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University of Cape Town



*Peculiar places and legitimate chiefs?: an exploration of the role of
traditional authorities in the titled locality of kwaMeyi village, Umzimkhulu
district, South Africa*

A minor dissertation submitted in partial fulfilment of the requirements for the award of the degree of
MASTER OF PHILOSOPHY, JUSTICE AND TRANSFORMATION (HUMAN RIGHTS LAW)

By

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19 July 2012

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ACKNOWLEDGEMENTS

In the midst of personal and financial challenges, I always received emotional, financial and intellectual support from my supervisor, Professor Lungisile Ntsebeza. I would not have come this far without your counsel and your faith. I thank you.

This thesis would not have been possible without funding from the Intercultural and Diversity Studies Unit (INCUDISA) Small Towns and Rural Transformation scholarship, as well as funding received from NRF Chair for Land Reform and Democracy.

The conception and completion of this thesis would not have been possible without the love, support and guidance of my dearest friend Oscar Masinyana. You will always be my GGH.

Auntie Za, you welcomed me into your home and nurtured me like a daughter. It will never be forgotten. Thanks go out to Lungisa and Luvuyo who travelled with me and ensured my safety and wellbeing in Umzimkhulu. I would like to thank the people of kwaMeyi for opening up their hearts and homes to a stranger. Informants are the fibre of intellectual endeavours. May the souls of Chief Mavana, Gogo Noma and her husband R.I.P.

To Khairoonisa Foflonker and Alleyne Smith, you are the family I choose. Your unconditional love and support fuelled me in my most despairing moments.

The laughter, dialogue and dancing shared among these friends and colleagues preserved my sanity and warrants special mention: Carmen Louw, Natalie Jaynes, Samantha Richmond, Nosomi Mdyesha, Sara Muller, Jean-Paul Solomon, Ruth Louwe, Nozipho Mpofo, Buhle Zuma, Fani Ncipayi, Senzeni Ncube, Clemence Rusenga, Thotoane Ramalefane, Mabel Sithole, Gavin Capps, Erna Prinsloo and Noma-Afrika Mseti. I also thank the ladies at INCUDISA: Melissa Steyn, Haley MacEwen, Theresa Daniels, Claire Kelly and Rumbi Goredema and those at the AGI Yaliwe Clarke, Adelene Africa, Wardah Daniels, Selina Muddavanhu and Celene Jansen-Fielies and Hilda Ferguson. I would especially like to thank the collective of TPM sisters: Suzanne Moore, Greta Kenney, Danya Davis and Emma Arogundade-you all literally held me together. I am indebted to Rosalie Kingwill and Aninka Claassens who made known to me the peculiar history of Umzimkhulu and provided me with a reading list to elucidate how the many peculiarities emerged.

And of course, all thanks to my family, particularly my mother, Tembi Charles, who never ceased to cook, clean and cry with me during the pains of thesis writing. Grateful acknowledgement goes also to my

brothers, Jermaine Charles and Randy Matsikidze, as well as my sister, Nandi Nkomo, for keeping me in check and in good spirits. Thanks also to my aunt and uncle Nigel and Barbara Tapela.

Finally, the staff at UCT; particularly Amina and William in Research Commons. Your vast knowledge and gentle comfort are just what a stressed student needs. Special thanks to the cleaning and catering staff of UCT. You hold the UCT structure together and often without so much as a thank you. You clean the classrooms you have not had an opportunity to learn in. Your plight does not go unnoticed.

*'In truth everything and everyone
Is a shadow of the Beloved,
And our seeking is His seeking
And our words are His words...
We search for Him here and there,
while looking right at Him.
Sitting by His side, we ask:
'O Beloved, where is the Beloved?'*

Rumi

DEDICATION

Your life's work was to see your children educated. I hope you are proud.

In loving memory of my dear father, Constantine Felix Charles

8 November 1950 ~ 7 January 2011

May your soul rest in eternal peace.

University of Cape Town

KEY TERMS: A BRIEF DISCUSSION

Traditional Authorities: The term traditional authority is one which is used to refer to those persons said to govern on a 'traditional' or 'customary' basis. Traditional authorities are sometimes referred to as traditional leaders who occupy various ranks such as chiefs, paramount chiefs, headmen and sub-headmen. The terminology used to identify such persons has shifted over time. Under the apartheid government, traditional authorities were defined as tribal authorities (see Bantu Authorities Act of 1951). Since 1994, they have mostly been referred to as 'traditional authorities' or 'traditional leaders' (Ntsebeza, 1999: 7). This thesis makes use of both of these terms which is in keeping with scholarship on the subject.

Freehold Area: A freehold area is one where the system of landholding is constituted in individuals or groups and registered in the central Deeds Registry. These areas are also described as freehold areas or titled localities. In sub-Saharan Africa, roughly ten per cent of the land is held under freehold (private) title which is a small percentage compared to those persons living in 'communal' areas (Deininger, 2003: 62 cited in Chimhowu and Woodhouse, 2006). This thesis is limited to a discussion of people in rural areas living in titled localities.

Landowner: In South Africa, people living on 'communal' land are considered *de facto* owners of such land. This means that while they do not have legal ownership of land in accordance with Roman-Dutch property law, they have constitutionally protected rights to live on that land (Cousins, 2002). This thesis does not deal with this category of "landowner" but rather, those residents of kwaMeyi village who are *de jure* landowners. Their land is registered at the Deeds Office and proof of ownership is constituted in a title deed. Other terms for landowner are titleholder or freeholder (Kingwill, 2008).

Rural Residents: This thesis defines people living in rural areas as 'rural residents' as opposed to categorizing them as 'rural people'. Rural residents are people who live in rural areas for a time but may leave in pursuit of employment or other opportunities to be found in urban centres of the country. By the same token, there are people who reside in urban areas that maintain links with the rural areas where they come from, and pertinently, show allegiance to traditional leaders governing these areas. Therefore, the urban/rural dichotomy does not adequately capture the reality on the ground where people, resources and ideas circulate. As Pahl (1960; 299) commented, "...some people are in the city, but not of it, whereas others are of the city but not in it" (1966, i: see also Gluckman, 1966).

ABSTRACT

There is little doubt that traditional leaders continue to make an indelible mark on the practice of politics across the continent of Africa. In democratising South Africa, the relevance of this institution is debated extensively. In the main, traditional leaders are described as the embodiment of patriarchy, comprised of unelected male representatives who rule with a “clenched fist” on an unwilling populous (Mamdani, 1996: 23). It is argued that traditional authorities “...can only secure legitimacy by drawing its sustenance from the modern state, working as a complement to democratic local government” (Southall and Kropiwnicki, 2003: 76). In addition to this, it is believed that traditional leaders are able to assert their authority because they control the allocation of land in rural areas, thereby forcing people to show their allegiance within a system of dependency (Ntsebeza, 2005).

In light of these assertions, this thesis answers two questions: do traditional leaders have a role to play in democratising South Africa? Is their only source of legitimacy that which is extended to them by the state or could there be “multiple legitimacies” which work to ensure their authority (Williams, 2010: 17)? The evidence generated from fieldwork conducted in the village of kwaMeyi indicates that traditional authorities are not dependent on the state for legitimacy because, in reality, they have no state given powers to control critical resources. Despite several pieces of legislation which recognise the authority of traditional leaders in South Africa, their roles, powers and functions are undefined. Instead, it is elected officials who exercise power in rural areas as they are constitutionally mandated to provide development and are financed by the state to do so.

This reality forces one to consider how traditional leaders are able to govern as legitimate political authorities in the absence of powers to control resources. In kwaMeyi, this question is compounded by the fact that the village is a titled locality. While most scholars believe that “...in the areas where chiefs rule, there is no individual freehold title” in KwaMeyi this is not the case (Williams, 2010: 8; Budlender et al, 2011). The village is a freehold area where land is owned by individuals but is nonetheless governed by traditional leaders.

By identifying that there are different sources of legitimacy, the findings of this thesis takes the debate beyond the oft repeated assertions that chiefs are legitimate only through the state and the control that they exercise over critical resources such as land. In kwaMeyi, the opposite appears to be true; chiefs and headmen exercise authority without controlling critical resources and are upheld as legitimate leaders, preferable even to elected officials within this area. Traditional leaders are said to govern in a manner that fits the moral order of kwaMeyi residents, thereby legitimising their authority

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CHAPTER 1: INTRODUCTION

Background to the research: the discovery of a peculiar condition

The initial focus of this thesis was to assess the relationship between women and traditional authorities in the village of kwaMeyi, Umzimkhulu district, given that it is a relationship that tends to embody patriarchal gender relations. It appears that in recent years, this patriarchal relationship has started to ebb away, at least in particular parts of rural South Africa. With regards to land allocation specifically, traditional authorities are increasingly allotting residential sites to women in their own right, and not through a male relative as is 'customary' practice (Cousins et al 2011; Claassens and Ngubane, 2008; Becker, 2006).¹ This phenomenon is reputedly a product of increasing "...awareness of post-1994 constitutional rights to gender equality..." noted by many researchers since the late 1980s and most especially since South Africa's democratic elections in 1994 (Cousins, 2007: 303; see also Fay, 2005; Alcock and Hornby, 2004). These changes are discussed in the context of people living on 'communal' areas in different parts of South Africa, where land allocation has historically been vested in traditional authorities. Therefore, my original intention was to ascertain the extent to which traditional leaders in kwaMeyi were engaging with the principle of gender equality, especially as it relates to customary practices of land allocation.

To my surprise, after conversing with kwaMeyi residents, I discovered that the village is not a 'communal area' but one that is constituted by freehold title. In this locality (as in much of the Umzimkhulu district) people live under a system of freehold tenure, on land that is legally owned by a small number of individuals. What is atypical about this condition of private ownership is that the landowners are black Africans having acquired their land during the colonial era when most black Africans were living in what was then known as the locations, and later reserves (Beinart and Bundy, 1987; Beinart et al 1986; Hammond-Tooke, 1964).² KwaMeyi village is one of a minority of areas where the colonial state made provision for black people to own land, reflecting a "rarity of freehold titles that has survived in African areas over the long term" (Kingwill, 2008: 184).

¹ In this thesis, the terms 'culture' 'tradition' and 'custom' are used interchangeably to articulate beliefs and behaviours that are said to be indigenous in character and historically rooted. I acknowledge that culture is not a bounded entity but an ever-changing phenomenon that is shaped by, as much as it shapes, people's lived experiences. As a result, sections of this paper that make use of these terms will not be contained in quotation marks for ease of reading but should be read as contentious nonetheless.

² The terms 'black African', 'black' or 'African' are used to describe kwaMeyi residents who classify themselves thus. In this thesis, these terms are not necessarily inclusive of those classified as 'Coloured' or 'Indian' as in the broader sense reflected in contemporary South African legislation and/or laws and policies. However, it is important to make this distinction because of the rarity of private ownership of land by black Africans during the colonial and apartheid eras. It is acknowledged that these are highly contested labels relating to racial identity politics in South Africa but it is not within the scope of this thesis to enter into such a discussion.

In light of this reality, it was not surprising to learn that land allocation is not vested in traditional authorities but is a responsibility carried solely by kwaMeyi landowners. These landowners demarcate certain portions of their land to those requesting space for residential purposes through a system of rent-tenancy that dates back to the late 1800s (Beinart and Bundy, 1987). What is even more peculiar about this circumstance is that even without powers to allocate land kwaMeyi village is still governed by traditional leaders. This counters the widely-held assertions that traditional authorities derive their legitimacy and authority from their powers to control land which has been emphatically argued by Ntsebeza in his study of Xhalanga district in the Eastern Cape. Ntsebeza (2005: 14-15) states that "...the question of the legitimacy of traditional authorities is very much associated with their position in and control of the land allocation process at the local village and Tribal Authority levels." Another peculiarity which arose was a finding that traditional leaders in kwaMeyi have no substantive powers to control critical resources, especially in the areas of service delivery and development. Once again, this contradicts the findings of other scholarship which posit that the legitimacy of traditional leaders is "...often a particular manifestation of state intervention" (Ribot, 2001: 77). Hence, these peculiarities formed the basis of my study.

Research Questions

In light of the aforementioned, this thesis is concerned with the roles of traditional leaders and whether or not the functions they serve legitimise their authority. Specifically, this thesis answers the following questions:

1. What are the roles of traditional leaders in kwaMeyi village, given that land allocation is not one of them and yet it is a function that is described as being traditional leaders' main source of legitimacy?
2. What are the sources of legitimacy that traditional leaders draw from, if not derived from the control of land or state-given functions as is the case in most communal areas in South Africa?

Setting the context: a brief historical consideration on the development of freehold tenure in kwaMeyi village

Before answering these questions, it is necessary to address the peculiar circumstance of African landholding in KwaMeyi village. As with most small villages and peripheral spaces in South Africa, there is no literature detailing the conditions that led to freehold tenure in this village specifically, save for archival material.³ However, because kwaMeyi village falls within the district of Umzimkhulu, it is possible to learn how black people obtained individual title from scholarly works which focus on the district as a whole.

³ It was not possible to go into the archives for this study, See section on "Limitations of the study" for further discussion.

Umzimkhulu, one of twenty-six districts that formed part of the Transkei, was the first of South Africa's nominally 'independent' Bantustans (Spiegel, 1990). Umzimkhulu was one of three districts in the frontier area known as East Griqualand (the other two were Matatiele and Mount Currie - prior to the annexation of the territories that subsequently became consolidated into the Transkeian Territories. The territories were annexed in blocks from 1879 – 1894).⁴ Literature on its history reveals that Umzimkhulu became ethnically diverse, given that "...the currents of history swept together men and women differing widely in origin, language and culture" (Ross, 1976: 104). This heterogeneous locale, named "Nomansland" by colonial travellers and officials, was home to a number of chiefdoms: first claimed by the Mpondo in 1884, and then smaller chiefdoms such as Xesibe and particularly Bhaca and Ntlangwini people, all of whom were fleeing Zululand (Beinart et al, 1986; Beinart and Bundy, 1987).

Nomansland was forever changed by the arrival of Adam Kok and his Griquas, who trekked across the Drakensburg to occupy this relatively under-populated area in 1862/3. In *Adam Kok's Griquas*, Ross (1976: 104) explains that they were trying to "build themselves into a self-sufficient community...which were baulked by the activities and concerns of the white colonists." A strong political force in the area, Adam Kok and his Griquas renamed the area East Griqualand, reflecting the stronghold that they eventually maintained over it and the other chiefdoms in the area. Most relevant for this thesis is the extent to which Griqua presence set the scene for African private land ownership in addition to ownership of land by chiefs, a highly unusual occurrence in most of colonial South Africa.

The Griquas acquired individual land ownership after having established a somewhat beneficial relationship with Sir George Grey who was in favour of securing frontier areas under mixed occupation (white, coloured, European, African) of 'loyal' groups, eventually culminating in the establishment of the Glen Grey Act of 1894. This provision was in keeping with Cape colonial policy of the late nineteenth century which sought to "...create a class of African farmers along white lines" (Ntsebeza, 2005: 58). However, increasing white settler presence saw greater demand for farm land, and with that, the loss of Griqua land to white demands (Beinart and Bundy, 1987; Beinart et al, 1986). As a result of a number of factors, mostly poor agricultural production and/or the need to make mortgage repayments or access credit, Griqua people began to sell their land. This was taken advantage of by merchants like Donald Strachan who bought land from the Griqua and who soon amassed such wealth that "Umzimkhulu village became the Strachan company town" (Beinart et al, 1986: 48). By the 1910s, private ownership had moved from Griqua hands to white settler ownership and two thirds of Umzimkhulu had been demarcated as farmland (Beinart and Bundy, 1987).

Prospective white farmers were not the only purchasers of Griqua land. Speculators and other interested colonial agents as well as missionaries such as the Trappist missionary took advantage of the desperate land sales by Adam Kok's people (Beinart et al, 1986). What is of significance here is that the opportunity

⁴ Email conversation with Rosalie Kingwill on the 13th of September 2009.

did not pass the notice of chiefs and headmen as well as elite Africans in the area, those who sided with colonial agents in addition to educated professionals. chiefs lobbied their subjects to provide cattle for capital and were thus able to gain land “in trust” especially in farms adjacent to their locations (Beinart and Bundy, 1987). As Beinart and Bundy (1987: 59) explained, “...chiefs and headmen seldom discouraged new settlement, for it provided them with a source of income from dues and broadened the base of their followers.” For elite Africans, purchasing land, and the “assembling [of] large numbers of followers around them“, became a means of establishing oneself as headmen in their own right (Spiegel, 1990: 60). These landowners then rented out subdivided portions of their land to other Africans in the area who needed a place to live. By the early twentieth century, a system of rent-tenancy was firmly in place. Coupled with poor agricultural yields and the need for farmers to generate other sources of income, this system forced ordinary rural residents to become subject to both chiefs and landowners. As Beinart and Bundy (1987: 51) noted, these events laid the basis for Umzimkhulu to become “...one of the Cape districts with the largest area of private land in African ownership at the time.”

These historical occurrences help us to understand how black ownership emerged in the village of kwaMeyi. Today, Umzimkhulu is composed of parcels of land owned by the state; small pockets that are considered communal areas and a vast majority of freehold land that is in the hands of individuals; some of whom are chiefs, while others are descendants of landowners. KwaMeyi village, the site of this study, remains in the hands of individuals who hold freehold title. The chief in the area does not own land or control land allocation processes in this village, although he owns land elsewhere in the district. Despite this, kwaMeyi village falls under his jurisdiction. Exploring the manner in which he maintains his authority and legitimacy in such a context forms the basis of this thesis.

Traditional leaders: a valued political and social entity

This thesis argues that even in the absence of powers to allocate land or control key resources as determined by the state, traditional leaders are able to exercise a certain degree of authority as well as draw some measure of popular legitimacy.⁵ It must be stated that these levels of authority and legitimacy are highly variable and inextricably tied to the particular localities and histories where traditional authorities have jurisdiction. As Kingwill (2003: 5) makes clear, “...the efficacy, impact and local legitimacy of existing traditional authority structures varies enormously across different regions.” Structures of traditional governance are not homogeneous in their composition or character, causing some to be favoured while others are denigrated. The findings of this small study indicate that even without powers to control vital resources such as land, chiefs and headmen are able to exercise some measure of authority and popular legitimacy. It is the contention of this author that the legitimacy of traditional rulers is tied, not

⁵ See section “Theoretical Framework: The question of legitimacy - towards the application of a multiple legitimacies framework” for further discussion of these concepts.

only to the functions they serve within their localised contexts, but the manner in which they perform these tasks.

In the case of kwaMeyi village, the institution of traditional governance is able to exercise authority because of the manner in which they address the needs of their constituents. Traditional leaders are said to govern in a way that fits the moral order of kwaMeyi residents, thereby legitimising their authority. This can be seen in the area of development and service delivery, where even without powers to control critical resources, traditional leaders are viewed as preferable to elected officials. Traditional leaders are seen as more reliable and sensitive to the needs of the community and are most valued for the role they play in the area of dispute resolution. The unlikely hero of the story in this village is the chief and his headmen who, in their role as purveyors of justice and the related role as maintainers of peace, are able to enter into a “space for negotiation” so that tenants’ rights are protected (Berry, 2002: 655).⁶ This is a vitally important function in a context where tenants are unaware of their land rights and are otherwise powerless to defend themselves from possible eviction by landowners. Hence, chiefs and headmen maintain authority for the roles they serve and the manner in which they govern in what Williams (2010) terms performance and moral legitimacy.

A broader argument and wider significance of the study: retraditionalisation and democracy

If traditional institutions are not reliant on the legitimacy drawn from the exercise of power over resources, but a variety of other sources, then there is much to explore regarding their resilience in the current democratic dispensation. While it is not within the limits of this thesis to enter into a debate on the notion of democracy, which Ntsebeza (2005:23) describes as being “notoriously ambiguous” it is necessary to provide the definition that is used in this thesis.

This thesis makes use of Kyed and Burr’s (2006) definition of democracy. These scholars argue that what is often times described as a resurgence of traditional leadership, or as “retraditionalisation” is not concerned with “...a return to the past, but an increased articulation of ‘tradition’, ‘roots’ and ‘belonging’ as part of a wider process of modernisation and/or reactions to these processes within the wider context of globalisation” (Kyed and Burr, 2006: 1; see Oomen, 2000 and 2005). Moreover, the institution of traditional leadership, a heterogeneous entity with varying degrees of influence and relevance, has long coexisted within diverse institutions and political logics (Beall and Ngonyama, 2009: 2; Kingwill, 2008).

⁶ The term community is used in acknowledgment of its contested meaning, particularly the assumption of oneness and connectedness that it imposes on people living in the same locale. Being cognizant of this, the term is still utilized because informants described themselves as belonging to one ‘community.’ Where it is mentioned, it is used as a way to reference their collective identity. Nonetheless, it is used with caution and an appreciation of its complexity. Again, quotation marks are not utilized but the term is to be read as contentious in meaning (see Benedict Anderson. 1983. *Imagined communities: reflection on the origin and spread of nationalism*. London: Verso).

Therefore, one cannot conceive of democracy as a purely liberal project created by the West and imposed on the rest of the world in an unchanged, unresponsive form. Instead, as Kyed and Buur (2007: 13) contend, democracy should be "...approached as a 'political imaginary' which appears in discourses...enacted in social and political spheres, but never made fully permanent...[T]he point is that democratisation is a process, (which) both formally and informally influence the role of traditional authority and vice versa."

If one is to accept that democracy is a "political imaginary," that is shaped by multiple actors, then traditional leaders, who have governed in some form since pre-colonial times, will continue to influence the practice of politics on the continent. The character of democracy is shaped by the actions of traditional leaders including how they (re)define themselves and their role(s); those of the state as well as the views and expectations of their constituents. Williams (2010: 21) explains this as "...the dynamic interactions among the chieftaincy, the state and local populations in the struggle for political legitimacy." Political legitimacy is sought after by both the state and traditional leaders as they strive to exercise exclusive control in rural areas. To this end, traditional leaders are taking on a more democratic nature while governments are known to invoke culture and tradition as a way to gain access in rural areas (Nyamnjoh, 2003; Oomen, 2005).⁷ Williams captures these dynamics when he explains that "...the different moral orders-the 'modern' and the 'traditional' actually interact and blend together in important ways. Even though most contemporary accounts eschew the use of modern/traditional dichotomy to describe authority relations, the notion that there exists two separate worlds only serves to reinforce this idea" (Williams, 2010: 17). Blending so-called traditional and modern forms of governance is a process of legitimatisation that is complex and contradictory and one which challenges our very understanding of authority, and indeed democracy, in South Africa.

Theoretical Framework: The question of legitimacy - towards the application of a multiple legitimacies framework

Legitimacy and the control of vital or critical resources

Those studying the nature and basis of the power of traditional authorities have been keenly concerned with the extent to which this institution can claim to be a legitimate form of governance, especially in a democratic era which favours representative governance over hereditary, traditional models of leadership. The legitimacy of traditional leaders has been debated enormously in a plethora of scholarly projects, most of which tie the longevity of traditional leaders to their ability to control key resources such as land (Ntsebeza, 2005; Peires, 2000; Mamdani, 1996), whilst others attribute their presence on the political landscape to state-led initiatives and laws (Hendricks and Ntsebeza, 1999; Kessel and Oomen, 1997). Proponents of this view are fully aware that traditional leaders serve a multitude of functions but argue that their powers to control vital resources makes rural residents vulnerable to their authority, essentially

⁷ Nelson Mandela famously aligned himself with the Chieftaincy in his autobiography and in his address to the nation after his release from prison.

compelling their allegiance. What the majority of these works proclaim is that traditional leaders do not enjoy popular legitimacy, that is “...a popularly accepted claim to leadership and authority” (Wright, 1994: 3-4). In order to answer the questions presented in this thesis, it is necessary to explore the question of legitimacy so as to better understand the reasons behind the resilience of the chieftaincy in kwaMeyi village, the site of this study, and in contemporary African politics.

The control of land has always been central to the authority of chiefs in Africa. As Delius (2008: 218) explains,

“[w]hen a chiefdom settled in a new unpopulated area, the chief, along with his councillors would point out particular areas to subordinate leaders who would in turn delineate areas for ward heads who in turn would convene processes for distributing areas of land to household heads on which to build and cultivate.”

For centuries, chiefs and traditional leaders have been at the centre of land allocation practices, essentially establishing and securing the land rights of their ‘subjects’ (Beinart, 1982). Since then, chiefly power over land has been vital to their exercise of authority which, as Ribot (2001: 47) argues, “...has been the basis of ‘customary’ authorities in Africa” (2001: 73). In looking at the ineffective leadership of elected officials in “chief’s areas” across democratising Africa, Ribot (2001: 47-48) situates chiefs’ powers with their ability to control what he calls “real resources,” arguing that unless state bodies give these elected representatives autonomous decision-making powers in regard to critical resources, they will never be able to compete with chiefs for authority and legitimacy in rural areas.

The connection between legitimacy and control of vital resources has been echoed by a number of other scholars. Lund (2002: 14) makes the case that “...the process of recognition of property rights by a politico-legal institution simultaneously constitutes a process of recognition of the legitimacy of this institution.” In his study of the Bafokeng chiefdom, Capps’s (2010) doctoral thesis, which takes a materialist analysis of the modern African chieftaincy, also highlights that “...the chief’s political legitimacy is dependent on his capacity to redistribute resources among the tribal community...” (Capps, 2010: 138). In the same vein, Shipton and Goheen (1992, 314) assert that “control of land is a central part of political leadership...can prop up a leader’s political power and authority and help define them.” Through their assertions, these authors are situating political legitimacy with powers to control resources that matter, especially if this control creates a certain level of dependency between themselves and people under their governance.

The link between political legitimacy and control of key resources was a relationship that did not escape the observations and activities of colonial administrators. In a bid to impose colonial rule on Africans, chiefs were side-lined in favour of headmen in the control of land and other critical resources. In *Traditional leaders in South Africa*, Bank and Southall (1996) highlight what was to be the beginning of an agitated relationship between the state and the chieftaincy, which first sought to undermine their authority, and then later restore it in an on-going ambivalent relationship between the two political entities. Bank and Southall (1996: 410) assert that after the introduction of the Native Land Act of 1913 “[a] system of

direct rule was imposed upon the formerly autonomous chiefdoms, the legitimacy of chiefs was deliberately undermined, and subaltern authority was widely - but not uniformly - devolved upon headmen.”

Under the apartheid state and with the promulgation of the Bantu Authorities Act of 1951, chiefs were ‘restored’ to their pre-colonial role as ‘custodians’ of land and given a number of other responsibilities. This ultimately served the needs of the apartheid state while pretending to have the concerns of rural people at heart (Ntsebeza, 2005; Hendricks and Ntsebeza, 1999). Chiefly powers, and hence their legitimacy, were constituted through state-led laws and policies and no longer “...in a social order based on extended kinship relationships in which common interests predominated over those of individuals” (Stack, 1997: 6). Instead, as Mamdani (1996: 48) elucidates, “...colonial powers salvaged a wide-spread, time honoured practice, one of decentralised exercise of power, but freed that power of restraint, of peers or people.” Chiefs were thus legitimate authorities because of the state in what has been termed state legitimacy; as they were given powers to control key resources and hence people (Mamdani, 1996: 23). Although published over a decade ago, Mamdani’s *Citizen and subject: contemporary Africa and the legacy of late colonialism* (1996) has left an indelible mark on scholarly conceptions of the chieftaincy. His brazen and harsh view of this institution has become synonymous with decentralised despotism, where chiefs are upwardly accountable to the state rather than downwardly accountable to the subjects of their rule. The reconfiguration of their power base severed the popular legitimacy that chiefs enjoyed prior to colonial contact.

Looking specifically at the South African case, Southall and Kropiwnicki (2003) highlight that the African National Congress (ANC) has tried to force traditional authorities to be upwardly accountable “...on the grounds that traditional authorities can only secure legitimacy by drawing its sustenance from the modern state, most notably by working as a complement to democratic local government” (2003: 76). However, rather than being a unidirectional relationship which sees the democratic state as legitimising the authority of the chieftaincy, Burr and Kyed (2005) note that these two political entities are engaged in a mutually reinforcing “legitimising process,” where the authority and legitimacy of the chiefs in the rural hinterlands gives weight to state bodies who are otherwise introducing new norms, values and practices that are for the most part, foreign (see also Williams, 2010). For government, “...legally bolstering the role of traditional leaders has been seen as a remedy for securing grassroots participation, developing a specifically African form of democracy, and bolstering state outreach and legitimacy in “weak states” (Burr and Kyed, 2005: 27). The weak-state hypothesis posits that chiefs are relied upon as a result of incapacitated state officials who do not have adequate resources to meet the huge developmental needs in rural areas or to ensure the provision of key services to rural residents (Koelbe and LiPuma, 2005; Ntsebeza, 2005; Ribot, 2001). Koelbe and LiPuma (2005: 91-92) note that weak states have emerged as a result of neoliberal economic policies which have constrained the government’s ability to “reach into the hinterlands.” From these arguments, it is clear that the ability of political leaders to control vital or critical resources goes a significant way in their being upheld as legitimate authorities by their constituents.

Exploring other sources of legitimacy: the multiple legitimacies approach

In *Chieftaincy, the state and democracy: political legitimacy in post-apartheid South Africa*, Williams (2010) acknowledges the importance of controlling vital resources in legitimising the authority of political leaders. However, in his analysis, he emphasises that there are multiple sources of legitimacy to be considered if one is to gain a deeper understanding on the resilience of the chieftaincy in the African context. He states that,

“...in South Africa there are multiple sources of legitimacy that all leaders-chiefs as well as elected officials-can use to justify their rule. Each of the different sources of legitimacy offers people a particular set of symbols, values, political principles, institutions, rules and processes that are central to ruler-ruled relations and interactions” (2010:17-18).

For Williams (2010), the ruler-ruled, or chieftaincy-society relations, as he often terms it, are what determine the legitimacy of political authorities. He defines political legitimacy as “an on-going process” where the ruler and the ruled critically evaluate the justifications that are put forth in the exercise of power. He argues that people are more inclined to follow rules, and hence follow leaders, if they behave in a manner that resonates with that society’s moral code and if that behaviour is beneficial to that society (2010: 20). William’s conception of political legitimacy has two dimensions: *moral legitimacy* and *performance legitimacy*.

Moral legitimacy is defined as the “...norms, values, myths, and symbols of the society that are used to define and evaluate ‘appropriate’ political action” (Williams, 2010: 21). At its core, moral legitimacy is about a society’s worldview, which determines how things ought to be done, distinguishing between what is right and what is wrong (Williams, 2010: 21-22). Williams (2010) asserts that there are multiple moral orders and that in terms of political governance, South Africa is faced with merging a moral code based on democratic constitutional principles (propagated by the state) and one which is considered pre-colonial; that of “African tradition and culture” (which, controversially, is said to be upheld by traditional leaders).⁸ The state and the chieftaincy are engaged in what Oomen describes as a “scramble for legitimacy” which is “...played out through the culture card” (2005: 3). Acknowledging that “African culture” is not static and that it can be used as a resource to assemble power and authority, it must be recognized that the notion of an “authentic African culture” continues to be a frame of reference for many Africans even if it is difficult to determine exactly what “African culture” is. Nonetheless, “...the ideological understandings of the chieftaincy, which predate indirect rule, continue to provide a frame of reference for many in the rural areas” (Williams, 2010: 27). One aspect of this framework is the notion of the chief as a “symbol of unity” (Williams, 2010: 27; see also Logan, 2011; Oomen, 2005). The belief that traditional leaders are better at maintaining peace and harmony, and that they have done so since pre-colonial

⁸ Traditional authorities primarily identify themselves as “custodians of culture” (see National House of Traditional Leaders website <http://www.nhtl.gov.za>). It is a role bears importance for people under traditional governance, even for those living under a democratic order (Nkosi at al, 1994; Nyamnjoh; 2003; Oomen, 2005).

times, continues to legitimise their authority in rural areas. However, this is only one source of their legitimacy and it alone cannot account for the resilience of traditional leaders as political authorities.

Performance legitimacy is presented as another source of political legitimacy for traditional leaders (Williams, 2005: 28). Performance legitimacy concerns the performance of political leaders in the area of service delivery and infrastructural development, especially in the long neglected rural areas. Performance legitimacy is about the manner in which political leaders exercise power and how those in society evaluate this process, but with specific reference to the provision of goods and services (2010: 28). This dimension of political legitimacy is about the ability of traditional leaders or state officials to provide for the needs of community members which increases local people's perceptions that they are *bona fide* political leaders. As Williams (2010: 28) asserts, "...in the long-term, legitimacy must be based on something more than performance or expectations of performance, but in the short term, it is possible that rulers can generate trust if they are able to deliver the political and economic goods that are promised" (Williams, 2010: 28). In this conception of legitimacy, controlling resources can legitimise the authority of a political leader but only in so far as their exercise of power is deemed appropriate and fitting with local norms and values.

Logan's (2011: 1) very recent Africa-wide investigation on the roles and legitimacy of traditional leaders makes use of Williams's (2010) multiple legitimacies framework and finds that:

"...traditional leaders are resilient because of – not in spite of – who they are and what they do. Their character as leaders, flawed as it may be, and their connection with and accessibility to the people in their communities, set them apart from politicians and government officials. They are more available as problem solvers, and they have the advantages of local knowledge and an understanding of community norms and practices that can make them effective resolvers of local conflict as well. These roles, not surprisingly, are highly valued by the communities that they serve."

At the heart of the multiple legitimacies framework is the idea that "...political actors must make decisions consistent with both the underlying moral and performance dimensions to remain legitimate" (Williams, 2010: 30). They must do so by engaging with norms and values of that society's moral code and in a way that is beneficial to the whole community. In this conception, political legitimacy is not simply about what a leader does for a community, but the manner in which they do it.

Methodology

Choosing the research site⁹

The research site of kwaMeyi village, which is part of the Umzimkhulu district, was selected as a result of a conversation with a resident of that area, Sakhile, a colleague and friend studying at the University of

⁹ See Map 1 in Appendices Section.

Cape Town.¹⁰ After informing him of my interest in the relationship between traditional authorities and women's land rights, he indicated that there was a robust chieftaincy in his home village, and furthermore, that it was characterised by female headed households who had access to land independently. Sakhile alerted me (albeit erroneously) to the changing practices of the traditional authority in this locale, in line with the 'new phenomenon' being articulated by several researchers noted in the Background section of this chapter. Hence, kwaMeyi village appeared a suitable area in which to situate my study.

Preliminary Research

Following this conversation, I conducted preliminary research on kwaMeyi village in order to deepen my understanding of the area. Unfortunately, there was little material on the village itself. Instead, most of the information detailed the demographic and socio-economic status of the district as a whole. This information was gathered from the Umzimkhulu Integrated Development Plan from 2006. Other internet sources which augmented my preliminary research included news articles, government websites and those detailing information on the kinds of tourism in the area. While I came away with an initial picture of life in Umzimkhulu, specifically its demographic makeup and socio-economic and political challenges, the information that was available did not highlight the existence of freehold tenure in the area or shed light on the roles played by the traditional authority there. Hence, I assumed that like most of rural South Africa where traditional authorities are present, kwaMeyi villagers were living on communal land which was allocated to individuals along customary lines by the governing traditional authority. As explained at the beginning of this chapter, this was not the case.

Conducting fieldwork: lessons learnt

One of the crucial lessons learnt after conducting fieldwork was that one needs to be cautious of making assumptions, even if those assumptions are based on dominant voices within the academy. Preliminary research had not alerted me to the existence of traditional authorities on freehold land. The weight of scholarship, research and literature ties the existence of traditional authorities to the 'communal' areas, also referred to as former reserves or Bantustans, where they exercise control over land and related resources. Communal areas of the former homelands are therefore conceived of as *the* traditional areas of customary rule, obscuring another reality of rule by chiefs on black owned, privately held land since colonial contact, a condition that reflects "the rarity of freehold titles that have survived in African areas over the long term" (Kingwill, 2008: 184). This omission has caused researchers to conclude that "...in the areas where chiefs rule, there is no individual freehold title; instead people occupy their land with the consent of the chief" (Williams, 2010: 8; see also Budlender et al, 2011).

¹⁰ I have used a pseudonym to protect his identity and that of his family with whom I interacted during my research and were central to the study as explained further in this chapter. Pseudonyms have also been employed to protect the identities of other informants, except that of the late chief Mavana and ward councillor Jonathan "Magic" Zulu because they were well-known public figures.

Hence, in kwaMeyi, I expected to find similar patterns of land allocation and a structure of traditional governance whose source of power was land allocation. However, through engaging with various residents in kwaMeyi village, what came to the fore was the existence of a traditional authority that operated despite having no powers to allocate land. As a novice researcher, I realised the importance of allowing the reality on the ground to highlight particular issues, as opposed to carrying one's presupposed hypotheses into the field, even if these hypotheses are based on the works of well-respected researchers, writers and academics. Indeed, Streiner and Sidani (2010: 2) have noted that "...any study, no matter how well designed, will face challenges in its execution. Reality is not always (or even usually) as neat as implied in any book's description of the research process or any publication's report of the study protocol and its findings."

Data Collection

Research Assistant

As a Zimbabwean national, I realised that conducting research with an 'insider', that is, someone who is known by the community, would have several advantages. Hence, I invited my colleague, Sakhile to work as a Research Assistant. Sakhile is a Masters student at the University of Cape Town. He was born in kwaMeyi village in 1985 and was educated outside the village since the age of ten. The first advantage of this was that he is familiar with the members of the community and has some knowledge of their history and the interpersonal dynamics between residents in the area. This familiarity allowed me to 'access' the community more readily and establish trust and rapport which are crucial elements when carrying out fieldwork.

However, because Sakhile was not educated in kwaMeyi village, and only visited once or twice a year since the age of 16, he had some degree of social distance, a level of 'outsiderness' that allowed informants to relay information that they may not have conveyed had he been a permanent resident of kwaMeyi village. A certain level of social distance was important given that the interviews centred on the sensitive issues of chieftaincy and land rights. In addition to this, Sakhile could speak the local dialect, which is a combination of Baca, Xhosa and Zulu languages. As an Nguni speaker, I was able to follow interviews as well as rely on him when I was unable to fully explain myself or needed to determine what was being conveyed by informants.

Fieldwork

Participant Observation

Fieldwork was conducted between the 14th of July and the 12th of August 2009. A key component of fieldwork is participant observation; where the researcher strives to immerse themselves into the everyday pattern of life in the chosen locale. As Silverman (2006: 68) explains, "...all social research is a

form of participant observation because we cannot study the social world without being part of it.” The best way to become an ‘insider’ in the ‘new world’ is to live in the community as fully as possible. To this end, I decided to live with my Research Assistant and his family. They assisted me in determining who I should speak to for my study, and especially in making contact with the chief of kwaMeyi. They welcomed me as a member of their family. I participated in domestic chores, met their friends and family and got insight into the everyday experiences of life in this particular village. I also frequented the district’s city centre where I visited shops, a newly opened mall and other small outlets and businesses. In so doing, I was able to familiarise myself with residents of the area and understand their everyday struggles and triumphs.

Snowball Sample

As mentioned previously, I relied heavily on the knowledge of my Research Assistant and his family in determining who would be most suitable to interview for the study. It was from these initial contacts that I worked on a referral system, a methodology known as snowballing, where one’s sample becomes larger as each contact suggests others to interview (Pierce, 2008). Using this methodology allows the researcher to overcome two problems in the field: access and trust. Overcoming these obstacles was important for me given that I was unknown in the area and outsiders tend to be regarded with suspicion.

Semi-structured Interviews

All the interviews conducted were semi-structured. This methodology mainly consists of open-ended questions which provide informants with more space to detail their responses as they see fit as opposed to closed questions or surveys which elicit limited answers. Semi-structured interviews allow for more ‘natural’ interaction which is consistent with the interpretive approach to research (Kelly and Terre Blanche, 1999: 128). These interviews were conducted in the homes of informants, being careful not to disrupt their activities such as cooking or cleaning. Interviews normally lasted between one and two hours, depending on the willingness and time constraints of the informants.

For this study, a total of 12 semi-structured interviews were conducted, with 8 being audio recorded and 4 recorded on personal field notes (see subheading “Field notes”). The interviews engaged 5 men and 7 women from the ages of 18 to 73. The respondents were rural residents of various social classes, education levels and occupations. With reference to the traditional authority in KwaMeyi, I managed to speak to the chief, a charismatic Mr Mavana, who was presiding over kwaMeyi village at the time of my research. In addition, I interviewed Gogo Liza, an elderly but vibrant woman, who served as a former headwoman in the Mvolosi Traditional Authority of kwaMeyi. At the time of research, I was unable to locate any other traditional authorities in the area, especially because there was a burgeoning battle for the position of chief. The rival chief, Mr Dlamini, was challenging the authenticity of chief Mavana’s position and the geographical boundaries of his rule. Hence, revealing lines of allegiance may have been

problematic at this time. Nonetheless, ordinary rural residents were able to articulate what they believed to be the role of traditional authorities in their area.

From these conversations, it became necessary to interview the ANC Ward Councillor for the area, who was commonly referred to as 'Magic'. However, several attempts at reaching him proved fruitless. On the whole, informants were forthcoming and cooperative. They were landholders, prospective landholders or tenants, all of whom narrated their experiences of living on freehold land and of being governed by both a traditional authority and Ward Councillors.

Field notes

What emerges while one is conducting fieldwork does not always come to the fore during scheduled interview times. Conversations at the dinner table, and especially those with my host family, yielded rich material on the everyday happenings in the village of kwaMeyi and those pertaining to my research questions. It was on these occasions that using a recorder proved difficult as it threatened the willingness of informants to speak freely. The use of a journal proved invaluable in recording the statements made during these unscheduled conversations. I was sure to capture the goings on in a journal on a daily basis.

Data Analysis

Grounded Theory

Conducting research is not a linear process. It is, therefore, important that analysis of the data speaks to the issues and themes that arise, rather than any preconceived ideas that the researcher may have carried into the field. Because my initial assumptions about kwaMeyi were dispelled, I needed to engage with the data collected in such a way as to see what themes came to the fore. To do so, I made use of the grounded theory approach. This approach requires that the researcher identifies themes and theory as derived from data rather than shaping the data to fit existing theories (Glaser and Strauss, 1967). This strategy makes use of coding, such as open coding, axial coding and selective coding in order to do so. The data collected from fieldwork in kwaMeyi was coded using open coding, which Strauss and Corbin (1990) describe as line by line analysis; where one surveys texts to retrieve themes, key phrases and statements.

As a means to ensure that the analysis was not overly subjective, the constant comparative method was adopted. Leedy and Ornord (2010: 142) explain that this method requires the researcher to move back and forth between the data and key literature so as to sharpen and focus analysis. By refereeing to the data, and then to the literature, I was able, to not only identify common themes, but also consider them in relation to other scholarship on the roles of traditional authorities.

Ethical Considerations

The issues of land ownership and traditional governance tie in with people's sense of belonging and identity. As such, questions concerning land ownership and allegiances to chiefs, needed to be treated with sensitivity and discretion. Every effort was made to maintain confidentiality and guarantee that the information provided would not be discussed with other informants. Informants were assured that their names and any identifying information would only be known to interviewers and transcribers. Interviewees were informed of their right to stop the interview at any point and change their minds in regard to the use of the information they provided for this thesis. All interviewees gave verbal consent which was recorded on audio files.

Limitations of the study

Given the unexpected reality that kwaMeyi village is one of a few titled localities in South Africa, it was necessary to briefly look at how this situation came to be. There is, unfortunately, scant literature on its formation, a challenge which would have been greatly remedied by some extensive archival research. However, lack of financial and material resources, as well as limited time, prevented the carrying out of this archival research. The archive would have been especially important in light of the peculiar condition of freehold tenure in kwaMeyi where black people have owned land independently for over a hundred years.

To gain a historical perspective, I had to rely on the general history of Umzimkhulu district (under which kwaMeyi falls), as captured by Beinart and Bundy (1987) in *Hidden struggles in rural South Africa: politics and popular movements in the Transkei and Eastern Cape 1890-1930* as a key text for this information. To my knowledge, it is the only text which deals with the area's history in thorough detail. Therefore, important historical moments are taken from this seminal work as a means to inform the findings of this small study.¹¹

¹¹ In the story on the formation of the village of kwaMeyi, two characters are common to all the narratives provided by older informants, namely Meyi Damoyi, Donald Strachan, and then the Griquas. Although the timelines given are not specific and there is a lot of contradiction in the testaments of these informants, a general pattern emerges. The story goes that a Malaysian man named Meyi Damoyi arrived in Nomansland (later to be called East Griqualand and then Umzimkhulu district) somewhere in the mid 1800s, his ship having crashed at Port St Johns. After moving to the area, he married a local woman, maDlamini, had children and bought land for them. He then allocated smaller parcels of land to his children each time they were married, essentially cutting into pieces what was once one big parcel of land. Some informants reported that the land was purchased from the Griquas, others from the very famous Donald Strachan, a white settler who also bought property in the area. As populations increased, kwaMeyi land was sold and further subdivided until it became a fully-fledged village, taking its name of kwaMeyi or Meyi's place from its original owner Meyi Damoyi. Future research on this area would necessitate the missing focus on archival material that is spread out in various archival storage houses throughout the country, which are situated in Mthatha, Cape Town and Pretoria and elsewhere. Interviews suggest that kwaMeyi is owned by nine families that have rented out portions of the land.

Structure of thesis: Chapter Outlines

Chapter 2: A place for traditional leaders? A historical outline of the roles, powers and functions of traditional leaders sets out the relationship between the chieftaincy and the state from colonial contact through to present day. It goes on to enumerate that while traditional leaders have drawn legitimacy from the state, and exercised their powers without popular support, the contemporary situation reveals a different picture, one where traditional leaders are highly favoured in specific localities across South Africa. This chapter highlights that while the academic gaze has considered struggles against the chieftaincy in communal areas, they have all but missed the peculiar condition of chiefly rule in freehold areas and therefore, the sources of legitimacy that work to ensure their authority in such areas.

Chapter 3: The role of chiefs in local government and development: an exploration of performance legitimacy tackles the notion of performance legitimacy with reference to the case study of kwaMeyi village. It demonstrates that traditional leaders are able to exercise authority in the area of development and service delivery because they govern in a manner that echoes the moral ethos of the community, and peculiarly, that they do so without powers to control critical resources. This chapter demonstrates that even in cases where elected officials are able to provide development to rural residents, it does not automatically mean that the community recognises them as legitimate political leaders

Chapter 4: The role of chiefs in local government and development: an exploration of moral legitimacy looks at the importance of Chiefs in the area of dispute resolution. Here, Chiefs are upheld as “symbols of peace” where they are expected to intervene in situations of conflict between landowners and tenants. This counters the research in other areas which has illustrated that where traditional leaders do not have the ability to control land, they will lose the support of their constituents (Ntsebeza, 2005; 14-15). In this case study, landowners acknowledge the authority of traditional leaders in the maintenance of peace, which is said to be a role they have played since pre-colonial times and hence, a source of their legitimacy.

In **Chapter 5: A place for chiefs after all**, the main findings of the study are restated. It reiterates that the legitimacy of traditional leaders is not tied to the control of key resources and/or state given powers, but to multiple legitimacies that serve to ensure a place for traditional leaders on the contemporary political landscape. Ultimately, it states that the peculiar conditions in kwaMeyi village warrant the development of a more extensive research project so as to delve deeper into the workings of authority and legitimacy in this locale and further explore its implications for political governance in South Africa and the continent as a whole.

CHAPTER 2: A PLACE FOR TRADITIONAL LEADERS?: A HISTORICAL OUTLINE OF THE ROLES, POWERS & FUNCTIONS OF TRADITIONAL LEADERS

Introduction

This chapter explores the roles of traditional leaders from a historical trajectory with reference to the state over time. Currently, the South African national government is engaged in a frenzied attempt to find a place for the institution of traditional leadership in the context of a democratic dispensation which espouses representative governance, equality and non-discrimination.¹² This political conundrum harkens back to the colonial era where the state extended its powers to chiefs and headmen with the aim of controlling, indeed oppressing, indigenous populations in a bid to serve the projects of racial segregation and white economic advancement. Since the late nineteenth century, therefore, traditional leaders and their respective governments have been engaged in a dialogical relationship that has literally shaped the South African political landscape, the major effects of which have been felt by people in the former homelands. In light of this contentious relationship, this chapter considers the roles, powers and functions of traditional leaders in relation to the various laws and policies that have been enacted to mould their governance in the rural areas, briefly focusing on the colonial, apartheid and post-apartheid decades. Further, it draws attention to the local responses to traditional and state rule in communal areas, revealing an unstable set of experiences across diverse localities in South Africa.

Ultimately, the chapter will show that in considering the vulnerabilities of people in rural areas to traditional leadership, the dominant academic gaze has not given enough attention to rural residents living on black-owned land that is governed by traditional leaders. This is due to the assumption that traditional structures are only present in communal areas and not titled localities. By overlooking this peculiar condition, alternative evidence is being left out on the raging debate concerning the legitimacy of traditional institutions in an era of democratic governance.

The beginnings of consensus-free traditional governance: the colonial and apartheid disruption

It is widely acknowledged that in pre-colonial times chiefs, and the elder men that formed part of their council, governed in a manner that reflected the needs of members of their chiefdoms as opposed to

¹² This can be seen by the tabling of various pieces of legislation such as the Traditional Leadership and Governance Framework Act 41 of 2003, the Communal Land Rights Act 11 of 2004, and Traditional Courts Bill B15 of 2008 (which was withdrawn and reintroduced in January of 2012). At their core, they attempt to find a contemporary role for traditional leaders.

ruling on the basis of their own desires and interests.¹³ Stack (1997: 6) asserts that in pre-colonial Africa, traditional leaders “...generally sought to reconcile rather than punish, in a social order based on extended kinship relationships in which common interests predominated over those of individuals.” Delius (2008: 115) explains that this form of governance was “...consultative, even democratic,” while Omer-Cooper’s assessment of the Zulu chieftaincy in pre-colonial times highlights that the chief’s powers were far from absolute and that he was expected to rule in accordance with general consensus, although he ultimately had “the last word” (1966: 17 cited in Williams, 2010: 52).

Writings on the chieftaincy in pre-colonial times indicate that subjects had ways of articulating their discontent, especially when chiefs displayed despotic tendencies. As Tapscott (1997: 292) notes, “...people showed their disapproval of unpopular chiefs by ‘voting with their feet’, that is, by moving to the areas of the more popular leaders [while] in other regions, unpopular chiefs were deposed or killed.” This is not to say that chiefs were not supremely powerful. Shaka’s rule is testament to the extent to which chiefs were able to command allegiance as much as they were led by consensus. As Williams (2010: 40) indicates, the reign of chiefs was a combination of “command and consensus” succumbing to the will of his subjects and the advice of his council but also exerting force when his powers were questioned or threatened. Nonetheless, it is generally held that traditional forms of governance were more consensus-based in the pre-colonial era than after the arrival of European settlers, whose presence set the tone for decades of despotic governance violently imposed on an unwilling indigenous populous (Delius, 2009: 218).

With European arrival, consensus-based pre-colonial rule was forever ruptured. In tracing chiefly powers from a historical perspective, Delius explains that the image of the chieftaincy had been ceased by white officials and legislators where chiefs emerged as despots eroding “...the processes of consultation and competition which had been the lifeblood of the pre-colonial order” (2008: 218). In line with this assessment, Cousins (2008: 111) ascertains that, “[c]onquest and colonial rule brought the imposition of new forms of authority and economic organisation as well as subordination of indigenous forms.” The main imposition was the system of indirect rule, a form of governance birthed by the British Administration. It was based on the belief that Europeans and Africans were culturally distinct and that the institutions of traditional government most suited to Africans were those they had traditionally constructed (King, 2004: 65). At the helm of this system were magistrates, especially in the Ciskei and Transkei territories which were under the Cape Colony (Hammond-Tooke, 1965; Spiegel, 1990). In this hierarchical system of governance, headmen were appointed as the extended administrative arm. Hammond-Tooke (1975: 77) describes this as the headmen-system whereby:

¹³ It is not possible to generalise about pre-colonial African societies given that writings and recordings of this period were carried out by a number of colonial agents who were “...outsiders with strong perceptions...limited language capacity and engaged with a limited range of informants...usually drawn from the ranks of Chiefs, royals and elders while the views of women, commoners and youth tended to be neglected” (Delius, 2008: 212). Hence, the description provided here acknowledges the debate between those who view relations between Chiefs as more consensus-driven (Tapscott, 1997) and those who see these relations as despotic (Peires, 1981; see also Ntsebeza, 1999: 16-17).

"The districts themselves were subdivided into locations, approximately thirty to a district, and over each was placed a headman, appointed to the post by the administration.... Although, in fact, succession to office was almost invariably inherited, in law the headman was appointed by Government and was subject to bureaucratic rules of censure and dismissal. The chiefs, as such, were all but ignored."

The powers of chiefs were thus eroded, although they continued to exercise authority in communal areas under a system of cooperative governance with the colonial administration. Further changes were brought about with the introduction of the Glen Grey Act of 1894. As Ntsebeza (1999: 21) notes, "...there were three major elements to the Act: a change in the nature of land tenure, the establishment of local District Councils in the African Areas, and a labour tax." Essentially, the Glen Grey Act permitted Africans to own land under a policy of 'one man, one lot,' transforming landholding from a communal system to one of individual freehold tenure. Beinart and Bundy (1987) highlight the extent to which a minority of 'progressive' Africans were able to acquire private land while the majority remained in communal areas. These reserves remained under the firm control of chiefs, given the distorted understandings of colonisers on the role of chiefs as 'owners' of the land. The misinterpretation of communitarian principles of African landholding became "codified in a way that allowed indirect rule by the state" (Cross, 1991: 77). Communal areas became the predominate sites where Africans could access land but only through tribal authorities who not only 'managed' land allocation processes but also the collection of taxes (Southall and Kropiwnicki, 2003: 52).

Chiefly powers were fully restored with the passage of the 1927 Native Administration Act which brought chiefs firmly into the administrative system by extending their powers beyond that of headmen. These powers were not absolute. The British administration maintained ultimate control via the Governor-General who acted as 'supreme chief' (Bennett, 2004: 109). What is critical is that the Native Administration Act provided for chiefs to become judicial officials in the newly delineated tribal areas where the Act "...conferred civil jurisdiction on chiefs..." (Hendricks and Ntsebeza, 1999: 104). Their powers were further extended with the passage of the infamous Bantu Authorities Act of 1951 which "consolidated chiefly powers in the reserve areas now reconceptualised as 'homelands'" (Southall and Kropiwnicki, 2003: 54). The Council system was abolished and replaced with Tribal Authorities and organised at three interrelated levels; tribal, regional and territorial (Ntsebeza, 1999a). Hence, "the chieftaincy became assimilated into the architecture of "separate development" (Southall and Kropiwnicki, 2003: 54). The Bantu Authorities Act set the scene for a series of rural revolts, some of which were led by dissident chiefs such as the Mpondo revolts of the 1960s (Hammond-Tooke, 1965). The Act was expediently accepted by traditional leaders, who were perceived as "collaborators of the colonial masters" (Kyed and Buur, 2006: 1). This was seen as giving them more powers to control matters in the reserves in a less restricted way than the council system had permitted (van Nieuwval and van Dijk, 1999; Mbembe, 2001). Abuse of powers by chiefs fuelled popular discontent, and as some argue, signalled the end of legitimate rule through popular consensus (Mamdani, 1996; Hendricks and Ntsebeza, 1999).

As a consequence of colonial and mainly apartheid legislation, chiefs emerged as a “clenched fist” ruling despotically on an unwilling rural populous in all matters administrative, judicial and executive. Their roles, powers and functions are succinctly captured by Mamdani (1996: 23):

“Not only did the chief have the right to pass rules (by laws) governing persons under his domain, he also executed all laws and was the administrator in ‘his’ area, in which he settled all disputes. The authority of the chief was thus fused in a single person all moments of power; judicial, legislative, executive and administrative.”

From these historical developments, the view that emerges is that these unanimous sources of power laid the basis for despotic rule and spelt the end of rule via popular legitimacy, especially as rural residents rebelled across the country. In Bennett’s (1996; 30) view, as a consequence of state action chiefs now had “...little in common with his pre-colonial forbearer, for successive governments have intervened to appoint and depose rulers, to redefine their powers, and to create or divide tribes [which lacked] an authentic or popular basis of legitimacy.” This very sentiment was shared by many observers of the African chieftaincy and caused them to anticipate its demise at the dawn of democracy.¹⁴

The democratic era: state-led ambivalence, contested laws and undefined roles

When the African National Congress (ANC) took office in 1994 and led the nation into an era of democratic governance, it brought along with it an unwanted but seemingly necessary passenger; the historically undemocratic and despotic institution of traditional authorities. Ntsebeza (1999a; 1999b; 2000; 2008) has undertaken over two decades of research and writing regarding the important yet problematic relations between the ANC and traditional authorities which attests to the fact that incorporating traditional leaders into the anti-apartheid struggle was a strategic move aimed at expanding the organisations support base. He writes (1999a: 84):

“One of the key strategies of the ANC was to mobilize support against apartheid on as broad a front as possible — hence its characterization as a multi-class and multi- or non-racial alliance. In 1987, during the dying moments of apartheid, a group of traditional authorities in KwaNdebele who opposed apartheid-style independence formed the Congress of Traditional Leaders in South Africa (CONTRALESAs) and immediately aligned itself with the ANC in exile”.¹⁵

¹⁴ It must be noted that some chiefs fought against white domination from the colonial period and especially during the apartheid years. In fact, as Kessel and Oomen (1997: 562) narrate, some of the founding members of the ANC were Chiefs, and traditional leaders comprised a large number of its membership. During the 1950s and early 1960s, some Chiefs spear-headed the rural revolts that took place across South Africa, in places like Mpondoland and Thembuland in the Eastern Cape (Ntsebeza, 2005; Spiegel, 1990). These Chiefs were ultimately sidelined for more “compliant Chiefs” who worked as an extended administrative arm of the state in the control and containment of people in rural areas (Kessel and Oomen, 1997: 534). Since the transition to democracy, traditional leaders have tended to over-emphasize the role they played in the anti-apartheid movement. Some scholars label this “opportunism” in a bid to secure political power and legitimacy in the democratic era (Ntsebeza, 2005; 1999a; 1999b). It is generally understood and accepted that traditional leaders were mainly compliant with the state.

¹⁵ To maintain their place on the political scene, traditional leaders began to come together as a unified body, CONTRALESAs. As Ntsebeza (2008) notes, some did so in a bid to distance themselves from ‘illegitimate’ Chiefs who were placed in positions of authority by colonial and apartheid structures while ‘genuine’ ones were side-lined by the oppressive state. But in the end, even formerly discredited Chiefs joined in as a way to ensure their longevity on the political landscape.

In most of his works, Ntsebeza presents the relationship between the ANC and traditional leaders as mutually beneficial. The ANC needed increased support from rural residents who were more closely aligned to traditional authorities than they were to the ANC. On the other hand, in the early 1990s, it was clear to traditional leaders that the apartheid system was in its last days and the shelter they enjoyed under the wing of colonial and apartheid structures would now have to be provided by the emerging ANC government. To this end, the two factions battled to find a place for traditional leaders. Once again, the law became the primal site of contestation. During the negotiations, traditional leaders fought hard to carve a place for themselves in the Constitution while the ANC remained committed to the development of democratic structures across the country. In the end, the battle was won by traditional leaders who managed to find a place for themselves in the interim Constitution of 1993 and in the final provisions set out in the 1996 document. This inclusion "...came as a shock to many observers" (Ntsebeza, 2008: 239) and ultimately set the tone for an ambiguous relationship between structures espousing democratic governance and the historically rooted traditional governance system (Mashele, 2004).

Evidently, this ambiguous relationship has its roots in the Constitution which is practically silent on the roles, powers and functions of traditional leaders. Chapter 12, Section 212 (1) of the Constitution states that "[n]ational legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities."¹⁶ In other words, 'providing a role' or adding content to the constitutional prescription is left up to the legislature. Following this constitutional mandate, the legislature has attempted to carve out a role for traditional authorities with dismal consequences. They have done so in the form of a series of controversial Acts and Bills, starting with the passage of the Traditional Leadership and Governance Framework Act 41 of 2003 (TLGF). This was quickly followed by the Communal Land Rights Act 11 of 2004, and then the even more notorious Traditional Courts Bill B15, which was gazetted in 2008. Read together, the most alarming aspect of these three pieces of legislation is that rural society once again falls under the centralized power of officially recognized traditional leaders in the vein of their colonial and apartheid predecessors, with little or no room to opt out of this form of governance. These pieces of legislature were greeted with fervour by most traditional leaders who coveted a return to the days of autocratic rule. Conversely, the decrees were met with outcry by land practitioners, civil society and activists at large who recognized that they were, at their very core, anti-democratic and oppressive.

The first of these Acts, the TLGF Act of 2004, reinvigorates the controversial Bantu Authorities Act 68 of 1951 which deems that 'traditional councils' are to govern in the tribal areas set in ethnically separate traditional areas, this despite "the reality of intermingled and ever-changing rural identities" (Love, 2008: xiii).¹⁷ These very traditional councils were set to take over land administration in ethnically separate

¹⁶ In general this entire section makes no recommendations on what functions are to be served by traditional leaders save to mention that they have a role to play in the observation of 'custom' in their various communities (see *ibid* 15).

¹⁷Section 28 (4).

communal areas under the Communal Land Rights Act (CLRA) which came to pass a year later. The CLRA sought to entrench the power of traditional leaders in the control of land in the communal areas instead of in the hands of elected land administration committees as had been the case in earlier versions of the Bill (Claassens, 2008: 264). The fact that rural residents would only acquire land through the administration of traditional councils led to a challenge from four potentially affected communities, namely Kalkfontein, Makuleke, Makgobistad and Dixie. As a result, on May 2010, the Constitutional Court declared it unconstitutional in its entirety, especially given the process that Parliament used to force the Act through in the wake of 2004 elections.¹⁸ Within four years, government attempted, yet again, to centralize power in the hands of traditional leaders through the Traditional Courts Bill. Among other disturbing precepts, the Bill bars people appearing before the traditional courts, manned by 'traditional councils' from representation by lawyers. In essence, such laws are "...in conflict with the constitution's protection to the right to representation of criminally accused persons" (Mnisi, 2006: 6).

For women, these pieces of legislation are likely to undo decades of gender equality. A gender analysis reveals that they are likely to reinforce patriarchal power relations or "official rural patriarchy" which sees traditional institutions actively oppress women as legitimized by discourses of tradition, custom and African culture (Walker, 1994: 355). In terms of composition, traditional councils are likely to be male centred, even if the TLGFA mandates that thirty-per cent of the Council should be composed of women. Power dynamics and local politics are likely to influence this process negatively and advance customary views of women as secondary citizens.¹⁹ People living in rural areas are likely to be governed on the basis of custom, which is often interpreted in ways that are disadvantageous for women. As Walker (2001: 11, cited in Cousins, 2007: 299) explains, "...the interpretation of 'customary law' by colonial administrators and magistrates served to strengthen not weaken, patriarchal controls over women and freeze a level of subordination to male kin (father, husband, brother-in law, son) that was unknown in pre-colonial society." Under these proposed and promulgated laws, women are likely to be further silenced and made evermore dependent on men for their livelihoods.

When evaluated collectively, it is clear that these set of laws will have several devastating consequences for rural residents. They will re-enforce colonially disputed so-called tribal boundaries, entrench patriarchal gender relations and centralize power and authority in the hands of appointed traditional councillors without options for rural residents to opt out. In this way, rural people are again taken as second class citizens, more akin to rural 'subjects' of traditional rule, than full citizens of a democratic nation in the manner famously described by Mamdani (1996). People living in rural areas who opposed the Communal Land Rights Bill in 2003 expressed the feeling that it was an "...expression of government's intention to dump its responsibility towards rural people...a way of backing out of government's responsibility to sort out the mess and provide services to rural people" (Claassens and

¹⁸ Information Newsletter of the Law, Race and Gender Unit, *Law, Custom and Rights*, July 2010.

¹⁹ Already, there are reports that the election of traditional councillors, both men and women, has been a failure in the North West, KwaZulu Natal and in the Eastern Cape.

Ngubane, 2008: 181). The research undertaken by some scholars indicates that some rural residents do not wish to return to the times of oppressive rule at the hands of traditional leaders. They perceive them as exploitative and unresponsive rulers and the antithesis of democracy. However, recent research reveals that in other localities traditional leaders in a more positive light and that governance under traditional leadership is reducing rural vulnerability, rather than causing it, especially for women (Logan, 2011).

Contemporary Experiences of traditional leaders: a mixed bag of benefits and disadvantages

The contemporary experiences of traditional rule by those living under their jurisdiction can only be described as a mixed bag of benefits and disadvantages. The previous section reveals that rural residents are not in favour of laws which (re)cast 'traditional authorities' as the exclusive and primary conduits of social services who are tasked with allocation of land in their areas. But in most studies which elucidate this, people in rural areas explain that traditional leaders should remain a visible part of the local governance structure. There is a small minority of rural residents that appear to be benefiting from traditional rule, or at least, capable of shaping custom in ways that generate more beneficial relations and outcomes. Reporting on the findings of their research, Claassens and Ngubane (2008) give voice to the varying realities experienced by people living in rural areas. For instance, "[i]n Batlharos in the Northern Cape, a traditional leader said land was also being allocated to single mothers.... At Mpindweni in the Eastern Cape, women said unmarried mothers had to struggle to get be allocated land, and if they succeeded then the latter was allocated in the name of a male relative" (Claassens and Ngubane, 2008: 169).

The findings of this research indicate that processes of change are underway in rural areas across the country, albeit amidst challenges. In other localities, traditional leaders are not putting up as much of a front as they contend with the demands of rural people, thereby shifting customary practice so that it takes on a more democratic character. Cousins's (2011) work in the Mchunu and Mthembu tribal areas of Msinga, KwaZulu Natal points to similar kinds of transformations in the practices of traditional leaders in relation to land allocation and the provision of other social services in the area. His findings indicate that single women can now be allocated land to establish their own homesteads. Secondly, that those who have partners but were not married could be registered and receive land. Both are innovations that run counter to customary practice (2011: 1). Describing this as social change characterised by the changing reality of land relations, Cousins (2011: 58) explains that "...in 2009, the Mchunu Traditional Council decided to allow land to be allocated to single people, including women. In 2010 the Council also decided to issue letters making it easier for couples to officially register their co-habitation as a 'customary marriage.'"

These changes do not take place without friction. Similar to the findings of Claassens and Ngubane (2008), Cousins (2011) explains that social changes such as these are marred by anxiety and tension. Even though these practices are moving towards the inculcation of equality in society, locals are discontent with the extent to which the institution of marriage is being broken down because traditional councillors are issuing land to single and unmarried people. The breakdown of marriage in this manner is not seen as befitting the moral order of the community. Locals are calling that traditional leaders act in accordance with local understandings of tradition as opposed to democratic principles of equality. Even in such cases where traditional leaders are acting in ways that promote the democratic principles of equality, it is the locals that call for a return to traditional conceptions of marriage. Hence, in order to maintain their legitimacy, traditional leaders are constrained by the expectations of their communities.

Bank and Mabhena's recent publication, *Bring back Kaiser Matanzima? Communal land, traditional leaders and the politics of nostalgia* (2011), bears testament to the ways in which people in rural areas are actively in favour of traditional authorities and more so than democratically chosen officials. At the behest of the Department of Land Affairs, Bank and Mabhena conducted a study in the Eastern Cape to examine whether or not rural communities in this area were ready for the implementation of the now repealed Communal Land Rights Act. One controversial finding was that "...traditional authorities remained firmly in control of rural allocation across communal areas in the Eastern Cape, and that most rural households believed they should continue to play a dominant role in land allocation" even though at the household level they expressed a need for more permanent individualised title (Bank and Mabhena, 2011: 121). Although the paper is unclear in terms of which communities in the Eastern Cape held such views, they report that in the area of local governance, locals reserved the most severe criticism for elected officials who were seen as "self-serving, disconnected and corrupt" while "chiefs and traditional authorities, by contrast, were viewed in a much more positive light, as potentially helpful, consensus seekers, and desirable intermediaries in community development" (2011: 121). The authors contend that most informants seemed to be calling for a return to the days of Matanzima's rule within what the authors have termed as a 'politics of nostalgia,' which is "essentially a response to social exclusion and the difficulties people face in connecting to the state and each other". (Bank and Mabhena, 2011: 139) This blinds rural residents from recognising how their lives have in fact improved, for example, through the introduction of social grants. Despite such views, which are mostly held by older informants, the failure of the state to provide adequately has fuelled local residents' perceptions that things are better under traditional governance. However, this fuel is lit by the present reality of incompetent and disconnected leadership of elected officials prompting "grassroots popularity of traditional leaders" (Bank and Mabhena, 2011: 132).

Questions concerning the popular legitimacy of chiefs and their incumbents formed the basis of an Africa-wide study undertaken by *Afrobarometer* (2011) over the last four years.²⁰ According to Logan (2011: 20):

²⁰ The research was carried out in Benin, Botswana, Burkina Faso, Cape Verde, Ghana, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mozambique, Namibia, Nigeria, Senegal, South Africa, Tanzania, Uganda, Zambia and Zimbabwe.

“Those who insist that traditional leaders do not enjoy popular support appear to be missing the core reality on the ground: in almost all of the countries studied, solid and at times overwhelming majorities of Africans affirm that traditional leaders continue to play an important role in their societies, and that this is *desirable*. In sharp contrast to the assessments of these analysts, people want *more* of their traditional leaders, not less.” [emphasis in the original]

Conferring with the findings of Bank and Mabhena (2011), Logan (2011) highlights that the popular support some traditional leaders appear to be enjoying can be attributed to the ineffective leadership of democratically elected officials. Furthermore, what is particularly striking, and not well emphasized in other research, is the fact that the character and moral standing of the individuals in leadership positions goes a long way to ensuring their legitimacy. It appears that the body of scholarship aimed at exploring the resilience of institutions of traditional governance is missing the high value that rural residents attribute to the content of a leader’s character as befitting the moral ethos of a community.

The missing narrative: traditional authorities on freehold land

Recent scholarship has brought into sharp focus the contemporary views and experiences of people living in communal areas. Surprisingly, along with the narratives which tell of corrupt chiefs exploiting the powers they have maintained in post-apartheid South Africa, are discourses that show chiefs and traditional leaders as socially transformative leaders, responding to the needs and vulnerabilities of their constituents. This variety is a direct result of the diversity of the institution itself and its highly variable manifestations across a multitude of localities in South Africa. It reveals that the institution of traditional leadership is not a homogeneous entity; neither are the people it governs.

The focus on traditional governance in rural areas is of critical concern, not simply because of the potential traditional leaders possess to rule undemocratically under the guise of customary law, but because their authority affects approximately 15 million South Africans living in the communal areas where they govern.²¹ These are the areas where people spend most of their daily lives subjected to traditional rule, their families and descendants having been forced to live there by the colonial and apartheid projects of segregation and exclusion. Communal areas of the former homelands are therefore conceived of as *the* traditional areas of customary rule, obscuring another reality of rule by chiefs on black owned, privately held land since colonial contact, a condition that reflects “the rarity of freehold titles that have survived in African areas over the long term” (Kingwill, 2008: 184). This omission has caused researchers to conclude that “...in the areas where chiefs rule, there is no individual freehold title; instead people occupy their land with the consent of the chief” (Williams, 2010: 8; see also Budlender et al, 2011).

²¹ The statistics on exactly how many people live the former homelands vary. Fast Facts 2011 states that there as 15 million people living in former homelands, while Claassens and Mnisi (2009) put the figure at 17 million. Murray (2004: 3) attributes this to the fact that people who live in rural and urban areas continuously traverse these two ‘zones’ making it difficult to uncover who spends their daily life under traditional rule and to what extent.

The relationship between landed Africans and chiefs has for the most part escaped the focus of academic research.

This is not to say that this obscure reality was altogether overlooked by scholars. The late eighties saw the publication of seminal works dealing with the peculiar condition of African landownership. Beinart and Bundy's (1987) critically acclaimed and influential account on the politics and popular movements in the former Transkei offer one of few in-depth historical accounts into the development of African freehold title from a historical perspective. Of particular relevance to this study is the fact that "...by the 1900s, Umzimkhulu must have been one of the Cape districts with the largest area of private land in African ownership at the time" (Beinart and Bundy, 1987: 51-52). Africans who could amass the buying fee for land did so. Elite Africans who had benefited from colonial aspirations to develop "...a class of African farmers along white lines" (Ntsebeza, 2005: 58) were able to purchase land and establish themselves as headmen in their own right by settling immigrants and thus "assembling large numbers of followers around them" (Spiegel, 1990: 60). Chiefs followed the same processes in a bid to cement their powers, taking advantage of the emerging land market to purchase land and settle their own people, thereby broadening the base of their followers. Hence, private land became re-communalised and ordinary rural residents became subjects of chiefs *and landowners*, a circumstance that continues to bear weight in Umzimkhulu to this day.

While Beinart and Bundy's book provides much needed historical insight into the emergence of freehold tenure in Umzimkhulu, it does not adequately comment on relations between chiefs and landed Africans. For this, one must consider other scholarly contributions which do not focus on the district of Umzimkhulu but attempt to uncover chief-landholder relations, although not in a detailed fashion. Two years prior to Beinart and Bundy's seminal work, Moll (1985) published his doctoral thesis entitled *Transition to freehold in the reserves*. In it, he explains that as a result of the Glen Grey Act of 1894 and due to various policies aimed at developing more individualised tenure, the next four decades formalised land tenure "patch work fashion" in all the magisterial districts of Ciskei, seven western districts of the Transkei, and even two districts in Natal (Moll, 1985: 3). Furthermore, Moll explains that the provision of freehold and in some cases quitrent tenure resulted in a series of social differences, especially between people under communal tenure who remained more dependent on their chiefs and those that did not. He noted that chiefs were generally against the introduction of quitrent tenure which threatened their authority (Moll, 1985: 4). Given that the main focus of his paper was to consider the effects freehold tenure on agricultural output, the roles, powers and functions of chiefs in freehold land was also not fully explored. Cross and Preston-Whyte (1987), however, pay more attention to issues of authority and tenancy on what they term the 'black freehold areas' of Natal. The authors examine the relationship between landowners and rent tenants more closely although they too pay scant attention to the role of chiefs in such a situation, which they argue was fraught with tension and conflict. Altogether these works provide critical insight into the development of black freehold areas from a historical perspective but leave out the experiences of black freeholders and rent tenants and their relations with chiefs and traditional authorities in general.

The more recent examples on relations between chiefs and their 'subjects' on privately owned land comes in the form of Ntsebeza's seminal work *Democracy compromised: chiefs and the politics of land in South Africa* (2005). It is the only South African example of an in-depth, historically rooted study on the relationship between chiefs and the people they govern on land that is not 'communally owned' and vested in chiefs. It bears witness to how landowners in the district of Xhalanga violently resisted the chieftaincy because they did not have to depend on it for their source of livelihood, including land allocation. This research affirms the hypothesis that, where traditional leaders are without powers to allocate land or control vital resources, their authority and popular legitimacy is greatly weakened (Ntsebeza, 2005; Ribot, 2001; Shipton and Goheen, 1992). While numerous parallels can be drawn between this study and others looking at the relationship between landed Africans and traditional authorities, it considers this in the context of quitrent and not freehold tenure. For this, one must consider a study undertaken by Kingwill (2008) which looks directly at the relationship between traditional leaders and African landowners.

Focusing on the villages of Rabula and Fingo, Kingwill's study sheds light on the relationship between African landowners and chiefs in Rabula and Fingo villages respectively, although a full, independent publication of her findings have not yet been made.²² Nonetheless, her analysis indicates that even though headmen in this area have no decision-making powers in regards to land allocation, in Rabula, "...there is currently a great deal of support among residents and owners for headmen to be reinstated...to manage the commonage over which title-holders struggle to enforce some measure of control, and also re-establish a direct link with regional or central government, widely believed to have been compromised under the municipal system" (2008: 193). Taken as a whole, these studies point to the necessity to examine more closely the particular experiences of Africans living in the few titled localities of the former homelands, especially in relation to traditional authorities that govern in these areas. This study hopes to provide a glimpse into the ways in which chiefs and headmen constitute their authority and legitimacy in a context where they have no powers to control land.

Conclusion

This chapter has shown that traditional authorities have maintained a stronghold over rural areas as a direct result of state policies, laws and legislation. From colonial times through to present day, their legitimacy has been, and indeed continues to be, drawn from the actions of the state. For the most part, chiefs and headmen took on the powers conferred on them with minimal resistance and hesitation, choosing instead to profit from the provisions made for them to control their subjects through such systems as the land allocation processes. When the ANC took power in 1994, the general expectation was that there would be an end to the exploitative institution and that there was to be a transition of rural

²² Rosalie Kingwill's writes in Chapter 8 of *Land, Power and Custom* and this is the only existing contemporary exploration of relations between chiefs, landed Africans and ordinary rural residents in South Africa to date.

residents from subjects into citizens. Instead, traditional leaders have received a new lease on life through the post-apartheid state, a place made for them once again through a series of controversial legislature. Most of these laws have not been enacted given the unwavering outcries from civil society and rural-based organisations who recognise that they are undemocratic, patriarchal and reposition rural residents as second class citizens. What is ironic and contradictory is that while some rural residents passionately call for an end to chiefly rule, others express growing need for it to take on a more active role in local governance structures, especially in preference to elected officials. This is because the institution is a heterogeneous one, governing in diverse localities that are shaped by the needs of rural residents in line with their moral order.

The findings of recent scholarship indicate that there is more to the chieftaincy than serving as agents of the state. The fact that they are present in freehold areas where they have no state conferred powers to control land, which usually forces rural residents to show their allegiance, demonstrates that they have other sources of legitimacy. To date, the academic gaze has not focused significantly on these freehold areas missing out the opportunity to evaluate what these sources of legitimacy may be.

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CHAPTER 3: THE ROLE OF CHIEFS IN LOCAL GOVERNMENT AND DEVELOPMENT: AN EXPLORATION OF PERFORMANCE LEGITIMACY

Introduction

Since the transition to democracy, the South African government has made a commitment towards extending democracy and development to the long neglected rural hinterlands of the country. This has caused people living in rural areas to have greater expectation concerning service delivery and development in these areas (Ntsebeza, 2005; 2008; Williams, 2010). Hence, development, or lack thereof, has become a critical part of the overall “legitimising process” (Buur and Kyed, 2006: 1). This chapter examines the extent to which traditional authorities maintain authority on the basis of *performance legitimacy*, which is concerned with the manner in which political leaders exercise power in the control of resources and how those in society evaluate this process in terms of service delivery and development (Williams, 2010: 28). This chapter highlights that residents of kwaMeyi expect development to be carried out in a way that fits the moral order of their community, illustrating that it is the behaviour of political leaders that ultimately positions them as legitimate political authorities. This chapter draws attention to the fact that even in cases where state officials have enough capacity to generate resources and services for local people, who they are as leaders matters as much as what they do.

Uncovering the local governance structure in kwaMeyi

In order to examine how traditional authorities and state officials serve in the areas of development as well as in the provision of services, it is necessary to map out the structure of local government in Umzimkhulu district, with particular reference to the village of kwaMeyi. Hence the following sections explore the character of traditional governance in KwaMeyi and that of local government in the district.

The peculiar rise to power of chief Mavana in kwaMeyi

In terms of a traditional governance structure, KwaMeyi village falls under the jurisdiction the Mvolosi Traditional Council which was headed by chief Mavana.²³ Chief Mavana presided over kwaMeyi village for sixteen years, from 1994 until his death in 2010. Born in 1960, he was a university-educated man, an activist during the apartheid struggle, and up until his passing, was chief over 13 villages in the Umzimkhulu district. He was also as an avid farmer who had a preference for growing organic food.²⁴ His

²³ Attempts to ascertain the composition and make up of this council were met with difficulty.

²⁴ Interview with Chief Mavana, July 2009, Umzimkhulu Municipal Offices. It should be noted that the quotations that are being used in this thesis are written word-for-word so as to aptly capture the views and sentiments of their authors. These quotations are highlighted in italics so as to distinguish them from quotes taken from works of scholarship.

rise to the position of chief is a unique and unusual story and one that needs to be elucidated in order to understand the functions of traditional leaders in kwaMeyi village.

As noted earlier, chiefly rule has been prevalent in kwaMeyi village and the wider district of what is now Umzimkhulu since its very formation in the late 1800s. In this area, the historical emergence of the chieftaincy is particularly peculiar, mainly because it is uncharacteristically a titled locality and not a communal area where chiefs normally have their jurisdiction. During an interview with chief Mavana, he explained how traditional authorities came to govern in the area of kwaMeyi and the wider district of Umzimkhulu with reference to his own rise to the position of chief:

...As time went by it was discovered that Umzimkhulu had plenty of land or farms. Chiefs here in Umzimkhulu came about because they bought farms. The chief would buy land, people would then live on his land and then he would be the chief. It was discovered that the chief couldn't understand the things on the farms. It was decided that there should be chiefs, as in my case, who is democratically chosen to look after the farm people since they were voiceless.²⁵

Chief Mavana's account attests to the history of land ownership by traditional leaders highlighted in the introduction of this thesis. To reiterate, it illustrates that the entrenchment of the chieftaincy took place in tandem with the spread of private land ownership in Umzimkhulu and confirms the arguments of such academics as Ntsebeza (2005: 14-15) who state that "the question of the legitimacy of traditional authorities is very much associated with their position in and control of land allocation process." Unlike other situations where land was vested in chiefs by the state, traditional authorities in Umzimkhulu took advantage of the land market to become landowners themselves through the purchase of land from the Griqua and white settlers respectively. This land became the support base for chiefs, housing their own subjects in addition to any immigrants who wished to reside there. Baba Steven, a seventy-five year old farmer corroborated this in an interview:

Tanya: Do you know of any land in Umzimkhulu that is considered communal land and is governed by the tribal authority. Do you know the history of how that came about and what's happening there now?

Baba Steven: You see for instance, Clydesdale just behind us. What happened there, the chief there of the Bhaca's. They got together as men and decided to go buy a piece of land as settlement of their subjects. Now it is called now communal land

T: But they hold the title?

B.S: They have got the title.²⁶

By taking advantage of laws extending title to Africans, chiefs were able to provide residential space for their 'subjects' to the extent that land became communal, or recomunalised in the fashion described by

²⁵ Interview with Chief Mavana July 2009.

²⁶ Interview with Baba Steven, August 2009 at his farm in kwaMeyi village.

Beinart and Bundy (1987).²⁷ Chief Mavana and his family have been purchasing farms in this manner for a time, his father having bought farms over his life time, encouraging his children to do the same. Unfortunately, I was unable to determine which sites these were within the district of Umzimkhulu, or establish whether or not chief Mavana governed these areas as a chief wielding authority over his 'subjects'; if he was acting as a landowner, charging rental fees to tenants without enforcing recognition of his chieftaincy, or even, the extent to which tenants were labour-tenants contributing their labour to agricultural output on his farm. In areas other than kwaMeyi village, I was unable to determine whether or not his rule was a consequence of these factors.

What must be emphasized and is of critical importance and of particular relevance to this thesis is that chief Mavana did not own land in kwaMeyi village or control allocation practices in any capacity. Furthermore, in kwaMeyi, chief Mavana had no authority to allocate residential sites. By his own admission, chief Mavana confessed, "*I have no authority to allocate sites here in kwaMeyi. The owner of the farm is the one who allocates the site.*"²⁸ Even without powers to control land allocation practices, chief Mavana presided over kwaMeyi village as its chief and was consulted by local residents in this capacity. This reality contradicts the widely-held view that the legitimacy and longevity of traditional authorities is mainly based on their powers to allocate land, which compels "...rural residents, willy-nilly to cooperate with traditional authorities..." (Ntsebeza, 2005: 22). This goes against the arguments of scholars such as Shipton and Goheen (1992, 314) who note that "control of land is a central part of political leadership...can prop up a leader's political power and authority and help define them." It appears that for traditional leaders in the village of kwaMeyi, controlling land is not central to their authority.

Chief Mavana, a democratically elected chief?

The existence of a traditional authority on privately held land is but one peculiarity in kwaMeyi village. The second peculiarity concerns the notion of a "democratically chosen" Chief as mentioned previously by Chief Mavana who said, "*...It was decided that there should be chiefs, as in my case, who is democratically chosen to look after the farm people since they were voiceless.*"²⁹ Another kwaMeyi resident, Gogo Liza, a 73 year old former member of the traditional authority, seemed at pains to emphasize the fact that chief Mavana was an elected chief, having gained political office through an electoral process and not through hereditary means as is common practice:

It's me who entered Mavana in that role. I was chief Twala's secretary. I had seven years as chief Twala's secretary. They shot him and he was also diabetic. Then we had to go to the Magistrate to ask for a new chief. We had to advertise the post. I was helped by this man who told me that Mavana had many degrees, in Human Resource. Mavana was ideal because he had degrees. He passed. We wanted someone who

²⁷ The process of recomunalisation is explored further in Section IV of this chapter.

²⁸ Interview with Chief Mavana, August 2009, Umzimkhulu Municipal Offices (my emphasis).

²⁹ Interview with Chief Mavana, August 2009, Umzimkhulu Municipal Offices

*had no criminal record and sober habits. He must be educated and religious. Mavana passed easily because he had 70% or 80% vote. He still thanks me to this day.*³⁰

Gogo Liza's comments demonstrate that chiefs can be elected through democratic processes and not only through hereditary means. It has already been noted that the ideology of democracy has resulted in significant changes in the structure and character of the institution of traditional leadership to some degree (Cousins et al, 2011; Claassens and Ngubane, 2008). If chief Mavana was indeed "democratically chosen", it greatly contradicts a central contention within the academy that chiefs cannot be voted into political leadership roles, that "...in so far as the institution of traditional leaders is hereditary, it cannot be transformed and democratised" (Ntsebeza, 2005: 33). This case study on kwaMeyi village seems to indicate that individuals can hold a place as 'chiefs' through an electoral process and not through hereditary means as is customary. Chief Mavana presents himself, and is presented, as an 'elected Chief' one without previous chiefly connections.

Ultimately, discussions with older informants have provided insight into the peculiar circumstances which led to Mavana gaining office as *inkosi* over kwaMeyi village, in addition to twelve others in the Umzimkhulu district. In some of the villages in Umzimkhulu, he presides as chief because he owns the land in which large numbers of people live. This privately owned land has become recommonalised and as a result, its residents show allegiance to the chief. This is in keeping with the assertions of academics and researchers who tie chiefly authority to their powers to allocate land. However, in kwaMeyi village specifically, chief Mavana has no authority to allocate residential sites although he is recognised by villagers as presiding chief and forms part of the local governance structure. Furthermore, it appears that chief Mavana is an 'elected chief,' one that was voted into power through a democratic, electoral process. These peculiar circumstances force one to consider other avenues, besides land allocation, that facilitate the continued presence of traditional authorities in kwaMeyi village.

The expansion of local government in kwaMeyi and the role of traditional authorities and ward councillors

One cannot explore the authority and legitimacy of traditional leaders without paying attention to the structure of local governance as a whole. As South Africa entered into an era of democratic governance, one of the central projects undertaken by the post-apartheid government was that of rural development. The rural hinterlands, once labelled as homelands or Bantustans, were little more than cheap labour reserves, serving the needs of burgeoning agricultural and mining industries. People living in these areas had suffered decades of underdevelopment and economic neglect which manifested in on-going rural poverty.

³⁰ Interview with Gogo Liza, July 2009, at her home in kwaMeyi.

To mitigate this crippling poverty, several laws and policies were introduced. The Constitution of 1996, the highest law of the land, provides that local government structures be created in addition to national and provincial levels of governance. Together with the *White Paper on Local Government*, the main goal of this third tier of government is to act as a developmental local government. Its aims will be "...to democratize local government, by introducing the notion of elected representatives even in rural areas, but also to transform local governance, with a new focus on improving the standard of living and quality of life of previously disadvantaged sectors of the community" (Ntsebeza, 2004: 8). Municipalities serve as the main institutions orchestrating this development in their localities, fulfilling the constitutional mandate that municipalities be established throughout the country and especially in rural areas as contained in Section 151 (1).

To this end, the Umzimkhulu Local Municipality was established in the year 2000.³¹ It caters to the developmental needs of the townships and villages in the entire district including the village of kwaMeyi. It describes one of its strategic priorities as being "...to develop systems to facilitate co-operative governance and inter-governmental relations especially with the district, other spheres of government and service providers to maximize the development impact within Umzimkhulu Municipality."³² The municipality also strives to extend good governance and citizen participation through its "fully functional" Ward Committee system.³³

At the time of research, the entire district was broken up into 18 wards, each headed by an elected Ward Councillor.³⁴ KwaMeyi village fell under Ward 11, which was then headed by councillor Jonathan "Magic" Mkhize.³⁵ The municipality also makes a concerted effort to work with traditional authorities across the district. In their 2008/2009 annual report, they stated that they "...have also worked hard to improve our relations with traditional leaders. Traditional leaders have been very supportive in issues of service delivery in our municipality."³⁶ This assertion indicates that traditional leaders are a visible part of the local governance structure in the area and that they are included in service delivery and development projects. It also speaks to a difficult relationship between state officials and traditional leaders, one which is explored further on in this chapter.

From the evidence shown here, it is clear that kwaMeyi village is overseen by an institution of traditional authority, headed by chief Mavana as well as the Umzimkhulu Municipality, headed by councillor Jonathan 'Magic' Mkhize for Ward 11. This dualistic pattern of governance has been described as a

³¹ See Provincial Notice 344 of 2000, published in *Provincial Gazette* 5563 of 2000, as amended by Provincial Notice 1 of 2006, published in *Provincial Gazette* 6456 of 5 January 2006, issued in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

³² Umzimkhulu Municipality Annual Report 2008/2009

³³ Umzimkhulu Municipality Annual Report 2009/2010

³⁴ This has since increased to 21 wards.

³⁵ There are now 20 wards and a new Ward Councillor

³⁶ Ibid 7

nested, multi-layered system of governance which has become characteristic of the post-apartheid political landscape in South Africa as well as elsewhere on the continent (Cousins, 2011; Kingwill, 2008). This kind of structure, with its multiple levels of authority, causes tension and confusion for residents of kwaMeyi, especially in the area of development.

Development, chiefs and ward councillors: a complex situation

Underperformance of Ward Councillors and the municipalities

The issue of development is a sore point for rural residents across South Africa. The same can be said for residents of kwaMeyi village. Informants explained that the levels of development in Ward 11 appeared to be taking place at a much slower rate than other wards in the district. It seems that the ward system has caused tension across the district of Umzimkhulu, as people compare and contrast the differing levels of service delivery and infrastructural improvements. Thembi, a 33 year old single mother explained that there were places “...where things are happening and in other places or wards where they are not.”³⁷ There was a pervading sense that the ward system, and particularly the Ward Councillor “Magic”, was not effective in the extension of development, such as repair and creation of roads, provision of electricity and piped water. However, there was some recognition that development, though perhaps sluggish, was taking place at a far better rate than when Umzimkhulu was part of the Eastern Cape. For much of the twenty-first century, residents of the district participated in protests and made numerous calls to government requesting to be transferred from the province of the Eastern Cape to that of KwaZulu-Natal.³⁸ When this plea was finally granted in March 2006, development began to take place, or so the residents perceived. As Hugo, a soldier aged 33 explained:

With regards to the development in Umzimkhulu, the complaints will always be there but honestly things won't happen and progress simultaneously. As you can see here at kwaMeyi, we are just sitting waiting for electricity to be installed. We have been waiting for a while. Places around kwaMeyi have electricity, where the holdup is, I really don't know. Perhaps the people who represent this area are not doing their jobs. However, if you look at Umzimkhulu in its entirety there is development occurring. Perhaps it's because we have been listed under the KwaZulu-Natal Province. I remember when I was younger; there was nothing but bushes and empty land. Now there is a taxi rank, shops like Rhino and Barnett's. Since we have been listed under KZN, the development of roads has occurred. There is development it's just that it is taking time.³⁹

While the comment above reflects an acknowledgement of developmental improvements since the provincial switch, they allude to a general dissatisfaction with development at the hands of “*the people who represent this area*” who are perhaps “*not doing their jobs.*” KwaMeyi residents were particularly vocal about their expectations of ward councillors and the displeasure they felt on their perceived

³⁷ Interview July 2009, kwaMeyi village.

³⁸ *Daily News* “Billions Spent on improving Umzimkhulu” 8 September 2008.

³⁹ Interview with Hugo July 2009, kwaMeyi village.

underperformance and that of the municipality in general. Gogo Noma, 70, a retired teacher and wife of a landowner, was very clear about who was to blame for the slow pace of development:

Gogo Noma: Even the ward councillors, they are here to give us water and electricity, put in the roads. But they don't do that! We don't have electricity.

Tanya: They don't? Why is there no electricity?

Gogo Noma: It's our ward councillor. The blame is with our ward councillor. Even now we are not sure if it's coming.⁴⁰

During fieldwork, it was evident that Jonathan "Magic" Zulu, Ward Councillor for kwaMeyi village, was not warmly regarded by the locals. This was largely attributed to his inability to bring in development at a suitable pace, in addition to being unavailable to assist community members in need. "Magic" was often described as someone who could never be located, a realisation I came to after failing to secure him for an interview. Whether or not he performed his duties effectively, very little could be achieved without consulting "Magic" as the following narratives reveal:

1. *Sakhile: Who is ward councillor for kwaMeyi?*

Thembi: It's... I don't remember, I know that he is a Zulu though. Apparently his name is Magic. Don't know whether that's his real name or what.

S: Oh so you have seen him?

Thembi: Yes, I have seen him

S: Where have you seen him?

T: I went to go ask for a letter to open an account. That's who we ask.

S: What account?

T: A bank account, even if you want a letter to go apply for the grant for the child. That is where you go.

S: So you don't ask this from the chief?

T: No, you get it from Magic.

S: So, if you would go to the chief and ask for this, they wouldn't take it?

T: I don't know, but all I heard is that if you want a letter to apply for a grant and an account you must go to your councillor.⁴¹

2. *Sakhile: What does Magic help you with?*

Diane: Since we get the grant for children, we go get a letter/book from the councillors then he does it for us. You get a folder that he assists you with, and then you go to Home Affairs with forms that are completed by the councillor.

S: Can't you go to the chief's headsman? You see there's the chief and there's the councillor right. Why don't you go to the chief to help you?

D: There wasn't a form that required me to go to the chief. There were two forms that needed to be filled in by the school and the councillor.

S: The form stated that you go to the councillor?

⁴⁰ Interview with Gogo Noma, August 2009, at her home in kwaMeyi.

⁴¹ Interview with Thembi, July 2009, at her home in kwaMeyi.

D: Yes, it states on the form that one must go to the councillor and the school.⁴²

From the narratives above, it is evident that Ward Councillors play a critical role in ensuring that rural people can access key services and resources tied to 'formal institutions.'⁴³ Formal institutions, such as banks and even the Department of Home Affairs, have drawn municipal officials into the processes that facilitate service provision and development in rural areas. It appears that chiefs and traditional leaders in the area are operating outside of this formal arena, thus contradicting assertions that "while chiefs are weak, one cannot achieve anything without consulting them" (email conversation with Jesse Ribot as quoted by Ntsebeza, 2005: 20). Instead, in the provision of key services and the extension of development, Chiefs are hardly being consulted. On this, Gogo Liza made the following remark:

The life at kwaMeyi presently is still the same even before we voted. It's a pity because other places developed and they got water and electricity. Another thing that went wrong in kwaMeyi before we voted was that we had projects we were working on. However when the municipality was involved nothing seemed to happen.⁴⁴

According to Gogo Liza, the traditional authority which she served and continues to align herself with, worked more efficiently in bringing development to the area. In her time, they had a clearly defined developmental role. Her sentiments are a testament to the fact that traditional authorities have a far smaller role to play in the area of development and the provision of key services and resources than before "*the vote*" in 1994. In this context, it appears as if the state has failed to provide clear roles and functions to traditional authorities. It has only paid lip-service to the authority the institution by enacting various laws and bills such as the Traditional Leadership and Governance Framework Act 41 of 2003. It has introduced elected representatives through the Municipal system, but has actually decreased the role played by chiefs in the area of development. Chief Mavana elaborates that this lack of clarity on the roles, powers and functions of traditional leaders has caused a great deal of confusion, tension and anxiety, especially in relation to Ward Councillors operating in the same areas:

Sakhile: As the chief over Meyi, Bisa and Thembeni. We found out that there is a ward system by the municipality. Now we are not quite sure where...

Chief Mavana: That's so confusing my children. It is a mixed masala. I have 13 villages to look after. There are three councillors. Some of the other places have a chief as well, so there's an overlapping. There are councillors and chiefs- it's conflicting in a way.

S: Their responsibilities and your responsibilities overlap or?

C.M: Some overlap and some clash. There are personality clashes, some people are complex. For instance, there is one of the issues that one of the councillors has. Usually councillors and chiefs work together. For example, a death certificate needs to be completed by the councillor but not the chief even though the chief

⁴² Interview with Diane, July 2009, at her home in kwaMeyi village.

⁴³ In this thesis, formal institutions are defined as "...those backed by the law, implying enforcement of rules by the state" (Cousins, 1997; 4-5).

⁴⁴ Interview with Gogo Liza, July 2009 at her home in kwaMeyi village.

*knows the people better. Councillors stay on their positions for five years and therefore they don't know the community. I have been in this role for 16 years and don't know all the people of kwaMeyi. But how much more a person who is in a role for five years?*⁴⁵

Chief Mavana's comments express a deep realisation that the powers of traditional authorities are dwindling at a practical level. In kwaMeyi village they are not being relied upon to extend development, nor are they being recognised as authorities by 'formal institutions' such as banks despite acknowledgements by that state that they are a valuable and important part of the post-apartheid era, democratic era. In terms of possessing the potential to control resources or bring about development, traditional leaders have very little powers in which to do so. Baba Steven highlights this point succinctly:

*These days their role seems to be fading off I am telling you. Even through the government, you find you listen more to the councillor than you would listen to your tribal authority. Like for instance if you go to the bank you need a residential address, you must have a residential address you go to the councillor not the chief. Now, you go to the council and they would do it for you. But even Mavana he does but it done by the councillor. But councillor is more recognized than the chief. That is why always find that there is this debate in the parliaments about the tribal authority, these chiefs and all that...It's not, let's just say it's KZN. Say KZN. You always hear in this culture saying Amakhosi (chiefs), speaking about Amakhosi (chiefs) fighting with the ANC that they are stripping powers from the Amakhosi (Chiefs). That is why culture is dying. That is why you can see they are slightly stripping off the power slowly. They are gently doing that. You find that there will be no Amakhosi in this area. There are councillors. At Umzimkhulu, we have these chiefs at Umzimkhulu; we have one Gugwini- Zethuse-we are talking about Chiefs not induna (headman)-we have Slahla. We have Chief of the Bacas, we have Mbovini. At these Chiefs areas you find that there is a councillor, okay? There's a councillor, and now the prominent people who bring development to the Chief's area is the councillor. So the people are more inclined to shift to the councillor because he is the only person who speaks to the mayor or the managers. The Chief has nothing to do with it. He tells his people what the municipality says: 'It says this and that.' 'The chief doesn't bring water. I would bring you water.' They have stripped these people of power. One day you are no longer the chief. Then you not respected because the chief doesn't bring anything to their people.'*⁴⁶

According to Baba Steven, traditional leaders are losing authority because the state is slowly, "gently" as he puts it, stripping their powers. The introduction of ward councillors, more directly drawn into development projects and formal institutions has had the effect of turning chiefs and other traditional leaders into little more than figure-heads within the structure of local government. While some informants argue that ward councillors tend to be ineffective in bringing about development, Baba Steven's comments illustrate that the buck stops with these state officials because "the chief doesn't bring anything to the people." As he explained, "the prominent people who bring development to the chief's area is the councillor." If indeed kwaMeyi village, is the "chief's area" as Baba Steven described, the assumption that development cannot take place without their cooperation does not hold here. What stands out from his

⁴⁵ Interview with Chief Mavana, July 2009 kwaMeyi village.

⁴⁶ Interview with Baba Steven, 3 August 2009, at his farm in kwaMeyi village.

comments is that whoever controls resources maintains political authority and this control is a central part of establishing political legitimacy. However, Williams (2010: 28) reminds us that "...in the long-term, legitimacy must be based on something more than performance..." In other words, there are other sources of legitimacy to consider.

Establishing authority through performance legitimacy

Baba Steven's view, as previously quoted, is not representative of other sentiments on the importance of traditional leaders in local government. For some residents, things would be better if chiefs had more control over resources as was the case before the advent of democracy and the introduction of democratic institutions. Similar to the findings in the study by Banks and Mabhena (2011: 133), rural residents in kwaMeyi appear to be engaged in a "politics of nostalgia" where people look back to the periods under traditional rule as "better times."⁴⁷ Enette, a 49-year-old teacher, displayed irritation at the fact that ward councillors were doing the same jobs previously assigned to traditional leaders, and at that, doing the job inadequately. Enette firmly believes that traditional authorities are preferable to state officials as she explains in the following narrative:

Sakhile: What is the difference between the councillors and the headmen, the older ones?

Enette: It's just government wasting money on people. It's like here at kwaMeyi. You know that there is a councillor called Magic. Magic has plenty of assistants who then deal with the people when Magic is not available. I am used to the assistants (sponda). The term councillor is a recent development.

S: Is there something that the councillor can or cannot do that the assistant (sponda) does or vice versa?

E: For me, their work seems the same because if there is something like someone passing away...an example is when my sister passed away. She passed away here at home. They told us to get a letter from the chief. I asked whether the councillor's letter will work. Clearly they do the same work. I think it's just that the government has a lot of money to waste. They pay the councillor and they pay the chief. Do you know that the chief gets paid a lot of money?

S: But the councillors get paid too?

E: Yes, and I think they should choose one person that they pay.

S: Which one do you prefer, the chief or the councillors?

E: I prefer the chief, the councillors are a dream....When we had a discussion with him when people started getting sick as a result of the road. We asked him why he hasn't fixed this road. He said it is the first priority this year and he hasn't done anything. I once heard a radio advert saying that, 'Councillors are always promising to do things.' That's all he does, promises. All the things that were done for Bisa were done by Jwara who was the previous councillor for the Bisa location. There is nothing you can point and say it was done by Magic. There isn't even one thing that Magic has done. The water was installed even before Magic was around, it was done by Jwara. That is why I would say that it probably would be better even if the councillors didn't exist. When there weren't any councillors and the old men of the community were working

⁴⁷ Bank and Mabhena (2011: 133) do not take such sentiments at face value. They explain that "objectively speaking what rural households have received from the ANC and what they were given as subjects of the Transkei state, it is clear that they are better served by the ANC than the TNIP." They explain that what may be driving this nostalgia is worsening socio-economic conditions on a global scale, which have made conditions for the world's poor dramatically worse. These include decreasing job opportunities and the toll of HIV/AIDS on rural households (Bank and Mabhena, 2011: 134-136).

for us and they had a sound mind. Well I don't know how to put it, maybe it's because of the way Magic is. He just cruises up and down the streets with his car and the young girls. He loves these young girls. You will find him with girls of 12 years just chilling. He is first class.⁴⁸

Enette's arguments tap into recent debates on the resurgence of traditional leaders in the era of democracy. They indicate firstly that traditional authorities continue to draw some degree of popular legitimacy as a consequence of poor performance by state officials such as ward councillors. Even if one accepts that the incapacity of the state is due to crippling neo-liberal economic policies and overall declining global socio-economic conditions, this is not the case in kwaMeyi village. It is clear that ward councillors have control over resources and that the Umzimkhulu Municipality is well-funded with capacity to meet many of the developmental challenges in the district.⁴⁹ What one sees through Enette's assertions and the narratives of other informants takes us beyond the weak-state hypothesis.

Her statement indicates that drawing legitimacy is significantly influenced by the *character* of those in leadership positions, in as much as it ties to their ability to control key resources, or in this case, bring about development. This fits Williams's (2010: 29) assertions that "political actors must make decisions consistent with both the underlying moral and performance dimensions to remain legitimate at local level." It is not enough to bring in development if your leadership style is one that does not fit the moral order of that particular locality. For Enette, she is not comfortable with the introduction of new norms and institutions such as ward councillors and the municipal system. To reiterate, she states that "*I am used to the assistants (sponda). The term councillor is a recent development*". Beyond this, Magic's behaviour is deemed inappropriate because he is accused of fraternizing with underage girls. Hence, ward councillor Zulu is not viewed in a positive light because of his perceived immoral behaviour. Local people assert that he does not really know the people of Umzimkhulu or care about their concerns. Conversely, chief Mavana is cast as someone who knows community members intimately and gives weight to their needs and concerns in a manner that reflects the values, norms and rules of this particular society. Therefore, the different ways these two political leaders carry out their duties is what legitimizes their authority. It shows that controlling critical resources can legitimise the authority of a political leader but only in so far as their exercise of power is deemed appropriate and fitting with local norms and values, in what has been described as performance legitimacy.

⁴⁸ Interview with Enette, July 2009, at her home in kwaMeyi. It must be noted that Enette lives in the township of Ibis, referred to as Bisa, and comes once or twice a month to see to her rural home which is permanently inhabited by her mentally challenged older sister and is tended to by a domestic worker.

⁴⁹ The 2009 Umzimkhulu annual report states that it received R22 million rand to repair roads in the area but only repaired roads totaling 30km. During the time of research, informants complained that these so-called repairs were partially complete and reported that development of roads had since halted as funds had "gone missing." The claims made in this report appear to be exaggerated (see report <http://www.umzimkhulum.gov.za/Umzimkhulu%20Municipality%20Annua...pdf>). The Umzimkhulu Municipality has had defend itself, numerous times, against allegations of corruption (see *Business Day* <http://www.businessday.co.za/Articles/Content.aspx?id=171382>).

Conclusion

This chapter has shown that chief Mavana had no authority to allocate residential sites and that he operated outside of the formal arena in the provision of services or development. If kwaMeyi villagers, like Thembi, needed letters to apply for bank accounts, they went to ward councillor “Magic.” If they needed letters to apply for social grants, as Diane did, they went to ward councillor “Magic”. This contradicts arguments within the academy that “...while chiefs are weak, one cannot achieve anything without consulting them” (Ntsebeza, 2005: 20). Even though ward councillor Magic is able to bring in some level of development, the manner in which he does so, and the way he conducts himself generally, is viewed as repugnant to the moral order of kwaMeyi villagers. He is described as being unavailable when needed and a corrupt individual with questionable morals. On the other hand, chief Mavana is upheld as an engaged leader; one who is ever present to meet the needs of his constituents. He leads in a manner that is more familiar, unlike the ward system which is a “*recent development*,” as Enette explained.

The development of the long neglected rural hinterlands is a burning issue in South Africa, and this is no different in the village of kwaMeyi. Development, or lack thereof, is seen as a critical part of the overall “legitimising process” (Buur and Kyed, 2006). However, for kwaMeyi residents, controlling critical resources does not translate into political authority. Chief Mavana was considered a legitimate authority because he behaved in a manner that engages with local norms and values.

CHAPTER 4: THE ROLE OF CHIEFS IN THE AREA OF DISPUTE RESOLUTION: AN EXPLORATION OF MORAL LEGITIMACY

Introduction

In Chapter 3, it became apparent that political leadership is not defined by a leader's propensity to bring in development or control critical resources but on the manner in which they exercise the powers that have been conferred upon them. Hence, their legitimacy is based upon their ability to act in ways that reflect the moral order of the community where they govern. This chapter delves more deeply into the moral aspect of political legitimacy by exploring William's notion of *moral legitimacy* as it applies to kwaMeyi village. Moral legitimacy highlights a particular society's worldview, their "...norms, values, myths and symbols used to define and evaluate 'appropriate' political action" (Williams, 2010: 21). One aspect of this worldview is the belief that chiefs are symbols of unity, tasked with maintaining peace and harmony since pre-colonial times (Logan, 2011; Williams, 2010; Oomen, 2005 and 2000) This ideology is noted in the study of kwaMeyi, where chief Mavana is upheld as a purveyor of justice and a political leader who maintains peace in the context of difficult relations between landowners and tenants. This chapter will show that the idea of chiefs as symbols of unity continues to legitimise their authority in rural areas such as kwaMeyi.

'Community-making' in kwaMeyi village

As detailed in the introductory chapter of this thesis, kwaMeyi village is a titled locality where the land is owned by a small number of individuals.⁵⁰ This form of landholding has persisted since the late 1800s when the Griquas obtained legal ownership through the Glen Grey Act of 1894 which was later sold to prospective white and African farmers as well as 'elite' Africans. Due to the difficulty of farming (attributed to poor geological conditions and inaccessible markets) landowners began to subdivide their land into smaller parcels, renting them as a means to generate income (Beinart and Bundy, 1987: 51). A system of rent-tenancy emerged which continues to operate in kwaMeyi presently. Thus, it is landowners who are responsible for land allocation in the village of KwaMeyi and not chiefs or traditional authorities as is the case in other localities across South Africa (Claassens and Ngubane, 2008). I have named this process a system of "community-making" as it is connotative of the how landowners, through rent-tenancy, have created the community of KwaMeyi. The term rent-tenancy does not highlight the fact that landowners engage in a process of inclusion and exclusion where they decide who can and cannot rent a portion of

⁵⁰ To reiterate, interviews with informants suggest that there is a total of nine landowners in kwaMeyi village. The rest of the community comprise of rent-tenants and kin relations who may or may not be paying rent or providing some form of compensation for their stay.

their land, and therefore become part of kwaMeyi society. It is a process that needs to be explored which answers a call put forth by Cross and Preston-Whyte (1987, 1) that “freehold and tenancy are closely connected, and the relationship needs to be fully debated in its local significance.”

Tenants and enduring rights to land?

It has been constitutionally recognised that tenants, particularly labour tenants, are among the most disadvantaged groups when considering the tenure security of historically displayed people in South Africa. Narratives of exploitation and oppression at the hands of despotic landowners, mostly farmers, have been the focus of much research and writing on tenure security in South Africa. In kwaMeyi however, tenants at first appeared to be enjoying secure tenure. For between fifty and a hundred and fifty rands per year, tenants in the area can reside there indefinitely, having opportunity to construct homes on the parcels of land allotted them by landowners. Unlike their urban counterparts, tenants in this area are described as having ‘enduring rights’ to live on the land of titleholders, from one generation to the next. Thembi, whose parents moved to live on the land owned by the Zulus when she was a child, explained that there were no problems between her family and their landlords stating that “...we all live together well. There’s no problem.”⁵¹ Enette, whose brother is a landowner had this to say on this form of intergenerational residence:

Sakhile: The people who build on your land, once they have children, do they just live in the same house?

Enette: Yes, they just live in the same house. However, at times when they have to move out of their parent’s house they will have to pay. Other than that, they just live in the same house forever. It’s a nice living. I know it’s not like that in the town/city.

S: Are there people who have left?

E: People who have built and left? There were Sotho people who came here and built. They came from Lesotho and there were many of them. Then they left and went to go work in Strathoek. The Sotho people don’t like anything that has to do with building, that’s what I saw, because they just left their building half done. It started to break down as result of the wind.

S: You didn’t remove it?

E: No, we didn’t demolish the house. They will return when they want to. We kept on asking them. When another job opportunity came up in another area, they moved from Strathoek and went there.⁵²

Enette’s comments display the form of tenancy in kwaMeyi that allows residents to make homes on landholders land for indefinite periods of time, residing on it “forever”, to the extent that even when they leave for prolonged periods, the structures that they will have erected remain untouched, left to decay by the hands of nature. This sentiment is shared by tenants as well. So confident are they in the permanence of this form of tenancy that some, with permission from landowners, build houses of brick

⁵¹ Interview with Thembi

⁵² Interview with Enette

and stone “*family homes*” belonging to close kin. The value and importance of the family home is encapsulated by Hugo’s comments. He explains:

*People think this is my house since I built it however it’s not my house. This is a family home. My brother and I discussed the idea of building a house for our mother...My mother stays with her older aunt in Durban. Most of my uncles and aunts have left to go find work elsewhere so there is no family home.*⁵³

From this narrative, tenants not only enjoy enduring rights as individuals but for current and future kin relations. Once one is granted permission to live on a demarcated piece of land, it is theirs forever and their lineages become a part kwaMeyi for generations to come. However, beneath the rhetoric of enduring rights to land, rent-tenants were, in actuality, not particularly secure. In as much as they spoke of having “*no problems*” with their landlords, in practice tensions and conflict between landowners and tenants meant that at some point their security of tenure was threatened, sometimes even to the point of eviction.

Landlords and tenants: tension, conflict and vulnerability

Landholders, tenants and even the chief were all reticent to reveal, in detail, the challenges and tensions of the tenancy system in kwaMeyi. Informants were particularly vague about evictions that have taken place in the past or the circumstances that led to them. Nonetheless, discussions with residents of the area were sufficient enough in detail to indicate that these landowner-tenant relations were fraught with difficulty. Diane’s narrative is indicative of the tensions of living on “*other people’s land*” as she explained:

*You know what is tricky here is that we live in other people’s land whereas in the other places they have land of their own. Here there is no such thing. For example, if you are a group of women who would want a place to stay we could ask the government to give some land to build on. Instead here we have to go ask people to live on their lands. We would like to ask government to help us. It’s hard, but it would be lovely to ask the government to do that. But we need to start asking from a person.*⁵⁴

Even with the promise of enduring, intergenerational rights to tenure on privately held land, tenants like Diane expressed strong desire to live on land that belonged to government rather than on privately held land in the hands of individuals. Her statement confirms that tenure security is not as secure as informants attempted to convince me.⁵⁵ As Diane continued to narrate, struggles between landowners and tenants are often centred on the payment of rent. Even though fifty to a hundred and fifty rand per annum may seem like a negligible amount for a year’s rent, in an area that is severely impoverished, characterized by unemployment and dependence on state-sponsored social grants, paying the monies is no easy feat. For rent tenants, not paying could lead to some degree of harassment. This was clearly a

⁵³ Interview with Hugo

⁵⁴ Interview with Diane

⁵⁵ Thembi echoed the sentiment when she stated that “..land must be released to the municipality.”

source of worry for Diane who expanded by saying that “...every July I need to pay that money...I would sacrifice my last money to pay for it. Even if I don't pay for it someone comes through and keeps on reminding me to pay.”⁵⁶ Non-payment of rent is one cite of conflict between landowners and tenants.

From the landowner's perspective, tenants posed numerous problems as well. All of the landowners interviewed suggested that tenants were causing problems in the area. Without pointing fingers at themselves directly, landowners explained that the practice of community-making had populated kwaMeyi village with 'criminal elements.' Unlike chiefs in communal areas, title holders were allowing people from outside to live on their land without 'checking' their character first. On communal land where chiefs or *indunas* (headmen) allocate residential sites, the prospective resident is expected to produce a letter of 'good character' from the traditional authority in the area where they had previously resided, which proved that this particular person was of good standing. But because the traditional authority in kwaMeyi has nothing to do with the allocation of land in this titled locality, landholders are now tasked with this responsibility. And it is one that not all title holders are fulfilling, as Enette explained:

*But there was something we used to do way back in time. Here at this farm, we used to ask for a testimonial from your former chief that will inform us what type of a person you are in order to avoid what is happening in kwaMeyi. We don't know the reason you left the other place. Before we used to ask for a testimonial. Perhaps, you were rude or you got chased away because of witchcraft. Now people just take their monies without enquiring what type of a person they are allowing to build on the land. That is perhaps why we have so much crime here because we have gathered all these people. We just ask for their money and they just build here.*⁵⁷

Informants believed that because of the monetary aspect of community-making, landowners were not being cautious in the selection of prospective occupants. Hence, rent-tenants were being blamed for the high incidence of crime and violence in the area. In general, they were viewed as a nuisance, making life in kwaMeyi “a living hell”⁵⁸. In instances where tenants were seen as being particularly problematic, landlords would intervene, some to the point of evicting them. When asked whether or not he had heard of cases where landowners have evicted tenants, Baba Steven confessed that he himself had done so:

Tanya: Have you heard of incidences where people have been evicted from their land or in a quarrel?

Baba Steven: I did

Tanya: You did?

Sakhile: What were the circumstances?

Baba Steven: This guy was born and brought up here. He grew and now he started stealing and he messed up uMakoti, women. He was fiddling with young women while men were in Joburg working the mines. So this came to me in reports. We warned him not to do it. 'Now get out, we no longer need you because of A,B,C,D'. Eviction is difficult because you can't evict an innocent somebody but you can somebody who you

⁵⁶ Interview with Diane

⁵⁷ Interview with Enette

⁵⁸ Interview with Gogo Liza

*have sleepless nights over him. A good reason, so that you take him to the Magistrate. So we cannot stay with such an animal here, make it go away we don't need him.*⁵⁹

Baba Steven's narrative is indicative of the status of landowners in kwaMeyi. As a farm-owner, he presides over his tenants as though he himself a chief, dealing with the problems of 'his' people. Those whom he judged to be of questionable moral character, as was the case with the man described above, faced eviction. This is similar to other research which illustrates that landowners on freehold areas share attributes of chiefs or *indunas* in that they are increasingly consulted by their tenants for help in solving various problems (Cross and Preston-White 1987, Kingwill, 2008). However, it is this very status which can be used to act in ways that threaten the land rights of tenants, especially given that the relationship between landowners and tenants is characterised by unequal power relations. Landowners tend to be elites-with a certain level of education, money and social capital. They wield more power and authority, and have a high social status as compared to rent-tenants who are often poor, uneducated and unemployed, and ultimately voiceless. Interviews with informants suggest that they do not know their rights as tenants under the law. If a person is accused of a crime, how does that person defend themselves and in what manner? Surprisingly, in the village of kwaMeyi, whenever tensions arise between landowners and rent-tenants, it is traditional leaders who act as intermediaries, giving voice to the needs of rent tenants.

Chiefs and the protection of tenants land rights

As stated previously, informants were reluctant to provide specific details on the vulnerabilities of tenants as a result of the actions of landowners, especially in regard to evictions. Nonetheless, it became clear that eviction, or at least the threat of eviction, was a common problem in kwaMeyi. When asked to elaborate on this, Chief Mavana had this to say:

Tanya: Do you actually deal with cases such as the Zulus kicking out a tenant and the tenant wants to complain?

C.M: I do try to assisting resolving such cases.

Tanya: Are there such cases?

C.M: Yes, there are cases like that.

Tanya: What would be the situation?

CM: The owner of the land thinks that I can just dismiss a person like that. But there are certain things they must do. He lives there for more five months, then the tenant has a right. The law says if you move the person, you must organize them a place to go.

Tanya: Customary practices or which law?

*C.M: Law, tenant's law...Someone would say, 'I don't want that person.' Then I would say, 'Go to any court of law, no-one would just allow you just evict someone.'*⁶⁰

⁵⁹ Interview with Baba Steven.

⁶⁰ Interview with Chief Mavana.

Chief Mavana's confirmation that eviction is indeed a problem attests to the tenure insecurity narrated by informants that live "on other people's land." On a secondary level, his statement brings to light the importance of traditional authorities as purveyors of justice. To fulfil this function, chief Mavana appears to have had a firm understanding of tenant rights under the law, one that he has used to defend vulnerable tenants who faced eviction by landowners, thereby preventing landowners from being able to "just evict someone" as he said. While informants were at pains to identify the role of traditional authorities in the area of local governance and development they were crystal clear on the role of the chief as a purveyor of justice as these two narratives indicate:

1. *Sakhile: So if people get chased out of their place would that involve the chief?*
Thembi: It should involve the chief because it will need to be discussed.
2. *Sakhile: Is there a place in the whole of Umzimkhulu where a place was given by the chief?*
Gogo Liza: No, they belong to the person who owns the place. He doesn't tell the owner where their tenants should build their land. He doesn't get involved. He only gets involved when there is conflict between the tenant and the landlord.

From these narratives, it is evident that even without powers to allocate land, chiefs wield enough authority and legitimacy to intervene in situations of conflict. They are recognised and revered as such by landowners who have no real impetus to respect their authority because they do not control land or critical resources which in essence create relations of dependency (Ntsebeza, 2005: 11). While recognising that chief Mavana had nothing to do with the provision of land for settlement in kwaMeyi, Enette, a landowner's sister admitted that chief Mavana was an important part of dispute resolution in the village:

Sakhile: Now things have changed, as you have said, there is nothing that involves Mavana here?
Enette: Yes, there is nothing that involves Mavana, but if there is a problem here for example if a person has built a house here and doesn't want to pay. The case will first go to the chief's headman. Bhuti Sgege, the head of the Damoyi family will be taken as the Damoyi representative then the case will be discussed. If the case cannot be solved then it will go to the chief. That is why I am saying that we are not dependent on him however there are cases where he gets involved.⁶¹

From her testament, it is apparent that traditional leaders are embedded in the process of conflict resolution. First headmen are consulted and when resolutions cannot be made, the chief intervenes. Whether landowner or tenant, there is acknowledgement that traditional leaders are integral to conflict resolution in the area, operating within a shared moral order, which is congruent with other literature on the roles of traditional leaders. In the research conducted by *Afrobarometer*, it was found that, "with their particular knowledge of community histories and traditions, as well as, in many cases, of the individuals involved, traditional authorities are often regarded as much better suited for handling dispute resolution

⁶¹ Interview with Enette

and conflict management than formal organs of the state such as the police and courts, or local councils.” For Berry (2002: 655) traditional leaders facilitate discussion and reconciliation by creating “spaces for negotiation” within a shared cultural framework.

Hence, if the chief is at the centre of such negotiations, then this is evidence that he employs some authority and legitimacy as an arbiter of justice. Statements such as the one provided by Enette indicate that while chiefs may not be “*depended*” upon by landowners for their livelihoods, they wield enough authority to intervene in situations of conflict. The following account by Gogo Liza reveals that even if landowners would prefer to have nothing to do with chiefs and other traditional leaders, they nevertheless recognise and respect their authority:

Sakhile: And in terms of the tribal authority like chiefs and stuff, do they have a role to play?

Gogo Liza: No, they don't at all because we are the landlords but the chiefs stick their nose to the people on the farms. But they don't. Because the tenants are under the chiefs we just turn down our heads and say, "Okay, Okay". But they are not supposed to interfere.⁶²

Gogo Liza's comments attest to a certain degree of respect for traditional leaders in the area, specifically the chief, even if traditional leaders “*stick their nose to people on the farms*” as she narrated. In general, landlords appeared to distance themselves from chiefly rule and authority, Baba Steven having given a lengthy monologue in Chapter 3 attesting to the fact of their diminishing powers; Enette explaining that “*there is nothing that involves Mavana*” while in this instance, Gogo Liza noted that they don't have a role to play with regards to landowner or in her words, *landlords*. Despite this, their authority cannot be discounted; when it comes to dispute resolution they are recognised as legitimate authorities, even if this is done with some degree of reluctance. This may relate to the fact that traditional leaders are seen to fulfil a more historically rooted mandate which casts them as “symbols of unity” which is the belief that traditional leaders are better at maintaining peace and harmony as they have done since pre-colonial times (Williams, 2010: 27). It is an ideology that is evident in kwaMeyi, even among landowners. Enette captures this articulately:

....They (chiefs) look after the peace within the community. The chiefs even looked at the crime within the households. Now, here there used to be house where the boys from kwaMeyi used to rob and steal electrical appliances. If the chief was still overseeing the community he would have investigated. But now the councillors would say go to the police it's not my problem. Then you get confused because the robbers are boys from the community. All that is needed is an investigation because people talk especially in social areas such as shebeens. The councillors just cruise around in their cars whereas the chief is within the community. Even if he cannot investigate himself, he will send his headsmen to investigate and they would be his eyes ears within the community.⁶³

⁶² Interview with Gogo Liza, my emphasis

⁶³ Interview with Enette, my emphasis

Again, drawing comparisons between the role played by the chief and his headmen and that of ward councillors, Enette is alluding to what can be seen as the primary function of the chieftaincy: that of peacekeeping. Ward councillors are again noted to be doing an inferior job of maintaining peace because they are not “within the community” like traditional leaders are. From Enette’s narrative, it appears that peacekeeping is being usurped by Ward Councillors, which is preventing the extension of justice and equally the maintenance of peace. Even as a landowner, it is evident that she sees traditional leaders as peacekeepers, and therefore legitimises the institution of traditional authority within this particular moral order. To reiterate, it is a view held by both landowners and tenants, who contend that the chief’s role is “...to maintain peace amongst people, to maintain harmony.”⁶⁴

Establishing authority through moral legitimacy

Bearing in mind that moral legitimacy is concerned with the “...norms, values, myths, and symbols of the society that are used to define and evaluate ‘appropriate’ political action, it is clear from the responses of kwaMeyi residents that traditional leaders are morally legitimate because they act as “symbols of unity” a role that is described as having pre-colonial roots. It is comparable to the findings in Afrobarometer which show that “...it is chiefs’ role in resolving local disputes and managing communal conflict...that makes them indispensable in the eyes of community members” (Logan, 2011: 4). This is reflected in chief Mavana’s statement that peacekeeping is function based on shared cultural understandings of how things ought to be resolved:

*CM: In our (African) traditional culture, for example if we fighting and swearing at each other with the Moyos, we might even hit each other, we will need to realize that this will cause danger and we will need to solve it amicably. Whereas if there is no chief, the chief is there to correct us and let us know that ‘Dlamini, you were wrong here and there.’ If there was no chief, the Moyos would have gone to the magistrate and I probably would be arrested for grievous bodily harm. I would pay a fine. We would remain enemies with the Moyos. There nothing that would happen so that there is forgiveness.*⁶⁵

The idea that “*the chief is there to correct us*” is one that appears relatively uncontested in the village of kwaMeyi. Because he is viewed as a symbol of unity, and behaves in a manner that has benefit for the whole community, chief Mavana and other traditional leaders are morally legitimate and therefore, legitimate political authorities. Furthermore, his role as a symbol of unity is seen as an aspect of what he describes as “*our (African) traditional culture*”, which continues to be a frame of reference for residents in kwaMeyi. In the same manner that there are democratic norms and values that espouse freedom, equality and human rights within a democratic constitutional order, notions of tradition have ideological value. Despite the distortions of African culture as a result of the warped interpretations of colonial and apartheid administrations, the articulation of custom continues to have relevance to a multitude of people in South Africa. The idea that African culture predates colonial contact and that chiefs are custodians of

⁶⁴ Interview with Thembi

⁶⁵ Interview with Chief Mavana

that culture, continues to be the main source of legitimacy for chiefs during this democratic period. Despite the controversy that undercuts claims to tradition or “retraditionalisation” (Oomen, 2005: 1) it is evident that for local populations they legitimise the authority of chiefs. As Williams (2010: 25) cautions, “...we cannot fully appreciate the current debates over the chieftaincy, or the nature of its authority, without an examination of these traditions and myths, whether they turn out to be ‘real’ or ‘imagined.’” Ultimately, the notion of African tradition and culture has ideological value which contributes to assessments of good governance and effective leadership.

Conclusion

Tenure insecurity continues to pose a challenge to the national project of land reform in South Africa. The focus of state efforts at alleviating this are pointed towards persons living on farm lands and in communal areas under the jurisdiction of chiefs. In dealing with the latter category, land practitioners have revealed traditional leaders to be exploitative, oppressive rulers, curtailing rather than extending the rights of their ‘subjects.’ Peculiarly, in the case of kwaMeyi, the chieftaincy appears to be doing just the opposite. Despite an ethos of enduring rights to land, where tenants are expected to live on landowners land *ad infinitum* and without threat of eviction, the reality is that eviction is a looming possibility. Here, tenants are subject to the decisions made by landowners who are solely responsible for ‘community-making’ which entails processes of inclusion and exclusion when considering who can live in, and who should, leave their land. If a tenant is judged to be criminal, or of questionable moral standing, they have little social status or capital to protest, and often lack the education or knowledge of their rights under the law. The unlikely hero of the story in kwaMeyi is the chief and his headmen who, in their role as purveyors of justice and the related function as maintainers of peace, are able to enter into spaces for negotiation so that tenants’ rights are protected. In line with Logan (2011: 4), the evidence presented indicates that “...it is chiefs’ role in resolving local disputes and managing communal conflict, rather than, or in addition to, their control over land that makes them indispensable in the eyes of community members.” On this basis, chiefs are morally legitimate, exercising power in a manner that reflects the ideology of local residents. In their eyes, chiefs do a better job of maintaining the stability of the community than ward councillors who are less accessible. By acknowledging the centrality of this function for rural residents in kwaMeyi and elsewhere in the country and on the African continent, one arrives at a deeper understanding of the resilience of traditional authorities within a democratic era.

CHAPTER 5: CONCLUSION-A PLACE FOR CHIEFS AFTER ALL

Chiefs as politically legitimate

This thesis has explored the roles and relevance of traditional authorities in the context of a democratic dispensation which aims to entrench a system of governance by elected representatives. It examined the linkage between what traditional leaders do and the question of their popular legitimacy. Popular legitimacy is "...a popularly accepted claim to leadership and authority" (Wright, 1994: 3-4). These questions were answered on the basis of fieldwork conducted over a period of a month in the village of kwaMeyi, Umzimkhulu district. What began as a study which sought to examine the dynamics between the chieftaincy and women in terms of land allocation practices, transformed into a study highlighting a peculiar condition: the presence of traditional authorities on individually owned land. In contrast to the arguments of scholars like Ntsebeza (2005) who provide examples of an imposed chieftainship in areas like Xhalanga, research in kwaMeyi indicates that traditional leaders are a valued political entity, respected especially for the important role they play in dispute resolution.

As discussed in Chapter 2, existing literature details the nature of traditional authorities as it pertains to their jurisdiction in communal areas, or the former homelands where they exercised the greatest authority over Africans. In such places, traditional leaders have been drawn into the project of 'indirect rule' since the beginning of the colonial era where they operated as agents of the state. As (Mamdani, 1996: 23) famously noted, their "...authority was like a clenched fist..." characterized by "...forced labour, forced crops, forced sales, forced contributions and forced removals." The devastating consequences of their rule on Africans has been thoroughly researched and documented. However, as I demonstrated in this thesis, another reality has not been thoroughly examined. The academic gaze has given scant attention to the character of traditional governance in titled localities; especially in relation to landowning black Africans. While the studies of Moll (1985), Beinart and Bundy (1986) and Cross and Preston-Whyte (1987) have provided some insight into the emergence of African landholding from a historical standpoint, they have paid little attention the dynamics undercutting relations between landed Africans and chiefs. Ntsebeza's study of Xhalanga is only one of few in-depth explorations of this dynamic, although his contribution focuses on people living under quitrent and not freehold tenure. While this work allows one to glean some of the tensions of landowner-chieftaincy relations, it is not an example of how they emerge on freehold land where landowners have full legal ownership of land. For this, one must rely on the work of Kingwill (2008) in her study of Rabula and Fingo villages respectively. This study suggests that even in freehold areas where chiefs do not control land allocation practices, chiefs and headmen are an important part of the socio-political fabric. However, Kingwill (2008) has still to publish the complete findings of her

research. Hence, in this thesis, I have illustrated that the academy needs to pay more attention to the workings of the chieftaincy in titled localities so as to better understand how traditional leaders maintain authority and legitimacy in spaces where they have no powers to control land or critical resources which are often described as the basis of their authority.

As a way to understand the roles and legitimacy of traditional leaders in freehold areas this thesis made use of William's multiple legitimacies framework (2010: 17). Questions concerning the authority and legitimacy of traditional leaders have been addressed by such scholars as Williams (2010) To better understand the longevity of the chieftaincy, Williams (2010: 17-18) proposes the multiple legitimacies framework, which posits that

“...in South Africa, there are multiple sources of legitimacy that all leaders-chiefs as well as elected officials- can use to justify their rule. Each of the different sources of legitimacy offers people a particular set of symbols, values, political principles, institutions, rules and processes that are central to the ruler-ruled relations and interactions.”

By identifying that there are different sources of legitimacy, Williams (2010) takes the debate beyond the oft repeated assertions that chiefs are legitimate only through powers extended to them by the state and the control that they exercise over critical resources such as land. In kwaMeyi, the opposite appears to be true: chiefs and headmen exercise authority without controlling critical resources and are upheld as legitimate leaders, preferable even to elected officials within the local governance structure.

Similar to the findings of research undertaken by Logan (2011) and Williams (2010) this thesis has shown that traditional leaders are resilient because their authority is drawn from different sources of legitimacy and not only state legitimacy or the legitimacy that is derived from controlling land and other important resources. In Chapter 3, I considered the performance dimension of the multiple legitimacies approach which concerns the performance of traditional leaders in the area of service delivery and development. This chapter illustrated that counter to assertions that “...development cannot not be achieved without consulting traditional leaders...” in kwaMeyi village this is not the reality (Ntsebeza, 2005: 20). Traditional leaders are revealed to be powerless in the control of critical resources and in the area of service provision. Ward councillors like, Jonathan “Magic” Mkhize, have access to municipal budgets to be used for development and are at the centre of service delivery where they assist residents of kwaMeyi in opening bank accounts and accessing social service grants. Even though informants report that things have changed for the better, they expressed dissatisfaction with the municipal system and councillor Magic in particular. Many felt that governance under traditional leadership produced more benefits for the community than the ward system has since its introduction. Chapter 3 demonstrated that even without powers to control resources, chief Mavana was upheld as an engaged leader because he worked in a manner befitting the moral order of kwaMeyi, unlike ward councillor Magic, who was of questionable moral character, possibly corrupt and generally inaccessible. In this chapter, I presented evidence which demonstrated that while controlling critical resources can legitimise the authority of a political leader to some degree, it is their behaviour which contributes to their being seen as a legitimate authority figure.

In Chapter 4, I examined the other dimension of the multiple legitimacies framework; that of moral legitimacy. Here, I illustrated that local norms prescribing how things ought to be significantly contributes to being accepted as legitimate leader. In kwaMeyi, the notion of “African culture” is an ideological framework that determines the worldview of locals, especially in evaluating how leaders should behave in the exercise of their power. As Williams describes, “...ideological understandings of the chieftaincy, which predate indirect rule, continue to provide a frame of reference for many in the rural areas” (Williams, 2010: 27). One aspect of this ideological view is the belief that since pre-colonial times chiefs have had a role to play in the maintenance of peace, harmony and social cohesion. The image of the chief as a “symbol of unity” is so entrenched in kwaMeyi that he is respected as an intermediary in tensions that arise between landowners and tenants. Chapter 4 demonstrated that counter to Ntsebeza’s viewpoint that landowners do not show allegiance to traditional authorities, kwaMeyi landowners not only respect traditional authorities in the area, but expect them to get involved whenever social stability is threatened. In fact, as Gogo Noma narrated, they “*bow down their heads*” in submission to their authority.⁶⁶ Hence, traditional leaders are seen as morally legitimate because they behave in ways that resonate with local norms, values and customs, legitimising their political authority in contexts where this should not be happening, specifically in titled localities with landowning Africans.

Avenues for further research

KwaMeyi village is a perplexing place. As this thesis has demonstrated, it has several peculiarities. In the first instance, it is a titled locality where black Africans have owned land privately for over one hundred years. While historians and other scholars have provided some historical insight as to how this emerged, the particular history of KwaMeyi village needs to be investigated through archival research. Conducting such research would yield rich material on the emergence of freehold title, specifically, how black people in kwaMeyi acquired the land they now possess; how the land became communalized and finally, how chiefs came to govern in the area. This kind of study would make a valuable contribution to the academy, which is missing an in-depth study on these dynamics currently. This is an enormous gap that needs to be addressed so as to arrive at a fuller picture of African landownership and the roles and legitimacy of chiefs who preside in such areas.

Another avenue for in-depth research centers on the character of the Mvolosi Traditional Council which has jurisdiction over kwaMeyi village. Of particular interest would be the circumstances surrounding chief Mavana’s supposed election to the position of chief. Academics like Ntsebeza have oft repeated that for so long as the chieftaincy continues to be based on hereditary claims to political authority, they will remain the antithesis of democracy which enshrines representative democracy through an electoral process (Ntsebeza, 2005; Ntsebeza, 1999a; Ntsebeza, 1999b). In this case study, we have evidence from two elderly informants that chief Mavana came into his position after “*the post was advertised*” and he was “*voted into power*” given his attributes as an educated man. Examining this irregularity would

⁶⁶ Interview with Gogo Noma

provide new insights by exploring how local residents were able to introduce democratic processes into a system of traditional governance where chiefs usually come into power on the basis of hereditary rights. The findings of such a study would perhaps signal shifts that are taking place within this institution concerning adherence to democratic principles of governance (Cousins, 2007: 303; Fay, 2005; Alcock and Hornby, 2004).

Overall Conclusion

This small study on kwaMeyi village provides a glimpse into the workings of traditional governance in relation to people living in titled localities. It proves that traditional leaders do not need to be in control of critical resources to ensure their legitimacy as political leaders. This thesis concludes that controlling key resources is only one avenue through which political leaders can maintain political legitimacy. What comes to the fore is that the character of traditional leaders: their knowledge of the lives of their constituents, their accessibility, and their connection to African culture sets them apart from elected officials. For these reasons, traditional leaders continue to be highly valued in the communities where they serve. For so long as they continue to uphold the moral precepts of these communities and engage with the needs of their constituents, there will certainly be a place for traditional leaders on the political scene.

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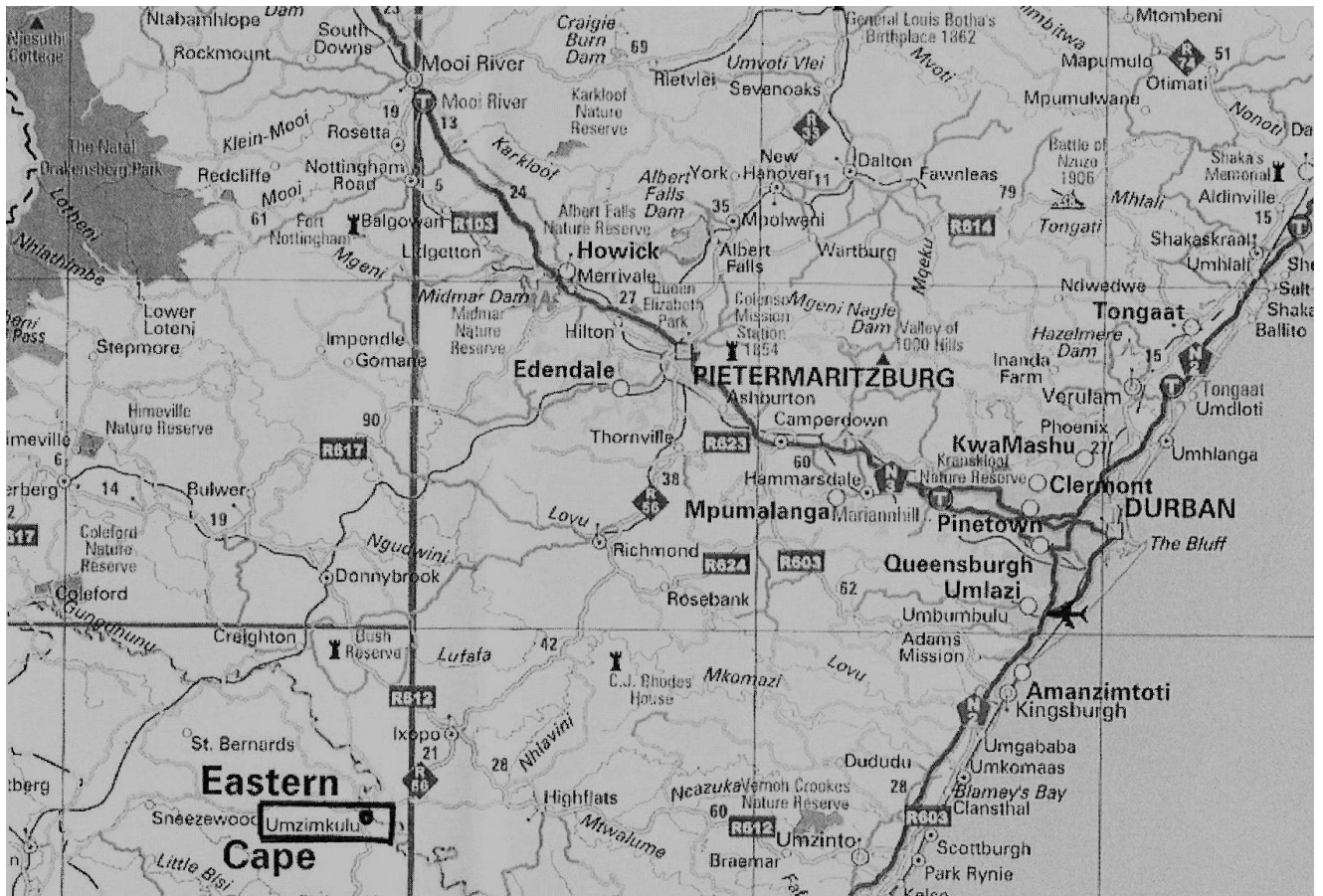
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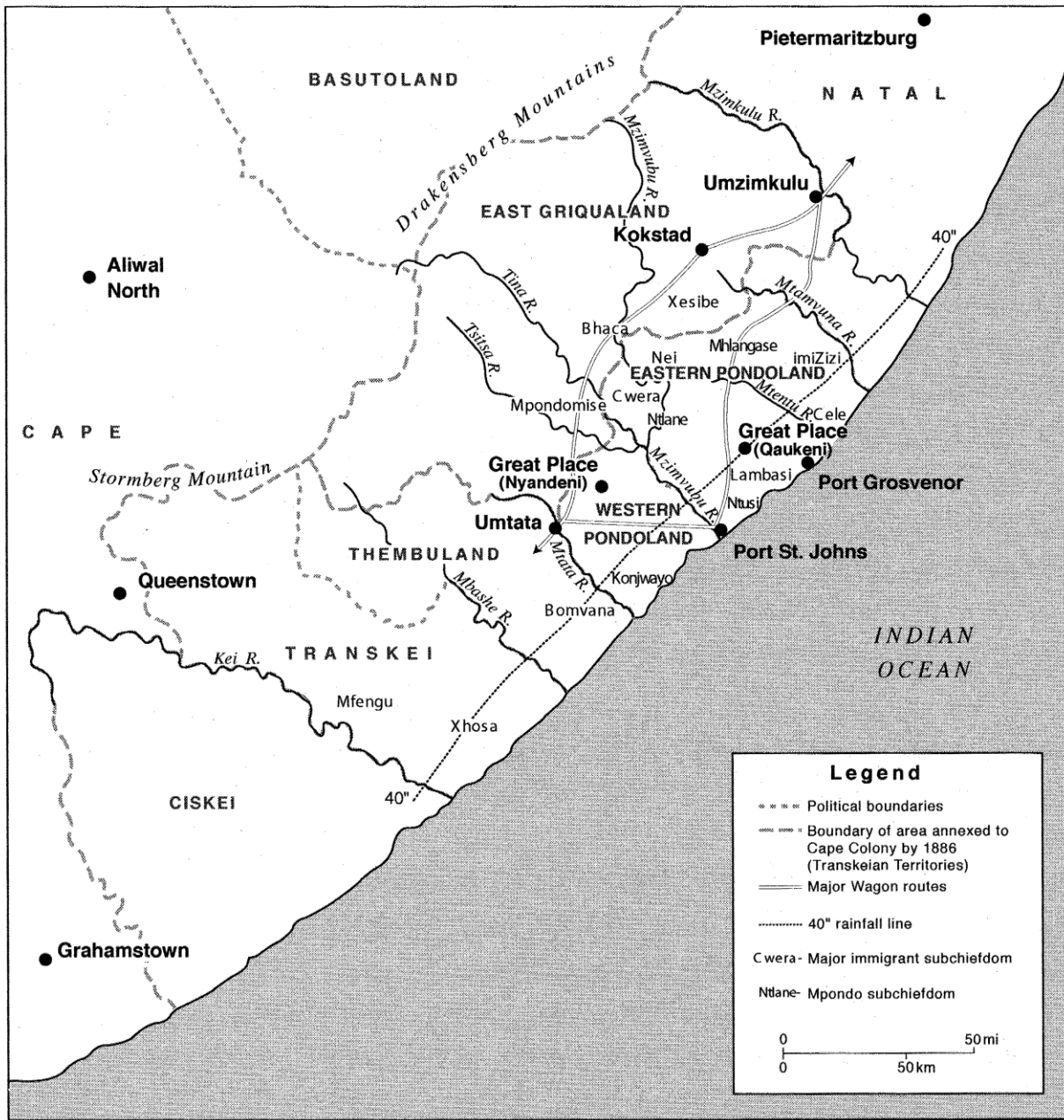
APPENDICES

Map 1: Location of Umzimkhulu, Eastern Cape province



Source: Google Maps

Map 2: The Location of Umzimkhulu District under Transkei (pre-1994)



Source: The University of Wisconsin Cartographic Laboratory