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Land management and the use of communal land: The case of the Mchunu Traditional Authority and Alfred Duma Municipality

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University of the Witwatersrand
Wits School of Governance

Masters in Management Degree

Land management and the use of communal land: The case of the Mchunu Traditional Authority and Alfred Duma Municipality

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ABSTRACT

For centuries, traditional leadership in Africa was the sole authority over traditional land. They were in charge of allocating and managing land. The beginnings of colonisation and, later, apartheid in South Africa, disrupted these functions by traditional authorities. This posed a significant challenge to the traditional authorities. African countries were decolonized in the years that followed. Following decolonisation and the apartheid government, the citizens in South Africa elected a democratic government that established laws that could regulate how traditional leaders performed their duties in areas under their jurisdiction. However, in 2013, the Spatial Planning and Land Use Management Act (SPLUMA) was introduced, and this act presented conflicts between traditional authorities and the local government. The conflict emanates as a result of ambiguities in the act that do not specify the particular roles of local government and traditional authorities in relation to land use management.

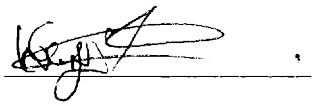
The research looked into how the Mchunu Traditional Authority (MTA) and Alfred Duma Municipality in Ladysmith, KwaZulu Natal, interact on land governance issues. The study employed a qualitative research methodology and utilised snowball sampling. It used in-depth interviews to gather primary data. The questions focused on the governance interface between the two institutions and their distinct functions and roles. The study found that the local government and the traditional authorities are knowledgeable about their functions, which is contrary to some of the findings in studies referenced in the literature. It also found that the institutions have never experienced conflict on issues of land governance and continue to efficiently co-govern.

Key words:

Governance; land; contention; conflict; democracy; SPLUMA; MTA; local government/municipality

DECLARATION

I declare that this thesis has been composed solely by myself and that it has not been submitted, in whole or in part, in any previous application for a degree. Except where stated otherwise by reference or acknowledgment, the work presented is entirely my own. I additionally declare that this work has not been submitted in any other degree or for examination in any university.



Nonkululeko NomfundoKhanyile

28-02-2023

Date

DEDICATION

I dedicate this thesis to my parents who have held me in their prayers as I ventured into this journey. Thank you for carrying me in prayer and for your motivation when I had none left. Thank you.

ACKNOWLEDGEMENTS

I would like to show appreciation to my supervisor, Dr Caryn Abrahams, who encouraged me throughout this work. Thank you for the constructive criticism and the words of affirmation that gave me strength when I thought I could not continue. May God bless you.

ACRONMYS

MTA	Mchunu Traditional Authority
SPLUMA	Spatial Planning and Land Use Management Act
COGTA	Cooperative Governance and Traditional affairs

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CHAPTER 1: INTRODUCTION AND BACKGROUND

This chapter will focus on the introduction of the study as well as the background. It will outline the problem statement, the purpose statement as well as the research question and the sub-questions.

1.1. Introduction:

This research focuses on the role of traditional leaders in local government and how they interface with Alfred Duma Municipality in governance issues relating to land and its management. It specifically focuses on the rural community of Limehill, within Alfred Duma Local Municipality in uThukela District, KwaZulu Natal Province. Limehill is a small rural area under the traditional leadership of the Mchunu Traditional Authority. In years prior to colonialism as well as apartheid the Mchunu clan had control over Limehill. The traditional authority as an institution is responsible for land and its management in areas under their jurisdiction. Traditional leaders allocate land to residence in their areas of jurisdiction or prospective residents and attached to every piece of land are land rights, which are the rights to build a homestead, erect a kraal for the livestock, amongst others (Local Government Bulletin,2019). The traditional leaders have authority on what happens in their land that traditionally belongs to them and their whole clan.

When many parts of South Africa and Africa as a whole became colonized, traditional leaders all over South Africa and Africa forfeited that authority that they had over land, although not entirely (Nel, 2015). Colonizers utilized traditional leaders as gatekeepers for whenever they needed access to their lands, however they still let them have some control over their land (Nel,2015). This continued until the apartheid government was in power in South Africa. The apartheid government still utilized traditional leaders and compensated them monetary for servicing the people and standing in for government in their rural communities. Literature suggests that during these times many traditional leaders were involved in numerous corrupt activities (Hendrick and Ntsebeza, 1999). When the government would supply funds for the traditional leaders to utilize for

developmental activities in their communities, traditional leaders utilized those funds for personal gain (Dubazane and Nel, 2016).

During the negotiations in April 1993 between the then-apartheid government and the Multi-Party Negotiation Forum, traditional leaders were constituted (Ray and Eizlini,2004). Traditional leaders were viewed as an integral part of the new envisioned democratic South Africa. Post the first democratic elections, traditional leaders' role was slowly diminishing and this gave birth to the current system that is being used to relate to traditional leaders (George and Binza, 2011). The democratic government perceived traditional leaders as corrupt and self-serving and this perception of traditional leaders as corrupt led to the government limiting their authority and all the more in land related issues (Beall *et al.*, 2005). This specific focus on land was primarily linked to land being a commodity and therefore traditional leaders sold land to people unconstitutionally and this is what eventually led to the government's control of land and its management in South Africa (Nel, 2015; Dubazane and Nel, 2016). However, in reality, land allocation systems as well as land use, in terms of customary law is still administered by traditional leaders (Local Government Bulletin, 2019).

In 2013, government introduced the Spatial Planning and Land Use Management Act (SPLUMA) which gave government control over land and its management (Hendricks and Ntsebeza, 1999). SPLUMA introduced zoning for land use. This means the government identifies land that it seeks to utilize in communities, including those under traditional leadership. The prerequisite for government officials or elected councilors of those communities was that they first consult with traditional leaders in their communities prior to zoning certain land, but in most instances that has not been the case (Hendricks and Ntsebeza,1999). Hendricks and Ntsebeza (1999) further express, in their study in the Eastern Cape, that municipal officials have gone to areas under traditional authority and decided to demarcate land not having consulted with the traditional leaders. As a result, this research is attempting to understand the role of traditional leaders in local government and how they interface in governance issues that relate to land management. Since land is a critical resource that is important for the wellbeing and survival of rural communities, it is said that the person who administers the land allocation has control over that land and the people who reside in that land (Local Government Bulletin, 2019).

Traditional leaders posit that they are at times not consulted on issues of land in their communities and that the municipality have, in many instances, commenced with development without consulting them (Hendricks and Ntsebeza, 1999). Land is at times set aside for other development in the area that traditional leaders deem vital for the wellbeing of the communities, but these plans are sabotaged by local government as literature in chapter 2 illustrates. The ongoing confusion between traditional leaders and local government was further caused by the overlap of functions between the three spheres of government in terms of section 152 of the Constitution of 1996, which compelled councillors to consider themselves as more powerful (George and Binza, 2011). The ambiguity of roles between local government and traditional leaders renders it difficult to gauge who possesses authority in relation to land and its management and ultimately who has the best interest of the community. To understand these roles distinctly, this research focuses on the interface between traditional leaders and local governances' role in areas under traditional leadership in local government and more specifically with issues pertaining to land in Limehill under the Alfred Duma Local Municipality.

1.2. Problem statement:

In the Constitution, traditional leaders have been entrusted with overseeing land that they have jurisdiction over as stated in customary law. Land and its management in areas of co-jurisdiction has high conflict potential. This creates tensions in the roles of the traditional authorities in South Africa's Constitutional local government system. The ambiguity emanates from the Spatial Planning and Land Use Management Act of 2013 (SPLUMA) that is not specific to the key roles of traditional leaders and their role in managing land within their jurisdiction and does not mandate precisely how the land issue is to be approached in areas under traditional authority (Nel,2015). SPLUMA, although not specific in terms of these roles, in the regulations recommends that municipalities have a service level agreement with traditional authorities. As a consequence of

municipalities not having service level agreements, issues of land have not been dealt with accordingly. There is academic literature, the work of George and Binza (2011) and some by Nel (2015), that has honed in on the role of government in relation to land and its management in areas under traditional authority. The literature, which is in chapter 2, presented land acts applicable in South Africa as well as customary laws that clearly distinguish the role of local government in communities led by traditional leaders (Beall, Mkhize and Vawda, 2005; Hendricks and Ntsebeza,1999). However, land laws, i.e customary law, and land acts, i.e native trust and land act, have not been implemented in some municipalities with regards to land management. This has presented conflicts on the different roles of municipalities and those of traditional leaders.
What is less clear is the local governance interface between the role of traditional leaders and local government with specific reference to land use and land management. The ambiguity of these roles creates tension between elected councilors, the municipality, and traditional leaders.

Limehill, which is under the Mchunu Traditional Authority (MTA), is situated under Alfred Duma Local Municipality, which is in Uthukela District, in KwaZulu Natal, South Africa. The Municipality consist of 36 wards and 22 of those wards are in rural areas, including Limehill, and those wards comprise of elected ward councilors in the municipality. Alfred Duma Municipality covers 11500km2 in terms of the district management area.

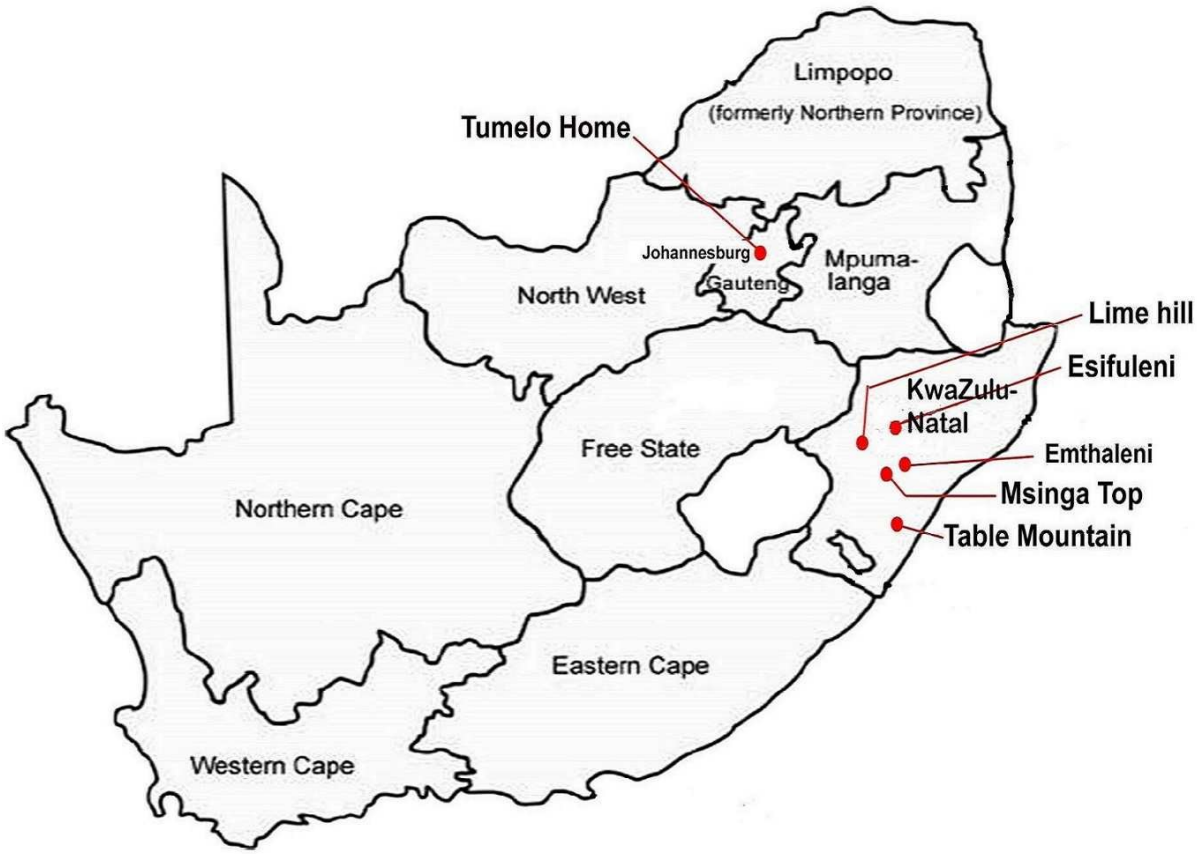

Figure 1: Limehill Map – LifeChild-Doctors for life

This research extends on the literature presented by scholars on the role of traditional leaders in local government (Hendricks and Ntsebeza,1999; Nel,2015;Ray and Eizlini, 2004). More research is required to understand how these two institutions are to relate to each other.

The land governance issue is a problem in areas under the jurisdiction of traditional leaders as it may impede development in the area as it has been stated. The overlap of the land management functions between these institutions has created contention in relation to governance issues (Local Government Bulletin, 2019). The study focuses particularly on Alfred Duma Municipality and Mchunu Traditional Authority as it is also an area under traditional authority. The basis for pursuing this particular study is because some traditional leaders have vowed that they would oppose the implementation of SPLUMA in areas where they have authority as it threatens to alienate them (Local Government Bulletin, 2019; George and Binza, 2011). The findings

will assist us to better understand issues faced by other municipalities, although it does not seek to generalize, the study will assist to illuminate more on the problem faced by municipalities with similar issues.

The study may contribute to clarifying the roles and authority of both governance institutions and contribute to peaceful resolution of disputes. Land use has implications for both local government and traditional institutions as both institutions are there to serve the community as I previously stated.

1.3. Purpose statement:

The purpose of this research is to explore the local governance interface between the institution of traditional leaders and the local municipality in relation to land management. The analysis will be undertaken in Limehill, under the traditional leadership of the Mchunu Traditional Authority, and Alfred Duma municipality. Undertaking this study will assist both local government and traditional leaders to work efficiently in providing development in their communities without contention and have clear governance roles in relation to the management of land.

The research will employ the functionalism theoretical framework lens to understand the role of the traditional leaders' institution and the local municipality as an institution. The research setting is in Alfred Duma Local Municipality, in Uthukela District in Ladysmith, KwaZulu Natal with a focus on the Limehill area under the Mchunu Traditional Authority.

1.4. Research question:

How does the Mchunu Traditional Authority in Limehill interface with Alfred Duma Municipality in relation to land and land management?

Sub-questions:

1. 4.1. What are the duties performed by Alfred Duma Municipality in Limehill with regards to land and how are these duties performed?

1.4.2. What type of working relationship does the Mchunu Traditional Authority have with the local municipality, Alfred Duma Municipality?

1.4.3. What is the nature of the interaction between the various bodies in relation to land use?

This chapter presented the background of the study, the problem statement, its purpose and the research questions. This enables an understanding of the reason the study was conducted as well as the underlying questions that provided the understanding of the research problem.

CHAPTER 2: LITERATURE REVIEW

This chapter presents the academic literature reviewed from scholars that ventured into studying this topic. It is the constructed conceptual framework drawn from appropriate literature sources. They outline issues of the colonial era as well as post-colonial error. This chapter also observes traditional leadership and its relationship with local government in African countries and how that has played out in governance issues and to a greater extent, land issues.

2.1. Introduction:

Most African countries that have had conflicts between traditional leaders and local government began the same way. Many rural communities in African countries, including South Africa, had been under traditional leadership until colonialism set itself in motion (see Asamoah, 2012; Champion & Acheampong,2014; George & Binza, 2011;Kessey, 2006 ; Konings, 1996; Nel, 2015). Rugege (2003) expresses that with the start of colonialization the most vital powers were appropriated by the colonial state and overtime by the apartheid state, in the case of South Africa, therefore weakening the role of the institution of traditional leadership in governing the African people.

Colonialism took much of the authority from traditional leaders but it did give them some authority over their kindred, in that they could still collect taxes, have authority over land in their communities and so on (Beall, Mkhize & Vawda,2005;George & Binza, 2011). It permitted the Europeans to force their own image of Africa upon the reality of the African landscape (Anderson and Grove; 1987:4 cited in Evers, *etl*.; 2005). This image that they were imposing was out of touch with the realities of Africans. The colonial administrators assumed that the land that was vacant was the communal property of tribes and that chiefs held administrative authority over lands (Colson 1971; Ranger 1983, Chanock 1985; cited in Brown, 2005). The colonial regime granted chiefs great control over the allocation of land, its use and natural resources in their territory and treated judicial processes and customary land tenure as fixed in practice and precedent (Brown, 2005). However, after all these African countries regained their independence, they were under democratic governments, but traditional leaders did not attain their full authority back (Valsecchi;2007).

The interference of the colonialists led to future ambiguities in governance in African countries and South Africa, which were later even more evident in the post-apartheid era. The ambiguity between the roles and functions of local government/municipalities and traditional leaders in several communities in South Africa is well noted (Nel, 2015; Nel, 2016). The confusion has worsened due to traditional leaders experiencing some exclusion from the government with regards to land issues through their program Spatial Planning and Land Use Management (SPLUMA) (Nel, 2015). Academic literature that is referenced below offers an understanding on the issues surrounding both these institutions and how they interface particularly on land governance, land use and its management. It is crucial to note that although this literature focuses on traditional authority and local governance alongside mutually, that it is not a comparative piece but rather an understanding of how they are operating in South Africa and other countries referenced.

The study is examining literature in other African countries that have a similar background to the study being conducted.

2.2. Traditional leadership in Africa:

2.2.1. Historical continuities:

According to Arhin (1985) a traditional leader is a person selected or elected in line with customary laws and recognized by the government to yield authority and execute functions obtained from tradition or allocated by central government within specified areas (Asamoah, 2012:90). Local government is the regulation in particular localities of matters primarily of local importance by locally elected bodies raising the money necessary for their activities by the imposition of local taxes, which are an assessment to fund public services, and generally subordinate to the central government (Barratt,1946 cited in Asamoah, 2012;91). There have been conflicts and points of contestations between these authorities.

Botswana is one of the African countries whose traditional leadership underwent these conflicts. The country of Botswana was also colonised and later had their independence. The colonisers utilized the system of traditional leadership to collect taxes and as a way to manage their communities, which is also the case with other

African countries, especially South Africa. After independence in Botswana, similarly to other African countries, traditional leadership still existed. Good (2002: 3) argued that the system of traditional leadership in Botswana exists parallel to the democratic system of government (cited in Dipholo *etl.*,2014). This presents conflict between the institutions as is the experience in South Africa currently between the institutions. Over the years the relationship between the institutions in Botswana has not changed and has even witnessed some traditional leaders resigning as Chiefs and participating in politics because the current political leaders fail to represent the needs of their communities (Dipholo etl.,2014; Holm and Botlhale, 2008).

Zimbabwe has experienced such conflicts between these two authorities in relation to governance and land use and land management. The country experienced colonization and traditional leaders, who prior colonization performed their traditional duties well and were accountable to their tribes, were paid government officials who were answerable to the colonial government and other traditional leaders began to be appointed outside the relevant ruling tribe or clan (Chigwata, 2016). This resulted in the role of traditional leaders being redefined and constantly changed by the sequential colonial government in longer periods.

The study by Chigwata (2016) posits that traditional leaders are oftentimes in conflict with the structures of the State in most rural governments because they are constantly in competition of resources, power and legitimacy. This leads to the redefinition of roles and the interface between the two institutions being ambiguous and unclear. The study further depicts contention where the local government infringed on traditional leadership roles, which reveals that clarity was and continues to be needed in relation to their jurisdictions. In 2013, Zimbabwe adopted a constitution which regulated the conduct and role of traditional leaders, however despite these regulations the roles are still unclear to date (Chigwata, 2016).

According to Chigwata (2016), Zimbabwe attained its independence after colonialism. Although there was independence, traditional leaders still were unable to perform their duties extensively as the ZANU-PF led government recognized the existence of traditional authorities as contention for leadership, support and legitimacy. There is still ongoing conflict and despite the upliftment of colonialism and strict regulations, the relevance and role of the institution of traditional leadership is under scrutiny.

Many African states recognised traditional leadership as a hindrance to nation building

and modernization after decolonization, therefore they attempted to reduce their role in national politics and local government (Kyed and Buur, 2005;Sharma, 1997 cited in Asamoah,2012). Ghana also encountered conflicts with regards to the roles of these institutions post-independence. The post-independent government in Ghana maintained that traditional leadership weakens growth in communities thus it is no longer needed in local government (Asamoah,2012). In 1992, a constitution was drawn up which made reference to the roles of traditional leaders in Ghana (Asamoah,2012). The 1992 constitution, according to Asamoah (2012), still had a conflicting attitude towards the role of local government and traditional leaders and how they interface. Traditional leadership continued and encountered major challenges when it had to work with local councils. They could not cooperate with local councils and were against local councils being given powers and they, therefore, resisted their efforts at generating revenue and managing their jurisdictions (Kessey, 2006).

The 1992 Ghanian constitution acknowledged the historic legitimacy of chieftaincy and guaranteed its autonomy from state intrusions in its specific domains thus putting a stop to the heavy-handed government interference that had been going on since the days of Kwame Nkrumah (Rathbone,2000 cited in Valsecchi, 2007). However, even with all the rights stipulated in the Constitution, the role of the traditional leaders was still not implemented properly. Although traditional leadership is recognized in Ghana, and included in their constitution, the institution is still afforded limited recognition with regards to making their own decisions for their communities. Valecchi (2007) argues that the constitution in Ghana overtly forbids the eradication of chieftaincy by legislation and refuses parliament the power to legislate to the disservice of the institution in any manner and yet there still are challenges with the manner in which they interface.

This section depicted the historical continuities from the three countries alongside the point of contention and reason for the conflict between these various authorities. Suffice to say, these are not the only countries that have encountered such conflicts and contestations of power within these authorities, however for the purpose of this study these three cases were most relevant. The histories between these countries may be different but the points of contentions are all similar in nature and can therefore be tested against each other.

2.2.2. Rights of the traditional leadership institution:

Bob (2010) asserts that land in sub-Saharan Africa has been subject to conquest, exploitation, conflict and expropriation, therefore resulting in the discrepancies that exists today. Land has always been a significant part of the African people. It continues to have crucial cultural, spiritual and historical significance. Africans do not only perceive land as a commodity but also as a vital way of sustaining the livelihoods of many Africans across the continent (Evers et al., 2005). Traditional leaders, as mentioned above, have always been known to be the sole custodians of traditional land and the management of that land (Local Government Bulletin, 2019). Traditional land is the indigenous territory-also referred to as traditional territory- it describes the ancestral and contemporary connections of indigenous peoples to a geographical area.

Kessey (2006) in reference to Ghana, asserts that the introduction of modern local government systems by the colonial administration started a process of marginalization of the traditional system. This included the crucial and core function of the traditional system, that is, the ability to control their traditional land as well as allocate it how they determine. George and Binza (2011) state that the allocation of traditional land, the preservation of that land, the application for social security and governance in traditional land was the role and right of the traditional leaders. The land was the property of traditional leaders and regarded as sacred.

Spierenburg (2005) argues that Zimbabwe has a long history of shifting authority over land in the communal areas, moving back and forth between traditional authorities, modern bureaucratic structures and more or less representational local government institutions. This is as a result of the colonial and post-colonial systems that interfered with the traditional systems that were already in place. Bugri (2013) stated that for many Ghanaians, those mainly in rural areas, the most relevant and important institution with regards to land relations is the traditional authority itself, in the form of traditional council, chief and land allocation committees (cited in Bugri and Yuonayel, 2015). This assertion further accedes to claims by the scholars that traditional land and its management was the responsibility of traditional leaders.

It is crucial to also indicate that through the administrative practice of the public land sector agencies in Ghana, chiefs are usually required to give consent to land

transactions within their area of jurisdiction (Campion & Acheompong,2014). However, the government still has power to decide on land even though the traditional leaders are said to have authority over land. This creates tension between these institutions because there is no legal agreement between the institutions to ensure that both understand their boundaries and where their powers cease. Botswana has a government system similar to South Africa where they have the central government (parliament), which is at the apex of the structure and the next level is constituted by district/urban councils or municipalities and subsequently the tribal administration which consists of traditional leaders (Dipholo *etl.,* 2014). In this system, traditional leaders can only perform or function only by the power vested by the parliamentary statutes. This is similar to the rights of traditional leaders in South Africa where they continue to follow rules and laws stipulated in SPLUMA.

2.2.3. Legislative protection:

Legislation contributes significantly in ensuring that both institutions, the traditional authority and the local government, are knowledgeable about their different roles. The different legislations include the constitution, customary law and land acts that govern both the institutions which are applicable in this research study. Land rights, whether through customary law or land acts, are a big part of distinguishing roles. In the Zimbabwean case, the communal land act of 1982 ensured that the ministry of local government, urban and rural development was made responsible for administering communal land through the district councils (Thomas,1992; Government of Zimbabwe 1994:22; cited in Spierenburg, 2005). This infringes on the duties and authority of traditional leaders in their jurisdiction if the ministry has been legislated to be responsible for administering the land under traditional leadership. Spierenburg (2005) further argues that the decisions that concerned any development policy and land reform were agreed to at national level and the directing of the resources of the state to the rural areas was managed by the national level, with no regard to bottom-up demands, as noted in Alexander (ibid.;183).

The legal regime around communal land management creates a high degree of ambiguity and potential for overlap of roles between traditional and state institutions (Chigwata, 2016). Consequently, power struggles and conflicts among elected and traditional structures with reference to the management and allocation of communal

land are common. Chigwata (2016) posits that these contentions of the interfaces between government structures and traditional leadership resulted in traditional leaders acting parallel to the government and allocating land that had already been allocated by government to beneficiaries of their choice and this further impedes development. The interface between these two institutions in Zimbabwe was for the traditional leaders to act as a communication medium for government agencies and to gatekeep land, however this, as evidenced in the study by Chigwata, has not been the case. In Ghana, the constitution allowed for the recognition of traditional leaders and their role on land management. Valecchi (2007) argues that the constitution in Ghana overtly forbade the eradication of chieftaincy/traditional leadership by legislation and refused parliament the power to legislate to the disservice of the institution in any manner and yet there still are challenges with how they interface. There are still overlapping functions as is the case in Zimbabwe, South Africa and other countries.

2.2.4.Systematic exclusion of the traditional leadership institution:

Kessey (2006) asserts that traditional leaders have been marginalized financially, administratively and politically. In the study to search for an appropriate framework to assist traditional leaders and local government to work better, Kessey further depicted how local government in Ghana has marginalized traditional leaders through indirect rule, and introduction of public treaties or town councils (Kessey, 2006). The superiority practiced by local government on traditional leaders is what led to perplexity over the different roles (Campion & Acheompong. 2014; Kessey, 2006). The perplexity has inevitably caused ambiguity in how traditional leaders and local government are to interface and to ensure efficient delivery of services to their communities. Although traditional leadership is recognized in Ghana, and included in their constitution, the institution is still given limited recognition with regards to making their own decisions for their communities, therefore rendering the institution marginalized.

2.2.5. Distinctive roles of the institutions:

Governance is the system by which entities are controlled and directed (Governance Today). Asamoah (2012) highlights how governance plays a crucial role in ensuring the well-functioning of a society. The separation of the different roles in governance structures in government ensures that the people in communities have access to

service delivery. Asamoah (2012) further elicits that, with regards to traditional leaders and local government, this is an area where both traditional leaders and government need to cooperate in governance to ensure members of their communities are catered for and service delivery ensured. Kessey (2006) asserts that although traditional leaders have been tested over time, their role has been marginalized and this therefore makes it hard to decipher the different roles of governance. This is the source of the ambiguity. The demarcation of roles is what assists good governance and these demarcations are the clearly defined roles and responsibilities of the traditional leaders as well as the local municipality. The complementarity of roles, which is the understanding of how the municipality and the traditional authority work together in ensuring that service delivery takes place and how that relationship is executed in governance, is an important indicator of how both institutions work together and complement each other.

2.3.The South African Case:

2.3.1. Pre-colonial, apartheid and democratic South Africa:

Literature in South Africa depicts that this conflict in these institutions is prevalent more presently than they were in the past. According to Hendricks and Ntsebeza(1999) South Africa encountered what most African states underwent during colonialism and this continued through to the apartheid led government. The apartheid government employed traditional leaders and compensated them so they could work together. While the apartheid government was in power, the chiefs had authority to make decisions on issues that pertained to land ownership and that included the removal of individuals from their land where such scarce land provided the means of subsistence and residential rights for the majority of the population (Ntsebeza 2000:289; Tapscott 1997:294-6 cited in Khan *etl.;*2006). However, post-apartheid, the democratic government held the position that this type of arrangement promoted corruption among traditional leaders and therefore striped traditional leaders off their authority in local government and instead placed democratically elected individuals to cater for community needs, i.e., councilors (Beall et al.,2005; George & Binza,2011; Dubazane and Nel,2016; Ray & Eizlin, 2004).

Post-apartheid the roles and duties of elected government representatives and traditional leaders were not clearly understood. Khan, *etl.,* (2006) asserts that the functions and roles of traditional authorities are still not resolved post the 1994

democratic elections and that there are new institutions and consultative structures. With the confusion still prevalent, the democratic government passed legislation that provided for a local government system that is restructured, the demarcation of municipalities and municipal elections that ushered in the new local government system (Rugege, 2003). The controversy arose because these municipalities cover the country as a whole and that included the rural areas that are under traditional leadership and as such, these municipalities were given functions and powers that overlapped the powers and functions that are exercised by traditional leaders (Rugege, 2003). It is section 151 of the constitution in 1996, that established these municipalities. The same constitution is vague with regards to the purpose, the legal and political consequences of the recognition of traditional authorities in municipalities. It is argued that the other source of conflict is of a legislative nature since the municipal structures act (MSA) 117 of 1998 grants powers to municipal officials to make decisions on matters relating to land use planning and development projects in municipalities without asserting how traditional leaders are to be involved, and eventually municipalities perform all the roles and functions with less or no involvement of traditional leaders (Mathonsi and Sithole, 2017). Mathenjwa and Mathonsi (2016) in their study argue that the municipal structures act provides traditional authorities that traditionally observe a system of customary law in the area of a municipality may participate through their leaders, in the proceedings of the council of the municipality. They also argue that the Member of the Executive Committee (MEC) needs to identify those specific traditional leaders that would be present in the council.

Legislatively, the institution of traditional leadership or council in South Africa may perform the following roles provided for in Section (20)(1) of the Traditional Leadership and Governance Act, 2009 (Act 41 of 2009): arts and culture; land administration; agriculture; health; welfare; the administration of justice; safety and security; the registration of births, deaths and customary marriages; economic development; environment; tourism; disaster management; the management of natural resources; and the dis- semination of information relating to government policies and programs (George & Binza, 2011). However, as stated previously, the implementation of these laws is a challenge at local government level, hence the ambiguity.

Customary law, as part of legislation, provides security of tenure and access to land that

would not be possible for many South Africans within the formal property market (Badenhorst, Freedman, Pienaar and Van Wyk, 2010 cited in Dubazane & Nel,2016). Under customary law, the right to occupy and use land has been controlled by traditional leaders prior to and during the colonial-apartheid period, although the institution of traditional leadership was misappropriated by both the colonial and later apartheid governments to serve their own ends (Lutabingwa, Sabela and Mbatha, 2006; Keuder, 1998: 3 cited in Dubazane & Nel, 2016). Notwithstanding all the legal work, traditional leaders see themselves as the legal custodians of land. There is also the issue of the communal land rights act which placed more focus on the community but was later struck down which could be discussed. However, as this research focused more on the roles of the traditional authority and local government and their interface on land issues, it does not fit the scope of this research.

Development and governance were part of the domain of traditional leaders before the emergence of the 1994 democracy. During the apartheid government, traditional leaders still had rights over land and they allocated land and managed it prior to the democratic government that later asserted that traditional leaders were corrupt (Khan *et al*., 2006). Land is crucial for traditional leaders and it is an important resource for the well-being of the people residing in their jurisdiction as well as for cultural and traditional factors. Their functions comprised the allocation of land held in a trust, provision and administration and order of services at local government, preservation of law and order, social welfare administration including the handling of applications for business premises and social security benefits, and promotion of education, including the construction and maintenance of schools and the administration of access to education finance (George &Binza,2011).

Hendricks and Ntsebeza (1999) posit that there is a lack of clarity concerning local government in rural areas which emerge from the continuing struggles between the leadership among traditional authorities and elected government representatives, i.e., councilors. Their study looked at the case of Xhalanga magisterial district in the Eastern Cape where a private company was competing with an NGO for utilization of development that included the provision of water and land without consulting the traditional leadership of that area (Hendricks and Ntsebeza, 1999). The perception of

the functions of the elected rural councilors has been the origin of a lot of confusion concerning the said functions for the various authorities. Traditional authorities are not explicit on the function and duty of elected councilors and their own. Mathonsi and Sithole (2017) note that granted, there is little recognition of this, traditional leaders continue to play a fundamental role on the welfare of the citizens in rural areas to date.

Literature in Nkandla Municipality, the Eastern Cape and other municipalities has depicted this reality where the institution of traditional leadership has felt undermined by government because of acts like SPLUMA which have been implemented by government that completely sidelines their institution (George &Binza,2011;Nel, 2015;Dubazane and Nel, 2016). In the Eastern cape case, traditional leaders were in disagreement about who legally represented the people in their jurisdiction, whether themselves or councillors. The councillors also refused coming to meetings with traditional leaders because of political differences which completely disregarded democratic processes that require for both authorities to work together (George and Binza, 2011). In the Nkandla case, traditional leaders were only invited to participate during the Integrated Development Programme (IDP) forums, wherein they felt that their participation was not meaningful, therefore rendering themselves sidelined on issues of governance where they are supposed to be included (Dubazane and Nel, 2016). They further believed that they had minimal influence on municipal decisions because they did not have voting rights, which further sidelines them systematically (Dubazane and Nel, 2016). A shortfall that was also presented in the study in Nkandla was that councillors and municipal officials during the IDP sessions used technical jargon that traditional leaders could not understand. This leads to misunderstandings and conflicts between these authorities and consequently the overlapping of their roles and functions. The overlapping of roles and responsibilities present ambiguities that municipalities are faced with currently.

2.4. Spatial planning:

Spatial planning is a big part of land management and consequently South Africa had planning laws that facilitated planning. Planning laws have to do with legal buildings being built and infrastructure development in communities that all need to be connected to the municipality, i.e the connection of water, sanitation, electricity, roads and so forth (De Visser, 2016). Recently there had been fundamental changes in these laws which

brought about the devolution of planning powers from provincial government to local government, which then brought about the introduction of SPLUMA.

Nel (2015) asserts that SPLUMA is the first piece of legislation that provides a cohesive spatial planning and land use management system for the entire country and is applicable to all spheres of government. SPLUMA is normative in that it emphasizes social justice, redress, equity and inclusion, community participation and transparent decision-making, and awareness of the role of property, housing, and environmental management in creating functional, efficient and humane settlements (Van Wyk and Oranje, 2014 cited in Nel, 2015). Most of the ambiguity and confusion experienced by municipalities and traditional authorities has been as a result of SPLUMA and what the act specifies. It emanates from how this act has been understood and implemented by local government. The boundaries were also not clearly stipulated in the spatial planning and land use management act (SPLUMA of 2013). SPLUMA, though it enunciates justice, it evidently did not comprise the ideas of culture and the best practices that surround bio-cultural community protocols (du Plessis,2018).

Traditional leaders according to the constitution need to be consulted before any development takes place in their communities, but SPLUMA, in the way that local government has implemented it in most municipalities, has resulted in many traditional leaders being marginalized (Ray & Eizlini, 2004). The Constitution is the highest law and overpowers any other legislation and as such should be heeded with reference to SPLUMA and rural areas.

2.5.Theoretical framework:

The theoretical frame that was utilized to undertake this study is the functionalism theory. The functionalism theory, in social sciences, posits all aspects of a society which are roles, institutions, norms, etc.—serve a purpose and that all are indispensable for the long-term survival of the society (Britannica, 2023). Scholars have utilized this concept of function to explain the interrelationships of parts in a system.

A social system is expected to have a functional unity in where all portions of the system function together with a degree of internal consistency (Britannica, 2023). Functionalism also posits that all social or cultural phenomena have a positive function and that they are all indispensable. A.R. Radcliffe-Brown examined the theoretical implications of functionalism as a relationship between a social institution and the necessary conditions of existence of a social system (Britannica, 2023). Talcott Parsons asserted that any process that does not contribute to the maintenance and development of a system is dysfunctional (Britannica,2023).

The functionalism theory is utilized correspondingly because of the traditional leadership being an institution in its own right as well as local government being an institution of the state, wherein they have distinct functions. Therefore, to fully understand how they interface there is a need to evaluate both institutions based on their functions as structures in society. One might argue that a different theory might better explain this relationship, however for the purpose of this research the functions and or roles of these institutions are the lens through which one would understand this phenomenon.

An institution is a formal structure or organization that governs a field of action and consequently the behaviors or rules that a certain people in that institution follow (Acemoglu & Robinson,2018; Brammer, Jackson & Matten,2012; Williamson, 2009). The rules encompassed in an institution can be cognitive, regulatory, behavioral, associative and constructive. Local government as an institution is regulative, constructive and associative. This institution outlines laws and rules that society ought to live by and is also governed by those laws and rules, therefore are a more formal institution. However, traditional leadership is more cognitive and behavioral in that this institution focuses on the norms, values, customs and culture. This institution is more

informal because they create their own rules and place private constrains on themselves on basis of what they deem important to them. According to Asamoah (2012) the institution of traditional leadership is the personification of a great culture, a driver of development and a motivation of change that must be maintained.

2.6.Conclusion:

Limehill, under the Mchunu Traditional Authority in Alfred Duma Municipality is no exception. Literature still has not addressed what is the role of traditional leaders in local municipalities and more precisely when it relates to land governance and land management. My study sought to understand this role between these two institutions and how they should interface which is still missing in literature. The literature has clearly articulated the key issues faced in all these African countries as well as regions in South Africa. The issue of land use and its management spreads further than just legislation but also that there is a problem with the articulation of that legislation. The most relevant and key themes are the historical continuities, the rights of traditional leadership, legislative protection, the systematic exclusion of traditional leaders, the distinct role of traditional leadership and spatial planning as evidenced in the literature provided.

The governance implication as a result of this study would be clear roles of both institutions. Clarity provided by the study could assist in development around the area as there would be no interdicts that impede the continuation of projects and development activities. The study is relevant for both local government and traditional institutions because it will highlight their roles, therefore ensuring development in the area and service delivery.

This chapter presented the existing body of knowledge that supported the research. It also gave guidelines to the important literature that would serve as reference during the analysis chapter.

CHAPTER 3: METHODOLOGY

3.1. RESEARCH APPROACH

This research study focused on the role of traditional leaders in local government and how they interface in governance. It was undertaken utilizing a qualitative research approach. A qualitative study enables the researcher to elicit and examine perceptions and meanings of the respondents (Braun and Clarke, 2013). The benefit of undertaking this study qualitatively is that it enabled myself as a researcher to interact with respondents and therefore gained an even better understanding of their perceptions and understanding in relation to the research topic than I would have had I employed a quantitative study. Employing a qualitative approach permitted for the interpretation of the world of my respondents through my eyes and experiences in their world as I sought to understand their social world (Abott,2004; Braun and Clarke, 2013). This research was undertaken with the understanding that in the social world there is not just one single reality but there are multiple realities that are socially interpreted and constructed (Babbie & Morton, 2001).

Limehill, which is under the Mchunu Traditional Authority (MTA) is situated in KwaZulu Natal, under Alfred Duma Municipality in Ladysmith. Alfred Duma Municipality is one of three (3) municipalities in Uthukela District. The current population for Alfred Duma municipality as per statistics on census 2011 is 340 116. Approximately 20% of the municipality is urban, these areas are developed and have structures such as housing, roads, commercial buildings, bridges, and 80% is rural, which are areas that are not as developed as urban areas and mainly underdeveloped and outside the town or city, and that presents obstacles in relation to service delivery. Limehill has, according to census 2011, a population of 5375 people. The specific case was purposively selected as it fit the scope of the research.

This research was undertaken with the understanding that the perceptions of the Mchunu Traditional Authority (MTA) and their perceived reality with regards to the role of government is shaped by their version of reality. The local government similarly had their own interpretation of this reality. Both these institutions have different perceptions as well as interpretations of their social world. Therefore, it was crucial that this research study employed this approach in order for the academic community to better understand these meanings. This study utilized a case study research design. For the research study to

answer the research question accurately it was imperative that I familiarized myself with the respondents. It was paramount that I acquire the data directly from the respondents because they were the sole individuals who could best interpret their social world, which permitted myself to better comprehend the research problem. When employing a case study research design, a researcher gains a deep understanding as well as in- depth knowledge on the phenomenon and issue and as a result the researcher operates within the boundaries of the case (Braun & Clarke, 2013; Creswell, 2002; Creswell, 2012). This was particularly crucial in this study because to understand the several instances where traditional leaders and local government interfaced, I had to undergo extensive data collection to clearly understand the interaction between these two institutions.

An Induna is an advisor to the Chief/traditional leader and forms part of the traditional authority. The Induna also acts as a mediator between the community and the Chief. Izinduna, which is plural for Induna, are part of the traditional council, which also consists of the Chief. The work of the Induna is to oversee the day-to-day operations of the community and that all the needs of the community in the land under the Chief, are addressed. These include allocation of land, service delivery, addressing issues of conflicts within families in the community and so on.

The traditional council is different from the municipal council. Traditional councils assist in administering the affairs of the traditional community in accordance to their custom, support municipalities in identifying the needs of their communities, facilitate the involvement of the traditional community in the development and even amendments of the integrated development plan of a municipality in the area that the traditional council oversees (Department of Cooperative governance and traditional affairs). The municipal council is the highest body of a municipality. The members of the council make all the important decisions affecting the municipality and these include education, tax levels, new buildings and others (Government of the Netherlands).

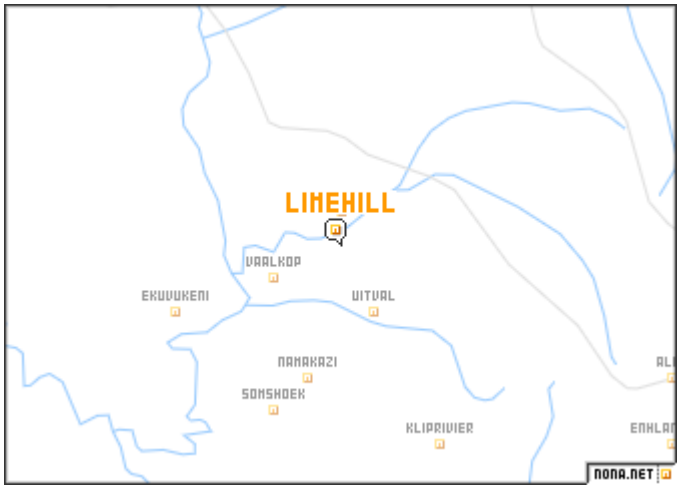

Figure 2: Limehill Map- Source :Nona.net



Figure 3: Rural Limehill. Source: Facebook



Figure 4: Limehill High School. Source: Facebook

3.2. RESEARCH TOOLS

This study utilized primary data which is data that is obtained directly from the respondents (Hox & Boeijie,2005; Silverman,2000). The Mchunu Traditional Authority in Limehill, councilors in the area, and a relevant government official from the Alfred Duma Municipality in LadySmith, KwaZulu Natal were the only sources of information that could better aid in understanding the research problem. Scenarios in communities and municipalities are different and therefore a blanket approach could not be utilized to understand the relationship and interface between these two institutions. Information had to be elicited from them directly to distinctly understand their specific problem.

The study employed in-depth interviews which probed the respondents to elicit information necessary for the study. These interviews were semi-structured and open ended in order to solicit data that best answered the research question. Semi- structured interviews were preferred for this study because they allowed the respondents to expand on their answers therefore offering more data for the study and allowed comparison between data sets (Braun & Clarke,2013; Jones, 2015; Mama, 2011). The study could have utilized official documentation to further validate and corroborate interview responses howbeit it was not within the scope of this research.

I had initially sought to travel to the research site and conduct the interviews face-to-face but due to the conflict of schedules of the MTA, I could not be present in the area. Consequently, I had to do the interviews telephonically and record them as I did the interview, therefore I could not take down notes as I interviewed them as initially planned. I, then, had to do telephonic interviews and forward questionnaires to some respondents to fill in whenever they were able to due to their unavailability to do the telephonic interviews. The issue of access was a challenge as I could not show up unexpectedly and could not on occasion get access to respondents on their cellphones as they were unavailable due to traditional council business. Occasionally, it took some respondents a couple of weeks before they could revert back to me.

Similarly, I encountered challenges with the official from Alfred Duma Municipality's development planning department. Following months of attempting to reach him to revert back with the questionnaire that I had sent him he finally responded three (3) months later. This was after I had to contact his senior and requesting that he assist with regards to the research study.

For all respondents, consent was sought and agreed to verbally. All respondents that were interviewed telephonically were informed that they would be recorded so that I would not omit any information during the interview. The respondents that responded themselves in the questionnaire were also informed and requested for consent during a phone call that sought that the questionnaire be filled and sent back to myself.

The study utilized, where necessary, email interviews where questionnaires were sent to respondents and similarly on whatsapp messenger. Reiteratively, this was as a result, particularly with the MTA, of the conflict of schedule between myself as a researcher and the MTA respondents. There were no restrictions due to covid-19 as I initially expected. In fact, all covid-19 regulations had been lifted.

3.3. SAMPLING

The study sought to employ a key informant strategy and purposive sampling strategy. In key informant sampling, respondents are selected based on the knowledge that they possess (Braun & Clarke, 2013). Purposive sampling is done by selecting respondents that possess the characteristics as well as traits that fits the study (Braun & Clarke, 2013). However, as a result of certain individuals not being available for interviews, I had to resolve to snowballing strategy. Snowballing is a non-probability sampling method where new units are recruited by other units to form part of the sample, it begins with one or more study participants and continues on the basis of referrals from those participants (Nikolopoulou, 2017). When the study commenced, there were a number of people who had committed to participating in the study, however, when they were called for interviews to be conducted, they could not be reached. As a result, I implored some of the respondents who had already done interviews to suggest other individuals within their portfolios who could assist with the interviews and the collection of data.

This study required certain information that could only be accessed from people that are knowledgeable about the research topic. Acquiring this information from any other person would have resulted in unreliable data and therefore yield the entire study futile as it would not have answered or gave an understanding of the research problem.

The study was meant to include the MTA Chairperson, the advisors (Induna's) to the traditional leader, councilors in the area under the MTA, and officials from the Alfred Duma municipality in the development planning department. However, as previously stated, I could not interview some people who had initially acceded to taking part in the study. One of the crucial people who ended up not being part of the study is the Chairperson of the MTA.

The study excluded traditional leaders who are not under the Mchunu Traditional Authority. It further excluded any person who was not the chairperson of the Mchunu Traditional Authority. It excluded those that are not advisors/induna's to the traditional leader. The study moreover, excluded officials who are not from the Alfred Duma Municipality and who do not work in the development planning department. The study excluded any councilor who is in any ward outside the Limehill area.

The intent of the study was to interview a maximum of 15 respondents but could only interview 5 respondents. This would have included a variety of people under the categories that were required to answer the research question. Due to the unavailability of a number of people and as a result of not having direct access to the research site, I could not attain the number of people that I had anticipated I would acquire. I had attempted, upon perceiving this challenge, to obtain more respondents but as I interviewed people, I perceived that the answers to interview questions were merely repetitive and therefore obtaining any more respondents would not offer any new information but would rather fritter away time that could be best used to work on the study. Therefore, the sample size was sufficient and adequate to respond to the research question. There was a time constraint due to the data collection phase lasting longer because of respondents who responded to questions late.

3.4. Ethical consideration:

The University of the Witwatersrand code of ethics was followed when the study was conducted. All respondents that participated in the study where informed about the study and what it required of them. Information letters were sent out and some read to the participants to ensure they were aware of the study they were participating in and what it required. The respondents were informed that their identities would be treated confidential and anonymous. Respondents were informed their names and any other

personal information will not be made known. All information that the respondents offered was treated confidentially and only for the knowledge of the researcher conducting the study.

A consent form was read to all respondents and all consent to take part in the study was agreed to verbally by all respondents. Respondents were assured that all information was only for the researcher and would only be published for the research report. Permission from respondents to record telephonic interviews was sought and agreed to by respondents. The respondents agreed to take part in the study.

3.5. Positionality:

As the researcher, I had no prior relationship nor conflict of interest in the area and in the study. I have never lived in the area and respondents had no personal relationship with me and did not know me prior to conducting the study. I did not personally benefit from the study but all work was towards my academic advancement. The topic, however, was influenced by the sudden interest in the land issue as it has been an ongoing issue that has been spoken about in parliament and the recent cases involving the Ingonyama Trust. That has sparked an interest as to how land is utilized and managed in rural areas as they are never utilized similar to those in suburbs as the needs of these areas are different.

3.6. Limitations to the study:

There are a number of limitations that presented themselves in the study. The language was a barrier because the Limehill area has deep roots in the Zulu language. I am a Zulu speaking person, however due to not having been exposed to schools that taught Zulu as a home language and not residing in Zulu speaking rural areas there were gaps in communication. I compensated for this barrier by downloading an app called ‘all language translator’ which assisted me to translate between the two languages, English and Zulu. The app assisted myself as well as the respondents in bridging the language barrier. The issue of time and cost were also a barrier as I reside in Johannesburg, Gauteng. I traveled to KZN in anticipation of meeting with respondents, however I never got to meet with any of them as a result of their unavailability. Therefore, costs were incurred for transport and time was lost due to the unavailability of respondents. In order

to cater for these limitations, I requested the Chief/chairperson of the MTA for cellphone numbers of some of the respondents that became part of the study. The was also a limitation with the email interview, which was mainly the respondent from the municipality, who did not respond on time. To combat this limitation, I continuously sent the respondent emails and when that was to no avail, I sent an email to his superior, who then ensured I got the response. Some respondents were not readily available when I needed them for data collection which presented another limitation. I combated this limitation by setting appointments timeously and was persistent in reminding respondents of my telephonic appointment until the day that the interview took place.

CHAPTER 4: FINDINGS

4.1. Introduction:

This chapter focuses on the presentation of the results from the interviews. It outlines the responses from respondents. Data presented was sought through the research questions and thematically organised.

4.2.Presentation of results:

As mentioned in the previous chapter, a number of five (5) respondents were interviewed. All respondents were qualified to answer all questions that they were asked individually. All individuals needed in order to answer the bigger research question were involved. The respondents were all interviewed and their identity, for the purpose of this study, has been kept confidential in the study. Consequently, I have assigned numbers to them to ensure proper representation of answers.

Respondent 1 and Respondent 2 are Indunas and are in the traditional council of the MTA. Respondent 3 and respondent 4 are councillors in the area. Respondent 5 represents Alfred Duma municipality and is a manager in the Development planning department.

I employed the thematic analysis technique to organise the data. Thematic analysis consists of systematically organizing, identifying, and giving insights into the meaning of patterns in data sets (Braun and Clarke, 2013). There data was sifted employing different themes that arose during the data collection stage.

4.2.1. Historical Continuities:

The first theme that was evident is the historical continuities of the institution of traditional leadership. This theme emerged as respondents presented on the history of the pre-colonial and post-colonial functions of both the traditional leaders as well as the local government. These points were raised by the four (4) respondents, that is the Induna's and the councillors in the area.

> *Respondent 1: During apartheid, the Mchunu Traditional authority embodied the protection of culture, traditions, customs and values. It played an important*

role in everyday administration of its areas and the lives of traditional people. It was a political and administrative centre of governance for traditional rural communities. This leadership was the form of government with highest authority. This leadership was the form of government with highest authority. Post 1994, the role changed after the government passed The Black Administration Act to give traditional leaders the power to control the land at regional, tribal and territorial levels. Section 25 was introduced although there are powers and rights still restricted to African people.

The respondent continued to reiterate that:

The traditional authority was dependent on the colonial government for resources and power.

Respondent 2 reiterated a similar point when asked a similar question in relation to the role of the traditional authority during colonialism and apartheid and the contestation of power. He reiterated that during colonialism and the apartheid era:

But with my little knowledge of that time, the traditional leadership did not lead in communities the way they do now under the municipality. When I started as an Induna in 2019, the traditional leadership was leading under COGTA.

The evidence suggests that there was a significant change in government in South Africa in relation to traditional authority during colonialism and into the apartheid era. As the literature suggested in the literature review, the era of colonialism and apartheid brought about great change for the traditional authority. These two points suggest that the full authority of the traditional authority was not restored post these eras. This could possibly be the reason for some municipalities and traditional authorities in South Africa to have found it difficult to co-govern and still struggle with issues of the contestation of power within their jurisdictions, hence the cases in the Eastern Cape and Inkandla that are referenced in the literature review in chapter 2.

4.2.2. Rights of the traditional authority:

Another theme that emerged is that of the rights of the traditional leadership of the institution pertaining to land with regards to land under the MTA prior and post 1994 and how the MTA has interfaced with Alfred Duma municipality. The theme focused on the

distinctive roles for both the institutions and the legislative protection. Respondent 1 echoed the sentiments that their role as an Induna or a traditional authority as well as in the municipality is property rights and the allocation of land in their jurisdiction:

> *Respondent 1: Property rights, particularly land rights are closely connected to the problem of housing. The right to gain access to land. There are people who need land and those who are not secure on the land they live in. The right to acquire land and have resources to sustain a livelihood.*

The second responded stated that:

> *Respondent 2: Induna's are mediators on issues relating to the community. For example, family members could be fighting and a family member can come to me as an Induna to report that such an incident took place in the family. The Induna then will call that family and have the issue prosecuted in the traditional court/council. Whoever is found to be in the wrong is then dealt with and fined. If there is a case brought to the Induna that involves murder, or the like, it is not prosecuted in the traditional court/council but the matter is then transferred to the police station through the Induna. A case that involves a gun, rape, murder and the likes, the Induna will transfer to the Police station and work together with police.*

Respondent 2 further reiterated that:

> *My right or duty as an Induna is to be an overseer in the land for the traditional leader. It is an Induna who knows exactly what is happening in the area as they oversee. They also know what part of land is available to be distributed to anyone in the community. A traditional leader does not have the authority to place someone or give someone land, that is the role of myself as an Induna. Before an Induna can give permission to anyone to occupy the land, they first request for proof of where they used to reside before coming to the area.*

These responses elicit that as a traditional council, the Induna's as oversees of the chief, have the authority to decide what happens in the land. This is their governance role and right. They are aware of issues that are taking place within their community and information that at times the municipality is not privy to. This would then suggest that the municipality would not be able to forcefully attempt to develop the area without the knowledge of what precisely needs to be developed and what is the priority of the community. Attempting to do it forcefully could result in the most crucial needs of the

community not being met. This, in my opinion, is why it is vital for both these institutions to be in compliance to legislation as it pertains to land rights.

The councillors also stated the roles of traditional leaders and the traditional council as per their understanding and how they have been operating in the area.

> *Respondent 3: As a councilor working in a place under traditional leadership, you should never not involve them in issues relating to development in the area. Even when you, as a councillor, are going to introduce or present a new project in the area under a traditional leader, you should first get in touch with the traditional leader. Even if it is an area where the municipality has earmarked for a certain development, you first have to approach the traditional leader because they are the steward over that area and land. Therefore, there is nothing you can do without including the traditional leader. Especially because also this land has people who have permission to occupy (PTO) certificates that further confirms that we can do nothing without involving the traditional leader. The people occupy the land that the traditional leader stewards over.*

Respondent 4 stated, amongst other points, that:

> *Respondent 4: Traditional leadership also enforce the law in the community, for example, in land that is under traditional leadership you cannot fight crime without their involvement. They have their own traditional courts/council where cases are prosecuted if someone in the community has done something that is regarded as crime or a disturbance in the community, whether it is a certain family that is misbehaving or an individual. The law that will apply before you involve the South African Police Service (SAPS) is that of traditional leaders.*

These, and other points that respondent 3 and 4 stated in relation to the role of traditional leadership in the area, suggest that the councillors, who are mediators between the community and the municipality, are well aware of their designated roles in the community.

> *Respondent 3: There is nothing you can do in an area under a traditional leader and they not be involved. So, with everything the traditional leader must be on board.*

The councillors also demonstrated the knowledge of their roles in the community as mediators between the community and the municipality. This is not merely an understanding based on their roles as councillors but also a deeper understanding of the nature of the area that they lead.

> *Respondent 3 stated: There are meetings in the traditional council where you get invited as a councillor and that is where as a councillor you present everything and every development that is going to happen in the area. Unless an urgent project comes up and there is no time for the traditional council, you can ask to meet on an urgent basis and present that project. So, if you have sat down and talked with the traditional leadership there are hardly any problems.*

The statement offers an understanding of the councillor in relation to how they are supposed to work with traditional leaders. They are aware of how they need to execute their duties. Their main role is to ensure service delivery in the community by the municipality but also are cognisant of the fact that they lead under a traditional authority.

> *Respondent 4 stated: For example, with the development of roads that had to be tarred, the Municipality had to consult the traditional leader because there is a type of sand that is under the land that is under traditional leaders that would be required for the construction of these roads."*

These responses resonate to a great extent to the study done by Arhin, where they stated that traditional leaders are recognized by government and have authority over areas of land that are under traditional leadership (Arhin, 1985; cited in Asamoah, 2012).

Respondent 5 also reiterated that as a municipality and a department, they do not plan a development in the area without engaging the traditional authority. As a municipality they have explained and informed the traditional authority of their rights as an institution in relation to SPLUMA and the land scheme.

> *Respondent 5: Yes, I have engaged with traditional leaders through the local municipalities Integrated Development Plan (IDP) road shows and also through*

public participation when the municipality was introducing Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA) within its area of jurisdiction.

4.2.3. Contestation:

Another theme that emerged was land management and of traditional land. The respondents were adamant that traditional land is sacred and should be treated as such, even by the municipalities. Respondent 1 stated when asked whether municipalities should have control over traditional land and how it is managed and allocated:

> *Respondent 1: No, because traditional leaders have the responsibility and have powers to control their traditional communities. There may be conflicts between government and traditional leaders.*

Respondent 2 also reiterated the authority that the traditional leadership has in the land by stating that:

> *Respondent 2: My right or duty as an Induna is to be an overseer in the land for the traditional leader. It is an Induna who knows exactly what is happening in the area as they oversee. They also know what part of land is available to be distributed to anyone in the community. A traditional leader does not have the authority to place someone or give someone land, that is the role of myself as an Induna. Before an Induna can give permission to anyone to occupy the land, they first request for proof of where they used to reside before coming to the area.*

A part that I found to be interesting about this particular response was that it highlighted that this is not merely about roles and the functions of the traditional authority, but power and authority that is exercised by the traditional authority. SPLUMA has also been thought, by traditional leaders, to be intruding and usurping their traditional authority and as a result traditional leaders in the Eastern cape and KZN have opposed it (Nel, 2015).

The ambiguity present in most municipalities as a result of SPLUMA gave a rise to a question as to whether SPLUMA has given the municipality power over the traditional authority, but respondent 5 responded that in actual fact:

> *Respondent 5: No SPLUMA has not given power to the municipality but rather power to the traditional leaders as now they have to be contacted for any developments proposed within their communities.*

The view expressed in Campion and Acheompong (2014) in the case of Ghana, provides an explanation of these responses in their study when they state that chiefs in Ghana are the ones required to give consent to any development and along with others that are similar in their area of jurisdiction which are related to land management. SPLUMA, however, with regards to working with traditional leaders is not mainly about whether traditional leaders permit the municipality to develop in the area but it also involves legislation that gives the parameters as to how far they can develop and how to go about the development. Hirt (2014:3) states that zoning defines the rules governing what and where people and institutions can and cannot build and operate in cities, suburbs and towns (cited in Nel,2015). He further asserts that by regulating what gets build how and where, it sets the parameters of where and thus how we live, work, socialise, play and exercise our citizenship.

4.2.4. The relationship between the MTA and Alfred Duma Municipality:

The theme on the relationship between MTA and Alfred Duma municipality emerged in the evidence. The proxy for this theme is compliance to legislation. When both institutions comply to legislation there is synergy in how they function and ultimately ensures development for the community. This theme contradicted the theme that was illustrated in chapter 2 that stated that traditional authorities were systematically excluded and marginalised by municipalities in some degree, whether it be financially, administratively and more. The respondents commented on their relationship which depicted what takes place in reality as they co-govern. Respondent 1 was asked about whether she has encountered any conflict with the municipality, which in part would depict their level of interaction and therefore relationship, stated:

> *Respondent 1: Yes, about 1.75 per cent of land has been transferred to land reform beneficiaries over the years, (I) the provision of resources and services, there are differences between the beneficiary communities and their neighbors, often white farmers. The outcome to this conflict still not reached since they are still failing to amend section 25.*

Respondent 2, however, had a different experience.

> *Respondent 2: In my jurisdiction I have not encountered any problems with the municipality. When a person has been given the permission to occupy (PTO) a certain part of the land, I then take their details to the traditional council and the person in question then receives a receipt of that PTO. The receipt is then sent to the municipality and it is then certified with a stamp from COGTA, and then the stamp of the traditional council and lastly my signature as the Induna. With regards to that, I have never encountered problems with the municipality.*

The sentiments expressed by respondent 1 do not necessarily depict an unhealthy or negative relationship nor non-compliance. It does, however, depict that there are issues that are present and also suggests that there is a possibility of other issues that have not been addressed in the responses. Respondent 5 stated that they, as a department, work well with traditional leaders.

> *Respondent 5: Traditional leaders are part of the Alfred Duma Local Municipality Council and it is important for the municipality to have a good relationship with the traditional leaders as most rural land under the jurisdiction of Alfred Duma Local Municipality is registered under the Ingonyama Trust Board. Amakhosi in the local municipalities are the guardian of the Ingonyama land therefore it is important for the municipality to work with traditional leaders in order to roll out service delivery and document people's needs in rural areas; these areas are still under the rule of Amakhosi and Izinduna.*

He further stated that:

> *Traditional Authorities within the municipality are treated in the same manner, the only engagement the department had with Mchunu Traditional Authority is when we were presenting the single land use scheme and how it is going to affect them.*

Utilizing these responses as a basis and with the understanding that in some instances there are conflicts between these institutions it was imperative to establish whether this relationship could be enhanced or the current status quo was accepted by the respondents. Respondent 3 and 4 who stand as mediators between the two institutions commented.

Respondent 3: *as I have mentioned, there are cases where councilors see themselves superior to the traditional leader. Sometimes they would look at themselves and think just because they have the privilege to bring in development then they are superior, failing to realise that they are only a councillor for 5 years but a traditional leader will be a traditional leader until they pass on. So, if people could have a way to see the distinction between these two roles. And also, councilors, I think, need a workshop on how they should conduct themselves and behave when they work in areas under traditional leadership. And they must also learn how to have a good relationship with the traditional council.*

Respondent 4: well, there is always room for improvement. But from my experience, Alfred Duma municipality works well with Inkosi uMchunu (traditional leader). One thing though, during Council meetings traditional leaders are supposed to be present but that has not been the case for a couple of years. I do not, however, want to blame traditional leaders for this change but I think something happened along the way. Initially they attended council in numbers but as time went, they stopped. This means that something might have happened between the municipality and the traditional leaders although I may not be sure what might have happened. So, I would encourage someone from the municipality to also check what could have been the issue.

Respondent 5 also in his response in relation to whether the relationship could be enhanced, expressed that:

Respondent 5: Better communication on service delivery issues and also host community meetings to hear what their communities need the most. Also have local area plans for traditional authorities which will guide development for those affected areas. These responses depict that the relationship is not one without challenges but it is a constructive cooperation. A constructive cooperation would certainly yield positive results for the community as issues relating to service delivery would be addressed with less conflict.

SPLUMA in one of their regulations, sub-regulation 19 (1), encouraged the traditional authority to have a service level agreement wherein they can have a legal agreement on

issues relating to land allocation. However, respondent 5 expressed that:

> *Respondent 5: No, the municipality does not have a service level agreement. We engage with traditional leaders informally via the normal ways of public participation, stakeholder meetings, etc.*

A service level agreement would assist in good working relations as it would explicitly outline the working terms between the institutions. However, the absence of such an agreement could lead to no accountability from both institutions.

4.2.5. Spatial Planning:

Another theme that emerged was spatial planning which deals with the allocation of land and how it is used. Respondent 5 explained what is spatial planning. The understanding of what spatial planning is or SPLUMA, provides a better understanding of how traditional leadership and the municipality should implement it. Respondent 5 explained that when it comes to managing the land under traditional land, it should be noted that:

> *Respondent 5: Amakhosi in the local municipalities are the guardian of the Ingonyama land therefore it is important for the municipality to work with traditional leaders in order to roll out service delivery and document people's needs in rural areas; these areas are still under the rule of Amakhosi and Izinduna.*

He further stated that SPLUMA:

> *It is a legislation that has been introduced in-order to have proper spatially planned towns and cities and also it is an act that guides development to have integrated and cohesive land uses. It is there to address past spatial and regulatory imbalances. To promote consistency and uniformity in the application procedures and decision making by authorities responsible for land use decisions and development applications.*

He also expressed that SPLUMA has positively affected the community under the MTA, which is contradictory to studies done in KZN and the Eastern Cape (Hendricks and Ntsebeza, 1999;George and Binza, 2011). These studies found that SPLUMA was the

reason for the ambiguity of roles experienced by these municipalities and the source of the confusion being the misinterpretation of the act by municipalities (Nel,2015, George and Binza, 2011; Nel, 2016).

> *Respondent 5 asserted that: It has affected communities positively as SPLUMA demands that the municipality have a single land use scheme which covers the entire area of the municipality. They are now able to be involved in development issues that are taking place in their communities as SPLUMA requires intensive public participation for any proposed developments.Through the land use scheme, they now have knowledge of what rights they can exercise on their land as all lands have been allocated zonings.*

The SPLUMA act of 2013, was passed so it could provide a framework for spatial planning. It was specifically designed to provide an inclusive developmental, efficient, equitable spatial planning at the different spheres of government, to address past spatial and regulatory imbalances (Government gazette, 2013). Although, through the literature review, the inclusiveness and uniformity in terms of development of land in urban and rural areas is what has caused confusion. The aim of municipalities is to have similar developments in both areas, however the implementation of such in traditionally led areas is what has been the source of contention.

This chapter presented on the findings that were in relation to the key research question along with sub-questions. They are presented in relation to the key themes that emerged in the data and will, therefore, in the next chapter be discussed extensively to be fully understood and what they imply for the study.

CHAPTER 5: ANALYSIS AND DISCUSSION

5.1. INTRODUCTION

This chapter follows the findings chapter which presented the responses and results of the study from the respondents. The chapter will extensively examine what the evidence purports to and how we can better understand the governance interface between the MTA and Alfred Duma Municipality. It will also account as well as provide understanding for how these can be better understood in the bigger scope of governance. The analysis will focus on the main themes that were identified in the evidence in connection to the themes that were identified in chapter 2, the literature review, to make this understanding and draw conclusions.

5.2. Historical continuities:

The history of colonialism and that of the apartheid era and the role it played in the issue of land in South Africa is significant for this study. It is crucial that there is an understanding of the role it played in how traditional leaders/authorities experience local government on issues of land management and its use. The evidence provided brought into view the stand point of traditional leaders in the MTA in relation to the local government, Alfred Duma municipality.

The evidence by respondent 1 suggested that prior the apartheid government and colonialism, they were the custodians of the land and they embodied the protection of their culture, traditions, customs and values. This statement agrees with what scholars have purported to in chapter 2. It concurs with what Asamoah (2012) expressed, that traditional leaders are elected in line with customary law. This is a reflection of the role that they played and their functions in ensuring that their culture, customs, and way of life is preserved for future generations. Respondent 1 further expressed that their role was to also play an everyday administration role in the area and the lives of their

communities. This finding expresses that the daily living of their communities and their well-being was their area of responsibility and not of the government.

The functions of the traditional authority, during colonialism and subsequently the apartheid government, changed as evidenced in the literature and they had less authority. However, respondent 1, asserted that post-apartheid the traditional authority through the black administration act were given the authority to have control over land in the regional, tribal and territorial levels. They regained some of the power that they had forfeited during the colonial and apartheid era. Respondent 2 expressed that post-apartheid and in the democratic government traditional leadership is leading under the department of Cooperative Governance and Traditional Affairs (COGTA). The department of COGTA has been the department that has ensured that traditional authorities are performing their duties in local government, specifically on issues of land and its management. In one response, respondent 2 expressed that in all activities that include allocation of land, that require a permission to occupy receipt or certificate, COGTA needs to sign those documents. The involvement of COGTA has ensured the representation of traditional authorities in government. This is a significant change to how traditional authorities were engaged during colonialism and the apartheid government.

5.3.Rights of the traditional authority:

The proxy for this theme is the distinctive roles of the institutions and the legislative protection which also emerged from the literature review. Land is regarded sacred for African people and with this fact in mind, it than provides a clear understanding of the prevalence of contestation for how the land is managed and governed. Respondent 1 expressed that land allocation and property rights are the role of traditional leaders in areas under their jurisdiction. The traditional leaders, by customary law, are entitled to allocate land to residence in their areas and the findings suggests that this is the case in Limehill, under the traditional leadership of the MTA. The MTA has not experienced any conflicts in this regard. The findings then suggests that the role of traditional leaders as custodians of land in the area is known by the local municipality. It concurs with the study by Kessey wherein the study asserted that the traditional system plays a crucial and significant role to allocate and control how their land is managed (Kessey, 2006).

Respondents 3 and 4 additionally concurred with the statements by respondent 1 and

2. They stated that the management of land and everything pertaining to its use are the responsibility of traditional leaders. Development in the land under traditional leadership cannot take place without the traditional leader being consulted. The statements depict the significance of traditional land to indigenous people. What is worth noting is the level of respect afforded to the MTA by councillors in the area and the municipality by affording the traditional authority that right when other municipalities are still constantly in contention on this issue. Respondent 5 alluded to this fact, that MTA is all the time consulted and development that is planned to take place in the area is introduced first to the MTA and is then carried out after these consultations have happened.

Respondent 4 expressed that in the land under traditional authority, all issues are first dealt with by the traditional authority. The traditional leaders are responsible for enforcing the law in their traditional authority capacity. This finding is congruent with the literature in chapter 2 that asserts that maintaining law and order is also one of the responsibilities of a traditional leader in the jurisdiction. The understanding of the functions of traditional leaders in relation to land by councillors and the municipality is significant. This understanding results in less contention and contestation of power in traditional land. It also ensures that the traditional leaders perform their duties liberally and in line with their responsibilities in customary law.

5.4.Contestation:

In the study, the findings exhibited a comprehension among the municipality as well as MTA with regards to the different duties that each institution needs to perform with regards to land. The significance of this understanding is based on a study that has been presented in the literature review by Chigwata, where he posits that the traditional leaders in Zimbabwe are constantly in dispute with state structures as they continually compete with each other for resources, legitimacy and power (Chigwata, 2016). This is not the only study that posits strife between the state and traditional authorities on issues of governance. There are a few that are mentioned in the literature review that explicitly indicate a continuous contestation between the two institutions.

In most municipalities referenced in the literature there are evident power struggles between these institutions. Some of these instances are not mentioned in the literature

but are evidenced in the media as is the one by the Ingonyama Trust and the State in South Africa (Mavuso, S; 2022). However, the evidence in the study as respondent 5 stated, that the act (SPLUMA) that most traditional leaders in the literature have deemed the point of contention with their local municipalities in South Africa, is certainly not the case in the MTA and Alfred Duma Municipality. This act has merely empowered the MTA and has given them the ability to comment before any development can take place in their community, whether it be in relation to land or any other structure under the jurisdiction of the traditional leader. This notion by respondent 5 contradicts the study in Nkandla and the Eastern Cape where traditional leaders perceived that the municipalities in those areas side-lined them because they considered that SPLUMA accorded these municipalities the power to overlook them in their own traditionally owned land (Nel, 2015 George &Binza,2011;Nel, 2016) .

The municipality, through respondent 5, argued that through the land scheme that is clearly outlined in SPLUMA, traditional leaders have knowledge of what rights they possess in their land as a result of public participation events that ensured their awareness. This then suggests that the municipality and MTA are clear on their position and as such can therefore act according to their rights as well as roles. The evidence in the previous chapter, especially by the councillors who act as a mediator between the traditional council and the municipal council, has depicted how this is carried out on a daily basis. Councillors are invited to be part of the traditional council where they then can introduce such development which then ensures that what is in the act, which is the right for traditional leaders to be consulted in relation to land issues, is not only set out in an act and legislated but rather practiced in actuality. These actions by the department in the municipality, with the assistance of councillors, ensures that the institutions are not only aware of their duties, but perform them. The study by Asamoah asserts that in Ghana, the 1992 constitution had conflicting views of the roles and duties of traditional leaders and those of the municipalities and as a result those presented challenges between the traditional authority and the town councils which presented opportunities for contestation of power (Asamoah, 2012). Asamoah's study contradicts what respondents in this study are conveying with respect to these duties and roles.

Respondent 3 and 4 argued that development that is set to take place in the community does not happen until the traditional leader has been engaged on the issue. This was

the sentiment of all the respondents throughout the study. This particular sentiment suggests that the engagement levels out the occurrence of conflict between these institutions. It offers a level ground for engagement in terms of what are the most crucial needs of the community and what could possibly be prioritised over others therefore eliminating the presentation of conflict. The lack of engagement could present conflict and a contestation of power between the institutions. As per the arguments of the respondent, 3 and 4, this engagement is crucial in ensuring that development takes place within the MTA led community.

Once more, this contradicts what most of the literature has claimed with regards to how most municipalities have performed their duties in places under the jurisdiction of traditional leaders. Chigwata (2016) in their study on the roles of traditional leadership in Zimbabwe, asserted that because the roles of traditional leaders were constantly being redefined in Zimbabwe, the role of the state and that of the traditional authority were constantly overlapping. It is the overlapping of roles that continuously creates ambiguities in municipalities and traditional authorities. The lack of engagement, whether formal or informal, between the state or municipality and traditional authority breeds conflict and a contestation for power. However, as evidenced by the responses of the respondents in this study, this is not the case for MTA and Alfred Duma Municipality. Brown (2005) in their study on contestation, confusion and corruption on issues of land reform in Zambia argues that the government of Zambia grants Chiefs the legal authority to oversee customary lands and to protect their community's culture and general welfare. This study, although not referenced in the literature review, concurs with the responses offered by the respondents. MTA, as seen through the evidence, does still have the legal right as per the customary law in South Africa, to oversee their customary land and manage it. This communicates that these two institutions have found a way to co-govern, which has been a challenge in other countries and other municipalities in South Africa.

Respondents 1 and 2 mostly agreed that a municipality should never take control on how indigenous land is utilized. This is primarily because the traditional leaders are custodians of the land and therefore would have a better understanding of what are the needs of the people residing in their land. Chigwata (2016) in his study contradicts this when he states that the legal regime in relation to communal land created some form of

ambiguity in Zimbabwe and in some instances, an overlap of the roles between traditional leadership and that of the municipality as referenced above. This is not the case with the MTA and Alfred Duma municipality. It is crucial to also realise that SPLUMA in its regulations can cause confusion as is evidenced in other municipalities. As a result of some functions that are performed by the traditional authority invariably intersect and overlap, it would breed confusion. For example, sub-regulation 19(1) of SPLUMA, the traditional leaders are encouraged to form a relationship with municipalities through a service level agreement and not specifically have the primary authority to allocate land, whilst in the same breath sub-regulation 19(2) specifies that traditional leaders can allocate land and then provide proof to the municipality for that land allocation under customary law. These overlapping roles can provide ambiguities that in turn would bring about power contestation between these institutions as evidenced in multiple studies referenced in the literature review. However, the strong conviction during interviews from respondents in relation to their roles and duties depicted that the municipality and the traditional authority are not dishonest in their engagements but in reality, what the act suggests is being carried out in this particular district. The respondents, 1 and 2, displayed a sense of confidence in their roles and even more so, their roles in relation to how they interact with the municipality.

Respondent 3 highlighted the avenues through which they, as councillors, and the municipality function. One of the avenues was that they, councillors, attend traditional councils where they present any project that the municipality has an interest in pursuing in the community. This statement further depicts the mutual understanding of the different governance roles that these institutions embody and subsequently act accordingly. Respondent 5 also alluded to the effect that the department engages with traditional leaders in relation to any project through IDP roadshows, stakeholder engagement and community meetings. This response presents the avenues that the municipality, apart from councillors attending traditional council meetings, utilize to present their plans for the community. This representation by councillors at traditional council as part of democratic participation is also worth noting and appreciating. This structure is mostly treated as ticking the box, especially in a municipal council. Democratically, and legislated by law, traditional leaders are also supposed to be present in municipal councils, and on the contrary to how councillors can participate in

traditional councils, traditional leaders are not afforded the same opportunities in municipal councils. The constitution has included traditional leaders to be a part of municipal councils as ex-officio members representing their communities (Nel,2015; Nel, 2016; George and Binza , 2011). In reality, they are not afforded the same rights to comment or be made part of decision making in the said council. The evidence presented has substantially refuted most of the literature in relation to issues of governance and how the different roles are performed in Limehill, within the Alfred Duma Municipality. What is evidenced by the responses from respondents is that when pertaining to the demarcation of roles between these two institutions, they are well knowledgeable in what those roles are and how they ought to be performed within their district, therefore eliminating the occurrence of contestation.

5.5.The relationship between the MTA and Alfred Duma municipality:

This particular theme emerged in the findings. This theme refuted the literature on the systematic exclusion of traditional leaders by local government in the MTA and Alfred Duma case. All respondents alluded to the effect that they have a constructive cooperation and are compliant. Constructive cooperation also mirrors good governance between the institutions and an understanding of the legislation that governs each institution. Although a working relationship solely would not signify that policies and rules are followed as they play out, especially in relation to the land management and its use in the area, it would however depict the environment through which engagements take place and how they take place when democratic processes such as the IDP and public participation take place. The cooperation would present a clear understanding of how they interface as well as deal with issues of governance in the district. Chigwata (2016) in his study on Zimbabwe asserted that the struggles of conflict and governance contestation in areas under traditional leadership led to these institutions working against each other and therefore contesting in terms of their different roles. Under this particular theme there were different views from respondents, however the evidence depicts that the working relationship between the institutions is a good one which translates to good governance as each institution performs their duties without interference form the other, therefore contradicting Chigwata's study.

Respondent 1 stated that at some point they encountered issues with the municipality

with regards to a particular amount of land which was transferred to land reform beneficiaries who are mostly white farmers as per the act, which is section 25, and this conflict has not been resolved since section 25 has not been amended. Although this response does not seem entirely positive, it also depicts not only the relationship but the reality that legislation in some instances could be a barrier to how well institutions cooperate and co-govern. This presents challenges, especially because most community members are not educated nor do they have an understanding of municipal council rules and by-laws. The failure of an Induna to, for example, allocate a certain part of land that falls under the land that respondent 1 mentioned in this response, could be translated to the Induna being reluctant to allocate that land to a certain individual in the community. Respondent 2 when they were inquired on whether or not they had encountered any conflict with the municipality, responded that they have never encountered any issues. This translates to a constructive cooperation because as the respondent further explained his interaction with the municipality, he alluded to the fact that when they have performed their duty as an Induna and presented all information needed, especially in regards to permission to occupy (PTO), they have had pleasant interaction and ultimately a good experience in working together. However, the suggestion then is that if the Induna does not have the documents in order and doe, the relations could be unpleasant. The reality then could possibly mean, in relation to this response, the relations are only pleasant and good governance experienced when certain requirements are met.

One important component that has been evidenced to building a positive relationship and ultimately having good governance between these two institutions, is the constant consultation between the institutions on issues involving development. Respondent 3 and respondent 4 both concurred that the traditional leadership is always consulted. The point of contention as well as the reason for most conflicts and bad relationships between traditional leadership and local municipalities as I have previously mentioned on studies referenced in chapter 2, is when municipalities disregard the traditional leadership in the area and that, therefore, produces negative results. The study by Chigwata (2016) is an exemplar of an unpleasant relationship between the institutions and structures.

Respondents, particularly respondent 3 and respondent 4, when questioned what could

best improve the relationship between the municipality and the traditional leadership on issues of co-governance, they responded by stating that according to their experience the relationship between these two institutions has been a good working relationship. Consultations between these institutions, and the municipality not interfering in traditional council duties, has forged constructive cooperation. However, they both agreed that there is in every relationship always opportunities for improvement. Valsechhi (2007) in their study argued that in Ghana the 1992 constitution forbade the state from interfering on issues of traditional leadership in relation to communal land. This study is in alignment with the evidence from respondents as it also concurs that local government should not interfere in traditional council business as this would breed conflict and contestation of power, and conversely the argument presented by respondent 5, when he stated that they have a positive relationship with the MTA , was also in agreement with the evidence presented by respondent 3 and 4. The positive relationship is enforced by each party understanding where their jurisdictions commences and where it ceases. To reference respondent 5 clearly, he stated that the municipality has a good relationship with MTA as traditional land is under the Ingonyama Trust and as a municipality they need to have a good relationship with traditional leadership. This statement requires us to, in future research, perhaps investigate the reasons why municipalities like Nkandla and the one in the Eastern Cape that have been referenced throughout this chapter and the previous chapter have failed to produce similar relations as the one evidenced by Alfred Duma municipality and the MTA (George &Binza,2011;Nel, 2016;Nel, 2015).

The evidence depicts a propitious relationship between these two institutions which in turn eliminates opportunities for contestation. They represent what most municipalities and traditional authorities that have been referenced in literature, have failed to achieve. This illustrates that Alfred Duma Municipality understands SPLUMA and how it should be implemented. The sentiment in most studies in municipalities when it relates to issues of traditional land and how it is managed within some municipalities was that municipalities have utilized SPLUMA as a way of suppressing and appropriating power from the traditional authority.

Respondent 2 stated that they have worked well with the municipality and more particularly in the area of allocating land. The respondent asserted that he has never

encountered any conflict with the municipality and also the councillors in the area. Suffice to say, constructive cooperation does not allude to no conflict but as evidence has shown, the respondents have not had conflict. As I have mentioned, a good working relationship between the institutions ensures good governance. It is less cumbersome for both institutions when they agree on similar values therefore bringing about service delivery for the community.

Respondents stated that there is always opportunity for improvement in any relationship. The relationship does not have to be challenging in order for improvement to take place, however even good relationships can be improved. Respondent 3 suggested that councillors need to get workshopped in order to understand how to lead in areas under traditional leadership. This was suggested because the respondent stated that some councillors disrespect and disregard traditional leaders. Constructive cooperation and compliance to legislation can yield positive results and it is then encouraged that the institutions continue to cooperate and abide by the laws that govern them, i.e customary law, land acts and the constitution. Abiding by the mentioned laws will assist the institutions in providing services for their community.

5.6.Spatial planning:

Spatial planning was an interesting and crucial theme that emerged in both the literature and the evidence as literature depicted that it was at the centre of the contention between traditional leaders and local municipalities. The theme is centred in SPLUMA as it deals with the demarcation of the land and zoning. SPLUMA in regulation 19(2) suggests that traditional leaders and local municipalities have a service level agreement which would then ensure that in issues of land and land allocation there is an agreement and accountability. The responses from respondents suggests that there is no formal agreement between these institutions. According to respondent 5, there is no formal service level agreement. The suggestion here is that although there is no legal service level agreement, the municipal and traditional council laws still afforded these institutions the opportunity to be accountable and to have a good working relationship. The understanding of the SPLUMA guidelines have provided guidelines that have ensured that they are both compliant in performing their duties as outlined. SPLUMA, has provided proper guidelines in terms of following procedures when engaging MTA on

issues of land. This then implores us to rethink the arguments that some studies referenced in chapter 2 have alluded, that SPLUMA is the justification for traditional leadership and municipalities to struggle with issues of contention in relation to land issues and start to conceive that perhaps it is not solely SPLUMA that has been the reason for this contestation but that there could be more underlying issues (Nel, 2015).

Respondent 5 suggested that there are a number of traditional authorities under the municipality and how they engage and work with MTA is no different to how they interact with other traditional authorities. He further articulated that the department, and himself in particular, only engaged the MTA once directly when they were presenting the land scheme and how it would affect them. The other ways that they have interacted with the traditional authority is through municipal channels but not as a department separately so this was done by their own admission. This statement suggests that there is no formal agreement but rather they follow rules stipulated in the municipal laws and laws stipulated in the constitution.

To conclude this chapter, it is worth noting that all the themes overlap each other. The logic for this is the themes all present with a governance perspective. The way in which land is managed and its legislation, the history of traditional leadership and traditional land, and SPLUMA are all governance related. It is also evident that municipalities have had different experiences with SPLUMA. The act has been a challenge to traditional leaders and became a point of contestation because the act is not understood and implemented by municipalities accurately, hence the ambiguities that are present. However, the experience of the MTA and Alfred Duma municipality could shed light on other municipalities and how they could best work with traditional authorities. There is a need for possibly additional workshops for both councillors and the municipalities to conjure up how to cooperate with traditional authorities when it pertains to land that they are custodians over. The same is true for the traditional council and how they should work and engage with the municipal council.

CHAPTER 6: CONCLUSION AND RECOMMENDATIONS

6.1.INTRODUCTION:

The issue of traditional leadership and its ambiguity with regards to governance issues with municipalities on land management transcends the current climate, whether political or environmental, that we seem to be facing. There are, with reference to literature, a number of cases where municipalities have found themselves in constant contention with traditional leadership or authority as a result of these ambiguities. The most prominent studies that have been referenced are the municipalities in KZN and Eastern Cape where there was constant contestation of power as a result of SPLUMA (George and Binza, 2011; Nel, 2015; Dubazane and Nel, 2016). As evidence, from South Africa and other studies in Africa suggests, all issues emanate from the colonial era to the current day. The introduction of colonialism somewhat confused the way of life of the indigenous people, which then led to ambiguities post colonialism as well as post-apartheid era in relation to land issues. This is apparent in all the literature referenced in previous studies that have been done that are similar to this study.

However, suffice to say, the experience of MTA and Alfred Duma has contradicted most of the literature that has been found in relation to this topic. The literature suggested that some municipalities in South Africa are in constant conflict and contesting power amongst the municipality and the traditional authorities. It also revealed that municipalities are not implementing SPLUMA in the correct way, therefore creating ambiguities and confusion on governance issues in relation to land management. This then inevitably creates an unfavourable working relationship between the institutions. MTA and Alfred Duma municipality is in contradiction to these claims. The evidence given as responses by respondents suggests this contradiction by stating that there has been no contestation of power, that MTA has a good working relationship with Alfred Duma and that both institutions have performed their duties as outlined by policy. One factor that I believe could possibly be the reason for this type of synergy is the type of environment that the research site is situated. It is a small rural town and rooted deeply in culture. The notion of “ubuntu” or being humane and being respectful towards your fellow people is one that is still esteemed and therefore these values will at times emerge even in working relationships. This is not to suggest that they do not have issues of their own, but in relation to how indigenous and traditional land is to be

managed, they seem to know precisely what each institution's role encompasses. They recognize what their roles are and how they are to be performed. One instance that we can reference is one of the respondents when they narrated how they address issues in the community. He asserted that every issue in the community is addressed in the traditional council. However, if an issue is outside their jurisdiction, for example murder, rape etc, then that issue starts at the traditional council and will, after it has been discussed in the traditional council, be transferred to the relevant government authority, for example the South African Police Service. This is one of the illustrations of their understanding as institutions and how they govern in their jurisdictions.

According to studies done by Nel (2015 and 2016), ambiguities emanated as a result of SPLUMA being introduced to municipalities and it also not being fully understood in some of those municipalities in terms of how the act should be implemented. This fact simply does not echo the sentiments that this study has shared. It is refuted by the evidence gathered through the respondents. According to the studies by Nel, the municipalities are the focal point of contention as they exercise their authority on traditional land without consulting the traditional authority in the area. However, in Limehill, the Alfred Duma Municipality is aware of their role when it relates to such areas. Alfred Duma respondent, respondent 5, echoed that they consult and engage traditional leaders and authorities before bringing any project in their area that involves utilizing the land that they are custodians over.

The evidence revealed that it is entirely possible for both institutions to co-govern and maintain a sound working relationship in their respective jurisdictions. The respondent 5 representing the municipality suggested that if a project entails the municipality doing some developments on indigenous land or a traditionally led area, the municipality will go and explain as well as consult the traditional leadership in the area to ensure they know, understand and approve what will be happening and how it will affect them. An example of this statement is the public meetings and introduction of the SPLUMA. It is also pertinent to note that the respondent stated that this does not only take place within the MTA but in all the areas under the municipality that are under traditional authorities. This makes it possible for these institutions to perform their functions and provide service delivery for their communities without compromising them.

This evidence then forces us to investigate and explore the reasons behind other municipalities not being able to practice what Alfred Duma has managed to practice. The evidence merely articulates that the municipalities are able to work in synergy with traditional authorities. The broader question to be explored would be what contributes to these municipalities being incapable of cooperating with traditional leadership in their jurisdiction and conversely the traditional authorities within the municipalities. It begs the question as to whether the issue truly is with the act (SPLUMA) or it rather is about the working relationship between the institutions. One respondent echoed that whenever there is contention between a municipal official or councillor with the traditional authority it is usually because those officials or councillor do not give the traditional leader as well as the traditional authority the dignity and respect that they deserve. That then results in points of contention that are personal but will inevitably translate to being professional, which then will explain why some municipalities might be in contention with traditional authorities. It starts personal and transcends to it being professional. I would put forward that being professional is the attitude of performing your duties with utmost diligence and integrity, irrespective of what situation you might encounter. This is, therefore, my reason for suggesting that the two institutions being able to work together and performing their duties depicts a level of professionalism that may possibly transcend the status of their working relationship. The failure to be professional and have a good working relationship in other municipalities is quite disconcerting because this implies that communities do not receive the development they deserve and are entitled to as South Africans.

6.2.IMPLICATIONS OF THE STUDY:

The study refuted what most of the literature had suggested in relation to how municipalities and traditional authorities' interface on issues of governance, and more specifically on issues of traditional land and how it is managed. It suggested the many ways in which these institutions can function and cogovern without impeding the progress of the other. It is highly lucid that, where good relationships are forged, there can be progressive talks between municipalities and traditional authorities. The one aspect that all five (5) respondents concurred on and alluded to was that the consequence of the institutions functioning well alongside each other was the aspect

of mutual respect. It was in actual fact that the municipality understood what their role was and how to manage traditional land that is under traditional authority. This information renders the process of working well together less cumbersome for both institutions. However, as a suggestion, I would encourage the formulation of the service level agreement to ensure accountability on both institutions.

The evidence in the study also purports to the fact that where governance structures are acknowledged and given the platform to perform as per their roles, a great deal of work can be achieved in communities through good co-governance. The respondent representing the municipality alluded to the fact that they often times go themselves as a municipality to engage communities on their needs as well as give them an opportunity to present what they, as a community, could best serve them. This is certainly done with the traditional authority being present and having had a similar conversation with the community during their traditional councils. This makes the whole process uncomplicated for both institutions. The respondent also mentioned that they have roadshows, stakeholder engagements, etc, to ensure that communities are aware of developments that are going to take place in the area which are done after consultation with traditional leaders.

With all the evidence presented by the study it is, nonetheless, worth noting that although these institutions have a good governance system in place, it still requires work to ensure its sustainability in this regard and to also not faulter in the next coming years. The respondents, especially the councillors, stated that there still is a need for other councillors to be workshopped and taught how to engage with traditional leaders and how they are to operate within their jurisdiction. As mentioned earlier, one councillor had stated that some councillors would show disregard and disrespect to traditional leaders that would initiate a personal vendetta against each other. The evidence then would suggest that councillors could be at the heart of the halting of service delivery in their areas where they lead. The disrespect and disregard for the traditional leaders could very well lead to under development in the community. This could possibly be one of the reasons as to why most municipalities in the referenced studies have failed to co-govern in the interest of their communities. It is something that as a researcher I would suggest that municipalities look into further.

This study, however, has given to some degree a roadmap for other municipalities to venture into in order to commence on having meaningful conversations on issues surrounding co-governance in areas under jurisdictions of traditional authorities. It could give an indication on how these conversations can be started and what the crucial and pertinent issues that need to be focused on are and can assist guide proper policies that ensure sustainable relationships in this regard. Land is a crucial commodity for African people and it therefore should be treated as such and proper engagements should be directed at specifically assisting other municipalities to proper understand as well as implement SPLUMA to ensure equality, even in areas under traditional authority. This study will, therefore, guide policy makers when drafting policies to clearly identify the main issues that need to be addressed, i.e what SPLUMA entails and how it out to be implemented in areas where traditional land is concerned, and then provide a plan on how this would commence as well as conclude. The proper articulation of these steps in policy will enable a proper governance interface in all municipalities as well as ensure that the people of South Africa's rights are not infringed on as a result of SPLUMA.

6.3.Recommendations:

The evidence in the study has represented a good working relationship as well as a clear comprehension of the different functions and roles that is performed between MTA and Alfred Duma Municipality. This was the main question in this study as this would depict and point us to how they work together. It has outlined how they interface as institutions to ensure proper functioning of both institutions in the district, especially on issues of land. The way that they interface, I believe, could assist other municipalities to achieve what MTA and Alfred Duma Municipality have achieved as far as co-governing on issues of land and its management is concerned. This manner of approach, i.e constantly consulting and also having meetings has been a great way of forging a working relationship between the two institutions.

Therefore, I would recommend, that in order for other municipalities and traditional authorities to follow suite that they:

- As suggested in the previous chapter, I would encourage that the MTA and Alfred Duma Municipality create a formal service level agreement to ensure

accountability although they currently have a good working relationship. I also recommend that there be a creation of a formal agreement on how issues relating to SPLUMA should be addressed, i.e a service level agreement in other municipalities. A service level agreement would ensure that all parties adhere to their terms of the agreement and therefore there will not be a rise in issues of contestations.

- As evidence in the referenced literature has depicted, the articulation and implementation of SPLUMA has been at the forefront of the contestation of power between municipalities and traditional authorities. SPLUMA, I recommend, should be clearly articulated and further explained to municipal officials as well as explained to traditional authorities so both institutions are aware of their rights in relation to the act and their expected duties to be performed as institutions.
- The respondents, who are councillors, echoed that it is crucial for councillors to be workshopped because some councillors are not capacitated in how to work with traditional leadership and work in areas under traditional leaders. This then breeds conflict between the councillors and traditional leadership. It is recommended that councillors in municipalities that govern in areas under traditional leadership should be workshopped on how they are to work with traditional leaders and how to approach issues relating to land where they are concerned.
- The evidence also suggested that the municipal officials also need to have better communication with traditional leaders so they could also be better equipped to assist them in relation to land issues. Therefore, municipal officials who work in the development planning department should also be workshopped on how to engage with traditional authorities as well as traditional councils. The comprehension of how traditional authorities function could forge better working relations between municipalities and traditional authorities.

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APPENDIXES

APPENDIX A: CONSENT FORM

Project Title: Land management and the use of communal land; The case of the Mchunu Traditional Authority and Alfred Duma Municipality.

My name is Nonkululeko Khanyile and I am a Masters student of Management in Governance at the University of the Witwatersrand, Johannesburg. As part of my studies, I have to undertake a research project, and I am investigating the local governance interface between the Mchunu Traditional Authority and Alfred Duma Municipality under the supervision of Dr Caryn Abrahams. The aim of this research project is to find out what role the Mchunu Traditional Authority plays in Alfred Duma Municipality with regards to land management.

Name of researcher: Nonkululeko N. Khanyile

I,....., agree to participate in this research project. The research has been explained to me and I understand what my participation will involve. I agree to the following:

(Please circle the relevant options below).

I agree that my participation may/will remain anonymous	YES	NO
I agree that the researcher may use anonymous quotes in his / her research report	YES	NO

I agree that the interview may be audio recorded	YES	NO
I agree that the information I provide may be used anonymously after this project has ended, for academic purposes by other researchers, subject to their own ethics clearance being obtained.	YES	NO

…..

….....(signature)
….....(name of participant)
….....(date)

….....(signature)
….....(name of person seeking consent/researcher)
….....(date)

APPENDIX B: INTERVIEW GUIDE

INTERVIEW SCHEDULE: MCHUNU TRADITIONAL AUTHORITY

SECTION A

DETAILS OF THE PARTICIPANTS: MCHUNU TRADITIONAL AUTHORITY

Date of the interview:	
Name of the participant:	
Age:	
Sex:	
Race:	
Home language:	

SECTION B: QUESTIONS FOR THE MCHUNU TRADITIONAL AUTHORITY

1. What role did the Mchunu Traditional Authority have in Local Government during the apartheid government? Did it change post 1994 and if so, how?

……
……

2. What could have been the contributing factors that may have contributed to this change?

……
……

3. What do you deem as your right in terms of how the land in your community is managed?

……
……

4. Do you think the appointment of elected politicians/councilors has affected your community positively or negatively in relation to land issues?

……
……

5. Have you, personally, encountered conflict with the municipality with regards to land issues, and if so, what was the outcome?

……
……

6. Should government take control on how indigenous land is utilized without prior consent from the traditional leader involved? Why?

……
……

7. Should municipalities not engage traditional leaders, what do you propose be the corresponding action?

……
……

8. Going forward, what would you recommend would be the best way for local government/ municipalities to engage traditional leaders with regards to land?

SECTION C

DEPARTMENT OF DEVELOPMENT PLANNING

Name and surname:	
Age:	
Sex:	
Position in the facility and experience:	

SECTION D: QUESTIONS FOR DEVELOPMENT PLANNING DEPARTMENT

1. In your experience, what relationship does the municipality have with traditional leaders?

…….
……

2. Have you, in your personal capacity engaged with traditional leaders? If yes, what was your experience?

…….
……

3. In your understanding, what is SPLUMA?

…….
……

4. Do you think SPLUMA has affected communities under your municipality positively? How did they manage to do this?

…….
……

5. Do you think SPLUMA has given local municipalities power over traditional leaders in their indigenous lands?

……
……

6. What is the department’s relationship with Mchunu Traditional Authority in relation to SPLUMA?

……
……

7. Does the department, in your knowledge, engage with traditional leaders before starting a land development project?

……
……

8. Does the municipality have a service level agreement with the Mchunu Traditional Authority that outlines how the municipality ought to work with the traditional authority in issues relating to land?.....

9. Going forward, what do you think the department can do differently to ensure a positive relationship with the Mchunu Traditional Authority?

……
……

SECTION E

DETAILS OF THE PARTICIPANT: WARD COUNCILLOR

Date of the interview:	
Name of the participant:	
Age:	
Sex:	
Race:	
Home language:	

SECTION F: QUESTIONS FOR THE WARD COUNCILLOR

1. In your knowledge, what is your role as a councillor in this ward as well as all other councilors in the area?

……

……

2. In your knowledge, what is the role of the traditional leader in the ward/area?

……

……

3. What development has taken place in your ward?

……

4. With all the developments in the area, has the traditional leader been consulted or only ward councilors are consulted?

……

……

5. What has resulted from the traditional leader not being consulted with regards to development in the area?

……

……

6. Do councilors, in your opinion, respect traditional leaders and more specifically the leader in your area?

……
……

7. Do you think government could better their current relationship with traditional leaders in general?

……
……

I appreciate you taking your time to fill this questionnaire. Thank you for your participation.

Nonkululeko Khanyile

Researcher

THE END