



**Reinventing African Chieftaincy
in the Age of AIDS, Gender,
Governance, and Development**

Edited by Donald I. Ray, Tim Quinlan,
Keshav Sharma, and Tacita A.O. Clarke

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10 Governance Policy and Democracy: Reconstituting Traditional Authorities in the eThekweni Municipality (Durban), 1994–2003

Shahid Vawda

1. INTRODUCTION

One of the defining features of South Africa over the last decade has been its attempt at instituting and consolidating democracy in a continent that has few long-term post-colonial stable democratic regimes. Much has been said about formal democracy taking root: there have been three successful “free and fair” general elections for national and provincial levels of government and two local government elections. A third local government election occurred in 2005. The last decade has also been important for the African National Congress (ANC) government mandated to formulating and implementing policies committed to the development, transformation, and enhancement of what has been

termed “the disadvantaged” sectors of society. In this, the ANC has enjoyed almost hegemonic control of the terms of debate and direction of a modernist development agenda and transformation with very little direct open challenge from civil society. Some commentators have decried the lack of sustainable challenge and dissent led by civil society to the government’s development and transformation agenda. Yet the picture of South Africa as a modern liberal democracy that votes every five years giving the ANC an unfettered mandate belies the very intense debates over the direction of aspects of government policy from competing institutions taking place at several other levels of society. One such site of competition is from the institution of traditional authorities.

In KwaZulu-Natal province there are very strong challenges to policies of government that assign a largely ceremonial role to traditional authorities. This challenge initially came from the Inkatha Freedom Party (IFP), who made the lack of a meaningful constitutional role for traditional authorities a point of principled boycott of the first democratic elections before the historic compromise by the ANC to attend to the issue once the elections were over. This promise, including giving the IFP three seats in the president’s cabinet, was sufficient to entice the IFP to participate in the 1994 election. However, the role that traditional authorities would play at national, provincial, and local government was left vague and continues to be one of the fault lines of politics in the KwaZulu-Natal province. Yet several times between 1994 and 2003, inflamed emotions around the issue of the traditional authorities were diffused and violent confrontation was averted. The question is why has this fault line not been breached thus far: avoiding, rather than precipitating, a civil war on the scale of the 1980s, or worse.

I examine the politics of traditional authority with regard to local government policies that seek inclusiveness and legitimacy of authority, rather than merely a single litmus test of elected representative democracy. I analyze the policy of government towards traditional authorities, in particular, the way in which traditional authority is constructed in the policy and its implications for governance. The issue is not whether the ANC government, a modernist liberation movement turned political party, had to negotiate with what appears to be a retrogressive political party with non-democratic tendencies by virtue of being aligned with traditional leaders. The issue is not a construct of “us versus them,” although in the

rough and tough of political dialogue that much appears apparent. Nor is this a simplified understanding of the division as democratic versus non-democratic. Traditional authorities are by definition un-elected representatives as they inherit their positions of authority and leadership of their communities. Rather the focus of attention is on the relationship between policy and governance, or governmentality, inherent in the policies pursued within a largely liberal democratic form of government, which seeks to control rather than exercise outright domination.

In this chapter I seek to understand how the traditional authorities in the eThekweni Municipal Council (formerly the Durban Unicity, also known as Durban Metropolitan Region [DMR]) are constructed and shaped by their own actions and discourse and by a bewildering series of policies, legislation, interpretations, and the actions of politicians and bureaucrats to play a role in the development of the area under their jurisdiction. These constructions, or rather reconstructions, of traditional authorities are also played out against a historical background of intense violence and conflict, and new imperatives towards democratic local government, changing boundaries, and the reconstruction of the South Africa society as a liberal democracy. The main question that I ask is how do policies, often embedded in mechanisms of institutional decision-making, act as instruments of government power to shape the way individuals or institutions are characterized as “subject,” “citizen,” “tribal authority,” “development beneficiary,” etc., and hence the way in which they act or are constrained to act as members of a state, and thereby consent to be governed. By policies I mean an ensemble of political speeches, party manifestoes, service delivery promises, people’s experiences at street-level bureaucracy (in offices of government or traditional authority’s office who may act as a cog in the bureaucracy of government) and written documents such as research reports, green papers, white papers, and legislation.

The way in which traditional authorities have put their case on the political agenda and the way in which government has responded are analyzed as a complex process by which policies, not only impose conditions, as if from above or outside, but influence people’s norms of conduct so that they themselves contribute, consciously or not, to a model of institutional social order. Burchell has remarked that governance is “a more or less methodical and rationally reflected ‘way of doing things’ or ‘art’ for acting on the actions of individuals, taken singly or collectively so as to shape,

guide, correct, and modify the ways in which they conduct themselves” (Burchell 1993, 267).

2. THE BROAD TERMS OF DEBATE ON TRADITIONAL AUTHORITIES

The role of traditional authorities is part of a larger debate about the transition to democracy and the entrenching of democratic values and institutions. The question is whether traditional authorities can co-exist with democracy in a post-colonial situation, or should they be abandoned. On the eve of African independence, Mamdani (1996) argues that questions of de-racialization and democratization loom large. While de-racialization can be a relatively simple process in the post-colony, democratization has proven to be a less-enduring success. One of the pivots around which the promise of democratic freedoms hangs in the balance is between the urban and rural forms of governance. Mamdani argues that the inhabitants of the urban areas are impregnated with notions of political, social, and economic freedoms and rights, while the rural dwellers are constrained within the limits of “tribal authoritarianism” and the *imprimatur* of violence. Mamdani suggests, broadly speaking, that overcoming, rather than compromising, this distinction is critical to democratization. Although Mamdani’s urban-rural divide of unmediated polar opposites within the post-colonial state, does offer a limited way to understand the *impasse* of the current situation of a bifurcated state, the tradition-modernity trajectory is resolved only in the dissolution of rural “tradition” into the modern (or renders itself into a clash).

At first glance, it might appear that Mamdani’s position is correct. In the first national democratic elections in South Africa, rural people’s participation was the result of a combination of an alliance and a compromise with the two main proponents of the ruling rural elites, the Congress of Traditional Leaders of South Africa (CONTRALESA) and the Inkatha Freedom Party. Although the Congress of Traditional Leaders of South Africa was in an alliance with the ANC, it nevertheless wanted the issue of traditional authorities to be addressed. But it was prepared to do so within the framework of the ANC alliance partners and the interim constitution.

The other main rural-based party, the Inkatha Freedom Party (IFP), negotiated a settlement with the ANC, which allowed them access to three ministerial posts in a government of national unity and a promise to address the issue of traditional authorities. Although the IFP participated in the strongly contested general elections (national and provincial), their strength was said to be in the local authority level in rural areas, which were strongly controlled by the traditional authorities. The compromises also led to peace pacts and negotiations over maintaining the peace at provincial, local government, and community levels. The impact of the peace is not difficult to discern in the aftermath of a decade of violent confrontation. Political tensions still exist but not the destructive violence of the past. There are obvious differences in the support bases of the political parties, which hint at the disjunctures inherent in the social composition of rural and semi-rural areas where traditional leaders have an important social and political influence and ordinary people desired the promises of the Reconstruction and Development Programme. Rural people are not the assumed subjects of unreconstructed traditional authorities.

While dualistic notions do offer some insights, they are problematic in the assessment of unmediated urban-rural divisions. There are examples to draw from to understand and illustrate the mediation of such urban-rural distinctions. For example, following Franz Fanon, rural migrant workers, or the unemployed lumpenproletariat in the city, may represent a strand of opposition to the colonial state, which in some circumstances may be extremely militant and violent, whereas the existence of trade unions in rural areas represent the notion of civil and political rights (cf. Kadalie; Hirson, Champion), rather than rural authoritarianism and compliance. "Tradition" as a rural form of institutional governance is thus not uncontested. Nor is the idea of tradition used by government agencies inspired by modernist intellectual pedigrees ideologically or politically neutral. "Tradition," as tropes, rhetorical and narrative devices, or discursive formations, is used in various ways by traditional leaders, as well as the state and various government agencies, to include and exclude, to empower or disempower, to give voice or to silence some against others. One such discursive formation is the invocation of the constitutional phrase "co-operative governance," often quoted as a way of getting on with the business of government, involving the relevant stakeholders such as traditional authorities, and providing the service delivery and development

that it loftily promised in 1994. This is often justified on the basis that “co-operative” government is both a constitutional, legislative, and policy requirement. To state that such a legal constitutional and policy requirement is being fulfilled would be to suggest that an objective, an intention of government, is being implemented and successfully achieved in that all voices are heard before a rational level-headed decision is made. Such a perspective, even to the casual observer, would be lacking in precision. Its imprecision is not just because the roles and functions of traditional authorities are still contentious and the subject of debate in parliament and subsequent legislation, but it would suggest that government policy of “co-operative governance” is being implemented and driven by a rational process that provides for a tangible, regulated, and legitimate outcome. If this is the case, then it would suggest that the policy and legislative framework has shaped the way traditional authorities are being categorized and classified in terms of their status and position within a system of governance, has their assent, and gives meaning to what they do or practice as it contributes to, or detracts from, “co-operative governance.” In such a view, there is little to suggest whether such actions contest or comply with the terms of the policy (or policies) and legislative framework as the process evolves with greater depth and complexity. I suggest that the outcome of the implementation of government policies on traditional authorities (combined with other policies that affect or implicate traditional authorities such as land tenure) and new democratic local government structures is more likely to be varied, contingent, negotiated, and re-negotiated and may include the use of violence.

Indeed, for the traditional authorities, the ending of apartheid brought, not the promised land so superbly imagined in our liberation cargo cults (certainly not an upper house of chiefs, mimicking the British parliamentary system), but a new confrontation of modernity’s latest maelstrom, re-entry into a globalizing world ☒ disintegrating the solidity of their familiar ground, generating new kinds of struggles and calls for renewals, and unleashing a host of ambiguities in their attempts to govern “traditionally.” This chapter traces the contours of the still-emerging new regulatory system for traditional authorities, against the historical background of a defeated Zulu state and the ever-present contemporary threat of politically inspired violence. It outlines the constitutional position and role of traditional authorities in a parallel system of representation for traditional

authorities from local government to the national parliament, and the general policy environment. The chapter also analyzes the image of traditional leaders that emerges from the role and functions as contained in the constitution, local government legislation, white papers, and government discussion documents. It is the engagement with the new emerging system of governance that is the subject of this chapter. This engagement is predicated on traditional authorities co-operating with the new regulatory framework but also highlights the predicament and dilemmas of their own political and economic circumstances. Their responses, in particular to the new images of governance inherent in the municipalization and demarcation process, saw a variety of responses, from enthusiastic acceptance to grudging compliance. In some early responses to demarcation, there was outright rejection and the threat of violent confrontation with both central government and local councils who tried to discharge their legal responsibilities. The chapter attempts to develop a typology of the responses to analyze and explain why traditional authorities take the various positions they do and what might be implications for governance and development in the areas that they claim to have authority over.

3. THE CONSTRUCTION AND GOVERNANCE OF TRADITIONAL AUTHORITY: 1800–2000

After the 2000 local government elections, the Durban Metropolitan region was expanded to include much of the rural and semi-rural area of the former Ilembe Regional Council.

The incorporation of these areas into what became known as the Durban Unicity (later the eThekweni Municipality) were justified on the grounds of functional integration, density of population, and the need for service delivery and development. In terms of the Municipal Structures Act and the White Paper on Local Government, the local authority's main prerogative is to implement local development policies. For the newly incorporated areas this meant, in the main, service delivery of water, electricity, roads, health services, libraries and the provision of recreational and civic halls. These areas, as I shall later show, have immense backlogs in infrastructure and services. These areas, significantly, also consist of

sixteen tribal authority areas. Most of these tribal authority areas have wholly been incorporated into a new metropolitan area, although some have been split by the new demarcation boundaries, which became effective in December 2000. Given that these areas are under rule of traditional leaders, it is difficult to ignore their importance in pursuing any development agenda. The very fact that tribal areas have been included within the metropolitan area is indicative of encounters between urban and rural forms of governance in overcoming the burdens of the past, not least that which is predicated on the past, albeit contested, constructions of traditional functions, roles, and power.

3.1. The Historical and Social Context of Traditional Leadership

It has been argued that the institution of traditional leadership has been largely marginalized under colonial and apartheid rule and that its final demise should be hastened by the arrival of democracy. If this was so, its resilience in KwaZulu-Natal may have been underestimated. Indeed, I shall attempt to show that the institution was firmly rooted in the policy and was instrumental in the governance, firstly of the colony of Natal, and later of the province. Furthermore, it is likely, given its current constitutional recognition, to evolve to meet the challenges of the twenty-first century as an integral cog in the governance of rural and semi-rural areas and in particular the eThekweni Municipality for the foreseeable future. (This is not to say that its future is guaranteed or that the institution will live out its relevance in obscurity.)

3.2. Before Colonization

In Southern Africa, particularly, before colonization, chiefdoms had been fluid communities with an ill-defined jurisdiction in which *imizi* (homesteads), the unit of mainly self-sufficient agricultural production, had been bound together by ties of neighbourhood, kinship (real and fictive), clientship, and marriage. Chiefdoms defined themselves in genealogical terms as a grouping together of lineages and descent groups. Kinship in this context was important in the maintenance of social and political cohesion and conferred legitimacy on the chief. However, kinship and lineage was

open to interpretation and manipulation, thus allowing for switching of allegiance from chiefdom to chiefdom, enabling fluid and unstable political units rather than consolidated polities of chiefly power. The emergence of the *amabutho*, or young male groups, in the late eighteenth century, which were bands of men required to provide labour or military services for their chiefs, was instrumental in the rise and consolidation of the Zulu state by King Shaka. However, until the latter half of the nineteenth century, the Zulu state and surrounding chiefdoms still relied on the productive unit of the homestead (Guy 1979, 10–11, 21).

3.3. *The Colonial Period*

Since the beginning of colonial domination in Natal and Zululand during the nineteenth century, the *amakhosi* or traditional leaders have had a precarious and uneasy relationship with the successive colonial governments. After the British annexed Natal in 1842, the colonial authorities evolved a plan whereby they recognized the authority of the chiefs, but they were deprived of their power of life and death. Traditional leaders were co-opted into the system of indirect rule, known as the Shepstone System (named after the Secretary for Native Affairs). Shepstone recognized their role as allocators of land to their people, but retained the right to appoint and dispose of chiefs. Within his reserve, the chief had the sole right to allocate land, which was held under communal tenure by his people. Although this right did much to strengthen the position of chiefs in early colonial years, the power of chiefs declined through a combination of new laws administered by magistrates and an inability to defend their communities against taxes imposed by the colonial government. In this way the institution of traditional leadership was essential to creating the space for the colonial government to pursue the development of the plantation and mining political economy in Natal.

3.4. *The Union Era*

The establishment of the Union of South Africa in 1910 did not usher in any new improvements in the position of *amakhosi* and their people. Instead, the successive governments intended to estrange *amakhosi* from their followers so as to ensure that they conform to the governments' scheme

of indirect rule and the policy of racial segregation. During the twentieth century, various governments decided to consolidate their stranglehold on *amakhosi* so that they could serve the purpose of being government servants. In that way, an *inkosi* was no longer accountable to the people but to the government to whom he was indebted for material support and his position as *inkosi*.

The government was not the only entity interested in securing the support of the traditional leaders. Political organizations such as the African National Congress (ANC) and the Industrial and Commercial Workers Union (ICU) recognized the significance of the traditional leaders during the early years of the struggle for liberation. The ANC, having been inspired by late-nineteenth-century struggles that had been waged by traditional leaders, had a House of Chiefs when it was established in 1912 (Odendaal 1984). The ICU yaseNatal also paid special interest to traditional leaders and A.W.G. Champion used to invite chiefs to meetings in Durban. For some time, Champion of the ICU yaseNatal and Clements Kadalie of the national ICU vied for King Solomon kaDinuzulu's support for their trade unions. Chiefs were also regular visitors to the Bantu Social Centre in Durban, which was a site of many early resistance activities.

3.5. Traditional Authorities, Apartheid, and Democracy

Increased urbanization during the first decades of the twentieth century as well as the legalization of land dispossession by the Native Land Act of 1913 further challenged and undermined the powers and positions of *amakhosi*. The political economy, which was centred on the patriarchal homestead system typical of the rural areas controlled by *amakhosi*, was being eroded, but not ended, by urbanization. However, it should be noted that many urbanized people still maintained their connections with the rural areas and still paid allegiance to their traditional leaders.

The swift pace of the struggles against apartheid in South Africa from the late 1940s left many of the *amakhosi* politically ambiguous. During the subsequent decades, many chiefs were perceived to be politically reactionary and a bulwark against liberation. On the other hand, the apartheid government was continuing with its plan of making traditional leaders the cornerstone of the Bantustan system. The most notable step that the government took to further complicate the position of chiefs was to enact the

Bantu Authorities Act of 1951, whose implementation led to many rural revolts and in some areas pitted chiefs against their followers. However, some chiefs decided to risk being deposed and openly supported the liberation movements, thus continuing a thread where chiefs were considered leaders of people, rather than agents of the apartheid regime. When the homelands were created during the 1960s and 1970s, chiefs formed a vital component in their administration. Implicitly considered as cogs in the apartheid machinery, troublesome chiefs could and were replaced with more compliant chiefs whose installation was to be ratified by the homeland government (Discussion Document: Towards a White Paper on Traditional Leadership and Institutions, 2000, 4). The appointment of councillors also changed with only some being elected while others were being appointed. As a result of these administrative changes, traditional authority institutions lacked the subtle control measures that moderated the power of chiefs and the accountability of councillors to their communities. The overall result, as Tapscott points out, is that, under apartheid, the homelands parliaments were heavily slanted towards giving chiefs 50 per cent or more of seats, insuring that power remained in the chiefs favour (1995, 294). Although traditional leaders continued to control, allocate, and remove people from land, this was now in a context where most homeland inhabitants were subject to influx control measures (Ntsebeza 2000, 289; Tapscott 1997, 294-96). However, it should be noted that it was mainly in the homelands that African people could legitimately have access to land principally in the form of permission to occupy land (a PTO certificate) issued by a chief and ratified by the relevant homeland government department. In effect, chiefs became representatives of a government department, but with none of the responsibility or power to service or develop that piece of land. Hence they were never empowered to deal with development or basic service issues. In the case of the KwaZulu bantustan, chiefs tried to find alternative forms of recognition, and many joined or came under the influence of Inkatha, the ruling party in the KwaZulu Legislative Assembly. This provided many of them with a parliamentary salary compared to the meagre stipend they received as chiefs (McIntosh et al. 1996, 341).

By the mid-1980s, it became clear that apartheid could no longer survive. Its strategy of propping up the rural economy with devolution of power to authoritarian bantustan authorities, a system of tight controls

over labour migration to urban areas, buttressed with sub-economic township housing, and subsidized transport, came under severe economic and political pressure. Under conditions of economic recession, a failing rural economy and the crumbling of the spatial order of apartheid, the struggle for access to basic resources such as land, water, and shelter shifted closer to the urban centres. The increasing movement by the rural poor to peri-urban and urban centres, added to the increasingly materially deprived and densely populated settlements in urban centres such as Durban. These areas, particular around the Inanda Dam area, have settlement patterns that are conventionally defined as peri-urban or semi-rural. They are in fact the result of the particular migration and urbanization patterns of the last two decades or more and are the most visible effects of the failure of apartheid's bantustan and rural-urban migration policies. These settlements, in the face of material adversity, both on the periphery of the old Durban metro and within the borders of the former Ilembe Regional Council, are characterized by the construction of survivalist livelihoods from both the natural environment and urban opportunities.

During the 1980s and early 1990s, these areas were subjected to intense political conflict and violence. From about 1985 onwards, these conflicts were reported variously as "black on black violence" or a "civil war" and became entangled in the political struggle between the proclaimed modernist progressive UDF/ANC and traditionalist Inkatha (Kentrige 1992, 43-73). In its declining years, the apartheid state could not provide a trickle-down effect sufficient for the material well-being for its most discriminated citizens. But neither could Inkatha, which was ultimately dependent on the apartheid state for the provision of basic services and significant economic development. Nor could those alternative formations, the UDF/ANC, as they did not have the levels of power, administrative capacity or legality to do so. Indeed, as some commentators maintained, a liberated UDF zone during the 1980s and early 1990s, was nothing more than the expunging of any opposition, in particular Inkatha supporters (Freund 1996, 183-84; Kentrige 1992, 57).

The political conflict of the late 1980s and early 1990s in the Valley of a Thousand Hills, outside the then municipal boundaries of Durban, was described as a struggle between progressive notions of "democratic" rule as opposed to the traditional authority system. This particular classification of the conflict submerged another important strand to the conflict. In

the area of Molweni, the conflict at first appeared to be one based on the legitimacy of governance between a movement for democratic change and traditional authority systems. Yet further investigation revealed that the already settled community of Molweni was not willing or was afraid to share their resources, particularly land and water, with newly arrived impoverished victims of flooding and the construction of the Inanda Dam. The refugees and victims of resettlement felt helpless and at a loss as to what to do with their ruptured lives. For the settled community of Molweni, the increased pressure on local natural resources, a sense of overcrowding on the land, growing unemployment, and general deprivation fuelled their frustration and mistrust of the newcomers on the boundaries of their land. Lacking the institutional mechanisms for promoting cooperation, peaceful co-existence or incorporation, these two groups soon descended into cycles of violence characterized by terror and revenge. Under such circumstances, pursuance of livelihood strategies, dependant in part on natural resources, became virtually impossible. Nor could any development plans be implemented.

With a near collapse of any state administrative structures to either maintain or extend the delivery of services and with growing unemployment and extremes of poverty, support for either organization and its leadership was a continually contested one. But this contestation was played out within locally based communities and along the fault lines of locally defined geographical spaces and cleavages. Neither organization could ultimately provide the sustained material amelioration that ordinary people desired. This contestation allowed for extreme forms of violence to flourish, often manifesting itself in brutal killings and the destruction of homes and other property. Varied forms of contestation emerged in this administrative vacuum: vigilantism, warlordism, gangs of professional killers and other criminals. Criminal violence existed alongside the more formal political rivalry between comrades, traditional leaders, and rival political parties. Although violence has often been linked to political affiliation, it was not the only, primary, or indeed conscious source of conflict and violence. The question of the ability to provide land and water as essential means to pursue livelihood strategies was also an underlying element to conflict.

In summary, during the colonial and apartheid periods, the institution of traditional leaders, though under-developed and under-resourced,

performed within the homelands system the important function of controlling, in the interests of the colonial and apartheid state, the movement and residence of people. The homelands also served as labour reservoirs of cheap labour for the urban centres and mining industry. At the same time, traditional authority institutions were pressed into ideological service of the state. Through a set of legislation, traditional authority institutions became a tool in which cultural differences were emphasized, balkanizing the country. Precipitated by the decline of apartheid, a spiral of political violence created an administrative vacuum in the semi-rural and rural areas around Durban.

It was against this background that, when there were negotiations for a democratic South Africa during the early 1990s, there was an impasse over the role of traditional leadership within the new dispensation. Compromises were reached, but many of the traditional leaders were, and still are, uncertain about their roles and their future. The continued perception of *amakhosi* as part of the system of apartheid has also contributed to the negative image many people, mostly urbanized, have about them and the institution of *ubukhosi*. Yet in the midst and the aftermath of a virtual civil war, many traditional leaders still attended to the daily problems of people, their myriad of mundane grievances and disputes, and attempts to valorize the few options they had in their everyday struggles to make a living within their textured and differentiated cultural logics. This strand of everyday practice also served to emphasize that the traditional leaders were in the service of the people they claimed jurisdiction over and by implication were the *de facto* officers maintaining a semblance of social order, however disruptive and irrational it might have been.

While various forms of violence characterized the pre-1994 period, the changed conditions in the post-1994 period saw a shift in emphasis to a state-directed reconstruction, development, and service provision through community participation. This was particularly appropriate, given the widescale destruction caused by a decade of conflict and violence. After 1994 the thrust of bringing areas under traditional authority under the control and influence of the state took the form of demarcating the country into municipal authorities, who are to be responsible for local level infrastructural and social service development, legitimated by the participation of newly elected municipal councillors. The effect that demarcation brings in the form of urban development initiatives, such as

bulk infrastructure (water and electricity) or social services such as clinics and libraries raises the question of the control of such services in support and enhancement of livelihood strategies in the semi-rural areas around Durban.

There are two questions that arise out of this reconfiguration related to institutional governance. Firstly, how would demarcation in such areas affect the current form of administrative control, particularly in relation to the traditional authority structures? More to the point, how does the development discourse give shape to the political leadership to be exercised or excised? The development discourse at the time discouraged the role that traditional authorities could play in immediate post-1994 period. The question is what was the response of traditional leaders, and whether their interventions fractured the dominant discourse shaped in the first instance by the ANC's Reconstruction and Development Programme and later by the state's development initiatives. Secondly, how would demarcation affect livelihood strategies, and whether it would potentially generate conflict over resources or resolution over its use. Thus a political choice of resolving the conflict over the distribution and allocation of resources had to be shaped by political leadership, whether represented by elected councilors or traditional leaders.

4. DEMOCRACY, NEW POLICIES AND TRADITIONAL AUTHORITIES

Currently South Africa has about eight hundred ruling chiefs supported by approximately a thousand headmen. Their authority extends to over 18 million people or 40 per cent of the population who are largely in rural areas. This fact is clearly recognized both constitutionally and by the ANC government. It is not as if the new national government is unaware of the democratic impulses and contradictions inherent in the body politic. Since 1994, various attempts to contain the impulses of traditional leaders and improve the democratic standards of representation in rural constituencies have been undertaken. Two main mechanisms have been attempted. The first was constitutional. This took the form of giving effect to the interests of traditional leaders through the constitutional provisions from

the national level down to the local governmental level. The other was to re-structure the entire form of representation in local government through demarcating new local government boundaries. This chapter outlines the constitutional and legislative framework, including the White Paper on Local Government and Municipal Structures Act. Also discussed here, as it forms part of the regulatory framework which gives territorial effect to the new created municipal councils are the criteria for demarcation and the anticipated impact in terms of the land mass, population increase, and developmental challenges for the newly constituted eThekweni municipal authority.

4.1. Institutionalizing Traditional Authority Framework for Co-operative Governance

Although the Constitution recognizes the importance of traditional leaders, it falls short of outlining their exact role and function at a local level. Instead, the Constitution states, “national legislation may provide for a role for traditional leadership as an institution at local level on matters affecting leaders local communities” (Section 212[1]). This clause in the Constitution is problematic but suggests that the central government is to specify the exact roles and responsibilities of traditional leaders at various levels of government.

Although much ambiguity exists on the exact roles and responsibilities of traditional leadership at a local level, provision is made for them to approach and lobby other agencies and spheres of government at both provincial and national levels through the houses of traditional leadership. The 1996 Constitution makes provision for the establishment of a National House of Traditional Leaders subject to relevant national and provincial legislation. The functions of these houses are to advise government on matters affecting traditional leadership, traditional communities, and customary law. It must be noted that it is not mandatory for government to seek the House’s advice before or during the submission of legislation and policy documents to parliament.

In keeping with the constitutional provision, six provincial houses were established in terms of legislation passed by the provincial legislatures and in close consultation with traditional leaders. This combination led to the formation of the National House of Traditional Leaders (previously the

Council of Traditional Leaders) in terms of the National Council of Traditional Leaders Act of 1998. The renamed national structure in 1998 consists of eighteen members (three nominees from each of the six provincial houses). The number of members of the six provincial houses was as follows: Eastern Cape 20; Free State 15; KwaZulu-Natal 76; Mpumalanga 21; Limpopo 36; and North West 24. Overall, KwaZulu-Natal represents 40 per cent of the total membership. The actual numbers of traditional leaders were as follows: Eastern Cape 179; Free State 15; KwaZulu-Natal 282; Mpumalanga 53; Limpopo 189; North West 68 (*White Paper on Traditional Leadership and Governance*, 2003, 49).

The Department of Provincial and Local Government is responsible for the administration of traditional affairs at the national level. The provincial houses of traditional leaders interrelate with the provincial administrations responsible for the administration of traditional affairs. However, relationships between the national government and the functions of the provincial houses differ from province to province. In KwaZulu-Natal this is the Department of Traditional Affairs and Local Government. Generally, they are concerned with the succession and appointment of traditional leaders, customary practices within individual communities. In theory, the issues of wider concern to traditional authorities can be raised via the House of Traditional Leaders at provincial and national levels and then be introduced into the National Council of the Provinces, and then enter into the debates of the National Legislative Assembly. This is a very circuitous route.

The White Paper on Local Government (1998)¹ did not create any new approach of the institution of traditional leadership. In fact, the White Paper simply highlights what the roles and responsibilities had been like in the old dispensation. Broadly speaking, the White Paper outlines the functions (sometimes very vague) of traditional leaders as follows:

- 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* (meetings);
- 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 general spokespersons for their communities;
- Being symbols of unity in the community; and
- Being custodians and protectors of the community's customs and general welfare.

More specifically, their role in the development of the local area and community include:

- 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 constituency participates in decisions on development and contributes to development costs; and
- Considering and making recommendations to authorities on trading licences (White Paper on Local Government, 1998, 96).

It is important to note that the White Paper accords no direct decision-making powers on development issues to traditional authorities. In instances where there is an overlap with municipal functions, it is the municipality that has jurisdiction and not the traditional authority. In other words, traditional authorities will be obliged to operate as

part of the government in a local government structure. This of course does introduce a tension in terms of the structure of responsible authorities. N. Mkhize (personal communication) in her research shows quite strikingly different local community views on what traditional authorities should and should not be doing. Traditional authorities may in the interim be making decisions, for in the absence of functioning local authorities, they are the only functioning local government structures in the rural and peri-urban areas. Indeed, it should not be surprising to note that traditional authorities often have well-structured development committees that deal with many of the issues that face their subjects. The Municipal Structures Act (1998) places the weight for local development on local municipal councils, not traditional authorities. The Municipal Structures Act together with the new demarcation of the country has entirely restructured municipal local government. Within the eThekweni Municipality and former Ilembe Regional Council, the new demarcations cut a swath through traditional authority territorial entities (see Map1.) What the White Paper on Local Government envisages is giving effect to further co-operative governance as contained in the constitution. In other words, traditional authorities will be obliged to operate as part of the government in a local government structure. The white paper does acknowledge that in rare circumstances traditional authorities are the only representatives of the local government structure in their entirety.

4.2. Commentary on Policy and Legislation

Notwithstanding the acknowledgment of *de facto* non-traditional roles, the general image of a traditional leader as portrayed in the white paper is overwhelmingly one of a benign facilitator of local disputes, adjudicator of traditions and customs, and state informant/consultant on matters of development. Actual robust engagement by traditional leaders with the state is not envisaged (except perhaps in an emasculated way at the national and provincial levels through the Houses of Traditional Leadership). The actual work of traditional authorities, certainly in the latter half of the twentieth century, has been varied, and does not conform to this image. Perhaps the objective reasons for traditional authorities' unease with contemporary policies of a post-apartheid government lies partly in what their actual roles, rather than the assigned functions, were in the past. It

might even be suggested that the image envisioned by the policies and legislation of a post-colonial government (and in the constitution) is consistent with an imagined unchanging chieftaincy from a not-too-distant past, appended onto a modern democratic modality without much insight into the actual practices of traditional leaders.

Prior to the establishment of the KwaZulu Homeland and KwaZulu Legislative Assembly in the early 1970s, the magistrate played a crucial role in co-ordinating the activities undertaken by the various divisions of the Department of Native Affairs (later Bantu Affairs). The magistrates generally liaised extensively with the *amakhosi* in implementing government policy because they lacked an adequate policing or administrative infrastructure for such implementation. They therefore relied on the traditional leaders, who took on a series of *de facto* powers in association with magistrates. However, during the 1970s, the functions of magistrates were brought under the control of the KwaZulu government. Service delivery became the responsibility of the KwaZulu government and was exercised through individual line departments. Traditional leaders could make requests and voice their concerns, but these were to be processed through a regional authority, then to the chief minister's office, and then back down to various line departments (McIntosh 1995). The consequence was that decisions about the development and delivery of local services and the actual provision of services were handled by officers of the line ministries, and the traditional leaders were bypassed and in effect were still confined to performing various judicial functions under customary law, to dispute resolution, and to land allocation and administration. Given these conditions and difficulties (lack of service delivery and inadequate infrastructure to carry out their duties), many traditional leaders sought political authority beyond their domain through participating in the party political arena, particularly by seeking membership of the old KwaZulu Legislative Assembly, which some have argued compromised them in the eyes of their followers. The outcome of the KwaZulu homeland experiment was not really effective development, but rather great variability in the conditions that traditional leaders found themselves in. Many found themselves living in conditions that were close to poverty stricken and were poorly educated, often feeling threatened by a rapidly stratifying society along lines of income, education, and employment opportunities and networks of political influence. But there were other traditional leaders who had

become influential, wielded political power, or had the appropriate political connections, had extensive business connections and were invariably well educated. It is suggested that it is under these circumstances that different traditional leaders have responded to the overtures of the government since 1994 and have sought to maintain their influence over their followers, or, as some have called it, their “constituents.” Indeed, in the early years of the new government, when the process of municipal demarcation began, relations with their “constituents” ranged from exercising their authority through violence and despotic behaviour, as was common throughout the 1980s, to regular consultation with their councillors (*izidunas*). The unfinished and unlikely success of the homeland experiment resulted in a combined and uneven legacy of neglect and patronage, of development and under-development that continues to shape lives of traditional leaders and the communities they lead today. Yet the roles and functions of traditional authorities are still unresolved in the post-1994 period, albeit there are new consultative structures and institutions. These new institutions both shape the way in which traditional leaders have to reconstitute themselves in order for their concerns to be addressed (as an interest group) to the state, and how they articulate their concerns and their subjects. A pertinent question is whether the new framework provides a basis for co-operative governance.

What emerges from the discussion thus far is that the legislation and the white paper envisages a shift in roles for traditional authorities in the future, that is, apart from their role and function as custodians of their heritage. But the shift is not clear, and the role of traditional authorities in development and service delivery is still clouded with ambiguity and vague generalizations. Whatever the final outcome, it seems clear that traditional leaders are to be bound to a set of democratic conventions in that they will not be able to out-vote any elected body of representatives in a local government structure. At most they will have an influence on decision-making if they actively seek to engage with the local authorities. From the point of view of the central state, traditional authorities compliance with a new but vaguely defined institutionalized system of local governance makes a great attempt to democratize the rural areas. At the very least, for those areas under the control of traditional leaders, it seems the roles and functions of traditional leaders may be fused with development issues but leave unanswered how this will happen. Thus what emerges is a

combination of traditional and non-traditional roles for traditional leaders to play (*de jure* and *de facto* powers that they have). Some issues that emerge out of this context are:

- What government support will be given to traditional authorities to enable them to fulfil their traditional functions?
- How do traditional authorities fit in with the delivery aspects of the new municipal authorities?
- Given the tension that is sure to exist between elected representatives and traditional authority representation in local government councils, what is to be their relationship? How will it be structured to ensure co-operative governance?
- What will the relationship be between land tenure, land use and development?²

I have sketched some of the important issues arising out of the new legislative process and the implications of the policy options in the White Paper on Local Government. While the Municipal Structures Act sets out the governing principles for the new municipalities, the Demarcation Board's mandate is to create the geographical entities in which these principles could be operationalized. It is to the politics of the demarcation and the creation of local authorities that I now turn. There were two phases of demarcation: in 1995/96 and in 1998/2000, coinciding with the interim and final phases of implementing local authority structures. The question that needs to be addressed is how does demarcation affect the roles and functions of traditional leaders in the governance of their respective chiefdoms as well as within the municipality.

5. DEMARCATIONS AND THE TRADITIONAL AUTHORITIES

5.1. The Demarcation Criteria

In the demarcation process, the following factors and considerations were taken into account:

- Sustainable service delivery: i.e., the economy, functionality, efficiency, equity, financial viability, and optimization of human and environmental resource with respect to the administration and rendering of services;
- Functional urbanization: i.e., the interdependence of people, communities and economies as indicated by commuting, shopping, employment, recreational, and amenity and infrastructure use patterns;
- Existing and expected patterns of human settlement, land use, and migration, including the need to accommodate future growth;
- The need for a cohesive, integrated, and unfragmented area;
- Existing and expected land use, social, economic, environmental, infrastructural, and transport planning;
- Topographical, environmental, and physical characteristics of the area;
- Existing and proposed functional boundaries (service, administrative, and statistical), e.g., municipal boundaries, magisterial districts, tribal, health, transport, electricity, water catchments, police, voting districts, and census enumerator boundaries;
- The financial viability and administrative capacity of the municipality to perform functions efficiently and effectively;
- The need to share and redistribute financial and administrative resources;

- The need for coordinated sectorial, municipal, provincial, and national programs and services;
- Political acceptability.

The criteria for demarcating new municipal boundaries is nearly always presented as a technical exercise, but it is inevitably the outcome of political and technical decision-making. In South Africa, after the first national elections in 1994, the impetus to create new boundaries for local government was heavily influenced by the need to overcome the boundaries, both physical and ideological, of what many perceived as the irrational and racially divided settlements based on apartheid policy. Overcoming the legacy of apartheid planning was an important objective of demarcation, and the idea of new local authorities was also conceived as the vehicle for promoting participative planning. The process of demarcation in the Durban functional region in both 1995 and 2000 serves to remind us that creating boundaries is not a value-free rational technical exercise, however much it is invested with such thinking. Boundaries influence power and the access to resources and services. Inevitably, it also presages who will have access to resources and the power to use (or abuse) those resources.

5.2. *Demarcation in 1995*

Based on the above principles, demarcation boards were established in South Africa in the first half of 1994. In KwaZulu-Natal, the Demarcation Board became operational in September 1994. The provincial Demarcation Board had until July 31, 1995, to make its recommendations to the MEC (Minister of Executive Council, Local Government and Housing) in order to comply with election regulations. Due to the volatile political situation in the province between the ANC and the IFP (with the IFP enjoying popular support in former traditional areas), the board was instructed to ensure that consultation took place with every tribal authority (Pillay 1999, 207), sometimes under the protection of the army. Thus, for example, the board's proposal for the demarcation of boundaries to define the Durban metro area and those external to it, which consisted mostly of semi-rural peri-urban tribal land that was under the control of the former KwaZulu Legislative Assembly, was opposed by the *amakhosi*

and the IFP in KwaZulu-Natal. The two main competing political parties, the ANC and and IFP, also accused the each other of manipulation of the city's boundary in order to protect their own constituency.

In July 1995 the Demarcation Board for Durban proposed ten sub-structures based on "population balance and community interests rather than economic viability" (Report on the KwaZulu-Natal Local Government Elections, 1996, 24). For example, the Indian areas of Chatsworth, Shallcross, and Reservoir Hills and the mainly white areas of Westville and Queensburgh were to form one substructure along with the mainly African area of Chesterville. In addition, the board also proposed the promotion of purely black municipalities such as Umlazi (south of Durban) and Ntuzuma/Newtown/Inanda (townships and informal settlements). The then MEC for Local Government and Housing, Peter Miller (who was an IFP member and Finance MEC), argued forcefully, and with some merit, that historically disadvantaged areas stood little or no chance of standing on their own financial resources and that the proposals amounted to retaining apartheid style boundaries. However, after extensive negotiations, it was agreed to adopt the MEC's proposal of six sub-structures in the metro area on the grounds of economic viability (Polunic 1999, 77-78).

The outer boundaries of the city, which were a serious point of political contest between the IFP and the ANC, were finally formed into a horseshoe-shaped intermediate regional authority between the rural areas to the south and north of the urban metropole of Durban and in the west between the regional authority of Ndlovu (which included the city of Pietermaritzburg) and the tribal authority area of KwaXimba (which insisted on being included into Durban metro area). These were areas under the control of the former KwaZulu homeland government, which had been unable to develop these poorly serviced areas. Over time, these areas had become functionally urban in character, and the Demarcation Board proposed that a significant amount of land under traditional authority be included into the Durban Metro. This proposal was rejected by the IFP as it represented a potential loss of support for the IFP and significant gains for the ANC and prompted the delay for the 1995 local government elections in KwaZulu-Natal until March 1996, while the Electoral Court sat to make a decision. It was these political considerations that, at the time, had a potentially high risk of degenerating into violence, and

undermining the legitimacy of the proposed local government elections. In these final decisions, political considerations combined with the technical criteria, and led to some dramatic last minute compromises. Indeed, the 1996 election results bear this out. The ANC won an overwhelming victory in the city, but also significantly won 32 per cent of the vote in the iLembe Regional Council (i.e., the surrounding region that was excluded from the Durban Metro boundaries). Rhetorically speaking, the ANC complained that the result would have been better had the *amakhosi* not prevented them from campaigning in those areas.

Significantly, the one tribal authority area that became part of the Durban Metro Region, KwaXimba, received an enormous boost in terms of development and service delivery. This showed up the vast differences in capacity and resources between the Durban Metro and the iLembe Regional authority. The results of almost five years of development could not have escaped the notice of those on the other side of the Durban Metro boundary and is probably a factor in the significant swing away from IFP in the 2000 local government elections.

5.3. Demarcation, Municipalization and Traditional Authorities: 1998–2000

The interim local government phase came to an end with local government elections in 2000. Given that demarcations of local government boundaries in the interim phase were not always decided on financial viability criteria, the new 1998 the Demarcation Board seemed more determined on applying the technical criteria more strictly. The Demarcation Board's mandate was to create municipal geographical entities to plan and provide for the needs of communities within the integrated social and economic arena and to operate effectively in the exercise of its particular powers and functions.

The national government decision to redraw the entire set of municipalities saw the 883 South African municipalities reduced to 284. The following were taken into consideration when determining boundaries of municipalities.

- Interdependence between communities in the area in respect of settlement patterns, work, commuting, spending patterns, and recreation;
- Financial viability of the municipality for that area, including a viable tax base for the performance of its functions;
- Sufficient financial and administrative capacity of the municipality to perform functions efficiently and effectively;
- Topographical, environmental, and physical characteristics of the area;
- Existing functional boundaries, including tribal authority boundaries, magisterial districts, and enumerator areas; and
- Existing and future land usage, town and transport planning, including commercial, industrial, residential, and recreational and amenity use (White Paper on Local Government, 1998, 99).

This re-demarcation process also introduced the concept the UniCity, which essentially is a metropolitan urban centre. The demarcation process resulted in an increase in the area under the control of the Durban Metropolitan Region (DMR, a.k.a. eThekweni Municipality). It is now 68 per cent larger than previously, covering some 2,297 km², (previously 1,366 km²). The population increased from 2,519,955 to 2,749,737, an increase of approximately 9 per cent. (Urban Strategy, Summary Information Comparing new Durban Metro Boundary with Present One, May 9, 2000).

This newly incorporated territory consists mainly of rural and semi-rural areas and included almost wholly sixteen traditional authority areas. Some traditional areas were split as a result of the demarcation. In theory, the municipalization of local government did not change the boundaries of the land under traditional rulers but split them into a number of wards, some of which fell outside of the eThekweni Municipality boundaries. But, as we have pointed out, lines on a map are not just technical boundaries; they influence access to resources, services, and other amenities. Such a dramatic shift in boundaries led to no less dramatic shifts in the strategies of stakeholders such as the political parties and traditional leaders. For traditional leaders, the major point was that: firstly, their functions in terms of the Municipal Structures Act were not that much different

from the apartheid era, secondly, they initially only had 10 per cent, later changed to 20 per cent, representation in the municipality with no voting rights, and thirdly, they had not been properly consulted on the issue of demarcation and the new municipal boundaries. As one traditional leader who requested anonymity stated: "There was no consultation. They just went ahead with the process of demarcation without consulting us. That was a big problem and caused confusion among the people."

The conflict between traditional leaders and the state on the newly demarcated boundaries evoked much concern about the future political stability of local government after the 2000 local government election. There were widespread threats from the *amakhosi* to call for a boycott of the local government elections. In Durban and its surrounding areas, the 1998 demarcation process and subsequent 2000 local government elections were no less contentious, although they were probably considerably less openly violently aggressive than in 1994-96. Nevertheless, the state did not want the second democratic local government elections to be at risk of being derailed, especially in KwaZulu-Natal, where the *amakhosi* was still very influential. Also the province of KwaZulu-Natal was one of two provinces not under the control of the ANC. The Provincial Legislature was dominated by the Inkatha Freedom Party (IFP). On the other hand, the City of Durban is predominantly African National Congress (ANC) dominated. On November 28, 2000, Deputy President Jacob Zuma, together with a special cabinet committee on traditional leaders, met with representatives of traditional leaders to resolve their grievances. The state committed itself to defining the powers and roles of traditional leaders arising out of the newly demarcated boundaries. A joint committee was established with representatives of the state and traditional leaders. In addition, a coalition of traditional leaders was formed, comprised of the national and provincial houses of traditional leaders, the Congress of Traditional Leaders of South Africa, and the Royal Bafokeng nation (Daily News, 12/12/2000).

The *amakhosi* in KwaZulu-Natal are known to have the largest constituency compared to their counterparts in the other five provinces. In KwaZulu-Natal, the *amakhosi* is comprised of a king, 280 chiefs, and approximately 10,000 headmen spread over 60 local, district and metropolitan municipalities. The KwaZulu-Natal Provincial House of Traditional Leaders has the largest number of representatives compared to the other provinces. Until 2004 the province was controlled by the IFP, to

which most traditional leaders owe allegiance, which gave them a sense of significant power. Their sense of power is further enhanced by the In-gonyama Trust Amendment Act (1997),³ whereby the king in KwaZulu-Natal is vested with powers to administer and manage land falling under the jurisdiction of tribal authorities for the benefit, material welfare, and social well-being of the members of the tribes and communities as set out in the KwaZulu Amakhosi and Iziphakanyiswa Act (1990) (Section 2(b)). Although the *amakhosi* do not in theory own the land, they are vested with the authority from the king to administer and allocate land to people. It is this right to administer and allocate land that has always been an important source of power, rather than modest functions of adjudication over customary practices. But at the same time they only have control over specified territory and can only draw their authority from their followers within that territory. Although they draw their cultural capital and legitimacy from the king, their support base is fairly narrowly defined. Here is the dilemma they face: they have to acknowledge the two sources of their continued existence from outside, i.e., the king for their continued cultural legitimacy as part of royal lineages and the state for their remuneration; yet at the same time they have to engage with local government for developmental improvements, i.e., infrastructural development and services, in order to retain their support base.

Their responses to the demarcation and municipalization process reveal fairly dramatic and quite divergent perspectives of the traditional authorities. There were *amakhosi* who defended their status. One representative comment, made by a chief who requested anonymity, suggested an astonishing claim for monarchy: "I always ask myself who is senior in terms of status: the chief; the mayor; councillor and the president? And I always believe that it's the chief." Another made the outrageous claim that "the apartheid government was much better ... I really miss the old government."

While some mourned a passing era, a few saw the new developments in more prosaic terms: "the only positive development introduced by the new government was to increase the salaries of the traditional chiefs." But others welcomed the new challenges: One saw the arrival of the provision of new services and development as positive but clearly wanted to carve out an integral role for himself: "I want to concentrate on development.... My two main functions are to unite people and maintain peace

and stability and to develop my people and their land.” Another claimed “development as my responsibility.” Clearly not all traditional leaders saw local government provision of services necessarily as a negative intrusion into their territory.

While there was uniform view among most traditional leaders that the demarcation process was flawed because of the process of consultation and the unsettled question of leadership roles and functions, the question of development elicited varied responses. It is these responses as leaders that are important to consider because they shape the way in which new forms of governance will be introduced by them and accepted by the wider community that they purport to serve. Stoker and Mossberger (1995) suggest a useful typology to understand the varied and perhaps fragmented responses to changes in local authority leadership roles unleashed by the demarcation process and the passing of the Municipal Structures Act. While Stoker and Mossberger’s analysis refers to the changes in local government in Europe, their typology of early adherents, pragmatic compliers, critical compliers, and late adopters may be usefully adapted to the conditions prevailing among the traditional authorities within the eThekweni area. The typology outlines four possible kinds of responses:

- Early adherents are usually leaders who display loyalty in adhering to implementing new local government initiatives.
- Pragmatic compliers are leaders who will play the game, but lack any innovation or vision as to how the system can be worked to their advantage.
- Critical compliers are leaders who may delay entry into the new system of governance but, once in, will re-shape or interpret policies and procedures to fit their own vision or local needs.
- Late adopters display little enthusiasm for the new system and make little attempt to comply. In some cases, there is nostalgia for the past, an acknowledgment that times have changed irrevocably.

The nature of the responses may be related to the economic and political circumstances of the local area. Early adherents tend to be sympathetic

to government or to act out of loyalty to a political party in government. Pragmatic compliers, although not enamoured of government restructuring of local authority structures, probably feel less threatened by the changes in local government, or the effects on their followers, because they do not feel under threat politically but are willing to comply. Critical compliers need to react because of declining, worsening, or difficult social or economic conditions, or challenges to political leadership, whereas late adopters show little urgent response because they are in peripheral rural areas where there is very little or a small chance of effects reaching them in the near or immediate future, or will be peripheral to the game of contestations and negotiations that, for example, critical compliers will engage with, because it requires a commitment to acquire the knowledge (policies, laws, constitutional issues) and understand how the new system works (governmental modalities). This is not to suggest that each traditional leader fits or is made to fit each type. There will of course be some degree of overlap in these categories. However, what is suggested is that the varied responses of the traditional leaders, as reflected in the interviews conducted, show an inclination to one of these types, and it is useful to explore the kinds of responses received thus far to governance issues within the new framework.

An example of an early adherent to the policy of the central government is *Inkosi* Mlaba from the KwaXimba Tribal Authority. He initiated from a very early stage in 1995 the entry of his area, KwaXimba, into the newly demarcated Durban Metropolitan Council. In formal terms, it became part of the outer west sub-structure. His political connections, being a member of the ANC and CONRALESA, ensured a steady stream of development initiatives, principally in the form of providing basic services such as electricity, roads, water, and civic halls in the KwaXimba area. However, *Inkosi* Mlaba openly welcomed development to the point of saying that the institution of *Ubhukosi* (the institution of chieftainship) would in the final analysis fade away because of the power of representative and democratic forms of government. He argued that development in the peripheral mainly rural areas should involve a merger of the traditional form of governance with modern representative systems. Indeed, according to the councillor for the area, cooperation between the *iziduna* (the *inkosi*'s councillors) and the municipal council representatives is precisely what is occurring in order to meet a number of development objectives beyond

that of basic services. Thus there is a touch of innovation, mixed with prophecy, in *Inkosi Mlaba* approach to politics and development.

Inkosi Gwala, however, argued that development of his area was a good thing and he would encourage it, although he was more sceptical of the process if there was no control over it by the *amakhosi*. Although he was openly critical of the municipality in applying a top-down approach, he argued that they, the *amakhosi*, needed the Durban municipality to provide services such as water and electricity. This implied a greater degree of compliance with the way in which basic services would be provided by local government. In reply to a question on the slow progress of service delivery to his outlying tribal authority area since the early 1990s, he said: “we are hoping that now we will be under Metro they will consider assisting us with electricity. Perhaps the Durban municipality will see that it is not good for some areas to lack basic services while others have everything.”

Although indicating a passive recipient mode of accepting service delivery, he was ambiguous on his role in development issues: “I fear my role in development is not going to be clear.... I may not be able to play an active role in development under municipal structures.” He nevertheless felt that he was active in development issues in his area and would not want to be excluded from playing a role in service provision. However, he did not define what that role should be. He did not think that traditional leadership could be easily ignored because of its role in providing stability in rural areas.

Inkosi Bhekisisa Felix Bhengu represents that strand of critical compliers among the traditional leaders whose areas have been incorporated into the metropolitan municipality. While some traditional leaders are ideologically tied to particular political parties, however impartial they might appear, *Inkosi Bhengu* offers a different approach. He is highly critical of approaches that have politicized chieftainship and made it a tug of war between two political parties, which he claims has led to confusion, not only among traditional leaders themselves, but also among their followers, the ordinary people they are supposed to lead. He is also critical of leaders, elected or traditional, who have no understanding of development challenges, no knowledge, and sense of their responsibilities and duties. While he acknowledges that many among the *amakhosi* are less than adequate to the task of leadership (in terms of education and ethical

responsibilities to their people), he defends the institution of chieftainship almost on biblical grounds. Despite these limitations, he is convinced that co-operative governance is the solution to the problems of development and, in particular, basic services. He states: "I differ from many traditional leaders because I see this [new local authority institutions] as a challenge."

For him, the challenge is multi-dimensional. It lies in equipping traditional leaders with intellectual knowledge of how local government works and the theory and legislation that underpins its work and making and sustaining contacts with the elected ward councillors. *Inkosi* Bhengu, unlike many traditional leaders, is not content to sit back and wait for councillors and city officials to come to him. Without upholding royal protocol as an excuse for not meeting elected ward councillors and officials, he has made contact with those he deems as relevant to his crusade for development in his area. In this melding of knowledge and action, he sees engagement between traditional authority structures and local government as the fertile grounds in which to pursue the development agenda. In his interview, he points to his certificates and diplomas on local government, project management, and development from University of South Africa (UNISA), Technikon SA, and Damelin College. As he says, "If you talk about local government and municipalities to me, I do not get surprised or threatened." Although *Inkosi* Bhengu seems to eschew party politics, his emphasis is on the politics of the locality. In this sense, he points to the fact that an *inkosi* is only an *inkosi* because of his appropriate leadership of his people, that is, the extent to which people who live within the designated boundaries of his chieftom are prepared to follow him. In this, he says he is willing to share leadership with elected councillors because they must also be answerable to the people. He states: "I believe a councillor should know what he's supposed to do and the same goes for the *inkosi* in terms of responsibilities and limits. There is no need for squabbles." Thus he argues that, rather than playing to the gallery, for example by both parties trying to build sports grounds or civic halls near their own homes, a more rational approach needs to be taken into account so the maximum number of people in the community benefit. He has a rational model of negotiating the best deal for his people in conjunction with elected leaders:

To me there is no need for quarrels between *amakosi* and elected councillors because both are doing the same job. They must work

together. The interests of people and their priorities should be considered when it comes to development. For example, if we want to build a hall we should look at priorities first before finalising it. In some areas there are halls dotting the hills when the people actually want clinics. That is why we have white elephants — chiefs and councillors are competing and building structures without consulting people about their needs.

Inkosi Bhengu places emphasis on consultation with the people, the community of followers, and the electorate. This is refreshingly different from the image of recalcitrant, backward-looking traditional leaders. He is able to debate and challenge, not only elected leaders, but also professional development consultants without underestimating the enormity of the task of providing basic infrastructure and services. He thus reshapes the debate and interprets policy in a bottom-up way that not only parallels the intent of the Reconstruction and Development Programme (RDP) but also contrasts it sharply with the demarcation as essentially a top-down process.

In sharp contrast to this interventionist approach are those leaders who display little enthusiasm for the new system, making little attempt to comply in the sense of how the system might be used to explore advantages and the limits of the concept of co-operative governance. Their disposition is one of holding at arms length the *fait accompli* of new local government institutions. While not wanting to appear to be against the idea of democracy, they concede that there has to be a parallel system of governance: the traditional system as intact and the local municipal system that should be subordinate. For example, playing on the idea of biblical precedents of the divine right to rule, one *inkosi* argued:

We do want changes but not when those are brought in order to destroy traditional leadership. Traditional leaders rule by divine right because they were put here from time immemorial by God ... during the days of Kings David and Solomon. Traditional rulers are the representative of God and look after the people on his behalf.

Recognizing that his people are functionally linked to the urban economy of Durban, have the right to vote, and cannot possibly gain access to the

services without the municipality, he argues for a depoliticized local government that provides services as a purely technical exercise at his request.

We as traditional leaders want development and the brightness of the urban area like good roads, electricity, water and many other good things.... But what we say is that we do not want the municipality in our areas ... we prefer the status quo to remain. The present local government should continue to work hand in hand with traditional leaders.

Another *inkosi* put it more blatantly:

I am not calling for an alternative state, but I am saying we should work with one another, but under the same conditions as we did during those days of the KwaZulu government. We need to work together but we don't want to have a situation where the mayor undermines us.

Indeed this model of benevolent divine rule is most exquisitely expressed thus by another *inkosi*:

The way I see it is that the King must be at the top level of the pyramid, below him *amakosi* who are part of his council and then the government, like it is done in the British system. The government needs to refer any disagreements to the King for a final decision. This is very simple and clear.

For some, their reluctance to comply with the new system is also tinged with nostalgia for the past dispensation of the old KwaZulu Legislative Authority and scepticism of what real changes it might bring. "I really don't see the point in this demarcation. No change is going to take place because of the demarcation and the new government." While his scepticism on the real possibility of change may seem healthy, it stops at that. In other words, any engagement with newly elected councillors is premised on such councillors meeting with traditional leaders in the first instance. This is a common refrain: "The government must not impose the municipality"; "the *amakosi* should always be consulted." "The fact that they

[elected ward councillors] have not introduced themselves has led to a deterioration of relations.”

Hence I suspect that, while the pre-2000 elections tried to wring more concessions out of the central government, the traditional leaders knew that they would have to engage with, compromise, and accommodate themselves to new conditions. While it appears that the state is winning the battle, the situation is still paradoxical and ambiguous because the outcome may reinforce chieftainship, render it fatally ruptured, or slowly dissolve the social and political influence of the institution. The outcome depends on what independent (material and political/social) resources traditional leaders have prior to engaging the state and how they engage the state.

6. ENGAGING THE FUTURE

In the next section I analyze the new political landscape in which traditional leaders have to operate by sketching in the political, social, and economic profile of the newly incorporated areas of the eThekweni Municipality. This profile provides the context for the development and service delivery challenges faced by both elected councillors and traditional authority leadership.

6.1. Changing Political Support

The Municipal Structures Act made provision for the role of traditional leaders, but it limited the representation to no more than 20 per cent⁴ of the total, that is, no more than three or four representatives out of the sixteen could sit *ex officio* on the Metro council. (Municipal Structures Act, 1998, Part 6, section 81). Without effective participation in municipal councils, many traditional leaders felt that their roles as leaders of their communities and actors in the development of their areas would be usurped, and they aligned this fear with the historical alienation of their land by the Durban City Council since the nineteenth century.

In terms of formal governance, demarcation has led to eighteen new wards being created. The complication arises out the fact that the ward structure does not coincide with the traditional tribal authority boundaries. For example, as *Inkosi* Bhengu, reflecting on the interesting change in elected representatives, states:

Now we're in the final phase and the interesting thing is that after having nine councillors [in the pre-2000 elections] I now have one councillor. My councillor for ward 8 lives in the adjacent Embo traditional authority. Mr Mngwengwe here in ward 9 at Molweni and his councillor is a white man who lives in Hillcrest, a member of the DA. You see that it's complex and confusing to some ordinary people. (Interview, September 11, 2001)

In short, some wards cover several tribal areas, while some large tribal areas cover a few wards. In effect, this means that one councillor has to deal with several *amakhosi*, or conversely, one *inkosi* may have to deal with several councillors.

Yet the results of the voting patterns arising out of the 2000 local government elections in these areas suggest an interesting conundrum. The 2000 municipal poll in the new re-demarcated Durban Municipal Region (now known as eThekwin Municipality) reveals an unexpected surprise. Of the 200 council seats available, the ANC won 95. The IFP only received 35 seats. Even though the ANC was clearly the majority party, its dominance and inroads into the strongholds of the IFP are very clearly seen when it wins 61 of the available seats (of 100).⁵ This represents an interesting turn-around since the last elections. The borderlands were supposed to be IFP supporters but now represent a turn-around. These results can be seen in Table 1.

Table 1: 2000 Municipal Election Results in the DMR. Number of Councillors per Party.

	Ward-specific councillors	List-specific Councillors	Total
ACDP	0	2	2
AIPP	0	1	1
ANC	61	34	95
DA	29	24	53
ECOPEACE	0	1	1
IFP	7	28	35
INDEPEND	1	0	1
MF	2	8	10
NUCO	0	1	1
PAC	0	1	1
Total	100	100	200

More specifically, when one examines the election results for the traditional areas incorporated into the eThekweni Municipality, the outcome is more revealing. In the sixteen of the eighteen wards in the traditional areas, in terms of average votes per ward, there was a two-third majority vote for the ANC. This result is intriguing as these areas were supposed to be IFP strongholds and were not to be included in the metropolitan area in 1995/96. What is the explanation for this remarkable change? What is it that caused a rupture in support for the IFP in what was considered a safe political support base? Does this mean that ordinary people’s support for traditional authorities has begun to dissolve?

Clearly the close identification of the IFP with traditional authorities is beginning to loosen. Although traditional leaders might still support the IFP as the political party of choice, their continued leadership depends ultimately on allowing their followers to exercise their right to a free vote. Except for a few inveterate loyalists, most traditional leaders know that it is all but impossible to return to the days of the KwaZulu homeland. They need to compete for their “constituents” more openly, or at least not be seen to act in any way that hinders the prospects for “development” that

lies in the hands of a local authority whose concerns are much wider than only accommodating a particular interest group within their boundaries. Indeed, traditional leaders are only one of a number of “stakeholders” that the new council has to deal with. From the point of view of the traditional leaders, the question that must be uppermost in their minds is what are the possibilities that exist for engagement with the local state, or indeed their disengagement without losing their legitimacy.

I want to situate my remarks about traditional authorities engagement with local authorities within the context of basic delivery of services and the reasons for the incorporation of the very specific area under the control of the sixteen traditional authorities. I do not want to suggest that the *amakhosi* will or should take particular courses of actions. I do wish to argue that it is not conceivable to ignore traditional authorities, and that they should, and probably can, be involved in the decisions about the development plans that will affect the communities under their authority. I want to do this by linking the very factors that prompted the demarcation in the first instance (i.e., functional integration and service delivery) to the prospects for the future. To speak of functional integration and service delivery presupposes acceptance of a particular discursive interpretation of the economic and social profile of such areas, which forms the basis for engaging with the future in terms of basic citizens’ rights to services. Although functional integration, service delivery, development planning, and environmental management did not feature significantly in the public disputes over demarcation with traditional authorities, it might be worth considering how any of these are likely to feature in possible contestations in the future.

It is the specific character or peculiarities of the settlements that have to be taken into account to situate the relationship between functional integration and the traditional authorities. These peculiarities relate in a substantial measure to the historical continuities from the past into the present in the construction of livelihood strategies that currently occurs in the areas under the governance of traditional authorities. Currently, these settlements are, in effect, under the control of traditional authorities that control access to land and the natural environment and provide a measure of civic administration. The households in these settlements have in large measure been able to combine elements of the communal tenure system, use of natural environmental resources, and whatever economic opportunities

become available in the urban centre in a way that provides a modest livelihood. However, there is a great disparity in incomes between settlements in the Metro and in Ilembe. It is the implication of this that needs to be considered. It is suggested that the implications of service delivery may shape the way traditional authorities respond and the directions they take will see them critically engage, passively accept, or reject the development options inherent in an urban development strategy. It is suggested that an urban strategy that is based on housing and the provision bulk water and electricity and other infrastructural services at a recoverable cost may disrupt the basis of livelihoods, which in turn could result in social disturbances and conflict.

6.2. Social and Economic Profiling of the New Incorporated Areas

In order to provide an adequate socio-economic profile of the tribal authority areas, a detailed analysis of the data collected by the Urban Strategy Department of the Durban Municipality and the Demarcation Board was conducted. The data used by Urban Strategy comes from various sources: the national census of 1996, the quality of life survey in 1999, and various sectorial surveys conducted in 2000 at the local level. This is being compiled into an as-yet incomplete database. In trying to provide a basic social and economic profile of the areas as a collective unit, I have relied on a paper by Khan and Lootvoet (2001a, 2001b) dealing with the issue of service provision in these semi-rural areas. They worked on what they called the “gross” tables that the Urban Strategy Unit of the Durban Metropolitan Council is compiling for a GIS profile of the entire Metro region. Urban Strategy has divided the eThekweni area into 406 planning units (PUs).

Despite the shortcoming of the database, according to Khan and Lootvoet, the metropolitan tribal authority areas correspond approximately to 62 planning units (PUs) covering a surface of 870 km². This is approximately 93 per cent of the surface that was added to the metropolitan area. The population of the 60 PUs for which data are available is 410,618. In the tribal authority areas, the demographics are quite specific, differing sometimes significantly from the urban areas. The average household size is 5.4 persons against 4.1 for the rest of the metropolis and the people are

significantly younger than the inhabitants living in the other areas. In the tribal areas, 47 per cent of the population are less than ten years old and only 9.8 per cent are fifty or more. The percentages for the urban areas are respectively: 36 per cent and 13.5 per cent.

This age structure influences the employment conditions on these outer boundaries of the city. Only one out of six people settled in the “tribal areas” is employed, that is, twice as bad as the rest of the metropolitan region. Incomes are particularly low. Khan and Lootvoet note that 21.8 per cent of the households are without any income or access to resources, and that only one out of four earns more than R18,000 per year (that is, R1,500 per month). The figures are respectively 11.9 per cent and 52.5 per cent for the rest of the metropolis. Assuming that this elementary data on income, age, and population are accurate, and even noting that the first six kilolitres of water (per month) will be free, it becomes difficult to imagine how people at this level of poverty, in a city that is working on the principle of cost recovery for services provided, is going to afford to pay for electricity, water, or telephones.

There are other considerations that will have to be taken into account in the development challenge for these areas, and it is likely that traditional leaders will take into account the way they receive and respond to development initiatives, at least those who want to actively engage in development projects within their areas of rule. A first consideration is distance and transport. On average, most of the settlements on the periphery are thirty kilometres away from the centre of Durban, eight kilometres from a transport node, and twelve kilometres from the nearest commercial centre. These are areas that would be considered undeveloped, or even underdeveloped, as some settlements merely served as migrant labour supply zones in the past. Khan and Lootvoet consider that only 16 per cent of the surface area as having agricultural activities, which in their calculations “is less than half of the surface occupied by the peri-urban settlements (35%). The proportion of the area that was classified as properly urban is small: 5%, of which 2.1% is formal and 2.9% is informal.” Conversely, 36 per cent of the area consists of traditional dwellings, compared to 3 per cent in the other areas of the Durban metropolitan region. Informal dwellings are only 15 per cent, whereas houses built on properly demarcated plots represent more than 30 per cent of the dwellings. The last figure is not vastly different from the average of 40 per cent in the

DMA. This is the socio-economic context within which services such as electricity, water, refuse removal, or sanitation (basic services) are still to be delivered. Yet Khan and Lootvoet estimate that more than two-thirds of the households potentially have access to the electricity grid, in contrast to 84 per cent for people living in the other metropolitan areas. They also note that the number of clinics (0.66) and of schools (6.26) per 10,000 inhabitants is higher in the tribal areas compared to the rest of the eThekweni Municipality, which is respectively 0.48 and 3.20. The development agenda thus presents a mixed series of lower levels of services compared to the rest of Durban and greater potential with respect to electricity, schools, and clinics. Nevertheless, the backlogs the local government has to address are still huge; for example, just over one household in five has access to running water in the tribal areas, compared to two-thirds in the former DMA in 1996 (Khan and Lootvoet 2001a, 2001b). This then sets the stage for engagement between traditional authorities and the local metropolitan government.

6.3. Engagement Over What and How?

The research for this chapter has not been able to elicit any specific examples or cases studies of sufficiently advanced development projects to enable a sufficiently valuable evaluation as this is an interregnum where the whole process of service delivery and planning is only beginning, and the procedures of incorporating the traditional authorities into a new system of governance is not fully complete. However, given the information at hand on the incorporated areas under traditional rule, there is a particular set of circumstances that sets them off from the other tribal authorities in the more rural parts of the province. These are poverty stricken areas with very high settlement densities as a result of migration and poverty (see GIS map on settlement densities). These dense settlements are a result from the demand from affordable land and housing close enough to the Durban Metro. The disparities in income between these areas and the metro are stark. In the peri-urban areas on the borders of the eThekweni Municipality/Ilembe Regional Council, the traditional authorities provide access to land for a large number of people, which is affordable (i.e., almost cost-free). Such land as allocated by the *inkosi*, through his *indunas*, provides for the construction of a subsistence base (and shelter), and the

ability to migrate to the urban centre for work – whether these are formal or informal jobs. In short, it provides for multiple set of livelihoods that enable them to survive the effects of the decline of apartheid and the harsh economic conditions of post-apartheid South Africa. These areas are compacted high-density areas with high land usage.

6.4. Controlling Settlements, Land Tenure, and Survival

While clearly there are settlements in these areas, and even if much of the rest of the area consists of ravines and gorges, agricultural activities, whether of the small garden variety or communal farming, is probably a consideration. Agricultural activities that do exist are controlled through the traditional land tenure system, and this inevitably involves the traditional authority structure. The households in these areas survive by a multiple livelihood strategies that include migration, remittances, and subsistence farming activities. The *inkosi* and his *iziduna* are intimately involved in the control and maintenance of the areas. Their survivalist strategies depend on minimalist costs in providing these services, and a judiciary system labelled “tradition” or “customary”. The central thrust of the eThekweni Municipality’s urban development strategy is to provide services (water, electricity, sewerage, refuse removal, roads) but with the proviso that the costs can be recovered. In other words, such development initiatives and services will be provided on the basis that they are paid for. However, in these settlements, as suggested by Cross et al. (2002), household survival is constructed by combining rural strategies that rely on the natural environment as a resource base and extracting whatever benefits can be had from forays into the urban economy of the city. Thus, monetary household income is not highly significant compared to those within the township, suburban, and inner city areas. Cross et al. (2002) suggest that the provision of basic services within such a development framework will drive a wedge through such peri-urban communities, which will led to the exclusion of many household/families from the benefits of inclusion in the metro. What are the potential implications?

1. The provision of services introduces an “insider-outsider” dynamic which could destabilize communities. Services – water, electricity, roads, – provided initially to all citizens

may be denied to those who cannot afford them. Those that are denied such services, even though they are part of the eThekweni Municipality, will be seen as outsiders and may be considered a potential threat to the well-being of the community of fee/rate-paying households. Such a process of defining who belongs and who does not with reference to services and/or other development initiatives creates “insider-outsider” boundaries. It marginalizes sectors of the population who may become unwilling displaced refugees from development initiatives. Unraveling of an “insider-outsider” dynamic depends on what choices are made available to counteract marginalization in the first instance, and this it depends on how the eThekweni council defines an inclusive approach to development by including traditional authorities as stakeholders. A development discourse championed by the *amakhosi* to include the poorest of the poor would contest the notion of services provided on a cost-recovery basis from individual households.

2. Land is an important resource in these densely populated settlements. It is the tribal authority that determines the land tenure and land usage through the patronage of the *inkosi*, his *indunas* and *councillors*. The tribal authority is the administrative mechanism for land management, which in theory is supposed to grant all community members’ equal access according to need. In the minds of the local population, there is no perceptible difference between ownership and land use. The granting of access to land conveys to the people land tenure and land use rights. These rights are necessarily seen as undivided and provide under the circumstances an effective way to sustain their multiple livelihoods and welfare networks developed within their communities. But from the eThekweni Municipality’s point of view, the provisions of services, albeit paid for by individuals or households, grants them the right to regulate how land is governed in terms of planning procedures and regulations. The difference between the two systems of control over land usage has the potential for severely strained co-existence between the Durban Metro and the tribal authorities. The introduction of modernist notions of land usage, bound up with unfamiliar sets of rules and regulations, unilaterally introduces a rupture to the current

traditional system of land administration. Rupture introduces uncertainty and confusion, which, like the refugees and helpless flood victims of Molweni in the late 1980s, can fuel frustration and the spark for violent reaction. Demarcation and incorporation has to be a process that adopts procedures that accommodate, sustain, and build the means of survival of such communities, rather than a process which undermines them.

3. The demarcation and incorporation into the eThekweni Municipality of portions of the traditional authority areas has undermined their territorial integrity. For example, the Inanda area, including the area around the Inanda Dam shows the excision of part of the Qadi Tribal Authority land. This is an area of fairly dense settlement, between 120 and 7,000 per square kilometre (Urban Strategy 2000: GIS map: Settlement Areas and Population Estimate. Durban Metropolitan Council). The income levels are fairly low, mostly less than R600 per month (Urban Strategy 2000: GIS Map Settlement Areas and Population Estimate. Durban Metropolitan Council). There are both traditional and formal types of houses. Several potential problems arise here: (a) Traditional authorities are already wary of eThekweni Municipality intentions and are unlikely to be simply swayed by the urban development possibilities. Without critical engagement on what constitutes development or service delivery, their legitimacy would be undermined. (b) The Qadi is already a tribal authority area split up by the demarcation process. The incorporation of portions of the Qadi Traditional Authority land into the eThekweni Municipality may focus people's attention into one of two possibilities. Firstly they might migrate further away from the influence of the eThekweni Municipality in order to retain their multiple livelihood strategy based around reliance on the natural environment for subsistence production, that is, to continue to be dependent on virtual costless use of the land and its natural resources (at least from their point of view). Such a migration out could then affect other already settled communities in the Qadi Traditional Authority area or indeed any other tribal authority area that is close enough. The question would then be whether other settled communities would be willing to incorporate these "refugees" from the

metro or resist any sharing of their meagre resources? The case of Molweni, described above, gives some credence to this possibility. A second possibility is for the locals to accept incorporation but resist the provision of services at a cost. One can only speculate on who would lead such a resistance and what the possible consequences might be.

6.5. *The Question of Governance*

As indicated above, traditional authority structures do exist, and in many settlements, especially for the very poor, provide a framework within which the elements of a modest household livelihood can be constructed. Undermining such structures may lead to conflict situations. Even if no conflict ensues, the likelihood of increased poverty looms. Two issues arise from the consideration of traditional authority structures in such a context. The first is the recognition of traditional authority and the integrity of the boundaries under their sphere of influence, especially those whose boundaries are overlaid with municipal wards and have been split by the demarcation of municipal boundaries. The second is their accommodation within a workable representative arrangement within municipalities. It is because the very poorest of the poor find a means of survival within the framework provided by traditional authorities that it is imperative to take into account the social dynamics of such settlements. The role of traditional authorities in development is recognized at a policy level in terms of the White Paper on Local Government, and in terms of participation in municipal affairs by the Municipal Structures Act (section 81). The real issue is how to respect the boundaries of traditional authorities as an integral whole, and their meaningful participation in a way that the interests of the communities within those settlements are not unilaterally sacrificed to those of the eThekweni Municipality. Thus, for example, many *amakhosi* and their *izidunas* see the former Durban City Council as being the agent that has consistently taken land away, albeit for developing townships, residential estates, and industrial areas and for bulk infrastructural development and provision of services. Such actions in the past have often led to disputes and divided communities, resulting in ongoing conflict and delaying development and delivery. A constant refrain in the run-up to the 2000 local government elections of those traditional authorities in the areas

that were to be affected by demarcation is that they did not want their land taken away. This refrain was not just as a complaint of historical injustices, nor can it be considered a bulwark against modernity. Historical injustices must be understood at a number of levels but can also serve as the point of departure in the articulation of different and multiple forms of representation and participation within municipal government. Respect for the integrity of traditional authority structures and their boundaries may lay the basis for developing appropriate participatory structures. These would make legitimate decisions that provided basic services, and administered the land in an environmentally sustainable way for the people.

7. CONCLUSION

In this chapter, I have illustrated that the legitimacy of traditional leaders, that is, their authority to lead their communities, is a combination of their own rhetorical commentary on themselves as historical agents (justifying their own legitimacy), their understanding of citizenship and development (the right to vote, to dissent, and to expect basic services from the state), and their own internalization and subjectification of the policies of governance in general and more specifically those directed mainly at the traditional authorities, principally expressed in white papers and legislation, and actions and rhetoric of government spokespersons and ministers.

A key concern in this chapter has been to understand and analyze the way in which policies as discursive practices have sought to define and classify traditional authorities in ways that have served and continue to serve the interests of the state. Since 1994, the policies and dominant discursive practices of the state portrayed traditional authorities as tradition-bound functionaries of the state. In effect, the policies appeared to make traditional authorities no more than the consultants on how best to implement development policies in the areas under their influence. However, by adopting the language of the developmentalist state and asserting their right to speak and decide on their future, traditional authorities have shifted the debate beyond the initial parameters set by the state. But in effecting a new set of parameters for thinking about traditional authorities,

they have not challenged the state's right to set the agenda for development. The challenge then is how traditional authorities can engage with the issues of development while protecting their social support base.

It may be that some traditional authority figures see the best chances of development for their areas through the eThekweni Municipality Council. Although both the Municipal Structures Act and the White Paper on Local Government have built into them a consultative role for traditional authority, especially on development issues, this is not a direct role in decision-making. Those traditional authority leaders that opt for a more direct representative role may be seen as compromised if:

- (a) Consultation with the leadership such as *indunas*, councillors, and elders does not ensure an agreement on such a strategy;
- (b) Such a strategy fails to deliver on the communities' basic needs in these areas;
- (c) Engagement is not critical, constructive, and participatory; or
- (d) Development initiatives are beyond the sustainable capacity of the people in the communities concerned.

Underlying these conditions is the need for greater openness and accountability by traditional leaders. Clearly, while the institution of traditional authority appears resistant to social change, they can and do evolve in response to new circumstances. Under colonialism, segregation, and apartheid, traditional authorities changed to accommodate new situations, albeit not on terms they could effectively challenge. There is an equally compelling argument to be made that, in the current context, the strong possibility exists where political intervention and agreements signal significant changes in the direction towards a more inclusive and democratic system of governance. More concretely for some traditional leaders and their supporters, such a situation offers the acceptance by the state that the institution of traditional authority has a historical materiality and tenacity that cannot be ignored. By accepting the discourses of the developmental local state, traditional leaders have shown that participation within a local government offers significant advantages.

Elected politicians engaging with traditional authorities in rural and semi-rural areas have the advantage of instituting local forms of governance in rural and semi-rural areas that has largely been absent almost a century. By accommodating the traditional leaders, the ANC government as also avoided a protracted battle, both legal and on the streets.

However, the real possibilities can only be fully appreciated once two further issues are explored. Firstly, the semi-urban, peri-urban nature of the households and community settlements implies that a township model of development is not necessarily appropriate and may indeed be considered an imposition and potentially disruptive. A model of development that incorporates present land usage patterns and future provision of services and basic needs has to be developed, possibly giving greater meaning to the idea of “co-operative governance.” Secondly, the provision of services and infrastructure as part of the urban development strategy used by the Durban Metro can have a serious effect on the livelihood strategies of households in these settlements. It may drive a wedge between those few that benefit from urban development and those who do not because of cost factors. This may lead to an increase in tensions between “haves” and “have-nots,” or insiders and outsiders. A possible way out is to recognize that the role in terms of the White Paper on Local Government. The inhabitants of such settlements would probably have informal lands rights in terms of current land reform legislation, which obliges negotiation land occupied is controlled by traditional authorities and that they are accorded a development in any case. It means entering into a series of negotiations towards the provision of services to meet basic needs for households and other welfare provisions without undermining the current livelihood base any further. To enter into negotiations implies two further aspects. Firstly, an acceptance of representation, which will mean that traditional authorities as legal entities have to be accommodated. At the very least they have to have a voice in deliberations, and decisions that affect the traditional leaders and their followers must be seen to be acceptable and legitimate.⁶ Secondly, it implies creating the space for open debate and allows for the exploration of the rupture in alignment between the IFP and traditional authorities.

Thus, the subject of authority becomes a participating citizen, and at least one ghost in the policy is exorcised.



INKOSI BHENGU IN HIS OFFICE. (PHOTO: eTHEKWINI MUNICIPALITY'S HERITAGE DEPARTMENT, LOCAL HISTORY MUSEUMS.)



INKOSI GWALA IF AMAPHEPHETHE. (PHOTO: eTHEKWINI MUNICIPALITY'S HERITAGE DEPARTMENT, LOCAL HISTORY MUSEUMS.)



INKOSI MLABA IN HIS OFFICE. (PHOTO: eTHEKWINI MUNICIPALITY'S HERITAGE DEPARTMENT, LOCAL HISTORY MUSEUMS.)



KWA XIMBA MR. SIMON NGUBANE ELECTED MUNICIPAL WARD COUNCILLOR. (PHOTO: eTHEKWINI MUNICIPALITY'S HERITAGE DEPARTMENT, LOCAL HISTORY MUSEUMS.)

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NOTES

- 1 Within the framework of the Constitution, the White Paper establishes the basis for a new developmental local government that is committed to working with citizens, groups, and communities.
- 2 To a large extent, the question has been answered by the Communal Land Bill, which envisages that traditional authorities will continue to have control over the distribution of land. In short, traditional authorities will control the allocation of land, and all access and development of the land will be subject to their decision-making in consultation with stakeholders.
- 3 In terms of this Act, 56 per cent of land from the former KwaZulu Homeland government is held in trust by the king. The Act required that this land be held in trust on behalf of the traditional authority, and the king of the Zulu nation is the primary guardian. This Act has recently been superseded by the Communal Land Rights Bill of October 2003.
- 4 This was 10 per cent, but increased after objections were raised by traditional authorities to the inadequate representation they have in municipal councils.
- 5 Elections at local government level are a combination of proportional representation based on a list of candidates submitted by the different political parties and direct elected representation (hence the list of specific councillors). In the Durban Metropolitan Council, there are an equal number of proportional and directly elected ward councillors. The ANC won 61 of the seats for directly elected councillors and 34 of the proportional seats as against the IFPs 7 and 28 respectively.
- 6 It is interesting to note that in an effort to get development and participatory democracy as features of the administration of the city, area-based management is being actively canvassed by the city. Yet in its list of stakeholders, traditional authorities are not mentioned as having any significance.

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