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**TRADITIONAL AUTHORITY,  
INSTITUTIONAL MULTIPLICITY AND  
POLITICAL TRANSITION IN KWAZULU-  
NATAL, SOUTH AFRICA**

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### Traditional Authority, Institutional Multiplicity and Political Transition in KwaZulu-Natal, South Africa<sup>1</sup>

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#### Introduction

Late Twentieth Century efforts to promote democracy in Africa were rewarded in one part of the continent at least. Flying in the face of the voice of Afro-pessimism, the first non-racial elections in South Africa in April 1994 heralded the end of apartheid and gave birth to a liberal democracy. They have been succeeded by two further democratic elections that have been inclusive, relatively free, fair and peaceful. However, this historic period of change in South Africa has been accompanied by a continental revival or reinforcement of ‘traditional rule’,<sup>3</sup> and an increase in the salience of customary practices,<sup>4</sup> in a trend that has been referred to as “re-traditionalisation”.<sup>5</sup> In this context and despite its democratic transition, South Africa has become caught up in a wider drift towards resurgent tradition. This is perhaps not surprising given that South Africa is as rich in institutions with indigenous roots and founded on customary practice as many other African countries. Nor is it without precedent if viewed both in historical and contemporary comparative perspective that traditional authorities in South Africa are competing for authority with the country’s new liberal democratic institutions.<sup>6</sup> What was not foreseen, however, was that South Africa’s new democracy led by an African National Congress (ANC) government would adopt such a conciliatory approach towards chieftaincy in South Africa, even at the expense of hard won liberal democratic principles.

Adherents of tradition argue that customary institutions in Africa and the traditional leaders that uphold them have a stabilizing influence, particularly given the inadequacies of many post-colonial African states. It is suggested that this remains the case for South Africa as well and that chieftaincy, though tainted by its association with segregation and apartheid, has nevertheless provided continuity of governance, particularly in rural areas where there were scant alternative structures. Opponents see the return to tradition as a regressive step that

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<sup>1</sup> This paper is the first of a series of papers coming out of that component of the Crisis States Research Centre concerned with institutional multiplicity and, more specifically, the role of traditional authorities in both conflict and reconstruction in states having undergone periods of political contestation and violence. It provides a conceptual and historical background to the field research in KwaZulu-Natal, which includes interviews with traditional authorities, councillors, politicians and local government officials, as well as a survey of residents in three peri-urban traditional authority areas.

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<sup>3</sup> S. Berry, *Chiefs Know their Boundaries: Essays on Property, Power and the Past in Asante 1896-1996*, Portsmouth NH: Heinemann, 2001; M. Mamdani, *Citizen and Subject, Contemporary Africa and the Legacy of Late Colonialism*, London: James Currey, 1996.

<sup>4</sup> H. Moore & Sanders, T. (eds), *Magical Interpretations, Material Realities*, London: Routledge, 2001.

<sup>5</sup> P. Chabal & J. P. Daloz, *Africa Works, Disorder as Political Instrument*, Oxford: James Currey, 1999.

<sup>6</sup> E. Hobsbawm & T. Ranger (eds), *The Invention of Tradition*, Cambridge: Cambridge University Press, 1983; L. Vail (ed.), *The Creation of Tribalism in Southern Africa*, Berkeley: University of California Press, 1989.

undermines progress towards democratic consolidation in Africa generally and in South Africa more particularly. In many respects these concerns are not new and reflect careful historical debate in South Africa that remains relevant in informing and understanding the contemporary period.<sup>7</sup> With this in mind this paper explores the institution of *ubukhosi*, or chieftainship, in KwaZulu-Natal (KZN), where resurgent tradition is particularly vociferous, but also part of a longer history exhibiting both continuities and discontinuities.<sup>8</sup> Against this background it considers whether the recognition of traditional authorities and the powers and functions accorded to them in South Africa, and more particularly KZN, constitutes a potential faultline of crisis in South Africa's fragile emergent democracy or a site of stability in a politically volatile province. The question is framed by recourse to institutional theory and is answered by setting the contemporary experience of 'negotiating tradition' in KwaZulu-Natal against a background of apartheid government, resistance and political violence in the province.

### **Background on KwaZulu-Natal**

Forged out of the former Province of Natal and the so-called 'independent homeland' of KwaZulu, the Province of KwaZulu-Natal (KZN) has had a difficult history and was born of political conflict during the twilight years of apartheid that assumed the proportions of a civil war. The price paid in the province for an end to apartheid and the transition to democracy was the loss of 20,000 lives since 1984.<sup>9</sup> At its height, the violence led to the displacement of half a million people with more people dying in KZN in a decade than in 20 years of fighting in Northern Ireland.<sup>10</sup> Nevertheless, today KwaZulu-Natal appears to have transformed itself from the epicentre of violent conflict and civic breakdown in South Africa to one where accord and coexistence prevail. This apparent transformation has been assisted by what Taylor calls "a politics of denial" about "a war that no one wants to admit or recognize".<sup>11</sup> It has also been facilitated by a number of political compromises by national government that hold particular resonance at provincial and local levels in KZN. The first compromise was that the ruling party, the African National Congress (ANC), accorded a cabinet post in the first government of national unity to Chief Mangosuthu Gatsha Buthelezi, the former Chief Minister of the KwaZulu Legislative Assembly and leader of the rival Inkatha Freedom Party (IFP). This position was maintained following the 1999 election when Buthelezi became

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<sup>7</sup> W. Beinart, *Twentieth Century South Africa*, Oxford: Oxford University Press, 1994; W. Beinart & C. Bundy, *Hidden Struggles in Rural South Africa*, Johannesburg: Ravan Press, 1987.

<sup>8</sup> N. Cope, *To Bind the Nation: Solomon kaDinuzulu and Zulu Nationalism 1913-1933*, Pietermaritzburg: University of Natal Press, 1993. Also S. Marks, *Reluctant Rebellion: The 1906-1908 Disturbances in Natal*, London: Clarendon Press, 1970; *The Ambiguities of Dependence in South Africa*, Johannesburg: Ravan Press, 1986; and 'Patriotism, Patriarchy and Purity: Natal and the Politics of Zulu Ethnic Consciousness' in L. Vail (ed.) *The Creation of Tribalism in Southern Africa*, Berkeley: University of California Press, 1989, pp.215-240).

<sup>9</sup> R. Taylor, 'Justice Denied: Political Violence in KwaZulu-Natal After 1994', *African Affairs*, 101 (2002), p.473.

<sup>10</sup> Jeffrey says, based on a conservative estimate, calculated from the number of houses known to have been destroyed between 1987 and 1989, that at least 10,500 people must have been displaced from their homes during this period alone (A. Jeffrey, *The Natal Story: Sixteen Years of Conflict*, Johannesburg: South African Institute of Race Relations, 1997). A more recent estimate is that between 200,000 and 500,000 refugees fled political conflict in KZN in the period from 1984 to 1994 (E. Mariño, *The 1994 Emergency in KwaZulu-Natal, South Africa: Statements and Observations from the International Observer to the Emergency*, Durban-Johannesburg, April-July 1994, p.14).

<sup>11</sup> Taylor (2002), p.504.

Minister of Home Affairs.<sup>12</sup> The second compromise was the decision to accommodate South Africa's traditional leaders in the governance of the country.<sup>13</sup>

The politics of compromise were entered into not least with the volatile politics of KwaZulu-Natal in mind. During the negotiation phase, Buthelezi supported the demands of the former ruling Nationalist Party for a federalist system of government and although they lost on this score, he tried to ensure greater power for the province of KZN through preserving the powers of traditional authorities, a critical element of his IFP support base. In the first non-racial democratic elections in a government of national unity in 1994 the IFP won a narrow majority in the new provincial legislature and KZN became one of only two provinces to fall outside the control of the ANC.<sup>14</sup> In the 1999 elections, neither party won a clear majority and a coalition provincial government was formed on the back of a shaky truce. Floor crossing in the Provincial Legislature subsequently rocked political calm.<sup>15</sup> This allowed the ANC and its allies in the province to secure a two-seat majority so that for the first time the political dominance of the IFP in KZN was dislodged, unleashing a backlash from the Party involving accusations of bribery and corruption against those who defected to the ANC.<sup>16</sup> In the 2004 elections the ANC won a narrow majority (46.98%) over the IFP (36.82%) but neither party appears able to make up an alliance bloc.<sup>17</sup> At the time of writing, despite the elections having been declared free and fair, the IFP was challenging the results and it looks as if once again, the prospect of an inclusive and cooperative coalition government in the province will be elusive.

Critical to the delicate power balance between the ANC and the IFP in the KwaZulu-Natal Provincial Legislature has been the fact that each party receives its votes from predominantly urban and rural constituencies respectively. The IFP has its major power base in the rural areas and commands strong support from the *amakhosi* (chiefs) and their *izinduna* (headmen). It has nurtured an urban following through alliances with white middle-class elites in the cities, notably through political accommodation with the Democratic Alliance (DA) party in the context of local government politics, as well as through courting Zulu migrant workers living in urban hostels, mobilised through local IFP branches. The ANC has been stronger in the province's urban areas and has only gradually made inroads into rural political

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<sup>12</sup> Buthelezi was at first given the role of Deputy President, later ceded to Jacob Zuma, one of the few high-ranking Zulu members of the ANC. At the time of writing it was not clear where Buthelezi would be accommodated following the 2004 election.

<sup>13</sup> It is recognized that the terminology around traditional leaders is contentious and that the use of terms such as traditional authorities and chiefs have been questioned and debated in South Africa. In KZN the vernacular Zulu terms *inkosi* (chief) and *amakhosi* (chiefs) are used. The Zulu term for the institution of chieftainship is *ubukhosi*. However, when the discussion is not focused exclusively on KwaZulu-Natal the terms traditional leaders and chiefs are used interchangeably here, stripped of pejorative connotations.

<sup>14</sup> The other was Western Cape Province. In 1994 nine provinces were created out of the four provinces of so-called 'white South Africa' and the ten former ethnically defined 'homelands' or 'bantustans' created under the Bantu Authorities Act of 1951 and the Promotion of Bantu Self-Government Act in 1959.

<sup>15</sup> This was provoked by changes in national legislation allowing incumbent elected politicians to switch party allegiances mid-term. The legislation was designed by the ANC led national government to address in its favour, problems being encountered at local government level in the Western Cape but the situation in KZN could not be excluded from this legislation although the implications are more ambiguous.

<sup>16</sup> At the time it led to the firing of three ANC Members from the Executive Committee (MECs) by the IFP Provincial Premier, Lionel Mtshali (*Sunday Times*, 13 April 2003). While on the surface such goings on might seem nothing more than political shenanigans, they were invariably watched with some anxiety in KZN, where fears of renewed political violence lay just below the surface. Such latent fear helps explain why politically neutral commentators prefer a coalition government to narrow majorities (*Mail and Guardian*, 11-16 April, 2003).

<sup>17</sup> <http://iafrica.com/news/saelectionfocus/news/316632.htm>, last accessed 18 April 2004.

constituencies, its progress having been consistently blocked by the *amakhosi*. It is for this reason, therefore, that *ubukhosi*, the institution of chieftainship in KZN, has become a political faultline along which democratic governance and indeed the peaceful transition is constantly tested.

### **Institutions and Social Change**

At a function in Greytown in April 2003, attended by the IFP leader Mangosuthu Buthelezi who was receiving the freedom of the town, Prince Gideon Zulu, the IFP MEC for Social Development lashed out at IFP defectors to the ANC in the recent floor-crossing episode, by saying they were behaving “as if they were bigger than their mothers’ bums”.<sup>18</sup> His remarks were broadcast on a local radio station, *Ukhozi FM*. They subsequently entered *Hansard* when he was asked by Peggy Nkonyeni, an ANC MEC in the Provincial Legislature, to retract his remarks. He refused, saying “I am not going to take nonsense from you, woman, your mother’s bum”. Eventually, however, and at the insistence of the Speaker of the House Bonga Mdlletshe, he offered a grudging apology. Peggy Nkonyeni said “As a woman, I feel belittled and humiliated and believe that [Prince Gideon] Zulu is a sexist who, like the racists of yesteryear, has no public role in our non-racial and non-sexist society”. Prince Gideon Zulu countered that his remarks were not insulting because buttocks were a subject of praise in Zulu culture, where men often “politely asked women to show off their bums”. This retort notwithstanding, Nkonyeni has lodged a complaint with the Human Rights Commission and the Commission on Gender Equality, both set up after the 1994 elections to give force to constitutional commitments on human rights and non-sexism respectively.

This incident is recounted because it encapsulates something of the competing institutions and associated norms and values that characterize political life and governance in contemporary KZN. One reading of the exchange would simply be to see Prince Gideon Zulu championing the cause of ‘traditional Zulu culture’, and Peggy Nkonyeni as sounding the voice of modernist reason. Another approach, and the one adopted here, is to be wary of such bifurcated analysis in favour of one that seeks to understand how processes of institutional transformation occur within a context of institutional multiplicity. Institutions are understood here as the humanly devised rules that constrain or enable individual and collective behaviour. They comprise formal rules, informal constraints and the enforcement characteristics of both.<sup>19</sup> Institutions are considered as efficient because they enhance information flows and reduce uncertainty and as durable because of their inherent inertia, given the high transaction costs of change.<sup>20</sup> They affect all aspects of social existence from political decision-making to the rules governing personal relationships and form the framework in which these social interactions take place.<sup>21</sup> Like culture, institutions are not static but they are inherently inert. Configured by past processes and circumstances they are never in full accord with the requirements of the present.<sup>22</sup> Following Cleaver, we refer to institutions not as formal and informal but as ‘bureaucratic’ and ‘socially embedded’.<sup>23</sup> We would argue that bureaucratic

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<sup>18</sup> *Sunday Times*, 13 April 2003.

<sup>19</sup> D. C. North, ‘The New Institutional Economics and Third World Development’, in J. Harriss, J. Hunter and C.M. Lewis (eds), *The New Institutional Economics and Third World Development*, London: Routledge, 1995, p.23.

<sup>20</sup> D. C. North, *Institutions, Institutional Change and Economic Performance*, Cambridge: Cambridge University Press, 1990.

<sup>21</sup> J. Knight, *Institutions and Social Conflict*, Cambridge: Cambridge University Press, 1992, p.1.

<sup>22</sup> T. Veblen, *The Theory of the Leisure Class, An Economic Study of Institutions*, New York: Macmillan, 1902.

<sup>23</sup> F. Cleaver, ‘Moral Ecological Rationality, Institutions and the Management of Common Property Resources’, *Development and Change*, 31 (2000), pp.361-383.

and socially embedded organisations can be more or less formal. Hence, traditional authority in South Africa is both socially embedded and imbued with hierarchical and patriarchal values and norms. However, it is also bureaucratic, as traditional institutions have become formalised as part of government, governance and development.

Douglas sees institutions becoming socially embedded by way of iterative cognitive processes,<sup>24</sup> and Giddens describes the rooting of institutions in terms of social systems understood as the “reproduced relations between actors or collectivities, organized as regular social practices”.<sup>25</sup> What this suggests with regard to the acrimonious exchange between Prince Gideon Zulu and Peggy Nkonyeni in the KwaZulu Legislative Assembly is that eventually one frame of meaning and the social institutions that support it might give way to the other, or alternatively they may adapt and mutate through the encounter. Bates has suggested that political interventions and settlements can play an important role in the creation of new or the evolution of old institutions.<sup>26</sup> This paper considers institutional change in relation to *ubukhosi* and how this has been engaged with as a political process within the context of KZN past and present. Both the tenacity and mutation of the institution of *ubukhosi* are demonstrated, from colonialism through to apartheid and well into the post-apartheid era in South Africa, so that today in a context of institutional multiplicity, democratically-elected members of the national and provincial parliaments, as well as ward councillors, operate alongside chiefs and headmen, who owe their position to lineage, inheritance and patronage.

### **Chieftaincy as an Evolving Institution**

One of the key problems facing South Africa is that chieftaincy in Africa operates on principles that are antithetical to democratic ideals. Selection for the office of chief is not by popular vote, but is usually hereditary and for life. It is a hierarchical and patriarchal system that has largely excluded women from office,<sup>27</sup> and it supports customary laws that are exclusionary and oppressive towards women, particularly in relation to property rights. In such a system, there are obvious limits to representation and downward accountability. In Africa more generally, traditional authorities have become dependent on elected or military governments for resources or recognition, leading to awkward lines of upward accountability. In South Africa similar axes operated in relation to the apartheid regime. Nevertheless, political pragmatism has demanded that a variety of governments have sought co-existence with chieftaincy in Africa, so that over the years the institution of chieftainship has endured. In many countries the power and influence of traditional authorities is such that politicians seeking elected office compete with them at their peril. However, to say traditional authorities are hardy perennials is only half the picture. Though resilient, the institution of chieftaincy across the continent bears the battle scars of having to adapt to survive. This is as true for South Africa as elsewhere.

During the colonial period the British experimented with two contrasting systems for ruling the indigenous African population. The first was to try and weaken the institution of chieftainship and govern through the colonial bureaucracy. In South Africa this system was attempted, for example, in the Eastern Cape. The second system was to rely on local indigenous rulers to administer and control the local population in a system of ‘indirect rule’.

<sup>24</sup> M. Douglas, *How Institutions Think*, London: Routledge and Kegan Paul, 1986.

<sup>25</sup> A. Giddens, *The Constitution of Society*, Cambridge: Polity Press, 1984, p.25.

<sup>26</sup> R. H. Bates, ‘Social Dilemmas and Rational Individuals: An Assessment of the New Institutionalism’, in J. Harriss, J. Hunter and C.M. Lewis (eds), *The New Institutional Economics and Third World Development*, London: Routledge, 1995, pp.27-48.

<sup>27</sup> There are a few women chiefs or regents in KZN.

Devised by Lord Lugard in Northern Nigeria and others such as Sir Donald Cameron in British East Africa, this was the system adopted in Colonial Natal by the Secretary for Native Affairs, Sir Theophilus Shepstone (1845-76). Known among the Zulu people as ‘Somtseu’, Shepstone’s approach to native administration at the time became known as the ‘Shepstone System’, which saw both appointed and hereditary chiefs become agents of the colonial government and totally dependent on it for resources. Thus engagement with colonialism changed the nature of *ubukhosi* in the territory of present day KZN.

It has been argued that in pre-colonial South Africa chiefdoms were ‘first among equals’. Communities were fluid and the *inkosi* had ill-defined authority over the *imizi* (homesteads) in his jurisdiction. Bound together by ties of kinship, marriage or clientalism, they derived their authority from the allegiance of subjects and functioned through the distribution and redistribution of accumulated tribute, usually in the form of cattle.<sup>28</sup> In other words, the authority of the *amakhosi* was derived not from coercive power but from patronage, ritual and symbolic power, itself the outcome of negotiated processes at the local level, as Butler explains:

Certainly the chief would have been looked to as the guarantor of tribal harmony (by playing a key role in conflict resolution); of economic viability of homesteads (by playing a key role in managing the allocation of land rights and land-use rights to households); and social and cultural coherence and continuity (by playing a key role in social and ritual aspects of tribal life).<sup>29</sup>

To a considerable degree, these remain the core responsibilities of the *amakhosi* in KZN to the present day. However, this is by way of a sometime turbulent history that changed the texture, if not the basic functions, of *ubukhosi* and even in the pre-colonial era chieftaincy or traditional authority was not unchanging.<sup>30</sup>

During the early colonial period in Natal, Shepstone augmented the position of the *amakhosi* by recognizing their right to allocate land, which was held under communal tenure, a factor that did much to reinforce their authority. However, Shepstone retained the right to depose as well as appoint chiefs and he dealt severely with recalcitrant *amakhosi*. Moreover, from 1850 magistrates were appointed to administer Native Law and to try criminal cases, leaving traditional leaders in charge only of minor criminal cases and dispute resolution. In later years the ‘Shepstone System’ was refined and codified, ossifying the fluidity and malleability of custom,<sup>31</sup> in what Mamdani has described as a “regime of total control”.<sup>32</sup> Indirect rule was entrenched under Union, with the Black Administration Act (No. 38 of 1927) stripping traditional leaders of more of their autonomy and allowing the Governor-General of South

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<sup>28</sup> J. Laband, *Rape of Sand: The Rise and Fall of the Zulu Kingdom in the Nineteenth Century*, Johannesburg: Jonathan Ball, 1995.

<sup>29</sup> Butler, M., ‘Traditional Authorities: Know Where to Land. Traditional Authority and Land in KwaZulu-Natal’, report for Association for Rural Advancement, Pietermaritzburg: AFRA, 2002, p.6.

<sup>30</sup> Between the late 18<sup>th</sup> Century and the mid-19<sup>th</sup> Century a period of political centralization and state formation under the ascendancy of Shaka Zulu saw the rise of the Zulu kingdom. In stronger chieftaincies both hierarchies and the power of the *inkosi* increased, while conflict led to the flight or subjugation of weaker chiefdoms. This process is known as the *mfecane* (the crushing) and is a subject of much scholarly attention (J. Guy, *The Destruction of the Zulu Kingdom*, Johannesburg: Ravan Press, 1982; C. Hamilton, *Terrific Majesty: The Powers of Shaka Zulu and the Limits of Historical Invention*, Cape Town: David Philip Publishers, 1998; J. Wright & C. Hamilton, ‘Ethnicity and Political Change Before 1840’, in R. Morrell (ed.), *Political Economy and Identities in KwaZulu-Natal, Historical and Social Perspectives*, Durban: Indicator Press, 1996.

<sup>31</sup> J. Beall, *Class, Race and Gender: The Political Economy of Women in Colonial Natal*, MA Thesis, University of Natal, Durban, 1983.

<sup>32</sup> Mamdani (1996), p.63.

Africa to prescribe the duties, powers and conditions of service of the chiefs, who he could in turn, appoint or dispose. The Nationalist Government that came to power in 1948 initially adopted a conciliatory stance towards traditional leaders as they fitted into their vision of 'separate development'. However, as Govan Mbeki concluded, they served apartheid as "baas boys" and tried and convicted in "bush courts" those who fell foul of the regime's regulations.<sup>33</sup>

In much of the country traditional authorities were estranged from their people as they became increasingly indebted to the South African government, leading to their declining legitimacy and popularity.<sup>34</sup> However, the position of *Inkosi* Mangosuthu Gatsha Buthelezi, himself a traditional leader,<sup>35</sup> as well as being premier of the self-governing territory of KwaZulu, was more ambiguous.<sup>36</sup> Buthelezi cleverly employed a strategy of what Maré and Hamilton called "loyal resistance".<sup>37</sup> This involved pragmatic accommodation with apartheid state institutions, from within the KwaZulu bantustan, which Buthelezi dubbed a "liberated zone".<sup>38</sup> Combining the resources of office, his IFP power base and an appropriation of many of the symbols of Zulu culture,<sup>39</sup> Buthelezi challenged the supremacy of the ANC in resistance politics at the national level and mounted a serious struggle for control of Natal and KwaZulu at the regional level. He was able to do this because of his support base among KZN's *amakhosi* and their *izinduna*, or headmen, who both bought into and gave credence to his use of Zulu ethnic identity for political purposes.<sup>40</sup>

Nevertheless, in order to understand the struggle over *ubukhosi* within the broader polity of the province, it is important to recognise that historically, as in the present, Buthelezi has not always had exclusive purchase on the institution. In the early years of the century, traditional authorities were closely associated with the liberation struggle in KwaZulu-Natal, from whence heralded one of the ANC's early leaders, Chief Albert Luthuli. In his address on the occasion of being awarded the Nobel Peace Prize in 1961 he emphasised the role of traditional leaders in resistance. He said that: "Our history is one of opposition to domination, of protest and refusal to submit to tyranny.... Great chieftains resisted manfully white intrusion".<sup>41</sup> The early ANC enjoyed considerable support from the chiefs, not least because of the way they were affected by the Natives and Land Act of 1913.<sup>42</sup> However, when the early ANC failed to win back the land their involvement with the Congress waned. Indeed, once chieftaincy became subsumed within apartheid homeland structures, the ANC explicitly

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<sup>33</sup> G. Mbeki, *South Africa: The Peasants' Revolt*, Baltimore: Penguin Books, 1964.

<sup>34</sup> Beinart & Bundy (1987).

<sup>35</sup> Buthelezi is an *inkosi* and claims royal lineage as King Cetshwayo kaMpande was his maternal great grandfather. On his father's side, he also asserts that his paternal great grandfather served the same king as prime minister and was a commander-in-chief of the Zulu army (G. Maré & G. Hamilton, *An Appetite for Power: Buthelezi's Inkatha and the Politics of 'Loyal Resistance'*, Johannesburg: Ravan Press, 1987, p.15).

<sup>36</sup> Marks (1986).

<sup>37</sup> Maré & Hamilton (1987).

<sup>38</sup> Maré & Hamilton (1987), p.195.

<sup>39</sup> The appropriation of symbols extended to national resistance culture so that the yellow, green and black colours of the ANC were also the colours of Inkatha, while the Zulu shield was the symbol of *Umkonto weSizwe*, the armed wing of the ANC, as well as Inkatha.

<sup>40</sup> G. Maré, *Brothers Born of Warrior Blood, Politics and Ethnicity in South Africa*, Johannesburg: Ravan Press, 1992.

<sup>41</sup> Document 65: "Nobel Peace Prize Address" by Chief A.J. Luthuli, 11 December 1961. Published in T. Karis & G. M. Gerhart (1977) 'Volume Three: Challenge and Violence, 1953-1964' in T. Karis & G. Carter (eds) *From Protest to Challenge*, Stanford: Hoover Institution Press, p. 710.

<sup>42</sup> The 1913 Land Act confined the majority of black South Africans to 'native reserves', later to become the 'self-governing homelands'.

associated traditional leadership with apartheid and tribalism and, as late as 1988, the ANC declared in its constitutional principles that traditional leadership was anachronistic to their modernist vision and that the organisation would abolish it with the advent of democracy.<sup>43</sup> Indeed, in the period immediately prior to the negotiated settlement and during the negotiations themselves, forces broadly allied to the ANC were locked in violent conflict with those supportive of traditional authorities, notably the KwaZulu-Natal based IFP. However, the ANC position softened and at its 50th National Conference in 1997 it adopted a resolution on traditional leadership.<sup>44</sup> This dissuaded traditional authorities from participating in party politics but saw for them a full and constructive role in consultative processes on local development matters.

In post-apartheid South Africa traditional authorities are recognised under the Constitution of 1996 and are represented at national level by the National House of Traditional Leaders.<sup>45</sup> There is also a Provincial House of Traditional Leaders in six of the nine provinces.<sup>46</sup> In 1998 the White Paper on Local Government accorded them a role in local government, and in 2003 the Traditional Leadership and Governance Framework Bill (TLGFB) sought to reinforce their role in local governance. The White Paper on Local Government issued by the Ministry for Provincial Affairs and Constitutional Development in March 1998 saw traditional leaders playing an important developmental role in local government, but under the rubric of the National Constitution and with municipalities having final and sole jurisdiction, reflecting very much the 1997 ANC position on traditional authorities. The White Paper states that on issues such as development, “a cooperative relationship will have to be developed”, and it generally presents an image of traditional leaders as benign overseers of local disputes, adjudicators of traditions and customs and facilitators on matters of development. Both the White Paper and the Municipal Structures Act (Act No. 117 of 1998) built in a consultative role for traditional authorities at the local level, especially on development issues. However, this did not constitute a direct role in decision-making.<sup>47</sup> Hence the role of traditional leaders and their position and functions relative to elected councillors and democratic government remained unclear although in the run up to the 1999 general election, the remuneration of traditional leaders was finally set, effectively doubling the salary bill for traditional leaders across the country.<sup>48</sup>

It has been argued that the Constitution was deliberately vague on their powers and functions because of ambivalence within the ANC itself over the future of traditional structures.<sup>49</sup> Consequently and as demonstrated below, efforts by the government in post-apartheid South

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<sup>43</sup> Jacobs, S., ‘The politics of traditional leadership’, *E-Politics*, 11 (5 March 2000), Cape Town: Institute for a Democratic Alternative in South Africa, at <http://www.idasa.org.za>, p.1.

<sup>44</sup> Jacobs (2000), p.1.

<sup>45</sup> When placed in comparative perspective, the system adopted in South Africa at the national and provincial levels is close to that of Ghana, where traditional authorities have advisory, ceremonial and extra-constitutional powers and are confined to matters of the chieftaincy. At local level, however, the system veers closer to countries where traditional authorities have been incorporated into the processes of modern government such as Botswana and Zimbabwe.

<sup>46</sup> KwaZulu-Natal, Eastern Cape, Free State, Mpumalanga, North West Province and Limpopo.

<sup>47</sup> The Municipal Structures Act (Act No. 117 of 1998) served to entrench the focus on the role of traditional authorities in local development, but still firmly under the authority of municipal councils.

<sup>48</sup> C. Goodenough, *Traditional Leaders, A KwaZulu-Natal Study, 1999 to 2001*, Durban: Independent Projects Trust, 2002, p.20.

<sup>49</sup> N. Levy & C. Tapscott, ‘Intergovernmental Relations in South Africa: The Challenges of Cooperative Government’, in N. Levy and C. Tapscott (eds), *Intergovernmental Relations in South Africa, The Challenges of Co-operative Government*, Cape Town: Institute for a Democratic Alternative in South Africa (IDASA), 2001, pp.1-21.

Africa to confine the chiefs to an advisory role or to matters affecting traditional communities and customary law, sometimes appear half-hearted and they are constantly contested by traditional leaders, nowhere more vigorously than in KZN. The TLGFB provides for traditional councils that will operate within and alongside other local government structures. Section Three of the Bill states that “traditional communities” must establish these councils, which in turn must comprise “traditional leaders and members of the traditional community selected by the principal traditional leader concerned in terms of custom”. Where the old tribal authorities exist, established in terms of the Bantu Authorities Act of 1951, they will simply be converted into traditional councils. What this means in effect is that legislation introduced in the 21<sup>st</sup> Century will give perpetual life to old apartheid institutions created by the much-hated Bantu Authorities Act, all in the name of preserving tradition.

### ***Ubukhosi* in KwaZulu-Natal**

Important as *ubukhosi* might be in the contemporary institutional landscape of KZN, the *amakhosi* and their *isinduna* continue to occupy an ambiguous position in the polity. This is not least because of the role they played in the violence that plagued the province during the political transition from apartheid. While the civil war in KwaZulu and Natal was primarily an urban war, especially in the early stages, it was fuelled from the countryside, where the *amakhosi* and their *isinduna*, most of whom gave their allegiance to Inkatha, called on the inhabitants of their areas to fight and attack the militant youth in the city’s townships. As Kentridge has explained, they were able to “exact their traditional rights from farmers and homesteaders in the form of military duty”. They did so in return for favours “ranging from land allocation to the issuing of licences” which though not a legal obligation was “a difficult summons to resist nonetheless”.<sup>50</sup>

The ANC was ultimately successful at national level and retained its popular urban support base in KZN. This served to thwart the divisive tendencies at work in the province at the time of transition, in which the IFP was deeply implicated, and provided a platform from which to try and win over a larger vote within the province. It also countered a tendency dating back to colonial times, for local politics and governance in KZN to work ‘within and without’ the South African polity and often at odds with the mainstream.<sup>51</sup> Under-currents of separatism were rife in the region and were not confined to the white population in Natal. They were matched by Buthelezi’s periodic threats of KwaZulu secession, which continued until very recently.<sup>52</sup> Indeed, it was only at the last minute that the IFP was added to the national ballot form, when Buthelezi finally agreed to participate in the historic 1994 elections. Against this background, few were surprised that while the rest of the country was caught up in the euphoria of declaring itself ‘the rainbow nation’ KZN was experiencing a more difficult and protracted transition to democracy.

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<sup>50</sup> M. Kentridge, *An Unofficial War, Inside the Conflict in Pietermaritzburg*, Cape Town: David Philip, 1990, p.52.

<sup>51</sup> For example, predominantly English-speaking white Natalians hesitated to join the Union of South Africa in 1910, railed against South Africa becoming a Republic in 1961, mourned the departure from the Commonwealth and relished their self-styled identity as ‘The Last Outpost’ of the British Empire (J. Beall, J. Grest, H. Hughes & G. Maré, ‘Conceptualising Natal: Implications of a Regional Political Economy’, Working Paper for the Southern African Studies Seminar, University of Natal, Pietermaritzburg, 1984; and ‘The Natal Option: Regional Distinctiveness within the National Reform Process’, Paper presented at the Seventeenth Annual Congress of the Association for Sociology in Southern Africa, University of Natal, Durban, 1986).

<sup>52</sup> *Natal Mercury*, 18 March 2002.

Political reconciliation was easier to effect in the context of national politics, where senior politicians in both the ANC and IFP began to enjoy the fruits of office and patronage,<sup>53</sup> but more difficult at provincial level where the rewards were more modest and the challenges in some ways far greater. The amalgamation of the old Natal and KwaZulu administrations proved much more difficult because they both had a very different organizational ethos. One outcome was the fragmentation of the provincial bureaucracy between three geographical centres (Pietermaritzburg, Ulundi and Durban) as a result of a messy political compromise that makes inter-sectoral coordination difficult.<sup>54</sup> Another outcome is that key provincial government portfolios fall under ministers of different political persuasion and who do not cooperate, making achievement of the national government's target of integrated development planning difficult. In part giving rise to these outcomes and affecting political and policy accord was the significance accorded to *ubukhosi* in the old KwaZulu administration so that reaching an acceptable decision on the role, powers and functions of the *amakhosi* emerged as a fissure in ANC and IFP relations in the province.

National legislation allowed for the establishment of a Provincial House of Traditional Leaders.<sup>55</sup> Issues of concern to traditional authorities get debated here first and then enter later into the debates of the National Legislative Assembly. This can be a long-winded process and, as many *amakhosi* are also IFP MPs, one that can lead to roles and agendas becoming problematically entangled. A critical point of conflict has been repeated attempts by the KwaZulu-Natal government since 1994 to pass its own Constitution. A draft Provincial Constitution was passed in 1996 and ratified by all seven parties in the Provincial Legislature, but was disallowed by the Constitutional Court. The draft contained a chapter on the monarch, traditional authorities and related matters. It sought to curtail the powers of the King by requiring that his actions needed to be approved by the Premier and where appropriate, the competent Minister. Unsurprisingly, given its origins with IFP supporters, it simultaneously sought to elevate the position of the *amakhosi*, "as the primary local government administrators of their respective communities".<sup>56</sup> The application to the Constitutional Court was opposed but the debate continues to simmer.

The situation at provincial level was not helped by the fact that there was not much constitutional or legislative guidance on local government, particularly in rural areas and it was left to provincial government to decide on what form of local government was most appropriate. The result was that "traditional leaders were given tremendous powers over a relatively lengthy period of transition".<sup>57</sup> This allowed them to entrench their already considerable influence at local level and then to extend it further in the context of national level negotiations. In KZN much more permissive legislation already existed in the former self-governing territory of KwaZulu in the form of the *KwaZulu Amakhosi and Iziphakanyisa*

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<sup>53</sup> R. W. Johnston & A. Johnston, 'Pressure Builds for an Election Deal', 1998, at <http://www.sn.apc.org>.

<sup>54</sup> Ulundi was the capital of the self-governing territory of KwaZulu and Buthelezi's power base, Pietermaritzburg was the capital of Natal Province also a centre of ANC support, while Mtshali controversially lives in the main urban centre Durban where much bureaucratic business gets done, but insists on still keeping both provincial capitals. Vast amounts of money are spent on flying the Premier Lionel Mtshali and members of the Provincial Assembly from one capital to another in a Lear jet bought especially for the purpose.

<sup>55</sup> This falls under the Department of Traditional Affairs and Local Government and like the National House, it is mainly concerned with customary practices and issues of concern to the institution of *ubukhosi*, involving itself with succession issues and the appointment of *amakhosi*.

<sup>56</sup> Cited in Goodenough (2002), p.36.

<sup>57</sup> L. Mbatha, 'Democratising Local Government: Problems and Opportunities in the Advancement of Gender Equality in South Africa', in A. M. Goetz and S. Hassim (eds), *No Shortcuts to Power, African Women in Politics and Policy Making*, London: Zed Books, 2003, p.191.

*Act* (Act No. 9 of 1990) and its various amendments.<sup>58</sup> These Acts saw the *amakhosi* and *isiphakanyiswa* (chiefs not of royal blood) not only upholding traditional laws and customs but also having a more significant role at local government level. As McIntosh, Sibanda, Vaughan and Xaba have pointed out, this came to be the ANC position as well, with the government hoping to create bodies that could render what were in effect “local government services”.<sup>59</sup> As the ANC has become increasingly conciliatory towards traditional leaders, not least because of the pressure sustained by the *amakhosi* of KwaZulu-Natal, so the role of the latter in local government is becoming not only clearer but also stronger.

National-level legislation that had a particular impact and that gave rise to a blistering backlash from the *amakhosi* was the Municipal Demarcation Act (Act No. 27 of 1998), which, following the first round of local government elections in 1995/6, established a Municipal Demarcation Board in order to redraw municipal boundaries across the country. The demarcation process aimed at introducing uniformity in local government structures on the basis of cohesive physical and environmental areas; the potential for sustainable service delivery; financial viability within functional boundaries and administrations; political acceptability and the potential for redistribution of functions and resources. Although presented as a technical exercise, the demarcation process was also an intensely political one, concerned first and foremost with overcoming the legacies of apartheid planning and racially skewed resource distribution.<sup>60</sup> A major point of contestation related to traditional authority areas, as the Demarcation Board decided to incorporate traditional authorities into municipalities and some of the new municipalities cut right across rural districts and tribal land. The process in KZN was particularly volatile and although consultations took place between the Board and every tribal authority in the province, sometimes this could only take place under the protection of the army.<sup>61</sup>

In January 2000 the *amakhosi* held a protest *imbizo* in Umlazi, one of the urban townships of Durban, to oppose the new municipal boundaries in KZN, the subdivision of their land and a representation of only ten percent on elected councils. Not long afterwards, the Zulu king met with President Mbeki to represent the concerns of the *amakhosi*. Thereafter, Thabo Mbeki and Sidney Mufamadi, the Minister of Provincial and Local Government, met representatives of traditional leaders from across the country and advised them to make submissions to the Department of Provincial and Local Government. In June that year the Demarcation Board began investigating potential municipal outer boundaries in KZN giving rise to a scathing attack from Buthelezi who claimed the “way of life of traditional leaders” was under threat. By August, after pressure from within the ANC itself, Mbeki increased the participation of traditional leaders in local councils from ten to 20 percent but did not give into their demand for 50 percent representation as against 50 percent elected representatives. This resulted in a stand off that saw Mufamadi postponing the announcement of a local government election date for the third time. It was eventually set for 5 December 2000, after traditional leaders accepted an undertaking from Mbeki to act on proposals to preserve their powers and

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<sup>58</sup> There were subsequent amendments: KwaZulu Amakhosi and Iziphakanyiswa Amendment Act, No. 9 of 1991; KwaZulu Amakhosi and Iziphakanyiswa Amendment Act, No. 3 of 1992; KwaZulu Amakhosi and Iziphakanyiswa Amendment Act, No. 7 of 1993; and KwaZulu Amakhosi and Iziphakanyiswa Amendment Act, No. 19 of 1993 (Goodenough, 2002, p.30).

<sup>59</sup> A. McIntosh, S. Sibanda, A. Vaughan & T. Xaba, ‘Traditional Authorities and Land Reform in South Africa: Lessons from KwaZulu-Natal’, *Development Southern Africa*, 13:3 (1996), pp.38-39.

<sup>60</sup> The demarcation process reduced the number of municipalities from 843 to 284 (Goodenough, 2002, p.40).

<sup>61</sup> S. Mkize, P. Sithole & S. Vawda, ‘Governance, Democracy and the Subject of the Traditional Authorities in the eThekweni (Durban) Metropolitan Region’, unpublished mimeo, 2001, p.45.

functions in the new local government structures.<sup>62</sup> Nevertheless, relations between KZN province and central government remained tense so that King Zwelethini has had to adopt a negotiating role and church leaders have stepped into the breach to avert a showdown. Even the ANC Secretary-General Kgalema Motlanthe said in July 2001 that relations between the KZN *amakhosi* and the party had to be addressed as a matter of urgency.<sup>63</sup>

An important reason for the stand off was that addressing political representation left unsolved the crunch issues around which the *amakhosi* would not rest, that of control over land. The White paper saw traditional authorities continuing to make recommendations on land allocation and the settling of land disputes but the *amakhosi* wanted more gilt edged guarantees than that. These they finally achieved through the Communal Land Rights Bill (CLRB) that gives them the power to control and allocate land and the accompanying Traditional Leadership and Governance Framework Bill (TLGFB), both of which were pushed through parliament at the end of 2003. The first draft provided for the community to appoint an administrative structure of its own members. Traditional leaders could sit on these bodies as ex-officio members but they could make up no more than a quarter of the body and would have no veto powers. However, in October 2003, the Cabinet approved a change to the bill that gave effective control over these administrative structures - now called traditional councils - to traditional leaders.

Why, on the eve of achieving its largest electoral victory yet, did the ANC put at risk the very democracy for which it fought so hard by rushing through legislation that entrenches the power of traditional authorities over their mainly rural subjects? In order to account for this we need to recall how the usually pro-ANC CONTRALESA chiefs during the 1995 local government elections threatened to dissuade their subjects from participating, after government had sought to abolish headmen in the Eastern Cape. It was following this episode that the ANC recognised the power of chieftaincy.<sup>64</sup> Similarly, just before the 1999 general election the stipends and allowances of chiefs were raised as a way of mollifying them. With regard to the more recent legislation that elevates the position of traditional authorities, veteran journalist Alistair Sparks advances the following by way of explanation:

It is a sweetener to the traditional chiefs and headmen - either in the hope of winning them over in the ANC's bid to gain control of KwaZulu-Natal or, on a more charitable analysis, to prevent them instigating bloodshed during the election campaign.... The Deputy Minister of Land Affairs, Dirk du Toit, told a media briefing in Cape Town recently it was imperative that the bill be passed before the election. 'If we want to get security we must work with the traditional groups', he said.<sup>65</sup>

However, the price to be paid for political expediency is very high. Displeasing the chief could potentially render an individual or a family homeless and without a livelihood.

Women are particularly vulnerable under the traditional system, in which they have curtailed rights and no access to communal resources outside their relationship with their father or husband. For South African women, this legislative turn amounts to taking one step forward and three steps back. The 30 percent quota for women on party lists was legislated for at other higher levels of government, is advised but not enforced at local level, and is made a mockery

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<sup>62</sup> Goodenough (2002), pp.50-52.

<sup>63</sup> Goodenough (2002), pp.53-57.

<sup>64</sup> Jacobs (2000), p.1.

<sup>65</sup> *Natal Witness*, 25 February 2004.

within a system that gives so much weight to structures dominated by non-elected men who owe their position to a hereditary principle. As a sop to women and in the name of modernising if not democratising traditional structures, the Traditional Leadership Bill insists that one third of the 'traditional community' must be women and 25 percent have to be elected. The bill states that all traditional councils must adhere to this within the space of four years but there are no sanctions if there is a failure to do so. Given the inevitable negative impact on the rights of women, there may be some weight to the argument that the joint effect of the bills is anti-constitutional. Many communities have strenuously opposed the bills, as have the Human Rights Commission, the Commission for Gender Equality, as well as the Legal Resources Centre, which is taking the issue to the Constitutional Court.

A lot of people in South Africa question the legitimacy of traditional authorities in a modern democracy and many within the ANC believe that the chiefs cannot expect the same rights as democratically elected representatives. This position, which is also held by Inkatha's traditional political ally, the Democratic Alliance (DA), holds that chieftaincies should not be allowed to hold the government to ransom. Others support traditional systems of governance, arguing that they have continued salience in contemporary South Africa and have to be accommodated. For the traditional authorities themselves, it seems they will stop at nothing short of constitutional protection of their powers and functions. This is something that the Government has so far resisted, insisting that traditional authorities must work together with democratically-elected bodies and in the interests of local development while transforming themselves to become more democratic within the framework of the Constitution. However, recent legislation has ceded a lot of ground.

If traditional authorities are to earn some level of legitimacy they need to play a positive developmental role, working in cooperation with elected local councillors and representative community structures. While experience has been varied, there have been some positive indications emerging in Durban that suggest that traditional authorities can accommodate themselves to democratic structures and processes. In 2000, a new metropolitan municipal council (which united the seven former local councils responsible for administering the old Durban metropolitan area) was established for Greater Durban, the eThekweni Municipality. It occupies approximately 2300 km<sup>2</sup>, constituting two per cent of the total area of KZN and has a population of over three million people, almost a third of the total provincial population of 9,426,017.<sup>66</sup> The new metropolitan boundaries also embraced 15 traditional authority areas and their leaders, which formerly fell under the Ilembe Regional Council, a transitional governance structure that had been set up after the 1996 local government elections. Initially the *amakhosi* in Greater Durban did not want to be part of the demarcation process and negotiations with them were difficult. Disagreements coalesced around concerns about the balance of power between the *amakhosi* and the Mayor and elected councillors, as the traditional leaders were mainly supportive of Inkatha, while the mayor and a majority of the councillors in the city were affiliated to the ANC. There were also anxieties about the roles and representation of the *amakhosi* in municipal structures. Although the legislation allows for traditional leaders attending and participating in council meetings, it was unclear on the crucial issue of voting rights, which have so far been denied. A third bone of contention was over the perceived lack of consultation with the *amakhosi* during the demarcation process and a perceived threat as to the future of *ubukhosi*.<sup>67</sup>

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<sup>66</sup> Republic of South Africa, Census 2001.

<sup>67</sup> Mkize *et al.* (2001).

Despite the assault on the integrity of traditional authority area boundaries, there is evidence that for some of the 15 traditional authority structures a workable representative arrangement within municipal institutions is being forged. While resistance to incorporation into eThekweni Municipality remains acute among some of the *amakhosi* of eThekweni, others see it as the best chance of development for their areas. In the battle for the hearts and minds of eThekweni's *amakhosi*, the City is seeking to deliver to traditional authority with capital investment to the tune of R200 million in the next planning phase.<sup>68</sup> Where they are supportive there is evidence that investment and development is leading some among the *amakhosi* to question whether their loyalties are better served by engagement with the city rather than with the IFP and the Province. It may well be that the deliberate channelling of resources to eThekweni Municipality's traditional authority areas is designed to win political favour in IFP-supporting areas, rather than to win the chieftaincy over towards cooperation within an inclusive structure of metropolitan governance. Nevertheless, even if this is the case engagement in democratic local governance is serving as a demonstration effect so that non-participating traditional authorities are pondering over where their future best lies. Moreover, our interviews with the *amakhosi* suggest that initial opposition, or passive resistance, is now turning to grudging and even enthusiastic acceptance.

It is too soon to tell whether this is a unidirectional and sustainable trajectory. Suspicion on the part of the *amakhosi* over arrangements for their representation and involvement within municipal institutions is built on layer upon layer of manipulation of the institution of *ubukhosi*, by colonial and apartheid authorities, as well as the IFP and the ANC in the context of resistance politics and reconstruction. This is as true for the city of Durban as for the province of KZN. From the perspective of the *amakhosi* then, eThekweni Municipality may well be simply one more structure in a continuous tradition of local government agents who have stripped them of land, authority and responsibility. From the perspective of the City, or at least the City Manager the *amakhosi* are not a homogeneous group and they have to be engaged with according to democratic practice, as well as the development imperatives of particular areas.<sup>69</sup> For example, among the 15 traditional authority areas there are those where the *inkosi* has real authority and those where he does not and where power lies with the *isinduna*. In some areas there is conflict between the traditional leaders and the councillors, while in an increasing number of areas there is cooperation between them. Nevertheless, disputes and tensions do arise, whether because of party political differences or competition over delivery or claims of credit for bringing water, electricity and other services to an area.

The political strength of the ANC in Durban as well as the predominance of an urban culture and strong foundations of democratic urban governance in the city suggests that the city could act as a vanguard in terms of incorporating traditional authority within a broader democratic governance arena. However, there is also evidence that the city is increasingly accommodating tradition. Some of the local councillors, for example, have been donning traditional dress for council meetings.<sup>70</sup> Moreover, although the city started out determined that *ubukhosi* would have to be bent into democratic shape by a cooperative engagement with democratic structures of metropolitan governance – led by elected councillors who would be advised and guided by the *amakhosi* and their *izinduna* – more recently, and in line with national policy on the matter, it has acknowledged their demand for privileged recognition and authority. In the 18 March 2003 *Newsletter of the City Manager*, the City Manager, Michael Sutcliffe, proudly announced, in what some might regard as a capitulation:

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<sup>68</sup> Michael Sutcliffe, personal communication, April 2003.

<sup>69</sup> Personal communication, April 2003.

<sup>70</sup> *Natal Mercury*, 18 April 2003.

17 March 2003 will go down in history as a day of significance for developing broad-based institutions of governance in eThekweni and South Africa. In the eThekweni Council meeting of that date, Council agreed that those traditional leaders with jurisdiction within the boundaries of eThekweni should be invited to participate in municipal affairs. Given the way that colonial and apartheid governments had whittled down traditional areas, from comprising the majority of our country to today comprising some 6% of the area of South Africa, that decision of Council will go a long way to restoring our sense of who we are and where we have come from. In section 212 [sic] of the Constitution provision is made that national legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities. The Municipal Structures Act regulates that arrangement and today's decision by Council brings it into effect. By doing so, eThekweni becomes the first metropolitan area, and the first major municipality, to allow for traditional leaders to participate in the affairs of governance.<sup>71</sup>

Both the Municipal Structures Act and the White Paper on Local Government build in a consultative role for traditional authorities at the local level, especially on development issues. However, this does not constitute a direct role in decision-making. While in Durban the emphasis on a developmental role remains, in this statement the City is making a serious commitment to involving the *amakhosi* of eThekweni more substantively, taking it a step beyond practice currently operative at other spheres of government and in many ways prefiguring the Traditional Leadership and Governance Framework Bill that followed it.

## Conclusion

The way in which chieftaincy and government relate in Africa is revealing of national ideology. The barometer of traditional institutions and the ANC's conciliatory stance towards them confirms a post-colonial impulse in South Africa that is unapologetically Africanist. The relationship between traditional leaders and African governments also speaks to the nature of political alliances and constituencies operating at different levels. The ANC, while predominantly an urban and urbane political party, is bent, at any cost, on wooing into the fold, and away from opposition parties, those leaders than can deliver rural constituencies. The implications of this are potentially grave for South Africa's nascent democracy. Mamdani reaches a similar conclusion in his book *Citizen and Subject*. He argues, too, for an historical understanding of the long-term entrenchment of 'indirect rule' in Africa, a system he dubs "a regime of differentiation", which has far outlived its colonial beginnings and is deeply implicated in the tenacity of the institution of chieftaincy today.<sup>72</sup> We concur with this view, but do not necessarily support the bifurcated analysis that accompanies it, which paints a dichotomised world of urban citizens and rural subjects. *Ubukhosi*, like other institutions, is neither monolithic nor coherent. The institution of chieftaincy is not hermetically sealed from other institutions.

While institutions are resistant to change they can and do evolve. Moreover, as Bates has argued, we often under-estimate the extent to which political interventions and settlements can create new, or lead to the evolution of old, institutions.<sup>73</sup> In South Africa over the last ten

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<sup>71</sup> Michael Sutcliffe, *Newsletter of the City Manager*, 18 March 2003.

<sup>72</sup> Mamdani (1996).

<sup>73</sup> Bates (1995).

years traditional institutions started out in political competition with those of liberal democracy. This was illustrated above through the exchange between Prince Gideon Zulu and Peggy Nkonyeni in the KwaZulu-Natal Legislative Assembly and in the way that the Communal Land Rights Bill and the Traditional Leadership and Governance Framework Bill are being contested in the Constitutional Court by civil society organisations concerned with human rights and the rights of women. At the same time, in a context of institutional multiplicity such as that which exists in South Africa, there are also processes of institutional mutation that are giving rise to evolving and mutually constitutive forms of governance.

Our research in eThekweni suggests that there are areas of accommodation and fusion emerging between so-called traditional institutions and so-called modern ones. These are sometimes spontaneous and at other times deliberate. Deliberate fusion often relates to cultural practices and protocol, for example observing rituals of respect towards the *amakhosi*, or to language and symbols, such as when an urbane local councillor wears traditional dress or an *Inkosi* arrives at a constituency meeting in his four-by-four vehicle and acknowledges women and men as equal participants. To the extent that the institution of chieftaincy can be incorporated into the democratic system without being robbed of its remarkable attributes of solidity and cohesion and without undermining the hard-won rights of citizens, *ubukhosi* could become a site for stability in South Africa.

To the extent that it remains a political football and provides increasing concessions towards the *amakhosi* at the expense of citizens, then *ubukhosi* will remain a faultline running through South African democracy. Institutions can be left to evolve and mutate, with much depending on the demonstration effect of cooperation in successful development and democratic governance over time. However, this could take too long for the safeguarding of South African democracy. What becomes 'rational' to individuals and normative in society is shaped by the diffusion of cultural values and practices through institutions,<sup>74</sup> requiring a conscious political challenge to the persistence of hierarchical and patriarchal institutions and practices. The resurgence of chieftaincy in South Africa reveals just how muddy are the waters between state and society, how deeply public and private institutions are enmeshed in each other. As Whitehead and Tsikata have argued with regard to women in Africa, "the answer is democratic reform and state accountability, particularly with respect to women's political interests and voices, not a flight into the customary".<sup>75</sup> In South Africa, much depends on the resolve of the ANC not to give into the more obscurantist demands of chieftaincy in the interests of political expediency. This is essential not only for a democratic polity but for a democratic society as well because a democratic culture cannot simply be forged at the ballot box.

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<sup>74</sup> P. A. Hall & R. C. R. Taylor, 'Political Science and the Three New Institutionalisms', *Political Studies*, 33 (1996), pp.13-19.

<sup>75</sup> A. Whitehead & D. Tsikata, 'Policy Discourses on Women's Land Rights in Sub-Saharan Africa: The Implications of the Re-turn to the Customary', *Journal of Agrarian Change*, 3:1&2 (January & April 2003), p.110.

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The aim of the Crisis States Programme (CSP) at DESTIN's Development Research Centre is to provide new understanding of the causes of crisis and breakdown in the developing world and the processes of avoiding or overcoming them. We want to know why some political systems and communities, in what can be called the "fragile states" found in many of the poor and middle income countries, have broken down even to the point of violent conflict while others have not. Our work asks whether processes of globalisation have precipitated or helped to avoid crisis and social breakdown.

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### Research Objectives

- 1 We will assess how constellations of power at local, national and global levels drive processes of institutional change, collapse and reconstruction and in doing so will challenge simplistic paradigms about the beneficial effects of economic and political liberalisation.
- 2 We will examine the effects of international interventions promoting democratic reform, human rights and market competition on the 'conflict management capacity' and production and distributional systems of existing polities.
- 3 We will analyse how communities have responded to crisis, and the incentives and moral frameworks that have led either toward violent or non-violent outcomes.
- 4 We will examine what kinds of formal and informal institutional arrangements poor communities have constructed to deal with economic survival and local order.



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