



**FACULTY OF HUMANITIES
SCHOOL OF SOCIAL SCIENCE**

**DEPARTMENT OF ORGANISATIONAL AND INSTITUTIONAL STUDIES
RESEARCH REPORT**

**THE ROLE OF TRADITIONAL LEADERS IN LAND ADMINISTRATION IN
BUSHBUCKRIDGE LOCAL MUNICIPALITY, MPUMALANGA PROVINCE.**

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A research report submitted to the Faculty of Humanities, University of the Witwatersrand, Johannesburg, in partial fulfilment of the requirements for the Master of Arts Degree in Organisational and Institutional Studies.

Johannesburg, 2021.

Declaration

I Mambo Maguranyanga, declare that this research report is my original work. I further declare that this work has never been submitted before for any examination or degree purpose to any other university. The literature and other author's work used in this report were fully acknowledged and cited accordingly.

Signature of Student

A handwritten signature in black ink, appearing to read 'Mambo Maguranyanga', with a stylized flourish at the end.

30 April 2021

Abstract

Traditional leaders' roles in South Africa, is one issue that is highly contested. Traditional leadership is the only institution without clearly defined roles in the Constitution of South Africa. In other countries such as Botswana, Ghana and Zimbabwe, the roles of traditional leaders are clearly stated in the legislative documents. On the other hand, the legislative documents in South Africa do not give these roles clearly when it comes to land administration done by traditional leaders. This study sought to understand the role traditional leaders have in land administration in Bushbuckridge Local Municipality. The research used a qualitative design, with Bushbuckridge Local Municipality located in Mpumalanga Province being the case study. The data was collected using in-depth interviews. The research found that traditional leaders have a role in allocating land in their areas of jurisdiction. Traditional leaders also have a participatory role in land planning in Bushbuckridge Local Municipality. The major challenges traditional leaders are facing in land administration are land invasion and illegal land allocation in their areas of jurisdiction.

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Dedication

To my parents and siblings for the support you gave me in writing this document. You were always there by my side. This boosted my mental strength and energy to keep marching forward. This work goes to you my loving family.

Table of Contents

Declaration.....	ii
Abstract.....	iii
Acknowledgements.....	iv
Dedication	v
List of Figures	x
List of Tables	xi
List of Acronyms.....	xii
CHAPTER ONE	1
1.0 Introduction	1
1.1 Introduction and Background of the study.....	1
1.2 Problem Statement.....	3
1.3 Research Question:	4
1.3.1 Objectives.....	5
1.4 Aims of the Study	5
1.5 Report Layout.....	5
CHAPTER TWO	7
2.0 Literature Review	7
2.1 Chapter Introduction	7
2.2 Land Administration.....	7
2.3 Land administration principles.....	9
2.3.1 Land tenure	9
2.3.2 Land value	10
2.3.3 Land Use.....	10
2.4 Objectives of land administration.....	11
2.5 Land administration systems of the world	12
2.6 Land Administration in South Africa	14
2.7 Common Problems in Land Administration	15
2.8 Cadastral System.....	16
2.9 Global Perspective on the evolution of the roles of traditional leaders.....	16
2.10 Pre-colonial roles of traditional leaders in Africa	17
2.11 Conceptual Definition of Traditional Leadership in South Africa	17
2.11.1 The traditional leaders' structure in South Africa.....	19
2.11.2 South African context on land administration and traditional leaders	20
2.11.3 Dominant debates about traditional leaders.....	21

2.12 Where legitimacy of traditional leadership is derived.....	23
2.13 Overview of legislative frameworks governing traditional leaders on land matters	23
2.13.1 The Constitution of the Republic of South Africa	23
2.13.2 Local Government Municipal Structures Act of 1998.....	24
2.13.3 Traditional Leadership Governance Framework Act of 2003	25
2.13.4 Mpumalanga Traditional Leadership Governance Framework Act of 2005.....	25
2.13.5 Spatial Planning and Land Use Management Act of 2013	26
2.13.6 The Traditional and Khoi-San Leadership Act of 2019	26
2.14 Challenges and Conflicting of roles between institutions governing land in Africa	27
2.15 Gender equality in land allocations in communal areas in South Africa	28
2.16 Sacred lands-management and the role of traditional leaders	30
2.17 Traditional leaders and land disputes.....	31
2.18 Chapter Summary	32
CHAPTER THREE	33
3.0 Research Methodology	33
3.1 Chapter Introduction	33
3.2 Study area and site selection	33
3.2.1 Demographics of Bushbuckridge	35
3.2.3 Justification of site selection.....	35
3.3 Study Area Maps	36
3.4 Research Design	37
3.4.1 Qualitative Research Design	37
3.4.2 Case Study.....	38
3.5 Sampling.....	38
3.6 Research Interviewees	39
3.6.1 Interviewee List.....	39
3.7 Data Collection.....	40
3.7.1 Key Informant Interviews.....	40
3.7.2 Secondary Data	41
3.8 Research Validity.....	41
3.9 Ethical Considerations.....	41
3.9.1 Informed Consent	41
3.9.2 Confidentiality and Anonymity	41
3.10 Limitations of the study	42
3.10.1 General Limitations of the Study	42
3.10.2 Covid-19 Induced Limitations	43

3.11 Data Analysis	43
3.12 Chapter Summary	44
CHAPTER FOUR	45
4.0 Research Findings	45
4.1 Chapter Introduction	45
4.2 Recognition and areas of jurisdiction of traditional leaders in the Mpumalanga Province	45
4.3 Role of traditional leaders in the land allocation.....	46
4.4 Traditional Leaders' role in land-use planning.....	48
4.5 Land Administration- Planning roles of traditional leaders	49
4.5.1 Integrated Development Planning and Spatial Development Framework-Traditional Leaders Roles	49
4.5.2 Operation Vuka Sisebente and traditional leaders	50
4.6 The role of traditional leaders in keeping land registers	51
4.7 Traditional leaders and sacred land administration	52
4.8 Land dispute resolution by traditional leaders	53
4.9 Fairness and impartiality in land matters by traditional leaders	55
4.10 Challenges faced by traditional leaders in land administration	56
4.10.1 Land invasion	56
4.10.2 Limited understanding and implication of by-laws in traditional leaders' areas of jurisdiction	56
4.10.3 Illegal land allocation	57
4.10.4 Working relationships between traditional leaders and municipality	58
4.11 Changes identified on the roles of traditional leaders in land administration	60
4.11.1 Legislative Changes	60
4.11.2 State land release in the traditional leaders' areas of jurisdiction	61
4.12 The role of traditional leaders in managing grazing lands.....	62
4.13 Chapter Summary	63
CHAPTER FIVE	64
5.0 Discussion of Key Findings	64
5.1 Chapter Introduction	64
5.2 Land allocation	64
5.2 Land use planning	67
5.3 Sacred lands administration	68
5.4 Challenges faced by traditional leaders in land administration	68
5.5 Land dispute resolution	69
5.5.1 Fairness and equality in land matters.....	70

5.6 Chapter Summary	71
CHAPTER SIX.....	72
6.0 Conclusion and Recommendations.....	72
6.1 Introduction	72
6.2 Summary of the Study and Conclusion.....	72
6.3 Objectives Revisited	74
6.4 Limitations Revisited	76
6.5 Recommendations	76
6.5.1 Codification of role of traditional leaders in legislative documents.....	76
6.5.2 Curbing land invasion.....	76
6.5.3 Indigenous knowledge of land administration	77
6.5.4 Strengthening cooperation in land planning	77
6.6 Suggestions for future research.....	77
Bibliography	78
Appendices.....	86

List of Figures

Figure 1: Map of Mpumalanga Province with district municipalities

Figure 2: Map of the Traditional Authorities in Bushbuckridge

List of Tables

Table 1: Overview of Land Administration in Africa

Table 2: Traditional Leadership Structure in South Africa

Table 3: Categories of Municipalities in South Africa

Table 4: Areas Size by Traditional Authority

Table 5: Interviewee List and Description

Table 6: Documents issued when land is allocated based on responses

List of Acronyms

BLM- Bushbuckridge Local Municipality

COGTA- Department of Cooperative Governance and Traditional Affairs

IDP-Integrated Development Plan

SDF- Spatial Development Framework

SPLUMA- Spatial Planning and Land Use Management Act

TLGFA- Traditional Leadership Governance Framework Act

TKSLA- Traditional and Khoi-San Leadership Act

CHAPTER ONE

1.0 Introduction

1.1 Introduction and Background of the study

This study was set to understand the role of traditional leaders in land administration in Bushbuckridge Local Municipality situated in Mpumalanga Province. This was informed by taking a look at the legislative documents in South Africa, both at the national and provincial government levels. These documents do not specify clearly what traditional leaders do in land administration. This chapter gives an introduction to the reasons why this study had to be undertaken. A background of the issues surrounding traditional leadership and land administration is given. This gives an insight on how issues have been addressed in other countries as well as in South Africa.

The research then goes into detail on the problem that exists in South African when it comes to traditional leadership and land administration. The laws that have been enacted are not giving the roles of traditional leaders clearly but they do acknowledge they have a role to play in terms of land administration. Failure to state the roles is causing conflict between elected councillors and traditional leaders. The authors who have looked at traditional institutions tend to focus more on the dominant debates on whether traditional leaders are democratic or undemocratic. This has the effect of overlooking what they actually do when it comes to land administration. The research sought to understand these roles in Bushbuckridge Local Municipality where not much is documented concerning traditional leaders and land administration.

The main question of this research is what the role of traditional leaders in land administration is in BLM. From this question, a number of objectives are created and these focus on land allocation, land-use planning, challenges faced by traditional leaders, sacred land management and land dispute resolution procedures. The study sought to enhance and get an in-depth understanding of what constitutes the role of traditional leaders in BLM.

Traditional leaders' roles have had contentious views surrounding them in the public domain and in the literature in many African countries, such as Botswana, Ghana, South Africa, Zanzibar and Zimbabwe. As a result of this, studies that seek to understand these roles are increasing. There are those who only focus on traditional leaders' role in land transactions (Kirst, 2020), those who comment on their relevance in a democratic society (Ntsebeza, 2004, 2006) and those that focus on their role in governance in general (Koenane, 2017).

There are also those who seek to dismantle the institution altogether. On the other hand, Khan, Lootvoet and Vawda (2006) argue that there is the need to incorporate traditional leaders in the new systems of governance. This is only to show a glimpse of the nature of research and where attention has been paid most to traditional leadership.

The traditional leadership institution existed in many African countries before colonisation and their duties covered a range of areas. From being in charge of judicial matters, cultural matters, political, trade and being the military heads in their areas of control. When the colonialist came and noticing the influence the traditional leaders had, they had to devise ways to limit these powers through the implementation of a system of indirect rule (Beall, Mkhize and Vawda, 2005). The authors further alert us that the colonisers recognised the roles traditional leaders used to play such as allocation of the land but they only limited their autonomy. However, the colonisers gave themselves the power to be able to dispose of the traditional leaders they did not want and replace them with weaker ones which significantly distorted traditional leadership positions (Mamdani, 1996). The Black Administration Act of 1927 is one example of legislation that was put in place to limit the power of autonomy of traditional leaders in governance issues.

In terms of numbers, the statistics alone from the Department of Cooperative Governance and Traditional Affairs in South Africa shows that there are over 800 ruling chiefs and over 1000 headmen/headwomen (Kanyane, 2017). A surprising fact is that in South Africa the traditional leadership institution is the only one with no clearly defined roles and functions in the Constitution regardless of their numbers (Koenane, 2017). Land administration is one such area that requires this clarity.

Traditional leaders' recognition in South Africa has been described by some as mired by controversy, as it is argued that it was used as a political tool to cool off political tension between the African National Congress and Inkatha Freedom Party (Klopper, 1996). Some have also raised that its recognition came soon after realising that traditional leaders wielded so much power in the communal areas where the majority of people lived in South Africa. Beall, Mkhize and Vawda (2005) argue that traditional leaders had so much influence over the inhabitants in their areas of control and those who would want to contest in elections had to go through them. It would be political suicide if one did not do this. This has remained the case in some countries like Zimbabwe. Not clarifying their role, in this case, is seen as a way to suppress their political power and influence. This is shown by the enactment of the

Traditional Leadership Governance Framework Act of 2003 which does not clarify their role particularly on land matters in South Africa.

In terms of land administration, the apartheid government gave power to traditional authorities to allocate land through the Permission to Occupy (PTO) documents but post-1994 their roles have remained undefined (Ntonzima and Bayat, 2012, p. 92). Bikam and Chakwizira (2014) also show that traditional leaders in the colonial period used to allocate land for a number of uses but currently the nature of their role is not clear. It is argued that the recognition of traditional leadership in 'both the interim and final constitution merely incorporated a clause recognising 'the institution of traditional leadership' without any clarity or guidelines as to its roles, functions and powers' (Ntsebeza, 2004, p. 80) (Buthelezi and Yeni, 2016). When we look at the law and policy frameworks that govern traditional leaders in South Africa, these ambiguities have continued to persist which affects how the institutions operate (Rangan and Gilmartin, 2002). This thesis focuses on the roles of traditional leaders in land administration in South Africa.

1.2 Problem Statement

Although the new Traditional and Khoi-San Leadership Act of 2019 (TKSLA) was enacted, the roles of traditional leaders have further remained undefined at the national level as well as at the provincial level. The Act has also carried on the ambiguities of the Traditional Leadership Governance Framework Act of 2003 (TLGFA) in terms of the role of traditional leaders and more specifically on land administration. What is ignored or intentionally skipped is the role traditional leaders have in land administration. In the previously mentioned legislative document, land administration is only mentioned once and with no clarity. Extensive literature acknowledges these ambiguities but it does not explore further to understand the role traditional leaders have in practice (Ainslie and Kepe, 2016); (Duduzane and Nel, 2016); (Buthelezi and Yeni); (Ntsebeza, 2004) and (Koenane, 2018). Ntsebeza (2004) acknowledges that the question of the roles of traditional leaders has not been resolved which is affecting decentralisation in the rural areas of South Africa. Koenane (2018) also adds that legislative documents and policies are silent on the roles traditional leaders have to play in the areas they operate. Literature on traditional leaders starts been trying to establish this but ends up being a critique of the institution on democratic grounds thus the role they play is not established.

Traditional leaders have continued to voice this issue and they have argued that failure to grant the legal title of the communal land and also to assign roles in land administration to the traditional authorities would further erode the institution (Ainslie and Kepe, 2016). Netswera and Phago (2011) add that, with no clarity of roles they feel their role in developmental issues is stripped if they do not control and administer the land. Additionally, Shabangu and Khalo (2008) contend that this is where the conflict is between the elected municipal officials and traditional authorities, as they feel that the roles assigned to elected local government councillors are similar to what they used to do themselves before 1994.

This problem has been happening across South Africa and this called for an exploration into the actual role the traditional leaders have in land administration with a case study of BLM in Mpumalanga Province. Much of the literature on traditional leaders tends to look at the democratic aspects which have failed to generate consensus amongst scholars and academics (Ntsebeza, 2006); (Ntsebeza, 2004); (Mulaudzi, 2017); (Koenane, 2017); (Ntonzima and Bayat, 2012). Mulaudzi (2017) comments on the ideological clashes of liberal democracy and the African system. The author shows that there is a tension of these ideologies and this has put traditional leaders in a position of seeking survival as legislation is slowly eradicating their powers in favour of democratically elected officials. Koenane (2017) weighs in these democratic debates by saying that traditional authorities have their own way of understanding democracy thus operate through consensus when making decisions. The author factor argues that although different political dispensations have come to be in South Africa, traditional leaders have endured. The democratic dispensation has also failed to give the traditional leaders clearly defined roles as the debate on the democratic nature of traditional leaders has the main focus. Buthelezi, Skosana, Vale (2019: vii) are of the view that the dichotomy of these two has masked the lived experiences in different communities thus these experiences 'are often missed'. This research sought to add to the literature what constitutes the roles of traditional leaders in land administration in Mpumalanga Province. The focus of understanding their roles is because the Constitution and the different policy frameworks do not specify clearly their role in land administration (Ntsebeza, 1999) and this calls for empirical research to know their role and thus avoid conflicts with municipal officials. The debates around democracy have masked understanding of these roles as was shown above.

1.3 Research Question:

What is the role of traditional leaders in land administration in Bushbuckridge Local Municipality, Mpumalanga Province?

1.3.1 Objectives

The research seeks to answer the research question by focusing on the following:

- To examine the role of traditional leaders in land allocation
- To determine the role of traditional leaders in land-use planning
- To establish the challenges faced by traditional leaders in land administration
- To understand the role of traditional leaders in sacred land administration
- To understand how land disputes are resolved

1.4 Aims of the Study

The study seeks to understand the role traditional leaders have in land administration in Bushbuckridge Local Municipality. The research sought to add to the body of literature and focused on the role of traditional leaders have in land administration in the local municipality. The focus on how the traditional leaders handle land disputes will increase an understanding of the issue. The exploration will include how they administer sacred lands and allocation of the land in the province as this all falls under land administration. Additionally, the research further seeks to explore the challenges faced by traditional leaders in executing their duties and functions in issues to do with land administration.

1.5 Report Layout

This research report consists of six chapters. A brief outline of this is given below.

Chapter One- provides the introduction to the research on the role of traditional leaders in Mpumalanga Province. It also gives the problem statement and the question the research sought to ask in the field.

Chapter Two- reviews the literature on land administration and traditional leaders in Africa and South Africa. This chapter also gives the debates surrounding traditional leadership in South Africa. An overview of the legislative documents is also given in this chapter and an analysis of these documents is also given with a focus on traditional leaders' roles in land administration.

Chapter Three- presents the research methodology and the approach used in this research. The chapter describes the case study, site selection and sampling used for the research. The chapter also describes the instruments used to collect the data. It also describes the research limitations and validity of the research. The chapter also gives the research ethical considerations of the research.

Chapter Four- details the finding of this research in the roles of traditional leaders. The chapter details the role of traditional leaders in allocating land, planning and dispute resolution of land matters. The challenges faced by the traditional leaders in land administration are also given in this chapter.

Chapter Five- The chapter discusses the findings of this research. The chapter discusses the findings under five themes namely land allocation, land use planning, sacred land administration, land dispute resolution and challenges traditional leaders face in land administration

Chapter Six- presents the conclusion of the study and further gives recommendations on the issue of the roles of traditional leaders in Mpumalanga Province. The chapter also gives the areas that require further research and that could not be undertaken by the researcher.

CHAPTER TWO

2.0 Literature Review

2.1 Chapter Introduction

This chapter provides focuses on the literature surrounding traditional leaders and land administration. The approach is from a global perspective and a specific focus on South African in the interrogation of- the debates, conceptual and theoretical underpinnings of this research. The concept of land administration is interrogated. The conceptual understanding of what a traditional leader in different countries and coming back to what it means in South Africa. More so, it further looks at the different levels of traditional leadership, the key debates and where they derive their legitimacy. The legislative frameworks were also added with the way they try to speak to the role of traditional leaders. The chapter also looks at sacred land and the challenges faced by traditional leaders. With this being said, we now turn to the literature on land administration.

2.2 Land Administration

Land administration has a long history in many countries but the exact time the term was coined is subject to debate. Dale and McLaughlin (1998) illustrate that the term started to gain popularity around 1973 in Malaysia. The United Nations Economic Commission for Europe (UNECE) on the other is of the view that the term was coined in 1993 when the Land Administration Guidelines were drafted (UNECE, 1996). Williamson, Enemark, Wallace and Rajabifard (2010, p. 3) also add that land administration is not new but rather it has been evolving over time and is believed to have come out of the cadastre system and also to include registration of land so as to ensure that land rights are secure in the communities. In an earlier article of these authors, they argue that 'land administration systems are considered to include a core parcel based on cadastral and land registration component, multi-purposed cadastres and/or land information systems, and in many systems facilitate or includes information on land use planning and valuation/taxation systems- although land administration does not usually include the actual land use planning and land valuation process (Enemark and Williamson, 2004, p. 641-2). Tija and Coetzee (2013) also point out that land administration quite new, however, it borrows from the cadastre, land registration, land surveying and mapping that dates back to the 3000BCE in Egypt. Although the difference in trying to pin the exact time the term came into existence there are similarities in what the term means and an understanding that the term has generally been evolving with time, as is shown below.

Kundo (2018) also argues that land administration in Bangladesh involves allocating land for settlement, development of land tax systems, recording of land allocations and also updating these land records. The author states that in Bangladesh land administration is carried out by different institutions that do not work closely together as there are a lot of policies that relate to land administration. Land administration is also understood as involving the processes of defining the land rights, ensure effective land markets are created and also ensuring that property rights are secure (Wyatt, 2011). Wyatt (2011, p. 506) further states that land administration also involves the process of land planning so as to ensure that there no illegal settlement on the land, recording of historical sites, protection of the environment.

Furthermore, UNECE (1996) cited in Williamson et al (2009, p. 4) argue that land administration 'is the process of determining, recording and disseminating information about ownership, value and use of land and its associated resources'. This has become the dominant and most sighted definition of what land administration is. On the other hand, Setha and Mund (2008) combine land management and land administration together and follow a similar position to the definition above. In their case, they do not separate the two in their definition as there is a thin line between the two terms as far as the definition of administration and management are concerned. They argue that these two are systems used when planning and managing land issues that not only pay attention to the social aspects of the land but it also looks at the economic and legal aspects of the land as well. To further understand what really constitutes land administration, in addition to what has been said above, Enemark and Williamson (2004) argue that the system used for land administration takes into account the social, political, legal and technical aspects for which land managers and administrators take into account. Of importance to note also is that systems used do not only look at what is on the surface but extends to the resources beneath as well as the marine environment. Tija and Coetzee (2013) concur with the above definitions of land administration but also add that land administration is concerned with the relationship between land and people, taking into account issues of ownership and that of security of tenure.

From the different definitions that have been given above, this paper takes the position that land administration is the process that involves planning, allocating, collecting land taxes, handling land disputes, registering land titles and making ownership information be readily available. Land administration, therefore, takes into account the social and cultural aspects of land issues as different people attach meaning to the land. The argument given by Enemark

and Williamson (2004) is therefore key for this paper as traditional leaders operate within cultural, political and social spaces, which helps understand their role better.

Land administration was often taken for granted by the developed world but this all changed in 2008 after the global economic collapse which forced the nations to think through and deeply about land administration. Williamson et al (2010) are of the view that as a result of this global economic collapse attention has now been made to take into account land information and understanding in detail the different mortgage policies and processes that relate to land transfers and land as a complex commodity. The reason for understanding this follows that as land administration is constantly changing and advancing while different things happening within it need to be understood. Land administration needs constant updating as it deals with a number of spatial information (Tija and Coetzee, *ibid*); (van Molen, 2002). They are of the view that innovative ways of carrying out land administration have to be devised so as make sure actors within it remain effective and the land administration systems remain efficient. How such information on land and the actors involved in administering the land have to be understood which was the emphasis of this research. This then sits well with the themes of this paper as; it observes that land administration is ever-changing thus regular checks to establish the land administration actor's role is important. This is why the researcher undertook this study to determine the role of traditional leaders in land administration as clarity of their roles is required. In order to under land administration, we can divide into land administration principles which shade more information on what actually happens in land administration as given below.

2.3 Land administration principles

The basic principles of land administration include land tenure, land value and land use (Enemark and Williamson, 2004). These principles should not be read independently as they work together in practice. 'Each attribute of land needs to be carefully managed and to achieve this there must be good land records: of ownership to ensure the security of tenure; of value to ensure fairness in land and property and equity in the compulsory acquisition of the land for State purposes; and of the use of land to ensure efficient resources management' (UNECE, 1996, p. 11). This thesis will focus on land tenure and land use.

2.3.1 Land tenure

Land tenure is the aspect of land administration that deals with the security of land rights and allocation of the land. Land tenure is defined as the relationship people have to the land in terms of the right to use the land and control it legally or customarily (FAO, 2002). Land

tenure looks at the legal boundaries that are placed on the land in question and giving titles to the right holders of that land. UNECE (1996) adds that aspect is important as it seeks to create security of tenure for landowners as well as investors of the land be it national or foreign. Land tenure also encompasses management and adjudication of doubts and disputes regarding rights and parcel boundaries (Enemark and Williamson, 2004).

2.3.2 Land value

The land value principle is concerned with the attachment, assessment of value on the land and the collection of the land taxes. In most countries, this is where most of the land taxation is handled. As Wyatt (2011); Enemark and Williamson (2004) show that land administration is also used in the collection of tax revenue, with the current legislative frameworks in place this collection of these is also not quite clear as different players are given the same roles and clarity of these also have remained vague. Koenane (2017) argues that the form of land tax traditional leaders collect is mainly for the use of the land. Buthelezi and Yeni (2016), Ntsebeza (2004) raise concerns on how and why traditional leaders collect land taxes. Although the function of land administration clearly shows that one of its essences is the collection of land taxes, critics of traditional authorities overlook that the policies and legislation do not specify the role they have to play but rather assume only elected officials have the prerogative to do so. A challenge to policy-makers thus has to be the main focus in establishing and clearly specifying who has to collect these would be ideal and this starts with an understanding of the roles of each actor, in this research's case traditional leaders.

2.3.3 Land Use

This is the division of land administration tasked with 'the planning of the land policies, regulations and enforcement; the implementation of these plan through granting permits to use and develop land according to the controls and the management and adjudication of land-use conflicts (Enemark and Williamson, 2004, p. 641). Wyatt (2011) argues that this principle helps prevent the illegal use of the land for other reasons not prescribed by the laws of the country or in our case the particular provincial laws. United Nations (2005) cited in Wyatt (2011) define land use as a process of planning and determining the use of land in a given area so as to ensure efficient use of resources in that area. This also ensures that the prescribed use of the land does not impact negatively on the environment and welfare of community members.

Breaking down land administration into these principles like what other authors have done is important because it makes it easier to determine the roles more clearly. With the broad

nature of land administration, this research mainly focuses on land tenure as this is where allocation procedure and the disputes can be understood fully. This research focuses on land taxes as an indicator of value in areas under the jurisdiction of traditional authorities in order to understand their role within such aspects. The importance of looking at such emanate from the critiques raised by various authors on land taxes which in some academic circles they consider this tax illegal (Buthelezi and Yeni, 2017); (Ntsebeza 2006). After breaking down land administration into these principles it is also important to look at its objectives and these are given below.

2.4 Objectives of land administration

Setha and Mund (2008, p. 358) add that the purpose of land administration is to ensure that the land is managed in such a way that it meets the ever-changing human needs while ensuring that the land and the environment are protected for the generations to come. What is interesting in this objective is that it speaks to the protection of the land and the resources below the surface. In rural areas where traditional leaders govern there are grazing land and firewood that have to be protected thus a clear understanding of the role traditional leaders have in such is important (Ngugi and Nyariki, 2005).

In looking at the different ways for addressing poverty reduction and sustainable development, Zevenbergen, De Vries, Bennet (2016) note that land administration is an essential tool as it bridges the divide between those who have limited access to land and those who have an abundance of it. Essentially what these authors are saying in the context of development is that land administration is there to alleviate poverty, make sure there is tenure security and access of land to all. This is the same view that is shared by Enemark and Williamson (2004) in that land administration has to bring about sustainable development which can help alleviate different social problems in society.

Additionally, UNECE (1996) indirectly gives the objectives when they highlight what good land administration should be like. On this issue, the land administration guidelines state that good land administration is there to ensure there is the security of tenure which therefore opens the way to understand traditional leaders' role in ensuring such. The article further adds that land administration should be there to minimise land disputes while also protecting the state's land from illegal settlements or land invasions.

2.5 Land administration systems of the world

Different countries have different systems that they use in terms of managing land. In stressing out the point that land administration is different in different countries and regions, Van der Molen (2002) compares the different regions of the world. On the part of industrialised countries, particularly those in Europe the author argues that these countries might have country covering land administration systems but the limitation of such is that, it makes it difficult in registering public land rights (especially those localised land rights of different communities). Another difference in land administration in other regions such as those in Central Europe and some African countries' land administration is that it takes into account the arrangements and institutions that have come to be accepted by the people. Van der Molen (2002) again notes that there may be a problem with such land administration systems in that they may be difficult to enforce at law and having sound land registers in place. Hull, Babalola and Whittal (2019) also illustrate that there are different land administration systems in their work on the land inform theories. Their argument is that the value people attach to land is context-specific so land administration systems can put in place to address these differences. These differences in how land is administered can diverge from the common and often well-understood Western norms of land rights, allocation and land tenure (Hull et al, 2019). When this is the case land administration has to be aligned to the societal context in is being carried out.

Furthermore, in exploring these different land administration systems, a majority of African countries have what is called dual land administration systems. These systems may also be referred to as plural land administration and it simply refers to a phenomenon of having multiple land administration systems in place (Wily, 2003). For example, it can be that the administration is decentralised thus focusing on certain types of land rights while on the other hand having a centralised system in the case of South Africa, Tanzania, Botswana and Zimbabwe (Wily, 2003). In South Africa, the legislative frameworks tend to give the prerogative of provinces to decide how this is to be done and arguing that the traditional leaders have a role to play in land administration. Although this is the law in place clear clarification of such roles is not given thus operation in practice of traditional leaders in land administration has to be understood. The relevance of understanding this is informed by the fact that the laws in the different African countries have this in place and in the rural areas the land administration has the involvement of traditional leaders or traditional institution as there is recognition of customary land rights and those that are formally recognised in the

statues of the country. Since there is this duality or plurality of land administration this research sought to understand the role traditional leaders have as the very existence of them has been subject to debates thus clarity of what they do in practice is of importance.

Table 1: Overview Land Administration in Africa

Country	Body/Actor	Type of Decentralisation	Extent-Empowerment	Province, region	District	Sub-District	Village
Eritrea	Govt	Deconcentrated	Low	X			
Tigray Et.	Local Govt	Devolved	High		X		X
Amhara Et.	Govt	Mixed	Medium	X	X		X
Uganda	Autonomous	Devolved	High		X	X	
Tanzania	Local Govt	Devolved	High				X
Kenya*	Autonomous	Devolved	High		X		
Zanzibar	Govt	-	Low	(central)	X		
Rwanda*	Semi-auto	Deconcentrated	Medium		X		
Zambia	Govt and TA	Mixed	Low	x			X (chief)
Malawi	Local Govt	Devolved	High		X		X (chief)
Mozambique	Govt and TA	Deconcentrated	Low	x			X (chief)
Zimbabwe*	Local Govt	Devolved	High		X		X
South Africa*	Govt and comm.	Devolved	Mixed		X	?	? (Will vary)
Botswana	Autonomous	Devolved	High		X	X	
Lesotho*	Local Govt	Devolved	High		X		X
Swaziland*	Community	Devolved	Medium				X
Namibia	Auton and TA	Mixed	Medium	X			X (chief)
Angola*	Govt	Deconcentrated	Medium	X			
Ghana	Govt and TA	Mixed	Medium	X		X (chief)	
Burkina Faso	Local Govt	Mixed	Medium				X
Niger	Govt and TA	Mixed	Medium		X		X (chief)
Ivory Coast	Community	Devolved	High		X		X
Senegal	Local Govt	Devolved	Medium		X		

*Proposed: provided in policies or laws not yet officially approved

Source: Wily (2003, p. 13)

The table above gives a sense of how land administration in Africa has been. Wily (2003) has been the one to look at a number of countries in a research and other scholars only work on country case studies thus the table has not been updated. In most of the countries, it does show that land is administered in different ways and also that different actors and institutions are involved in land administration. In the case of South Africa, which was the focus of this research, it is central government and the district level allocations and administrations that

show the duality of the approaches used in land administration. Every system that is in place has its own follows and an understanding of the common problems is key.

2.6 Land Administration in South Africa

Land administration South Africa operates on a system that both recognises customary law and Roman and Dutch Law. The former does not guarantee secure tenure rights while the former guarantees this through title deeds. For example, Cousins and Hall (2011) show that the prior 1994 Black people were given inferior title to the land they owned in urban areas and the situation was worse in the former homelands because of the apartheid laws that were there. The apartheid systems created an instance where there were those that had rights and those that did not. This created what Mamdani calls a bifurcated state (Mamdani, 1996). Post-1994, particularly in the rural areas, things have remained the same as there is no security of tenure. It is also argued that traditional leaders are of the view that ‘...the Western-imposed legislative framework fails to appreciate the interplay of individual and group rights, how these live side by side in a mutually beneficial inclusive and harmonious fashion rather than in a competitive manner’ Advisory Panel of Land Reform and Agriculture (2019, p.35). What this alerts us is that private property rights are considered more over the indigenous ways of doing things, which in most cases are shunned. This then has the effect of creating problems in land administration as evidenced in South Africa.

The Department of Agriculture Land Reform and Rural Development in South Africa is the one that deals with the policies on land at the national government level (DALRRD, 2020). It is therefore entrusted with handling national-level cadastral surveying, mapping, the registration of deeds, land restitution, redistribution and handling land claims. It coordinates with Provincial Government, Municipalities and Traditional leaders on land administration in South Africa (DALRRD, 2021). These first two institutions have their role clearly spelt in the Constitution and other legislation. They give title deeds for land parcels they sell in their areas of jurisdiction and are involved in spatial planning in the country. Traditional authorities are the ones that do not have specific roles assigned to them in land administration.

When it comes to land rights in the rural areas of South Africa it is seen to be a problem. Pienaar (2009) argues that the failure to resolve these has the effect of causing serious economic and political problems. The author further adds that the branch of land administration in South Africa that needs special attention is land registration and land tenure. Sound policies and effective procedures have to be put in place to deal with the insecure

rights particularly in the rural areas. The Commission for Gender Equality (2009) concurs with this by saying the pressing problem in South Africa as far as land is concerned is the lack of secure land rights. They further point out that the challenges form part of the daily struggles of rural people in their quest for social reproduction through land-based livelihoods. Women are the ones affected more by the chaotic land administrative systems that are in place as roles of officials particularly traditional leaders are not given. On this problem of land administration in South Africa, The Advisory Panel on Land Reform and Agriculture (2019) reported that land tenure in communal areas is a problem and this has the effect of excluding the people from participating effectively in the mainstream economy. The argument they raise emanates from the fact that acquisition of line credit for such insecure land they reside on is a challenge as banks do not accept the PTOs. The Advisory Panel on Land Reform and Agriculture further shows that as a result of this land administration failure, more than 60% of South Africans do not have recorded titles to the land they reside on. From what is gathered here land administration is indeed a problem especially of the principle of land tenure.

2.7 Common Problems in Land Administration

More so, Enemark et al (2004) argue that over two-thirds of the world population are excluded from the formal land administration systems in place thus their rights to land are not secure. The main groups of people most affected by this are the poor, women and other vulnerable groups. This means that the land they occupy is mostly unregistered which contributes to their tenure insecurity. 'What they do possess are informal, customary and unwritten land interest, which in most cases. This is a major problem that needs to be addressed for land administration to benefit all. One of its objectives as was mentioned earlier speaks to this but the systems in place have these problems.

Bugri (2012) cited in Biitir and Kuusaana (2020) alerts us that in Ghana some land is managed by landowners who are also entrusted with handling customary land transactions. The problem that arises from this is that they do not record these land transactions properly due to a lack of skilled human resources and financial resources to do so. Biitir and Nara (2016) cited in Biitir and Kuusaana (2020) add that transparency, therefore, lacks in the recording of these land transactions as some of the landowners rely on unskilled personnel who end up allocating land without alerting the head landowner. This becomes a problem when land transaction records and the registers are not showing the true picture on the ground in regards to ownership and the value of that land.

2.8 Cadastral System

It is impossible to talk about land administration without elaborating further on the operation of the cadastral system. The concept of the cadastre is one that is universal in nature and speaks to the official mapping of the territory and setting boundaries, registering of the land and attaching different values to the land or property (Yomralioglu and McLaughlin, 2017). What is gathered from this concept is that it helps document the records of ownership, determining the borders and the use of such land as it enables the issuance of title deeds which further answer the question of who owns the land, where it is and its size and, in most case, how much such land or property is (Yomralioglu and McLaughlin, 2017). In corroborating with this, UNECE (1996, p. 11) argues that a cadastre and a land register are similar in that it provides details of the land and in some cases provides a legal basis of holding such land. 'A cadastre is an information system consisting of two parts: a series of maps or plans showing the size and allocation of all the land parcels together with text records that describe the attributes of the land. It distinguished from a land registration system in that the latter is exclusively concerned with ownership' (UNECE, 1996, p. 11).

2.9 Global Perspective on the evolution of the roles of traditional leaders

There has been a view in the literature and public domain that decentralisation of the state functions to communities helps improve participation in land administration issues and this has revived the interests in studies of traditional leaders in sub-Saharan Africa (Kirst, 2020). The author adds that with the large-scale transactions of land in Africa the role of traditional authorities in land administration has kept emerging and further notes that an area often overlooked is their role in land conflicts. When we look at the developments in rural Zanzibar the political decentralisation happening there has also necessitated the resurgence of academic interest in traditional leaders' role in land administration (Dean, 2013, p. 18).

Still on the global trends, Cliffe et al. (2011) argue that at independence in Zimbabwe the land administration roles of the traditional authorities were changed and this saw the transfer of power to local government. What is interesting as these authors note is that two decades later the traditional leaders are given their powers back in land administration and these matched the ones they had under colonial rule in the then Rhodesia. Reasons for this have been pointed to the power they wield on the rural population as they reside on the land they control and also to get the support of the rural populace in time of elections. Mujere's account as noted by Cliffe et al. (2011) shows that competing entities emerge in land administration in the case of Zimbabwe, with all of them claiming sole mandate in land administration as a

result of the ambiguities of legislation. The gap that exists is articulating the role of traditional leaders in land administration.

2.10 Pre-colonial roles of traditional leaders in Africa

More so, there is a view that traditional leaders in pre-colonial Africa had the role to provide fair and equitable distribution of the land for the community. 'Chiefs were also mandated to distribute the land among their people equitably. This implies that they were not supposed to hoard the land that belonged to the community for their personal gain' (Makahamadze, Grand and Tavuyanago, 2009, p. 36). They further add that in Zimbabwe for instance, traditional leaders had an administrative machinery of people from which they consulted and sought advice. Similarly, Dusing (2001) points out that traditional leaders in the pre-colonial period were not in a position to unilaterally make legislative decisions without their councils' knowledge and approval. From all this we can also pick that, the land allocation had to be approved by the council as well. Makahamadze et al (ibid) noting the work of Ranger (2001) with reference to the Ndebele kingdom understand that there was no chief in the area who made a decision on their own without consulting the council and the people. This then challenges a lot of narratives that are of the view that they do not involve the people in their decision-making. Without ruling this narrative from these facts, the postcolonial states, therefore, require the need to be critically analysed to determine whether this is how traditional leaders operate and if they still perform this role.

2.11 Conceptual Definition of Traditional Leadership in South Africa

The term traditional leader varies within different communities and as well as their powers and duties world over. Traditional leaders are not homogenous in South Africa because of the different cultures that are available. Makahamadze, Grand and Tavuyanago's (2013) understanding of what traditional leaders are is that they are people who occupy the positions of power and leadership within their community as a result of their ancestry of lineage. A traditional leader is a person who occupies a throne based on the ancestral history in order to be in control and regulate social behaviours and matters within their jurisdiction or community (Dlungwana, 2012) cited in (Koenane, 2017). Ombe (2003) shares that the traditional leaders infuse Indigenous Knowledge Systems in the management of land. They are therefore responsible for traditional environmental practices. Ombe (ibid) further notes that this role traditional leaders hold is threatened by social and historical pressures particularly the customary positivist approaches to the environment. This approach is said to blame the rural communities and traditional leaders for land degradation. Traditional leaders

are a rich source of indigenous knowledge and practice as they are custodians cultural of practices in communities.

Traditional leaders' role has evolved since the colonial time and it included authority over the different spheres of government that is judicial, legislative and executive (Mamdani, 1996). Ntsebeza (2004) in analysing this there note that the nature of their authority went against the notion of separation of power which is a feature of democratic and liberal authority. From this is where one of the dominant debates around traditional leadership emerges as they are viewed as not democratic.

Beall, Mkhize and Vawda (2005) are of the view that there may be misconceptions of what really constitutes traditional leadership in that the dominant narrative is that the institution is resurgent but rather it is persistent. What these authors are simply trying to highlight here is that like all other institutions there do exist continuities and discontinuities of the practices they do. On the other hand, Rugege (2003) posits that that traditional leadership existed in the pre-colonial periods as the leaders then had control over the military, political, social, cultural and also the custodian of the land. Linking this to Beall et al (2005) we can also see why the institution has maintained some of the roles they had but we must understand that they have changed significantly.

In the colonial time, traditional leaders were appointed from above and some were hereditarily appointed which is one of the features that has remained and stirred controversies with the democracy proponents (Mamdani, 1996). When we look at the traditional leaders in South Africa, we can clearly observe this occurrence as there are hereditarily appointed and they do not have terms of office as death is the only thing that ends their authority. As a result of this continuation of the colonial legacy after colonial states got independence, attempts were made by the post-colonial government to reform it as Mamdani, (1996) cited in Ntsebeza (2006) points out, however, traditional leaders and their institution were not democratised. As a result of this, this is where Mamdani's (1996) work is famous for in that he argues that there is the need to dismantle the bifurcated state which is one of the dominant debates surrounding traditional leadership. According to Mamdani (1996), this is defined as an attempt to link the rural and the urban by the removal of the binaries that exist such as 'rights and customs, representation and participation, centralisation and decentralisation....' (Mamdani, 1996, p. 34).

Ntsebeza (2004) notes that when we talk about traditional leadership in South Africa, there are those who support the idea that traditional leadership survived the colonial period because of the indirect rule by the colonialist. To put this into perspective, Mamdani (1996) argues that when the colonialist came to Sub-Saharan Africa, they were faced with the need to have alien rule and also the control of the natives. In order to do so there was the need to devise a way to push the indirect rule a point that Mamdani's (1996) work dwells much on. Adding on to this narrative, Ribot (2004) strongly believes that this notion of indirect rule was to issue the majority that is to say the Africans had to be managed by administrative means and not to try to enfranchise them. To further this with the words of Colonel Louis de Trentinian, he said 'Do not get mixed up in the many conflicts without significance, which demand an understanding of the moral and traditions of the population. Instead, give additional prestige to the native leaders, who are indispensable intermediaries' (Ribot, 2001, p. 74) cited in Ntsebeza (2006, p. 17). This reinforced the continuation of traditional leaders however their powers were more regulated than before.

2.11.1 The traditional leaders' structure in South Africa

Traditional leaders in South Africa fall into different categories. They are managed by the Department of COGTA in South Africa. They operate within traditional councils set up in the areas of jurisdictions. Below is the table that shows the structure of traditional leaders in South Africa.

Table 2: Traditional Leaders Structure in South Africa

Structure	Description
King/Queen	Is a traditional leader at the top of traditional leadership in South Africa in their areas of jurisdiction. They have authority over senior tradition leaders and they operate in the confines of customary law. They are recognised in the Constitution and TLGFA of 2003. Mpumalanga Province has two Kings that are recognised, these are from the AmaNdebele Kingship and Ndzundza-Mabhoko Kingship (COGTA, 2016).
Principal Traditional Leader	Is a traditional leader 'under whose authority, or within areas of jurisdiction senior traditional leaders exercise authority in accordance with customary law' (TLGFA, 2003: Chapter 1)
Senior Traditional Leader	Is a traditional leader of a specific traditional community who

	is given authority to be in charge of a number of headmen or headwomen.
Headman/Headwoman	These traditional leaders fall under the authority of senior traditional leaders in their area of jurisdiction. This is the lowest level of traditional leaders in South Africa.

Source: TLGFA (2003)

The above table shows the structure of traditional leaders in South Africa. This is also similar in many African countries such as Botswana, Lesotho, Namibia and Zimbabwe (Kurebwa, 2018; Rugege, 2003).

2.11.2 South African context on land administration and traditional leaders

South Africa, has over 800 ruling chiefs and over 1000 headmen that have the authority of over 40% of the population in South Africa (Khan, Lootvoet and Vawda (2006, p. 89) cited in (Kanyane, 2017); (Department of COGTA Website, 2021). A strong debate has been about having or dismantling the institution altogether from various authors and political circles. For example, Khan et al (2006: 175) argues that an attempt was made towards the year 2000 to have municipal control over tribal areas but this attempt fuelled a lot of complexities in the roles of traditional leaders and municipal councillors thus on all metropolis in South Africa, Durban is where there is the existence of traditional leaders in an urban setting.

In giving a historical perspective of traditional leaders in terms of land administration, Ntsebeza (2006) argues that land allocation was done through the issuance of permission to occupy (PTO) letters. This was done at different levels of traditional leadership as was highlighted earlier that there is the kingship level, senior level, headman level and sub-headman level. The allocation was usually to a man who would identify the land and garner support for it to be parcelled out to them. The way the allocation was or is done is the bone of contestation with gender activists as it goes against the dictates of the South African Constitution in being a male-dominated process. Adding on to the role traditional leader played, ‘the sub-headman then called a ward assembly (*imbizo*), at which the purpose was to offer people an opportunity to comment on the application’ (Ntsebeza, 2006, p. 78). After this was done the sub-headman would report back to the headman who would verify and give a receipt to the land applicant of the land which was later to be submitted to the magistrate. Ntsebeza (2006) goes into detail about the role traditional leaders played in land allocation, collection of fees, accompanying the applicant to the magistrate and record-keeping at the

traditional authority. As was mentioned earlier that traditional leaders are not homogenous understanding their role in the context, they operate is important.

2.11.3 Dominant debates about traditional leaders

Some view traditional leaders to be undemocratic as they do not come to power through the popular vote but are imposed on the people (Ainslie & Kepe, 2016a). This follows that most of the traditional leadership appointments are hereditarily passed, which is why objections to them have been made in a democratic society like South Africa (Ainslie and Kepe, 2016). Similarly, Buthelezi and Yeni (2016) showing that they are undemocratic, argue that traditional leaders use coercion and tend to make decisions unilaterally in the area they govern whether in land or developmental projects. Counter-arguing, Koenane (2018) argues that proponents of the traditionalist school of thought view the institution of traditional authorities as democratic when compared to the modern political order. Beall et al (2005, p. 759) noting the work of Veblen (1902) argue that ‘like culture, institutions are not static but they are inherently inert. Configured by the past processes and circumstances they are never in full accord with the requirements of the present’. Although they take a position that is neither for democratic approach or that of the traditional in the debate, they shade an important point in that institutions do not conform to new rules all at once but with time they will be. The contestation above may explain why their role in land administration is not clearly given but in practice, they are involved in land administration which supported undertaking this study.

Regardless of the way the traditional leadership institutions have been said to be undemocratic and tainted because of their historical past particularly the time in the colonial and apartheid-era it has continued to exist (Beall et al, 2005). Beall et al (2005) further argue that this dichotomy of traditional and modernist approaches should be closely looked at as this can also mask the transformation that takes place when there is a multiplicity of institutions that exist. Although a reading of this approach these authors opens up the question of the role the traditional leaders have and understanding what they are supposed to do when these multiplicities of institutions exist in this case the traditional and the modernist approaches which usually operate at a tangent to each other. As has been

Another debate that exists emanates from the point Rugege (2003) with reference to Mbeki’s point that traditional leaders and this institution were significantly distorted by the colonialist and apartheid rules. The point that is stressed out here is that the apartheid system allocated

roles to traditional leaders that include land allocation and judiciary as well as others which they were not supposed to have in the first place. This follows that the roles they are said to have are actually performed by local government and rightly pointed out in the legislative documents in detail. Challenging this insinuation, Kanyane (2017) notes that traditional leaders would disagree with it by pointing out that their roles date back as far as the precolonial, apartheid and even the post-apartheid democratic dispensation.

Authors like Ray (1996), Bank and Southall (1996) have argued that the institution of traditional authorities in South Africa is compromised as they argue that they were complicit or collaborators of the apartheid system and thus the institutions lacked accountability when they managed the former Bantustans (Ntsebeza, 2004). Ainslie & Kepe (2016a) acknowledge this but they argue that there are mixed reactions to this in relation to the legacy of traditional leaders in that some helped fight colonialism and managed land well. Koenane (2018) also points out that the institution still has a role to play and can have a positive impact on the development of rural communities thus showing a point that they can coexist with the Western model of governance. This also then supports the idea of a dual or plural land administration system as was highlighted earlier.

In South Africa, some have pointed out that with massive corruption and poor administration of land that happens in local government, some consider traditional authorities as a better system of governance, especially among the rural population. Faced with this, the objection to traditional authorities for lacking accountability has thus been quashed as municipalities have faced these challenges also which has significantly affected service delivery in South Africa (Ainslie & Kepe, 2016a). Similarly, Dean (2013) argues that the traditional authorities in Jongwe in Zanzibar show that the institution does work in the contemporary world. Although this has been noted, debates surrounding traditional authorities in terms of their role have therefore been unresolved since their recognition post-1994 in South Africa. As a result of this, traditional leaders or authorities have faced challenges and even uncertainty in their continued existence in the postcolonial state (Ainslie & Kepe, 2016a). Kanyane (2017, p. 212) believes that although there is the recognition of traditional leadership in South Africa, it can be observed that there is a slow erosion of their sovereignty and relevance as a result of modernity and also migration to urban areas.

Although most of the literature available focuses on the undemocratic nature of the institutions in different provinces, it fails to state the role they have to play in land

administration whether democratic or not. This research did not seek to establish if they are democratic or not as this is unlikely to be resolved as shown by the debates above. Agreement from these different bodies of literature is highly unlikely. Understanding this, the researcher sought to move beyond this debate and thus takes this institution as it is, not only because it is recognised in the Constitution of South Africa but the traditional authorities have a lot of influence in rural communities when we look at the politics of land. The research acknowledges these debates but focused more on their role in land administration as they are a lot of ambiguities on this aspect.

2.12 Where legitimacy of traditional leadership is derived

When one brings in things to do with leadership, it will be difficult to overlook issues to do with legitimacy which also includes the legitimacy of them being involved in land administration. Traditional leaders and their leadership do not necessarily derive their legitimacy from customary laws but they are accorded these through their recognition within the statutes and the Constitutions of different countries. For example, in South African a number of statutes were enacted like the Traditional Leadership and Governance Framework Act of 2003 and the Constitution of the Republic of South Africa. The concept of 'legitimacy is a generalised perception or assumption that the actions of an entity are desirable, proper or appropriate within some socially constructed systems of norms, values, beliefs and definitions' (Suchman, 1995, p. 574).

2.13 Overview of legislative frameworks governing traditional leaders on land matters

South Africa has had a long history of the laws governing traditional leaders. From the 1900s onwards a number of legislative documents were enacted and others repealed. It focuses on the Constitution of South Africa, Traditional Leadership and Government Framework Act, Spatial Planning and Land Use Management Act, Local Government: Municipal Structures Act and the Mpumalanga Traditional Leadership Governance Framework Act. The Traditional and Khoi San Leadership Act is also given to show how traditional leadership will be governance after April 2021 as this is when this Act is becoming operational.

2.13.1 The Constitution of the Republic of South Africa

The Constitution is the supreme law of the country and Chapter 12 (s211) recognises traditional leadership institutions and their leaders. The Constitution further states that the status and roles of traditional leaders have to be in line with the national legislation. Chapter

12 (s212) also states that national or provincial government may provide for these roles but are subject to the Constitution (Constitution of the Republic of South Africa, 1996).

In the Constitution traditional leadership is the only institution with no clearly defined roles is that of traditional leaders. To add to this confusion, it makes clear is that they should operate within the confines of customary law and customary law which is quite broad and differs given the tribes and culture within South Africa. Furthermore, the Constitution does not do justice in stipulating the roles of traditional leaders as it only states that the national legislation or provincial legislation may provide for this (Constitution of the Republic of South Africa, 1996). This vagueness in the actual roles they have to play is continued in the different legislative documents that are analysed below.

Buthelezi et al (2019) rightfully note that the role of traditional leaders in South Africa is a highly contested one and the Constitution's formulation of these role is in an ambiguous way which ultimately adds to the confusion around the traditional leaders' roles. What can be picked from the authors is that the statues vagueness in terms of the role of traditional leaders makes it prone to manipulation and the laws being breach at they will be operating in a vacuum. On the legislative front, Chief Mpiyezintombi Mzimela in 2003 argued that the push to have a constitutional amendment was going to continue as the role of the institution of traditional leadership remained undefined and needed urgent rectification (Ntsebeza, 2006, p. 255) and up to now this has remained the case. Similarly, Koenane (2018, p. 2) argues that the Constitution of South Africa does not specify the powers, functions and roles of the institution of traditional leaders in local and provincial issues as done to other institutions, which is problematic. The policy documents and framework at the provincial level also repeat the ambiguities of the roles of traditional leaders in land administration for which traditional leaders feel their powers were taken away from them (Sekgala, 2018).

2.13.2 Local Government Municipal Structures Act of 1998

This Act provides for the establishment of municipalities, how they are to operate and the duties of those in the municipality. Section 81 of this Act states that the traditional leaders are invited to participate in council meetings and give them the opportunity to express their views. The Act also provides the code of conduct of traditional leaders in the municipal council meetings. It states that a breach of these can result in suspension and warnings to the traditional leaders by the provincial government (Local Government Municipal Structures Act, 1998).

The Act states that the traditional leaders may attend and participate in municipal meetings but is silent on whether they can make decisions or not. To elaborate this further, Bikam and Chakwizira (2014) argue that the provisions of this Act do not specify the role traditional leaders have to play in issues to do with land use and planning. Rather, the traditional leaders in areas in Limpopo for example, have voiced their displeasure with the provisions of this Act. They argue that it has simply relegated them to being participators of the proceeding but not given the decision-making role to issues to do with the land under their jurisdiction.

2.13.3 Traditional Leadership Governance Framework Act of 2003

This Act not only recognises the traditional leadership at different levels but also allocates them roles. It also details how traditional councils are constituted and the members of such councils. The Act also gives the grounds for the removal of a traditional leader. One of the important things to note in the TLGFA is that it gives the level of traditional leadership that is recognised that is to say the King/ Queen, senior traditional leaders or headman/ headwoman. Section 20 of this Act gives the guiding principles for allocation of roles. The prerogative of such is given to the national or provincial government. TLGFA states that traditional leaders have a role in land administration. The TLGFA also goes on to specify that when the roles have been assigned government has to monitor and also resources should be made available in carrying out these roles Section 20(1) states that

‘National government or a provincial government, as the case may be, may, through legislative or other measures, provide a role for traditional councils or traditional leaders in respect of- (a) arts and culture; (b) land administration; (c) agriculture...’ (TLGFA, 2003).

However, there is consensus amongst various authors on the issue to do with the ambiguous nature of the TLGFA land administration role (Ainslie and Kepe, 2016) (Ntsebeza, 2006). The TLGFA acknowledges that the provinces are different thus different provinces can allocate roles to traditional leaders. This then means that there is the need to explore the role traditional leaders play with a focus on land administration in a different context so as to cover the gap in the literature in an often-overlooked province like Mpumalanga.

2.13.4 Mpumalanga Traditional Leadership Governance Framework Act of 2005

The Mpumalanga Traditional Leadership Governance Framework Act of 2005 ‘provides for the recognition and the withdrawal of recognition of traditional communities; to provide for the establishment and recognition of traditional councils; to provide for the recognition and appointment of traditional leaders and their removal from office; to provide for a Provincial

Code of Conduct...’ (MTLGA, 2005, p. 2). The operation of this Act is at a provincial level only and is guided by the Constitution and the TLGFA.

In terms of the roles of traditional leaders, the Act does not specifically have a section on the role of traditional leaders but rather has one for the traditional councils. Although the TLGFA mentions the land administration role this is not mentioned in the provincial legislation.

2.13.5 Spatial Planning and Land Use Management Act of 2013

The Spatial Planning Land Use Management Act (SPLUMA) provides that municipalities have to work together with traditional leaders when they are preparing their land use schemes. Section 19 of the Act provides that after these consultations with the traditional leaders is when they can be able to prepare their land-use schemes in the area of jurisdiction. Section 96 (1) provides that service level agreements in the municipality’s jurisdiction can be concluded by traditional councils but this has to be in accordance with the regulation that is set for land use management.

Although the Act speaks to land administration and land development in greater detail the role traditional leaders have is not clearly given. It is argued that the coming in of SLUMA also added confusion in terms of the roles of traditional leaders in land administration. Dubazane and Nel (2016) argue that traditional leaders were excluded from the municipality tribunals which handles issues to do with land and development, which further made traditional leaders feel they were excluded in land allocation in KwaZulu Natal. Clearly, these ambiguities and vagueness of their role create contestations in that, the municipality and the traditional authorities end up working parallel to each other thus having a negative impact on developmental issues and land administration. Bank (2011) as cited in Ainslie and Kepe (2016a) notes that tension between traditional leaders and municipalities is there in the Eastern Cape Province and it is believed that traditional leaders try to frustrate projects in the area to discredit municipal councillors as their roles are not given. Assessing such problem in Mpumalanga Province is also important as they are less literature that focuses on traditional leadership roles in land administration. This research sought empirically test these claims to see if challenges like these exists in issues to do with land administration.

2.13.6 The Traditional and Khoi-San Leadership Act of 2019

The Act is similar to the TLGFA of 2003, however, it adds the Khoi-San communities who were previously excluded from traditional leadership legislation. It provides for recognition, removal, the duties and functions of the different traditional leaders. Section 15 of this Act

provides for the role of traditional leaders. The ACT also provides that the traditional leaders can support the municipality in the implementation of SPLUMA. The Act also provides that municipal councils and traditional leaders have to respect each other's roles and have good working relations.

This again adds to the already existing confusion on the role of traditional leaders as their roles are not provided for. However, the pattern of the other legislative documents is continued as it simply provides that traditional leaders or Koi-San leaders are to perform their roles in accordance with customary law. This Act was assented in 2019 but it will be in operation in April 2021.

2.14 Challenges and Conflicting of roles between institutions governing land in Africa

Beall, Mkhize and Vawda (2005) alert us that when looking at the institution of traditional leaders we do not have to view it as being resurgent but one that is persistent, for which they stress out that continuities and discontinuities exist. An important element that is raised here is that the current legislation constitutes a threat to this institution should the point of focus. In trying to promote the partnership of traditional authorities and municipalities in developmental issues and land in Ghana, it was recommended that traditional leaders have a role in advising and also decision-making in these issues and it should not be ignored (Osei-Tutu et al., 2019). Although this is the case, Dubazane and Nel (2016) argue that institutions entrusted with dealing with land administration appear to be working against each other rather than working together in the Nkandla area. These conflicts arise when the roles of the institutions are seen to be conflicting with each other or when they are not clearly defined. This is also shared by Rugege (2003) and adds that the solution to such a problem is the amendment of the Constitution so as to have clearly spelt roles that ensures that there are good working relations between the various institutions. Failure to do this is why there is a strained relationship in many provinces in South Africa between the traditional leaders and councillors (Shabangu and Khalo, 2008). Focusing more on land administration, Ntsebeza, (2006) adds to these arguments by saying tensions do exist between elected officials and traditional leaders has contributed to the collapse of land administration since these institutions operate at a tangent to each other. Furthermore, Goodfellow & Lindemann (2013) argue that institutions of the state and traditional authorities are competing as there is a lack of collaboration between the institutions. This all emanates when one or all the authorities operates in a legislative vacuum thus the need to find their actual roles in land administration. Bringing out the roles of traditional leaders in land administration there gives clarity on who

has to do what in the rural areas. As a result of this, there is the need to understand the role they play in land administration to resolve and have cordial working relations which clearly are not there between municipalities and traditional authorities in South Africa.

As a result of the vagueness of the roles of traditional leadership role in general and land administration terms, the traditional leaders have often been excluded from community development mandates. Kanyane (2017) argues that for this reason traditional leaders are given positions of lesser significance when we look at those given to municipal authorities for example. The reasoning behind this argument emanates from the financial resources allocated to the two institutions thus it is believed that traditional leaders may be in a weaker position to carry out their roles in land administration. From all this, it is ‘ultimately, the power of the purse which dictates strategic community direction’ and heavily impacts their role in land administration (Kanyane, 2017, p. 213). With this being said, this generalised statement’s applicability in the Bushbuckridge area provided the gap for which this research sought to understand. The question that stood out from all this sought to understand if it is the financial resources that stand in their way in carrying out their role in land administration.

Adding on to the challenges, Kanyane (2017) tries to give a balanced perspective in analysing the challenges the traditional leaders face. The author argues that some of the challenges that traditional leaders face result from their own pursuit of personal maintenance and benefits instead of those they govern. What this means is that the central or provincial government which allocates resources to them to implement the government plan may be withheld because of them thinking about their personal welfare and not the people they govern. From this, we can pick that it is them that contribute to the problems they face when carrying out their role whether on developmental issues or land administration. As has been mentioned earlier that research that focuses on land administration by traditional leaders in Mpumalanga is limited, understanding if this is the problem that is observed in Bushbuckridge is important.

2.15 Gender equality in land allocations in communal areas in South Africa

There is extensive academic literature on how women have been marginalised in land-related issues and those relating to traditional leaders. The Constitution of South Africa in Chapter 2 provides that all citizens are equal before the laws, no discrimination based on gender has to take place (Constitution of South Africa, 1996). While land administration is supposed to cater for all, some institutions that manage land are not accessible to women. Land in rural areas in various countries has been dominated and is controlled by men (Ravnborg and

Spichiger, 2014). This is what the law aspires to achieve but Ragan and Martin (2002) but in rural areas, people are not treated equally based on gender. Obtaining land for cultivation and other practices for women has not been easy, which definitely needs to change whether in the rural setup or urban context (Walker, 2005) (Gengenbach, 1998) (Moyo, 2013). Moyo (2013) argues that women in the rural areas of Africa lack knowledge about the rights they have on land and as a result of this land administrators end up taking advantage of this situation. women have on land. The customary practices are also said to exacerbate this situation as the patriarchal demands of culture in the rural areas deny women their land rights (Ngugi and Nyariki, 2005). What we pick from this literature is that women's access to land has been affected by the cultural practices in the areas however an understanding of what role traditional leaders can play or have in ensuring fair practices is not given.

Rangan and Gilmartin (2002) argue that access to land rights by women has generally been affected by customary practices which have often contradicted the constitutional underpinning of fairness and equality in resources such as land. More, in Mpumalanga province when women have often had their rights revoked by traditional authorities when they have been given access to communal lands rights (Rangan and Gilmartin, 2002). The High-Level Panel Report (2017) corroborates with this as it found out that women are often not given equal rights to land and the institutions that operate in the rural areas favour men. It further adds that as a result of this 'women are often excluded from traditional institutions such as traditional and village council meetings where key decisions about land rights are taken...' (High Level Panel Report, 2017, p. 473).

When we look at the policy documents in South Africa, they specify the need for equality between genders, for the Reconstruction and Development Programme (RDP), the Bill of rights and even the Department of Land Affairs. Adding on to this, '...gender equity and land reform are viewed as social issues that can be resolved in space by defining the ways the ways in which land allocation is should occur and, stipulating the ways in which existing government agencies or NGOs should ensure even-handed distribution of lands between women and men' (Rangan and Gilmartin, 2002, p. 636). More so, Cross and Friedman (1997) cited in Ranga and Gilmartin (ibid) argue that PTOs are usually given to men instead of women in the communal areas. looking at the Bufflespruit area under the Matsamo Traditional Authority, Rangan and Gilmartin note that in order to mask the bias in land allocation the traditional leaders in this area turned women into the problem as they accuse them of being troublemaker. What the authors conclude is that there is the need to have

institutional reform that ensures that responsibilities are clearly given to the institutions involved in land administration. With this in mind understanding the role traditional leaders play in encouraging fair allocations between genders in land administration is important. As literature is rich in gender issues in land administration this study sought to add on the often-overlooked role of traditional leaders in ensuring equality in land administration processes.

2.16 Sacred lands-management and the role of traditional leaders

Land in Africa as well as in South Africa has diverse uses and to indigenous communities, it is not only for agriculture or structural developments. Makahamadze et al. (2009) argue that the precolonial era in Zimbabwe land was a sacred commodity that was administered by traditional leaders on behalf of ancestors. Land from this narrative was considered a sacred commodity and it was believed to belong to the ancestors with the traditional leaders tasked with being its custodians. Similarly, Dubazane and Nel (2016) argue that land has a sacred value to it, which links it with ancestors and also those who live on it. They further note that this argument is shared by Bennet (1999) cited in Duduzane and Nel (2016). Bennet (1999) further argues that land's value also lies in the social aspects of communities and is used in ritual functions. Sacred land is therefore land that has socio-cultural importance to society. It is also the land where cultural ceremonies take place in South Africa.

Traditional ways of managing land and the environment have often been excluded from development or the modern of land management (Ombe, 2003). Feliciano (1998) cited in Ombe (2003) argues that the practices in the Tsonga communities of Northern and Southern Mozambique show that are ceremonies that are done for the land, distribution and some rituals as well and they have not been affected by external ways of life. Although anthropologists have tried to expose this, these practices are often not recognised. More so, Ombe's (2003) study of the Shinvongueni and Changane River shows that there was land that was dedicated to women and no men would be allowed there and the opposite is true as well. Traditional leaders are said to have played a role in the dissemination of information and being the guarantors of the traditional practices of the sacred land. Ombe (2003) further notes that the disempowerment of traditional leaders affected the land tenure and the allocation procedures of the land. From all this, we can get a sense that traditional leaders in the eastern border between South Africa and Mozambique had a role in administering what is called sacred land but this role was generally affected by modern practices. However, resistance to these ideologies were challenges around 1980 when droughts began prevalent. Roesh (1996) argues that the opinions on traditional practices on the land quickly changed and thus the role

of traditional leaders in managing such land was regained. Alerted with these occurrences there is the need to understand if this is the case in South Africa is key as they are a lot of cultural practices that are not captured in the literature surrounding the administration of sacred land by traditional leaders.

Ngubane (2004) adds that there are lands that are specifically reserved as burial sites or common areas amongst the indigenous people in Africa. Indigenous knowledge of the management of such land has been deteriorating in Africa as they are often regarded as ancient practices (Izidine, Sierbert, van Wyk and Zobolo, 2008); (Ombe, 2003). Izidine et al (2008) point out that in the colonial era the traditional leaders were given sole mandate to control the Licuati Forest Reserve thus resources within it could not be harvested without their permission. They further add that their role was also to liaise with the government so as to determine the resources that would be harvest and thus the land was protected. In some cases, fines were imposed and the collection of such was done by traditional leaders for the violator of the sacred land. Although this is given chief and some of the elder are of the view that government institutions have been slowly taking their sacred land law enforcement role (Izidine et al, 2008). Noting this circumstance, 'local communities must become involved in protected area planning and management by integrating tribal authorities with conservation agencies and indigenous knowledge systems...' (Izidine et al, 2008, p. 194). When government recognises this then the role of traditional leaders has to be studied as they operate more on cultural practices. This is one of the reasons this study in the Bushbuckridge area was conducted so as to establish the role they play.

2.17 Traditional leaders and land disputes

Land disputes in different countries have detrimental effects on the development of the economy. Traditional leaders in many communities in South Africa are involved in these both as mediators and they themselves as the ones who cause them (Aiyedun and Ordor, 2016). Wehrmann (2008) argues that there are various types of land conflicts and these stem from boundary disputes, inheritance, limited access, evictions. Conflicts over land in Africa keep increasing and failure to resolve them has often been pointed to the legal pluralism that exists and institutional competition as a result of undefined roles (Kobusingye, van Leeuwen and van Dijk, 2016). Unruh (2003) cited in Kobusingye et al (2016) defines legal pluralism in land issues as a scenario where there is the existence of a number of legal orders that are operating in an area or country. What these authors try to show in their work on the land

disputes and institutional orders in Uganda is that the existence of these multiple systems creates problems when trying to resolve land disputes.

Dande and Mujere (2019) in their study on contestation between traditional leaders over land show that this has been an understudied area in Africa. The main land disputes are those of claims of land by different traditional authorities over the same piece of land citing different versions of occupancy of such land. For example, some traditional authorities in Makoni District in Zimbabwe claimed that they were the rightful owner of a piece of land within the space of another traditional authority. As a result of the relationship of the traditional leader in Makoni and him being elected into parliament, the traditional leader won their case and threats were made on the other traditional leader to stop making claims to the land (Dande and Mujere, 2019). What they try to highlight is that political expediency has often been used to resolve these disputes when traditional leaders are part of the disputes. In cases like these, the government is the arbiter of such disputes. Traditional leaders are not in a position to resolve these disputes themselves thus a third party is required to resolve these. In disputes like these, there is no role traditional leaders have in dispute resolution.

2.18 Chapter Summary

The chapter shared valuable insight on traditional leaders and land administration from different authors. We can observe that the role of traditional leaders is not clearly given from the legislative frameworks and what they do in practice. This provided the gap for this study as the debates on the roles are a dominant issue in the literature. Although the debates on their recognition and the democratic nature were noted it overlooks the practices on the ground and the role traditional leaders have in land administration. The debates will go on for a while as long as the roles are not clearly given in the legislative frameworks.

CHAPTER THREE

3.0 Research Methodology

3.1 Chapter Introduction

This chapter describes how data collection was done for this research. It starts by giving an overview of the study area and also includes the demographics of the area. It then moves to show the maps of the area to give a picture overview of Bushbuckridge and why this area was chosen. This chapter then goes into detail on the qualitative research design and the supports choice of this as it helps capture the finer details, historical and emotional detail given when discussing land issues in Africa. The chapter also describes the fieldwork challenges and limitations of the research.

3.2 Study area and site selection

Bushbuckridge Local Municipality that is falls under Ehlanzeni Municipality in Mpumalanga Province. It is located in the North-eastern parts of Mpumalanga province and shares a border with Mozambique. One of the notable activities in the area is agriculture and tourism which brought the necessity of understanding land issues in the area (BLM Final IDP 2020-21, 2020). It is the largest local municipality in the province however nationally it falls under the third level administrative category. The area size of the municipality is about 10 250km² (BLM SDF, 2017). The Bushbuckridge Local Municipality Integrated Development Plan of 2020-21 also categories it as a category B municipality within the province (see Table 2 for municipality categories) (BLM Final IDP, 2020). It has both rural and urban areas but most of the area is under traditional councils making it a good area to get the roles traditional leaders play in land administration (see Table 4 for percentage administered by the municipality and traditional authorities).

Table 3: Categories of Municipalities in South Africa

Category	Municipality Type	Description
A	Metropolitan Municipality	These are the municipalities that govern the major cities in South Africa. For example, Johannesburg is a Metropolitan Municipality.
B	Local Municipality	They are the municipalities that fall within a district in South Africa. For example, Bushbuckridge Local Municipality.
C	District Municipality	These are municipalities outside the major cities or towns that consist of wider area that is broken down into local municipalities. For example, Ehlanzeni District Municipality where Bushbuckridge falls under.

Source: Internet, South Africa Government Communication and Information Systems.

Table 4: Area Size by Traditional Authority

Traditional Authority	Chief Name	Hectares	% of land belonging to BLM in Traditional Authority
Amashangana	Nxumalo Mpisana Eric	50838.45	4.96%
Hoxane	Nkuna M.P.	15434.11	1.51%
Jongilanga	Khoza N'wa-Mutonga Phillemon	27580.74	2.69%
Malele	Malele Sekata Ellias	1705.03	0.17%
Mathibela	Mokoena Lamerik Mathupa	7984.70	0.78%
Mnisi	Mnisi P.P.	27724.07	2.70%
Moletete	Chiloane A.L.	5520.26	0.51%
Moreipuso	Mashego M.	8830.45	0.86%
Sethlare	Chiloane Ntokobane Reuben	16169.09	1.58%
Thabakgolo	Mashego Dilla George	8243.96	0.80%

Source: BLM Spatial Development Framework (2017:51)

The table shows the 10 traditional authorities in Bushbuckridge Local Municipality. It also shows the size of each traditional authority in Bushbuckridge Local Municipality. The table also shows that majority of the land is under the jurisdiction of traditional leaders as per the data given by the local municipality. This was also corroborated by the municipal officials and provincial government officials that were interviewed in this study.

3.2.1 Demographics of Bushbuckridge

In terms of the demographics of the area, the national census of 2011 put the population at 541248 people (STATS SA Census, 2011). The population is mainly Black African who constitute about 99.55% of the population while the other groups constitute Coloured, Indian or Asian and White (BLM IDP, 2020). In the Mpumalanga Province, we mainly have AmaNdebele, Swati, Ba Pedi and Tsongas who follow different customary laws and practices.

3.2.2 Traditional Councils in Bushbuckridge

There are 10 Traditional Council in Bushbuckridge Local Municipality (Traditional Leadership Booklet, 2020); (BLM Final IDP, 2020). A traditional council consists of different traditional leaders at different levels in an area of jurisdiction (TLGFA, 2003). A third of the member of this council should be women (TLGFA, 2003).

- Amashangana Traditional Council
- Hoxane Traditional Council
- Jongilanga Traditional Council
- Malele Traditional Council
- Mathibela Traditional Council
- Moletele Traditional Council
- Moreipuso Traditional Council
- Mnisi Traditional Council
- Sethlare Traditional Council
- Thabakgolo Traditional Council

3.2.3 Justification of site selection

Research studies that have been carried out in Mpumalanga Province have focused on service delivery, environmental issues, political governance and relationship with municipal councils (Nkosi, 2016); (Findlay, 2013). For example, Findlay (2013) focuses on the role of traditional leaders in managing firewood in Bushbuckridge. Each of these areas was not the focus of this research but traditional leaders' role in land administration.

Additionally, research on traditional authorities has also focused more on Eastern Cape, KwaZulu Natal and Limpopo Province which have powerful and more vocal traditional leaders in place (LiPuma and Kolble, 2009); (Southall, and Kropiwnicki, 2003); (Ntsebeza,

2004); (Buthelezi and Yeni, 2016). For this reason, Mpumalanga Province was selected to fill the gap in the literature.

Another reason Bushbuckridge was selected is that over 80% of the land is under the jurisdiction of traditional authorities. Table 4 shows this and this made it easier to understand the area. The pool to choose traditional leaders from was widened because of this fact.

3.3 Study Area Maps

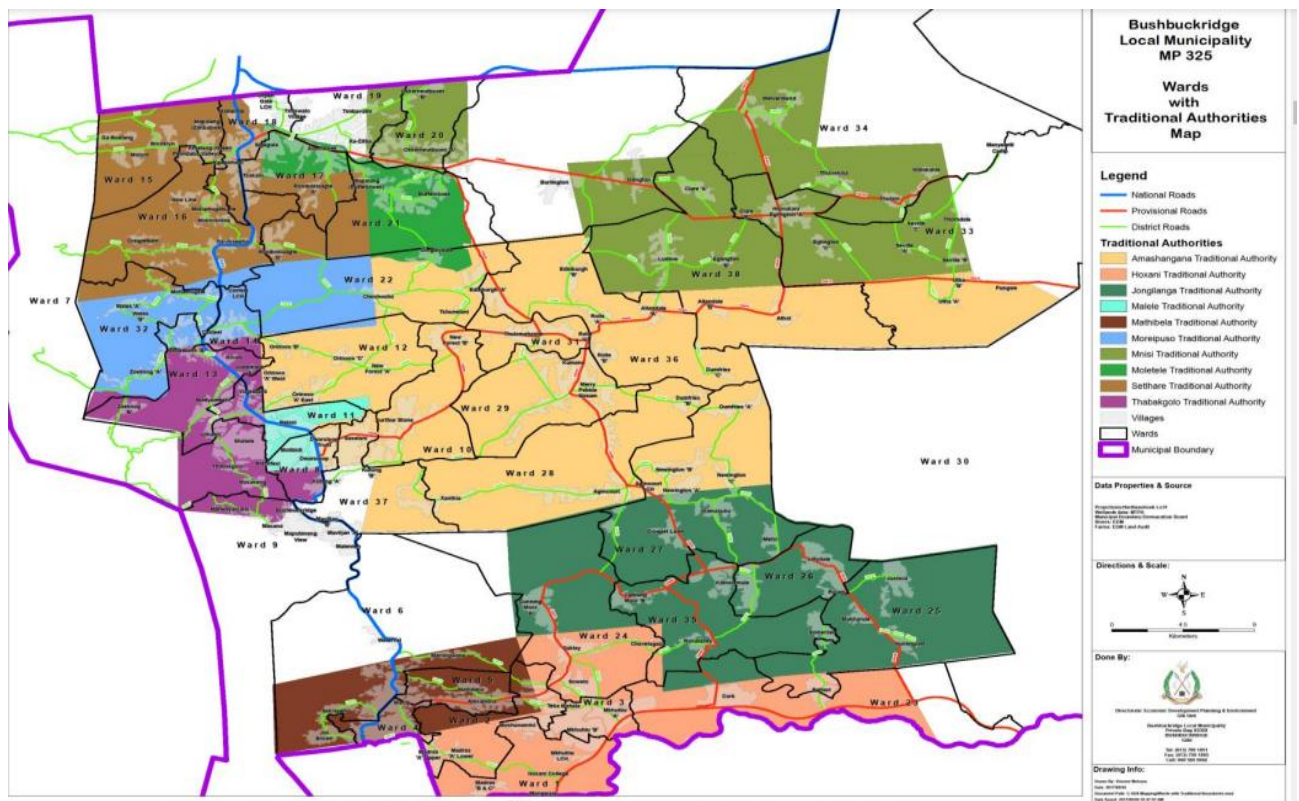
Figure 1: Map of Mpumalanga Province with district municipalities



Source: Bushbuckridge Local Municipality (2021)

The above map was provided by Bushbuckridge Local Municipality. The above map shows the map of Mpumalanga Province and the district municipality BLM is located. The map also shows the district municipality BLM is located which is Ehlanzeni District Municipality. It was taken as is as the municipality is in a position to know the exact boundaries of the areas.

Figure 2: Map of Bushbuckridge Local Municipality with Traditional Authorities



Source: Bushbuckridge Local Municipality (2021)

Figure 2 shows the map of Bushbuckridge Local Municipality as was given by the municipality. It was constructed by the GIS department at BLM on behalf of the researcher. The map shows the traditional authority areas of jurisdiction and their boundaries. Figure 2 also shows the wards that are located in BLM. The map also shows that the largest traditional authority in terms of land size is the Amashangana Traditional Authority. The smallest traditional authority in terms of land size is the Thabakgolo Traditional Authority.

3.4 Research Design

3.4.1 Qualitative Research Design

In reflecting on the research design that was suitable for the research topic, a qualitative approach was adopted in understanding the role of traditional leaders in land administration. A qualitative approach is one that seeks to understand the behavioural or social aspects of human interaction which in most cases is exploratory in nature with the use of techniques such as interviews, surveys and case studies (Salkind, 2018). Similarly, Corbetta (2003) argues that qualitative research is an interactive approach and also open that aims at understanding the subjects. Qualitative research enables interactions, is open and seeks to

understand the social behaviour of people. It was therefore used because it enabled interaction with the traditional leaders and government officials in trying to understand the role traditional leaders have in land administration. The qualitative approach also assists in bringing out the realities on the ground which this research sought to do by questioning the traditional leaders themselves in Mpumalanga Province.

The qualitative research design was also chosen because it does not aim to standardise information but rather aim at the heterogeneity of information, which in other terms means depth of understanding a phenomenon (Corbetta, 2003). Those who have tried to establish these have used a quantitative approach thus have failed to get the role they play thus the qualitative approach will be able to understand in-depth as clarification of issues can be achieved (Andersson, 2007).

3.4.2 Case Study

This study incorporated a multiple case study approach because ‘it enables a comparative analysis and understanding of the events and the subjects of study as well as the phenomenon in the real-world context’ (Yin, 2012, p. 2), (Fidel, 1984). Case studies encourage the use of several different techniques to get the necessary information from personal observations, to interview...’ (Salkind, 2018, p. 176). Bushbuckridge Local Municipality in Mpumalanga was the case study.

3.5 Sampling

The researcher had hoped to randomly select one traditional authority but this was not possible as participants were not willing to participate and some did not speak in English. After calling the different traditional councils and facing rejection and some calls being dropped the researcher had to use purposive sampling. 5 traditional leaders were willing to participate in the research (positions not mentioned for ethical reasons addressed later). On the part of the municipality and provincial government, the researcher asked the official entrusted with approving the research request to assist in identifying the departments that work with traditional leaders and land administration. Contacts of all people in these departments were shared and the people who availed themselves were interviewed. In the municipality out of 3 out 5 people who work closely with traditional leaders in land related matters were interviewed.

In the provincial government, 3 people availed themselves. This was after all directors from different departments that had been sent requests to be participants in the research referred

the researcher to those 3 people that were most suitable to answer the questions the researcher sought to understand. The researcher had to look for community policing forum members a reading of literature that they work closely with traditional leaders. 2 of them availed themselves to be part of the research after an informant helped share contacts of them. 13 key informants became part of this research.

3.6 Research Interviewees

The research subjects of this study were traditional leaders in the Bushbuckridge area, officials from the Provincial Government (Cooperative Governance and Traditional Affairs), Bushbuckridge Local Municipality officials who focus on land administration issues.

3.6.1 Interviewee List

Table 5: Interviewee List and Description

Name assigned to Interviewee	Description of Interviewee
M1	Director Provincial Government
M2	Assistant Director Provincial Government
M3	Official Provincial Government
M4	BLM Town Planner
M5	BLM Acting Chief Town Planner
M6	BLM IDP Official
M7	Traditional Leader 1
M8	Traditional Leader 2
M9	Traditional Leader 3
M10	Traditional Leader 3
M11	Traditional Leader 1
M12	CPF Member 3
M13	CPF Member 1

Source: Author, 2021.

The above table gives the description of the interviewee that formed part of this research. The code names were given to mask their identities. The prefixes on the traditional leaders show the ones that are from the same traditional authority.

3.7 Data Collection

3.7.1 Key Informant Interviews

Key informant interviews were used so as to gather the information that may be difficult to gather. Its advantage is that it collects data from people who are knowledgeable about the phenomenon under study (Carter and Beaulieu, 1992). Similar studies in the role of traditional leaders have tried to use surveys and quantitative techniques but have failed to establish the roles of traditional leaders in land administration (Andersson, 2007). The key informants interviewed the people who are knowledgeable on the issues of land administration by traditional leaders. These were traditional leaders, provincial government officials and municipal officials in Mpumalanga Province.

The researcher conducted semi-structured interviews both face to face and video-aided phone calls with the participants of this study. The advantage of interviews was that they provide a broader picture of the phenomenon and the important details that may arise from different stakeholders (Corbetta, 2003). Probing was also made possible in this technique and the researcher has used this method before thereby understands the conduct required of the interviewer. These include seeking consent and making sure it is an ongoing process during the course of the research, allowing participants to pull out of the research when they feel uncomfortable, listening and being respectful to the diverse cultures the researcher was exposed to. Thirteen key informants were interviewed. Four interviews were conducted face to face and nine key informants were interviewed virtually. The researcher visited the site once. Phone calls were made to remind the participants of the meetings once they have consented to be interviewed.

Noting the impacts of the Covid-19 pandemic on the research, the researcher was flexible enough to use video-aided interviews. The researcher used video-calling tools such as Zoom, Microsoft Teams and WhatsApp to interview the participants and the preference of tool was left to the participants to choose. The preference was given so as to ensure that participants use a software that they are familiar with and comfortable to use. The majority of the participants of this study preferred Zoom meetings as they said it is user-friendly. This meant that less time was spent in trying to explain and teach the interviewees how to use the applications. Furthermore, the advantages of using this method were that, it saved money in travelling to meet the participants in Mpumalanga Province and that it enabled access to as many participants in a short space of time (Corbetta, 2003, p. 144).

3.7.2 Secondary Data

In order to reinforce the face-to-face interviews or video call interviews, the researcher used secondary data, legislative documents, government reports and other archival records. Archival material was also used because it was easy to access and the cost of acquiring the documents was minimal. The university library made this possible by allowing access to archival material online which the researcher utilised. These were used in the study so as to get a historical perspective surrounding the institutions of traditional leaders. As shown above, primary data techniques in the form of interviews and documents as secondary data were used to cater for the flaws of the other (Salkind, 2018).

3.8 Research Validity

The researcher triangulated the data from different sources that is from traditional leaders, municipal officials and provincial government officials. This assisted in providing validity of results as data could be compared from different sources. Similar questions were asked to participants. The five traditional leaders who were part of this study were from different levels from senior traditional leaders to the headman/headwoman. This enhanced validity as responses from the different traditional leaders were compared.

3.9 Ethical Considerations

3.9.1 Informed Consent

Ethics are a set of moral principles which are suggested by a group or individuals in a particular field and should be followed and adhered to (Oliver, 2010). This study adhered to the research ethics and thus ensured participants were informed about the research in order for them to decide to take part or not in the research. ‘Without question, every research project that uses human participants should have an informed consent form that is read and signed by each participant or person granting participation...’ (Salkind, 2018, p. 79). The researcher ensured that the participants are fully informed on the nature and procedures of research and participants are at any moment allowed to withdraw from the research. For this reason, regular checks of this were done thus encouraging what is called ‘process consent’ in the data collection period Ellis (2007) cited in (Israel, 2015, p. 3).

3.9.2 Confidentiality and Anonymity

Furthermore, the researcher also ensured the confidentiality and anonymity of the participants and the material that was collected. The researcher assured participants that their names would not be released and pseudonyms used in the report. The interviewees who granted

permission to use their names in the report are the ones that are shown. They did so through the consent form that was sent to them prior to the interview taking place. Salkind (2018) also argues that confidentiality can be maintained by making sure the confidential data given by the participants should have minimum or no people who see it.

3.10 Limitations of the study

3.10.1 General Limitations of the Study

3.10.1.1 Non-disclosure of the name of interviewees

Giving a full profile of the subjects is not possible in this research as some departments that were engaged with the researcher have a few people which would reveal the identities of the participants. Due to the political and sensitive nature of the issue to do with land administration the researcher chose this stance to protect the identities of interviewees. This reason for this was also to prevent straining the relations of participants from the different institutions that formed part of this research.

3.10.1.2 Access to traditional leaders

Negotiation of access to traditional leaders also proved to be a challenge as a result of the above. As a result of the sensitive nature of land issues and their power or role in issues to do with it, traditional leaders required face-to-face interactions. This was so because they wanted to establish the authenticity that the researcher is indeed a student and sharing some confidential information. It took time to gain their trust. Understanding that trust was key the researcher sought the help of the officials within the Provincial Department of Cooperative Governance and Traditional Affairs, Bushbuck Local Municipality and community members who know *indunas* who would relay my message to senior traditional leaders. The procedure is that one informs the headman/headwoman who then speaks to the senior traditional leader. Kings/ Queen are not easily accessible and were not part of this research. Documentation of the research and student card was sent to traditional leaders and video aided calls were also made.

3.10.1.3 Language Preferences

Language preference is the other limitation that was encountered when speaking with some traditional leaders. All the five traditional leaders had wanted to speak their vernacular language for which the researcher is not able to speak these vernacular languages. The researcher was not in a position to recruit interpreters as they were limited financial resources to do that. After the researcher explained this to the traditional leaders, they agreed to have the interviews in English. This did not affect the results as all the traditional leaders said there

are multi-lingual and could speak English fluently. This was observed as they understood the questions and responded accordingly to what was asked by the researcher.

3.10.2 Covid-19 Induced Limitations

The research was conducted at a time that has never been experienced post-1994 where there would be restricted movement. The Covid-19 pandemic lockdown that went into effect in South Africa at the end of March 2020 greatly affected how the research data collection procedure had been envisioned. Lockdown is the time South Africa experienced restricted movements. At one point the interprovince movement was restricted thus affecting face-to-face engagements with traditional leaders and other government officials in the province as the researcher is based in Gauteng. The researcher observed that most institutions of the state including traditional councils are now operating virtually which limited the researcher from travelling to Mpumalanga. The researcher only went there once and conducted four face to face interviews with key informants in Bushbuckridge. The researcher observed the World Health Organisation guidelines, which require maintaining social distancing between individuals, wearing face masks and avoiding crowded places.

In a way, it also became an advantage as the interviews could now be conducted remotely and saved the financial resources that became limited during the course of the research as the country was on lockdown. The easing of the lockdown regulations was done but the key informants were not in a position to conduct these interviews face to face, thus they had to be rescheduled. The researcher kept monitoring the regulations in the country as well as those in Mpumalanga Province so as to conduct the research in a conducive environment. However, nine of the key informants opted to have the interviews virtually and one face to face.

3.11 Data Analysis

The research used a thematic approach in analysing the data. This entails coding and putting the data into themes thus analysing patterns for easier interpretation (Braun and Clarke, 2006). These codes and themes are based on the literature and the research question the research sort to answer (Leedy and Ormrod, 2010). The interview notes were compared and grouped together into different themes that were created by the researcher. During the course of this process, responses that were not speaking to the literature and the research question were dropped after thorough evaluation and going back to the literature. By going back to the literature, it allowed the researcher to make sense of and interpret the data easily (Braun and Clarke, 2006). The direct quotes used were after a thorough examination of the coded data and taking the responses that clearly elaborated the issue from the different participants from

different institutions. The researcher used NVivo software to analyse the data. This software enables coding and thematic analysis of data. According to Hilal and Alabri (2013), this software works best with semi-structured interviews which is in line with what was used in this study. Another reason this software was used is that it reduces the manual tasks of coding the data and easily pick up trends and tendencies. Lastly, the choice of the thematic analysis method was because it provides flexibility in determining the codes and themes to use. The interpretation of these codes and themes was made easier because it was backed by the interview data that was collected.

3.12 Chapter Summary

The chapter described how data was collected for this research. It detailed how the site was selected and the traditional authorities available in the area. The chapter also described the limitations that were encountered in the fieldwork. The next chapter presents the findings of this study.

CHAPTER FOUR

4.0 Research Findings

4.1 Chapter Introduction

This chapter presents the findings from the study undertaken on the roles of traditional leaders in land administration in Bushbuckridge. The research established their role in land allocation and the processes that happen in allocating the land. The chapter also established the role of traditional leaders in land use planning. This chapter also established the role of traditional leaders in dispute resolution and sacred land. Another issue this chapter looks at is the role of traditional leaders registering land and keeping of these records. Challenges the traditional leaders are facing were also gathered and land invasion is the biggest challenge they face. The direct quotations from the interviewees that elaborated the issues clearly are noted down in italicised font.

4.2 Recognition and areas of jurisdiction of traditional leaders in the Mpumalanga Province

The research found out that the only traditional leaders that are recognised in the Mpumalanga Province are the ones the Constitution speaks of in Chapter Twelve and the TLGFA. This recognition is both at National Government and Provincial Government Level. Recognised traditional leaders are published through a government gazette by the Premier after consultations with the House of Traditional Leaders in the Province. All of the thirteen interviewees (see interviewee list) agreed that before one becomes a traditional leader, one must be recognised to operate in the area of jurisdiction. Without this one cannot be a traditional leader. The areas they operate are proclaimed and these are published in the provincial government gazettes. The national government gives the prerogative to proclaim these areas of jurisdiction to the provincial government. This is done by the Premier of the province after consultation with the Provincial House of Traditional Leaders (TLGFA, 2003).

Traditional leaders have to be recognised before they can operate in the areas of jurisdiction. When we look at the land, traditional leaders hold this land in trust on behalf of the Department of Agriculture Land Reform and Rural Development. If you go to the TLGFA, it tells you whenever the traditional leaders want to do something on the land the local municipality has to be informed together with the DLRRDA which is the owner of the land (communal) (Interview, M1, February 2021).

There is the department of land reform. Basically, all land in South Africa is under that department. It is that department that gives power to traditional leaders to manage it. It is the

department that has the final say on land issues. It is the biggest stakeholder. (Interview, M6, March 2021).

4.3 Role of traditional leaders in the land allocation

On land allocations, the research found out that according to the proclamation given to the traditional authorities by National Government and Provincial Government, they are custodians of the land they operate on. The people that are given first preference to land allocation are people who reside in those areas or previously did but had relocated elsewhere. One interviewee raised that with the migration that is taking place, people who are from other provinces are being allocated land now (Interview, M5, March 2021). Most of the land that is allocated is for residential and farming purposes. When it comes to commercial land allocation it falls under the jurisdiction of the local municipality as was gathered during the interviews (Interview, M4, M5, March 2021). However, the interviewees also raised that when a person resides in a traditional authority's jurisdiction and wants to operate a commercial business, they have to first go to the traditional leaders who identifies the land. After the land has been identified the traditional leader approaches the municipality as they are responsible for approving land-use across the municipality. The final decision of commercial land allocation rests with the municipality and has to be in line with the SDF (Interview, M4, March 2021). The research also established that traditional leaders know the boundaries of their areas of jurisdiction. When they assume their positions, the provincial government furnishes them with maps of their areas and their boundaries (Interview, M1, February 2021). The interviewee adds that the boundaries of each traditional authority are determined by the Department of Land Affairs as they are responsible for the land traditional leaders preside over. Traditional leaders also seek the assistance of the municipality officials in the GIS department to help with the mapping of the areas. They are also regularly given the maps of their areas of jurisdiction and no conflicts on boundaries when allocating land are experienced as the research established.

All interviewees from the municipality, COGTA and even the traditional leaders agreed that the traditional leaders are responsible for land allocation in their areas of jurisdiction. This is what they shared with the researcher:

When it comes to the issue of land allocation, in their areas of jurisdiction, the traditional authorities are responsible for that (Interview, M5, March 2021).

We do have a role in land allocation and this is one of our major roles as our history shows (Interview, M7, March 2021).

When we say land allocation, we mean that they (traditional leaders) give some form of ownership to their beneficiaries, the people (all) that stay within their jurisdiction or land. The form of ownership that they do have, they give what was previously called PTOs (Permission to Occupy). This name has been out of the system for a very long time now but some are used to it. They now give people what we call Tribal Resolutions, which is a form of tenure for their beneficiaries. So, if you look at it in terms of the hierarchy, right on the top, you have a title deed, which is a full title, then you have what we would call, in our sense (municipality), R293 Proclaimed Townships document (local government proclaims these), which is a limited tenure right title-sort of full title. Then under that, you had the PTOs which were given by the previous Gazankhulu Government and they were given by the traditional authorities and now we have Tribal Resolution (Interview, M4, March 2021). This response was worth adding as it details what the traditional leaders do and what the municipality on issues to do with land allocation.

Table 6: Documents issued when land is allocated based on responses

Document Name	Issuer	Tenure Status
Title Deed	Municipality	Secure tenure
R293	Municipality	Limited tenure
Tribal Resolution	Traditional authorities	No tenure security

Source: Interviews (2021)

Table 6 shows the different documents that are issued when land is allocated in BLM. The traditional leaders issue tribal resolutions in their areas but these do not guarantee tenure security.

Another interviewee agreed with the above and also said that Yes, traditional councils are still issuing permission to occupy. There is no traditional council that issues title deeds, title deeds are only issued by the municipality or the rural development department. But the traditional council it is only the PTOs. However, these documents offer limited security of tenure because this is just a paper to say they are just given the space to occupy but you not owning that land. You know, it's unlike in scenes where you get the title deed. In this case, it

is like they have borrowed you the land. For instance, if there is a development that has to take place on that land, they can move you to another area (Interview, M2, March 2021).

A Community Policing Forum (CPF) also shared that in terms of allocation of land *the induna usually recommends to the chief or the traditional council after seeing the application of the land. After this has been taken to the traditional council they sit down and they are the ones who approve the application or reject to allocate the land. The chief has the final say in issuing the land. They are the ones who play a major role in the allocation itself (Interview, M12, Feb 2021).*

Additionally, the research found out that these Tribal Resolutions mentioned above states the name of the person given the land as well as the size and intended use of the land. The role of the senior traditional leader is to sign off these documents together with the chief's council. The research also gathered that to ensure transparency in the issuing of these documents a number of signatories from the traditional council have to consent. The King/Queen or senior traditional leader as the chairperson is the last to sign it off. This was agreed by all the traditional leaders and municipal officials interviewed as responses above indicate.

4.4 Traditional Leaders' role in land-use planning

Traditional leaders have limited a role in determining and making the final decision on land use in Bushbuckridge. A BLM official mentioned that when we look at SPLUMA, local government has the first instance when it comes to land use management decisions. So, what this means that the municipality is responsible for making all land-use decisions (Interview, M4, March 2021). Provincial Government through COGTA and the BLM officials all concurred with this in that land-use decisions are taken solely by municipality. Traditional leaders can only make requests which can be approved or declined depending on the spatial planning and land use set out by municipality (Interview, M5, March 2021). The traditional leader on the other hand reserved their comments on SPLUMA. Their views on the issue could not be gathered from them. The responses below illustrate what the researcher collected from Provincial Government and the municipality officials.

They (traditional leaders) can say in this piece of land we request that you put this on your municipal plan for it to become a residential area. Let us say now we are having a problem of long periods of no rain for agriculture. So, the people are not doing agriculture on the pieces of land they have. So, traditional leaders can approach the municipality to do the change of land use. That means that the traditional authorities can approach the municipality

with what they want to happen in their spaces. The municipality can grant or reject the request depending on the SDF (Interview, M2, March 2021).

Another senior provincial government official supported the above by saying that, the role of traditional leaders in Mpumalanga in land administration is to make requests to the municipality on issues they want to be addressed on the land they administer (Interview, M1, February 2021). What the research found is that the municipality has the role of land-use management in Bushbuckridge however they may get some input from traditional leaders. The role of traditional leaders that we pick from this is that of assisting or making requests (suggestions) on what they think should be done in their area of jurisdiction as far as land use is concerned. However, the final decision on land-use management rests with the municipality as it can approve or reject these suggestions as highlighted above.

4.5 Land Administration- Planning roles of traditional leaders

The research also found out that three areas where traditional leaders have a role in assisting in the planning of land matters. These issues emerged in the research fieldwork through discussions with one municipal official and two provincial government officials. These three areas that they assist in planning are the Integrated Development Plan (IDP), Spatial Development Framework and also Operation Vuka Sisebente (OVS). The municipality is in charge of drafting these plans.

4.5.1 Integrated Development Planning and Spatial Development Framework- Traditional Leaders Roles

The researcher learnt that these processes that happen in the two that is the SDF and IDP are similar, for this reason, they were summed up and collectively highlighted as did in the response of the interviewee. No questions were prepared for these by the researcher as these were highlighted in the interview. The research found out that traditional leaders have a participatory role when it comes to the planning of land matters. They participate in giving input when the Integrated Development Plans in Bushbuckridge are being drafted. These plans speak to all the issues that the municipality seeks to achieve within a given time period. The laws (such as SPLUMA and TLGFA) in place require that the institutions that traditional councils and municipality work together in drafting these plans. That is to say traditional bring suggestions of land issues that they want to be addressed and municipality doing the actual drafting of these plans (Interview, M6, March 2021). The municipality officials responsible for these plans mentioned that there do consultations with traditional leaders twice. They do this when drafting these plans to get traditional leaders' input and for

traditional leaders to check whether land issues they want to be addressed are captured (Interview, M6, March 2021). The role that was found here is of a participatory nature, that is traditional leaders giving the situational position on the ground in what needs to be done in the area and sharing the developments on land that they seek to achieve. After this has been done the IDP or SDF is adopted by the municipality and the document is sent to traditional leaders for them to check if they agree with it or not. However, the last decision is made by the municipality. One interviewee was quoted saying that

The traditional leadership used to attend the meetings but because they saw that whether they are part of the council meetings or not it does not change much because the caucus (municipal councillors from different political parties) has already decided...South Africa is very political you know... So, with that they will say why should we go somewhere we know whatever input we have will not have much of an impact. As the law requires, we always invite them to these meetings (Interview, M6, March 2021).

Although the above shows that the traditional leaders play a role in contributing to planning, BLM alerted us that in most cases traditional leaders no longer come to these meetings or other meetings to contribute their views on land issues. The reason for this is that political parties already come or have a predetermined position after they have caucused behind the scenes on what needs to be done. 2 traditional leaders confirmed this by saying that they do not see the need of coming to these meetings as decisions come decided from political parties (Interview, M7; M8)

Another issue that is related to the Spatial Development Framework that was found by the researcher is that traditional leaders also play a role in making requests to the municipality to assist in demarcating stands and providing services to land within their areas of jurisdiction. However, the research gathered that these have to be in line with the SDF of the municipality. (Interview, M4, March 2021). Senior traditional leaders also approach the municipality to ensure that services like electricity, water and road are made available for the newly resettled and formalised areas once approved by the municipality. M6 mentioned that there are traditional leaders who may go ahead to demarcate stands and this is why services to those areas take time to come.

4.5.2 Operation Vuka Sisebente and traditional leaders

The research also found out that in Mpumalanga Province there is what is called the OVS. Traditional leaders are also said to be part of these war rooms or war councils that discuss

different issues that range from service delivery to land administration. These are provincial government-initiated war councils that have different stakeholders from community members, businesses, government department officials, ward committees as well as traditional leaders to discuss the different issues affecting the areas. the research gathered that they started in 2015 (Interview, M1, February 2021). The OVS, IDP and SDF planning needs traditional leaders as M6 mentioned earlier, for which the researcher found that they play a participatory role. A number of them no longer attend these because their input may not be adopted. Their voice in this is suppressed due to the number of competing institutions within it (Interview, M6, March 2021).

4.6 The role of traditional leaders in keeping land registers

The research found out that traditional leaders have a role to play when it comes to keeping the records of allocation of land they make in their areas on jurisdiction. Where there is a full title to the land the municipality handles such in accordance with the deed registration laws. Since traditional leaders do not have the power to issue out such, they offer Tribal Resolution (formerly Permission to Occupy documents) and they solely keep these records to themselves. One traditional leader argued that the tribal office records this information when such a document is issued (M8, January 2021). The document will have a map drawn by hand by the traditional leader or induna and they know where such land is. Measurements that may be given here may not be accurate as the researcher picked up. All municipal officials in the planning department agreed on this and shared that they try to assist traditional leaders with Geographic Information System (GIS) technologies and devices that help in mapping and giving accurate measurements of the pieces of land (Interview, M5, March 2021). The research also established that they also have the role of making sure that these documents are kept well and safe. Two traditional leaders have the registers in digital form and these records give details of the land they have issued. They are kept on a laptop at the traditional council office. This makes it easier to pass on if changes to traditional leaders occur. The secretaries to the traditional leaders usually a trusted *induna* are the ones who consolidate these registers from the other traditional leaders within their areas of jurisdiction. When a traditional leader has changed the records that they had are transferred to the other traditional leader that will succeed them. Different interviewees and the traditional leaders had this to say with regards to land registers:

Each traditional council has got its own database that states that this land has been allocated to these people. So, there is a register and we know that within this piece of land or in this

village, there are so many people in this tent, it is owned by who so basically, we have got all the information (Interview, M11, January 2021).

It is their own records and if somebody wants information you can go to the traditional council and get the file of the records. In some cases, they may also share it with the municipality for filing purposes but they never send this to COGTA. We as COGTA can go there if we want clarity on certain issues (Interview, M3, March 2021).

In terms of the SPLUMA, it requires that the traditional council should work hand in hand with the municipality. But this varies as some of the relationships between the municipality and the traditional councils are not too good. When this is the case, there is limited to no communication and sharing of these registers of the land between traditional councils and municipality will be a problem (Interview, M2, March 2021).

Lastly, the researcher also gathered that hard copies of the registers as was hinted by the traditional leaders is the main form of keeping these records. As a result of the majority of the interviews having been online, traditional leaders were not in a position to send more details regarding these registers because of personal information in them. Two traditional leaders mentioned that, they could have shown these registers to the researcher had they had engaged the researcher face-to-face.

4.7 Traditional leaders and sacred land administration

On the role traditional leaders have in sacred land administration, the research found out that some are of the view that traditional leaders are trying to preserve these lands as they are slowly disappearing. However, one interviewee was of the view that these lands no longer exist thus difficult to establish their role. The above confirms the study by Ombe (2003) by that shows that the showing that indigenous knowledge and practices in communities need to be preserved. In order to preserve and manage areas of cultural importance there is the need to establish systems to preserve and learn how people managed these lands before. This disappearance of the sacred land points to the fact that Indigenous Knowledge Systems are not being taken seriously in the traditional areas. The indigenous practices and knowledge of managing such spaces need to be included in the curriculums for it to enhance the management of sacred lands (Harison, 2002; Ombe 2003). Below are the responses that were gathered in relation to sacred lands in Bushbuckridge.

These areas are slowly disappearing, like in my area, they are no such lands anymore except the burial sites only which makes it difficult to know the role of traditional leaders on these lands (Interview, M13, October 2020).

Another interviewee shared the same sentiment by stating that these lands are no longer as many as they used to be as traditional councils are allocating stands and people are invading them. However, where such sacred lands still exist, traditional leaders are said to play a role in preserving these lands. Three traditional leaders said they try by all means to host ceremonies that remind people of the importance of such lands but also highlighted the challenge of land invasion as the main problem that is affecting them (Interview, M8, January 2021).

Yes, these lands are important you know. Our role is to make sure that the young people understand where we come from by preserving our culture. People are increasing in number and these areas are getting few. Some people are moving away so just a few still know about these areas (Interview, M7, October 2020).

Others were of the view that, on these sites, their role is to make applications to the municipality to assist in terms of fencing so that it may be protected. This is what one interviewee pointed out.

Their role also here is to coordinate with the municipality to come in and build things like toilets on the burial sites and to fence the areas that are considered to be of cultural value (Interview, M3, March 2021).

4.8 Land dispute resolution by traditional leaders

On handling land disputes, the researcher understood that traditional leaders become judges in trying to resolve land disputes. This is what the research gathered from the interviewees.

When there is a land dispute in a traditional area like for instance, Mr. M and Miss. N are fighting over land. So, this is what they do, the complainant can go to the traditional council and report everything on what happened, then the traditional council and traditional leader will call both parties that is the interested and affected parties in a meeting to discuss everything. Each of them states their facts and thereafter they (traditional leaders) will issue a judgment. In the case where the parties are not satisfied with the judgement or one of the parties is not satisfied, he or she can come to the department of COGTA and appeal the judgement... The department (COGTA) will then advise the traditional leaders after a

meeting with the conflicting parties so as to come up with the right judgment or decision on the dispute (Interview, M2, March 2021).

Two traditional leaders also shared that usually these cases of land disputes between community members are usually with dealt at the community level by the *induna*. In most cases, they manage to resolve these. When the dispute becomes complicated that is when they take it to the senior traditional leader who usually manages to resolve the disputes (Interview, 11, January 2021); (Interview, M10, November 2020).

As indunas, we hear the disputes and we take them to the traditional office which as you know is where our leader will be. They hear these disputes and then make the judgement (M9, October 2020). A member of the Community Policing Forum corroborated with this and argued that the final decision and handling of the disputes is done by the senior traditional leader (Interview, M12, March 2021).

Looking at the time frame of handling the land dispute appeals, the research also found out that, COGTA in its annual provincial plan seeks to resolve a dispute within two months. However, one senior provincial government official argued that they also encourage the complainants to also go seek other organizations, public or private like the Public Protector's office or the courts when the parties do not agree to the judgement given (Interview, M2, March 2021). Similarly, two traditional leaders supported this but emphasized that they strive to make good decisions in their areas and that they do not want a dispute going on and on. What we can pick from this is that the traditional leaders try in their best interest to be fair and time conscious when handling land disputes (Interview, M8, January 2021); (Interview, M7, October 2020).

Additionally, the research gathered that COGTA and traditional leaders are on the same page in terms of the parties invited to the land dispute courts by the traditional leaders. This is what was said in regards to this. *The traditional leaders and the disputing parties are the ones who attend these sessions* (Interview, M2, March 2021). Only those who are not agreeing and fighting over land are the ones that are invited to the meetings (Interview, M10, November 2020).

Lastly, the research also found out that traditional leaders at these councils do take notes of the meeting either through an appointed induna or the chief's advisors or secretaries. Traditional leaders said in some cases requests are made to access these documents but

because of their sensitive nature they could not show them to the researcher while online (Interview, M8, January 2021).

4.9 Fairness and impartiality in land matters by traditional leaders

Another key finding of this research was that traditional leaders in Bushbuckridge strive to ensure fairness and being impartial in carrying out their role in land administration. Five traditional leaders and three provincial government officials agreed that that traditional leaders in Bushbuckridge do not discriminate in terms of gender or social status of a person when they are administering land administration issues. One municipality official said that they are not privy to such information on fairness (Interview, M4, March 2021). Another municipal official said they do not know as their office does not deal with such issues (Interview, M6, March 2021). The following is what was gathered from the provincial government and traditional leaders.

Traditional leaders take into cognisance, prioritise and ensure that there is fairness in allocation and other matters. In most cases when there is a sitting in the House of Traditional Leaders or at a traditional leaders' council sitting, they emphasize and always address the issues to do with fairness and the marginalised (Interview, M3, March 2021).

In terms of fairness, when it comes to land disputes, allocation and others they (traditional leaders) do not separate issues. They treat people equally. But in some cases, the traditional leaders can tell you that you have to wear a doek or remove your hat, you do not wear a trouser in their courts (traditional operating spaces). You know, those are the circumstance or problems that women are facing in South Africa. However, as we work with them closely, I have observed that their mission is to treat everyone equally on land issues (Interview, M2, March 2021).

Respect for our culture and us as Amakhosi is important. Just like in the courts there is a dress code but matters before the judges are handled fairly. We also do the same on land issues you are asking me about. If you go in the communities, they will tell you that we fair' (Interview, M7, October 2020).

Another traditional leader argued that since South Africa became a democracy, things have been changing. The traditional leader pointed out that only men were given land and unmarried women were not treated well in land matters back then but now that is not the case. One traditional leader also indicated that even now more women are getting the roles in land and some are advisors to the *Hosi* (senior traditional leader) (Interview, M11, January

2021). From what has been said we find that the traditional leaders do not discriminate and are impartial in their roles in allocations and other land administration functions they do in Bushbuckridge.

4.10 Challenges faced by traditional leaders in land administration

4.10.1 Land invasion

The major and persistent challenge in the Mpumalanga Province in terms of land administration that affects traditional institutions is land invasions in their areas of jurisdiction. In a booklet that is published by the Provincial Department of COGTA on Traditional Leadership, the MEC for COGTA in Mpumalanga Provincial, Mr. Msibi argues that land invasion is being perpetuated by people who are not traditional leaders. The department has since signed a Memorandum of Understanding with different institutions like the police, local government associations and the House of traditional leaders to tackle this issue. Results of these are not yet public as they are still trying to tackle the issue (Traditional leadership in Mpumalanga, Booklet, 2020).

This is a problem that is around the country and the province as well. The traditional councils report these cases to COGTA. Usually, they try to call these culprits in a meeting to discuss. Most of these people go to invade a space within a cell and claiming that it is their land or that they are ploughing it because it has been always their land and they are not invading it. Traditional leaders do not have any power to stop or remove people once the people have settled (Interview, M2, March 2021).

In terms of land invasion, they start the process of discouraging that. They start to engage the people who are doing the land invasion. In case they disobey the order, traditional leaders usually engage the municipality, the SAPS (South African Police Services) sometimes the SAPS may say you must come up with a court order for them to evict the individuals. This is when traditional leaders start engaging lawyers, provided they have financial muscles, which in most cases they do not have (Interview, M3, March 2021).

4.10.2 Limited understanding and implication of by-laws in traditional leaders' areas of jurisdiction

Another issue that was noted from the research is that some of the traditional leaders lack a clear understanding of the by-law on land administration. On this issue, the research unearthed that there was more that needs to be done to train traditional leaders as far as land laws are concerned. This is what was said by one interviewee,

If we look at the municipality these by-laws are there but when we come to the traditional councils they are not enforced and some do not even know that there are there (Interview, M12, March 2021).

More so, another interviewee added that they do not know of any by-laws to govern the invasion of areas deemed to be sacred lands. They pointed out that there may be there on the part of the municipality by they are not enforced by the traditional leaders (Interview, M3, March 2021). This also pointed to the lack of communication of the by-laws by the municipality.

Although serious concerns were raised by traditional leaders and officials from the provincial government, the research found out that BLM has a policy in place that is part of the Land Use Management Systems to curb land invasion. There are also by-laws in place and ways to deal with perpetrators of these illegal settlements. One municipal official argued they are the biggest municipality in the province if we look at land mass. However, since financial and human resources are limited to enforce these laws, this greatly affects traditional leaders in land administration (Interview, M6, March 2021). Traditional leaders also corroborated with this by saying enforcing these laws becomes a challenge as the land invasion happens so quickly and that they have limited resources to remove these illegal settlers (Interview, M7, October 2020). Generally, what was picked from the traditional leaders is that there is the need for more workshops and communications of these policies and by-laws from their responses. Lack of understanding of these is affecting the role traditional leaders have in land administration as the research found.

With regards to land invasion or illegal settlements, we do encounter such problems because we do not have a clear understanding of the guiding documents (by-laws on land). We encounter challenges in trying to remove the people from the areas some do understand and others do not because they know most of the traditional leaders do not know the laws governing land issues (Interview, M12, March 2021).

4.10.3 Illegal land allocation

All the interviewed traditional leaders said that there are people who are not traditional leaders or municipality officials who allocate stands for illegal financial gains (Interview, M7, October 2020) (Interview, M8, January 2021). This is what was gathered by the researcher.

You know headman (indunas) right. Some of these headmen are not paid for their duties in administering the land. So, these headmen are allocating stands and taking the money for personal use. This means that they are doing it without involving the traditional council. They are doing it illegally which is one of the problems creating land disputes in traditional communities. For instance, when a headman allocates a stand and there is another headman or traditional leader allocating that same land to another person it becomes problematic (Interview, M2, March 2021)

We are seeing the rise of these people who just allocate land and they are not even chiefs. They are invading our land. (Interview, M7, October 2020).

People and traditional leaders are losing land for agriculture through this activity by these people who just allocate land without the knowledge of traditional leaders (Interview, M1, February 2021).

Another interviewee corroborated with the above and added that allocations of business or residential stand on land that has not been surveyed by the municipality in the traditional leaders' areas of jurisdiction is a problem in Bushbuckridge (Interview M1, February 2021). The research found out that this illegal behaviour is also happening in the traditional areas without the knowledge of the senior traditional leader. They end up duplicating land allocation which creates land disputes that are common in the communal areas as was noted above.

4.10.4 Working relationships between traditional leaders and municipality

In terms of proper communication between traditional leaders and municipality, the research also picked up that in some areas there is no proper communication and cooperation between the municipality and traditional councils on land matters. The political institutions and their representatives are also said to be the problem as some come and do not recognise the traditional leaders on land issues. This then creates conflicts in land administration between these institutions. The research found out that from interviewees that,

One thing I have noted or that becomes a problem in land administration is the issue that when there is a portion that is eye marked for residential sites you can find out that the municipality does not approve or it takes time for them to approve in order to frustrate us (Interview, M11, January 2021).

It differs from one traditional council to the other as some councillors do work closely with the traditional councils. However, some may say these councillors are taking our roles like

the allocation of land. When it comes to local space there are so many structures including the ward committees. As you know there is the Operation Vuka Sisebente (OVS) in Mpumalanga. These structures are competing in the local space. So, I am saying in some traditional councils there is no proper communication and in some, they do have good communication (Interview, M2, March 2021).

The argument that was also raised concerning the working relations in land administration has its roots in complaints from traditional leaders that municipal officials and councillors are taking their roles in land administration. The main issue that was observed is that as municipal land increases the money traditional leaders were collecting from people is also reducing thus reducing their power (Interview, M4, March 2021). From this, we can gather that these poor working relations are exacerbated by the lack of recognition of one institution to the other.

Also speaking to the issue to do with cooperation and cordial working relations between the municipality and traditional leaders, the research also gathered that in some cases they may be strained relations between the two institutions. This is because when it comes to the land traditional leaders do not adhere to the Spatial Development Frameworks (SDF) or the Integrated Development Plans (IDP). This means the traditional leaders end up doing as they please which has an impact on development in general (Interview, M6, March 2021); (Interview, M2, March 2021). Four out of four traditional leaders interviewed pointed they work well with the municipality but are not happy with SPLUMA. Although the majority of interviewees pointed out this, there are good working relations between municipalities and traditional leaders in the area they emphasized that this issue should not be overlooked. The reason for this is because a number of traditional leaders no longer participate in the IDP or SDF meetings.

Lastly, the research also found out that the Acts are also contradicting each other and the roles of traditional leaders have never been clear post-1994 (Interview, M2, March 2021). All of the participants agreed with this but were of the view that these roles have to be informed by the Constitution which in their view does not clearly give these as well. This is where the problem is as a majority of interviewees stated.

4.11 Changes identified on the roles of traditional leaders in land administration

4.11.1 Legislative Changes

Looking at whether the roles of traditional leaders have been changing all the respondent argues that SPLUMA did change the way traditional leaders were operating. The research found out that legislative documents are changing the roles of traditional leaders. None of the interviewees commented on prior legislation. On this finding, the responses given to the researcher were as follows,

From 2015, legislation dictated that we can no longer have different legislations regulating land use. What is said is that, we can no longer have an instance where only 10% is covered by what we call the land use scheme. It said we want the whole 100% covered by the local authorities... So, after 2015 traditional authorities realised that in actual fact when it comes to land-use management, SPLUMA does not identify them as an authority to give out approval or not. SPLUMA just takes them and says you can comment like everyone else. They have become a component in the system. The instance that is there now is that traditional leaders give out the land but the municipality gives the use... So, already their power has shifted from merely giving someone a piece of land and the use. They are not able to dictate the spatial projection or the future plan of an area now (Interview, M4, March 2021).

They have been arguing that municipality is taking our roles and they have always been competing with municipality in terms of allocations and planning on issues to do the land. SPLUMA only seeks to bridge the gap between the traditional leaders and municipality. What happens now is that they need to consult with the municipality. There is one traditional council (they were not in a position to disclose the name) that has partnered with municipal and for now, things are going good there. My hope is that majority of them follow suit (Interview, M6, March 2021).

There is nothing much other than the issue of SPLUMA because traditional councils and leaders before did not want to communicate with local municipalities when it comes to land administration or land allocations. So, they start the issue of saying municipality is taking our power to manage our land. As you know the majority of traditional leaders are not in support of this Act as they say it is taking their powers in managing land. From this angle, there is some evolvment as they used to do things on their own and as they please (Interview, M2, March 2021).

Another interviewee corroborates with this and adds that most people are waiting to see is the way the newly enacted legislation on traditional leadership will be implemented (Interview, M3, March 2021). Another interviewee also pointed out that SPLUMA is actually a problem in the face of traditional leaders as it is challenging their institution (Interview, M13, March 2021). The research established that this is why we see resistance of this legislation not only in Mpumalanga but also around the country. Basically, what they were trying to say is that SPLUMA is indeed changing their role as the things traditional leaders used to do have been removed particularly on making decisions on land use.

There is an Act called SPLUMA which is also key. There is no development that can take place without utilising this law. But you will find when you talk to them (traditional leaders) that they sometimes use their own mind to allocate stands and other issues (Interview, M1, February 2021).

More so, the research also found out that at an address of the members of the National House of Traditional Leaders by the Mr. Gugile Nkwinti (former Minister of Department of Rural Development and Land Reform) in July 2015 was told that the traditional leaders were not happy with SPLUMA. This is because the Act changed the role traditional leaders had in land administration. Kgoshi Mokoena from the Mathibela Traditional Council in Bushbuckridge vowed that as traditional leaders they would defy the Act as it was making the municipality be in a position of being the victors as their roles as traditional leaders were being significantly changed as far as land administration is concerned (Sowetan Live, July 2015).

4.11.2 State land release in the traditional leaders' areas of jurisdiction

The research also found out that there is a process of state land release on the jurisdiction of traditional leaders that are changing the roles of traditional leaders. This process is done through the agreement of the DALRRD, municipality and traditional councils. The municipality wants to formalise some areas so as to ensure people have adequate housing and giving them the full title of the land. To do so they need more lands from the traditional leaders. Traditional leaders have to relinquish some of the land to the municipality thus a process of state land release has to be initiated (Internet, M4, March 2021). Once this process gets the approval of the community and traditional authorities it means the people become the owners of the land and have full tenure security. They are then not subjected to the traditional authority fees. Confirmation of these fees from traditional leaders interviewed could not be confirmed as they declined to comment. Two interviewees were of the view that this in a way is a problem to traditional authorities and they are restricted from collecting land fees from

these people (Interview, M5 March 2021) ;(Interview, M4, March 2021). Since people are no longer paying these fees, the role of traditional leaders is changing.

Traditional leaders have what is called the Khonza Fee (appreciation fee or some form of land fee) that they collect annually from each person (or household) that is in the tribal jurisdiction. I think it is R200 a year or so. So, when you are saying to them, we are going to remove 500 people from your area they will think they will lose. That is why I was saying there is deterioration of their power. People are also not paying it anymore as they asking themselves why should pay this (Interview, M4, March 2021).

4.12 The role of traditional leaders in managing grazing lands

The research also looked at the issue to do with the common lands such as grazing land in the jurisdictions of traditional leaders. The researcher found out that there are divergent views between COGTA, BLM and traditional leaders on this issue. The following was gathered.

There is no much role when it comes to grazing lands. The issue that is a problem in the province is that of land invasion of such land, especially in rural communities. In instances like these, traditional leaders play a role of protecting that land, even though they do not have much power to enforce the law. There is not much that they can do because such land is allocated by the municipality as well (Interview, M2, March 2021).

Since the land is demarcated specifically for grazing, even if someone needs to occupy that land, the traditional leaders will actually deny them the right to occupy that land. The indunas and community members also play a role in preserving these lands. There is a structure that is there specifically for these grazing lands called Group Ten. This is the structure that is also sent by traditional leaders to talk to the people who may be trying to invade these lands (Interview, M12, March 2021).

In terms of grazing land, it is a similar process of how the land is allocated. What the traditional council does is that it will say these are the hectares for grazing land, those who have cattle you make them graze there. Together with the Department of Agriculture, they will be there to assist the farmers in terms of the dipping of the cattle. However, the grazing land is taken care of by traditional leaders. On the grazing land, there is no PTO that is issued by the traditional council (Interview, M3, March 2021).

Lastly, on grazing land roles of traditional leaders, the researcher was also told by one induna that there was an incident where livestock farmers were claiming land that was common land as theirs. This meant that they were treating the grazing land as personal property solely for

their group and not for other community members (Interview, M7, October 2021). To resolve this the traditional leaders had to verify this claim but they found out that the farmers did not have any Tribal resolution to support their claim and they later gave it to the community.

4.13 Chapter Summary

The chapter covered the findings of the research on the role of traditional leaders in land administration. The major role that traditional leaders have in land administration is the allocation of land. This was supported by all the interviewees of this research. Another finding was that they do take part in the planning meeting of land matters thus having a participatory role. However, it was established that some traditional leaders no longer attend these meetings even if the BLM still invites them. The majority of the interviewees shared that SPLUMA has changed the role of traditional leaders as they can now only allocate but not decide the use of the land. The traditional leaders do not want to hear about SPLUMA and they are against it. Lastly, land invasion and induna who illegally allocate land without the knowledge of the senior traditional leader was also found to be the problem in Bushbuckridge.

CHAPTER FIVE

5.0 Discussion of Key Findings

5.1 Chapter Introduction

This chapter discusses the key findings of this research based on the question it sought to ask. The research sought to establish the role traditional leaders have in land administration in Bushbuckridge Local Municipality. The issues discussed here are centred on land allocation roles, registering of land roles, administration of sacred land, dispute resolution roles and the challenges faced by traditional leaders.

5.2 Land allocation

The findings of this research concur with Ntsebeza's (2006) historical perspective of land allocation by traditional leaders in South Africa (see Chapter Two). The responses that were gathered from the research indicate that traditional leaders do have the role of allocating land in Bushbuckridge. Triangulation of the responses from the traditional leaders, municipality and the provincial government was done to get a clear picture of who does what in land allocation amongst these institutions. They mentioned similar issues showing the level of agreement on this particular role traditional leaders have in the allocation of land, in their areas of jurisdiction. Dusing's (2001) argument that pre-colonial traditional leaders required the approval of their councils when making the decisions on land is still the case now. This is confirmed by the research in Bushbuckridge in that for the Tribal Resolution to be issued it requires approval from the other levels in the hierarchy of traditional leaders in a traditional area. Without this, the document is not issued. Kundo's (2018) understanding of land administration is supported by the data collected from this research. How land administration is conceptualised in Bangladesh as a system that ensures that there is allocation of land and registration of land is similar, to the results found in Bushbuckridge. What this study adds is the nature of the land that is allocated. As was mentioned earlier, the land that traditional leaders allocate is for residential purposes and farming purposes. Commercial land allocation falls under the municipality and has to be in line with their SDF for it to be approved.

Although, Wyatt (2011) argues that for land administration to be effective, land rights have to be clearly defined. The data collected showed that the traditional leaders in Bushbuckridge still give people what are now called Tribal Resolution (formerly the Permission to Occupy) documents. This latter term, as we learnt from the research is still used to refer to the new term that is now given. Although the term might have changed the document does not give security of tenure as that it is conceptualised by Wyatt (2011); Williamson et al (2010), Tija

and Coetzee (2013). The key informants of this research, detailed the procedure that is done in land allocation but put an emphasis that security of tenure is not guaranteed by these documents given by traditional leaders.

Cousin and Hall (2011) share these same sentiments in that PTOs (now Tribal Resolutions as findings alert us) are not a secure form of tenure which negatively affects rural inhabitants to enter into land markets. One quoted interviewee above actually states that when there are developments that are to take place in an area, one may be moved, which is a problem in itself. The fact that land administration is there to ensure tenure security, is not the case as collected from the research. Molen (2002) acknowledges that in some cases institutional practices that have come to be accepted by people may be strong to mask these realities. This problem of tenure security has a long history and institutions entrusted with resolving these are reluctant to address the issues in traditional areas. It makes it difficult to make long-term investments on the land by the land users as they are not guaranteed they will not be moved later as the land does not belong to them. Finding ways to formalise the land and also rethinking the new role of traditional leaders on such land is key to address this issue.

It was stated earlier that land that is under traditional leadership's jurisdiction is owned by the DALRRD, if it decides to do certain developments on the land, people lose out. Traditional leaders may have a role in allocating land but they have a weaker role in ensuring tenure security for the people they give the land as Ntsebeza (2006) notes. What these arguments infer is that the traditional leaders do have the role of allocating land but these allocations are not secure as interviewees alerted us. People can only get secure tenure once traditional leaders make requests to the municipality to have an area in their jurisdiction formalised ensuring that people are given titles to the land they hold.

Furthermore, Wiliamson et al (2010) state that land administration is also concerned with registering land and the rights to land. In the areas of jurisdiction of traditional leaders, the research found out this role of registering and keeping of these records is done by traditional leaders. Kundo's (2018) research also concurs with this as it speaks of recording land allocations. Although, their focus is not on who does what in the registration of the land, our research managed to pinpoint who exactly plays this role which is the traditional leaders. They are entrusted with keeping their registers in the areas of jurisdiction and are in no way obliged to give this information to the municipality or provincial government. Other institutions can only know the land allocations that are taking place in an area on request and

if the traditional leaders are willing to avail these. Although one interview mentioned that they are required to share these with the municipality and that they are kept at the municipal office this was not the case from the point of view of the municipality officials. Municipal officials mentioned that they only know of these when there is an application on land use such as operating a business or building a shop on that land. They can also get to know of these when traditional leaders request services like roads and water on the residential areas they have allocated. Their role is to record all the details including the name of the person they have allocated then land, the size of the land and where such land is located. To create transparency, thinking through ways to ensure that records are available to all can go a long way in preventing multiple allocations on a single piece of land. It also has the effect of ensuring that the set procedures are followed always in a given traditional authority.

Furthermore, the research also established that the first preference of the land allocation is given to inhabitants of the traditional authority. With the migration that is taking place, the findings also show that people who have never been residents of the area are being allocated land. Boundary determination is not a problem in the traditional authorities that were considered in this research. The GIS department and well as the town planning department in BLM is assisting traditional leaders with new technology on how to map their areas. They are also assisting traditional leaders with the maps of their areas which makes the traditional leaders aware of which land is theirs or not. However, problems that are likely to affect these boundaries are from people who purport to be traditional leaders when they are not. They illegally allocate land with no knowledge of these existing boundaries which in time will cause problems for traditional leaders amongst themselves.

Although the interviews and the literature that was consulted all agree that the traditional leaders are responsible for the allocation of land, they are slowly losing influence in their communities. With the formalisation of the areas, it means the settlers of those areas are gain their right to land through the acquiring of titles to the land they hold. Power on land that traditional leaders have as Mamdani (1996) points out is slowly fading away as the subjects of the traditional leaders are gaining their rights and security of tenure. Decentralised despotism that was placed on communal areas is slowly disappearing. The process, however, will take a while for all traditional authority inhabitant to secure such right as the laws of the country allows the dual land administration we have observed. The legitimacy that is given to such a system by the law also cements that this will take a while. At present what exists is that there are those who have their land administer or allocated by the municipality thus

gaining full titles and those under traditional authorities that have insecure land rights. As noted by Ntsebeza (2006) what will slow the process is the unresolved question of documenting the roles and powers of traditional leaders in land issues. To resolve these problems stipulating what the role of traditional leaders has to be clearly stated in the policy and legislative documents.

The way land allocation is done still resembles the process that dates back to the apartheid era as we compare issues raised by Mamdani (1996). The variation of this is on the title that is given to the document that is given to communal inhabitants after land allocation. The document as was mentioned earlier is now termed a Tribal Resolution after the abolishment of the Permission to Occupy. However, these two documents are still similar in their use.

5.2 Land use planning

If land administration is broken down into different parts for easier understanding as Wily (2003), Enemark and Williamson (2004) illustrate, we can see that land administration encompasses land planning. This planning is the one that determines the use of the land or policies that the institutions dealing with land issues seek to achieve as previously highlighted. The research established that traditional leaders have a participatory role in the planning process of land matters. This now limits their previous power in making the final decision in land use. They are now part of a system thus they can only contribute but cannot unilaterally decide the land use in their areas of jurisdiction. The research established that they can only make requests or bring up the land issues that they want to have addressed in their areas of jurisdiction. This becomes part of their contribution to the land planning process. We also learnt that when SPLUMA was enacted it was meant to consolidate the land use planning to be decided by one institution which in essence removed the power of planning and deciding of land use at the same time by traditional leaders. This may be one of the reasons traditional leaders refused to comment on the issue every time SPLUMA was mentioned in the interviews. Through insights from the interviewees, one can pick up that this piece of legislation limits the role of traditional leaders in planning to that of being contributors in the land use planning process. Municipality officials also raised that they have planning meetings on land matters by traditional leaders no longer come. This could not be substantiated from traditional leaders for the reason mentioned above.

The laws that are being enacted are further reducing the powers of traditional leaders and also further creating problems for land administration. There are not addressing the issue of roles

by stating them clearly. This explains the reason why clashes between traditional leaders and municipal officials are evidenced in South Africa.

5.3 Sacred lands administration

In seeking to understand how sacred lands are administered and the role traditional leaders have it points to a cultural preservative role. The cultural meanings attached to land are diverse in some cultures (Makahamadze et al, 2009); (Duduzane and Nel, (2016). These cultural aspects of communities have to be understood to understand what constitutes sacred land. In the research conducted some pointed to burial sites and places traditional ceremonies are held as being the sacred lands. The findings of this research as noted above show a diversity of responses on the existence of the land but not on the role traditional leaders have on such lands. The way modern society is now structured overlooks some of these values that have been placed on the land by generations that came before us as rightly noted by Ombe (2003). Reinforcement of Indigenous Knowledge Systems from traditional leaders has to be thought through and preserve the culture of communities. The events that they host are welcome but a curriculum and documenting these practices need to be established.

Our findings give an insight into the disappearance of sacred lands as people are migrating thus the knowledge of the cultural practices and knowledge needed to preserve such land is slowly fading in Bushbuckridge. This makes it difficult to determine the nature of the role traditional leaders have on these lands. What the research also established is that, where these sacred lands are, the traditional leaders play an important role in preserving these lands. Izidine et al (ibid) give a detailed picture of how the Licuati Forest was maintained in pre-and colonial periods which was done by traditional leaders to protect the land and its vegetation. The findings above confirm that the cultural ceremonies that take place in the traditional areas are in a way to maintain this knowledge and this is why traditional leaders host these. The frequency of the ceremonies could not be established by this research. The increase in urban migration also shows that traditional leaders, with time, may no longer play this role if African cultural practices on land issues are not paid attention to. From what was gathered, the lands are slowly disappearing but we can conclude that traditional leaders try to preserve these lands with the assistance of the municipality.

5.4 Challenges faced by traditional leaders in land administration

Although the literature reviewed (see Chapter Two) shows problems like poor working relations and institutions not working together well on land issues (Goodfellow and Lindemann, 2013) this was not could not be concluded by our research. Land invasion is the

main problem that was established by the research. The way this was explained is when people move to settle on land under the traditional leader without permission to do so it is deemed land invasion. Not only traditional leaders are being affected by this but also provincial government and municipalities as gathered by the research. The research established that traditional leaders may try to prevent these land invasions by sending a structure called the Group Ten but because of lack of resources, they tend to lose these battles of regaining control of their land.

Biitir and Kuusaana (2020) in their study of customary land administration observe that there are people who issue land without the knowledge of the heads of the institutions such as family landowners, traditional leaders and local government authorities. The data collected by the researcher shows a similar position to that of Biitir and Kuusaana (2020). The slight variation to these authors' finding is that they observe that family members of those who own the land are the ones who illegally allocate the land without the knowledge of the heads of those land in Ghana. In our case, there are people in a habit of allocating land in both rural and urban areas of Mpumalanga Province illegally but true identities could not be established. What was only learnt is that some of these illegal allocations are being done by some traditional leaders in the lower traditional leadership structures and individuals who are not traditional leaders for financial gain. This however does not confirm Kanyane's (2017) claim that traditional leaders are after personal benefit as the result gathered were not conclusive. As was shown Provincial Government is also disturbed by these illegal allocations of land that are happening in areas of traditional leaders' control.

5.5 Land dispute resolution

The disputes that the research found out are those between community members who stay in areas under the control of traditional leaders. Although the literature shows that there are disputes that also involve traditional authorities with other traditional authorities as Dande and Mujere (2019) illustrate, the respondents argued that they have not come across such as boundaries are well defined (See Figure 2 for traditional authority boundaries). Wehrmann (2008) illustrates the various types of land disputes in Africa and argues that there has been a failure to resolve some of these because institutions working on land issues will be competing for roles. In some cases, these roles are not codified which in turn, affects the process of land dispute resolution. The research we conducted did not pinpoint the nature of the conflicts that happen in Bushbuckridge in detail. What the researcher found out is that disputes that involve community members against each other over land are the ones traditional leaders resolve.

Provincial government officials and traditional leaders' responses show that traditional leaders have a role in resolving land disputes. This corroborates with Aiyedun and Ordor (2016) that traditional leaders help resolve land disputes in the areas of jurisdiction and have always had this role before colonisation. Municipality officials stated that they do not have extensive knowledge of such issues because they are not privy to these specific issues that happen in the traditional leaders' areas of jurisdiction, as far as land disputes are concerned. They can only know of these disputes if it has to do with land use which they are supposed to regulate based on SPLUMA.

In answering how traditional leaders handle disputes, the research gathered that they call the disputing parties to meetings to resolve these. They happen at different levels on the traditional leadership hierarchy as was shared earlier. When the lower-level leaders fail to resolve these disputes, they refer the matter to the senior leaders. The senior leader adjudicates these disputes fairly and impartially as was collected. The research also gathered that there are times when disputing parties do not accept these judgments. The traditional leaders consult with COGTA, which assists the traditional leaders to give fair judgements.

5.5.1 Fairness and equality in land matters

The dominant narrative in the literature that was reviewed in Chapter Two shows that women are not treated equally to men on land matters in rural areas (Ngugi and Nyariki, 2005). Cultural practices have been used to suppress the rights of women to land. Ragan and Gilmartin (2002) illustrate this and are of the view that these practices go against the Constitution's aspiration of having a fair and equal society on all matters. Their research in Mpumalanga had shown that women are generally denied their right to land. Traditional leaders were said to be at the forefront of those who do not ensure fairness to women in the Province. As time has elapsed since Rangan and Gilmartin (2002) did their research things have generally been changing as the findings of our research show. The findings show that traditional leaders in Bushbuckridge have come to understand the dictates of the Constitution enshrined in Chapter 2, which requires equality and fairness to be given to all aspects in South Africa. This confirms Beall, et al (2005) argument that in every institution they exist continuities and discontinuities. They have dropped the bad practices of not treating people equally on land matters as the research gathered. Williamson et al (2010) give us insights into the nature of different land administration systems, for which they highlight gender equity may be included as an important component. The role actors play in this becomes important. Our research found that traditional leaders do try to emphasize this in their gatherings and

when they are resolving land disputes amongst community members. This was unanimously agreed upon by the 13 key informants of this research.

5.6 Chapter Summary

Discussion confirms the studies done in the past on traditional leaders as having a role in allocating land in their areas of jurisdiction. It further shows that the main problem affecting traditional leaders in land administration is land invasion, which adds to the problem commonly identified in land administration. The discussion also showed that traditional leaders now have a limited role in planning and determining land use. This chapter also discussed the role traditional leaders have in administering sacred lands as that of a cultural preservative role. The next chapter gives the conclusion of this study.

CHAPTER SIX

6.0 Conclusion and Recommendations

6.1 Introduction

The previous chapter discussed the findings of this study on the role of traditional leaders in land administration in Bushbuckridge Local Municipality. This chapter gives a summary of the study. It also revisits the objectives of the study as well as giving the limitations of this study. Lastly, this chapter gives recommendations on land administration in traditional authorities and highlights areas that require further research.

6.2 Summary of the Study and Conclusion

This research sought to understand the role traditional leaders have in land administration in Bushbuckridge, Mpumalanga Province. The research was motivated by scarce literature on the subject in Mpumalanga Province on land administration. The research then sought to add to the literature what constitutes the role of traditional leaders in Mpumalanga. Due to the nature of the area and the majority of its land being under the custodianship of traditional leaders it gave a good opportunity for study purposes.

The research was based on a qualitative design so as to enable in-depth interactions with key informants of the study. The majority of these interviews were carried out virtually due to the Covid-19 pandemic that is affecting all countries. This affected the way the researcher had hope to conduct these interviews, which was to have them all face to face. Where the interviews were conducted face to face, Covid-19 protocols had to be observed. The findings of this research are based on the interviews that were conducted by the researcher. Triangulation was sure to provide validity of the finding as data was collected from different sources and people stationed within different institutions that have knowledge of traditional leadership land administration in Mpumalanga Province.

The findings of this research show that traditional leaders have a role in allocating land in Bushbuckridge. The traditional leaders are the ones that allocate land to people who apply for land in their jurisdiction. It was beyond this scope to assess the nature of these applicants. The role they have in allocating land has not changed from the ones they used to do in the past. The results on this issue concur with Koenane (2017), Ntsebeza (2006), and Roesh (1996) that traditional leaders do have a role in allocating land. The process of land allocation starts at the community level with the induna playing an active role in the process as the research established. They draw hand maps or sometimes use GIS devices in the mapping

and knowing the actual area one has been allocated land. The document they give has changed its name from the PTO to the Tribal Resolution. The majority of people however still sue the former as the research established. The respondents unanimously agreed that indeed traditional leaders have a role in allocating land in their areas of jurisdiction. Although this was the case this role is not codified clearly in any of the legislative documents.

The study was also able to establish that the making of the final decision in land use by the traditional leaders has since changed. This has been made so through the enactment of SPLUMA which is the legislation that deals with all land use and spatial planning for the whole of South Africa. It covers both urban and rural areas in regulating these. The traditional leaders are not in support of this legislation base on the silence and refusal to comment on the issue. Provincial government and municipality officials who were part of this study all share that the final decision of land use now rests with the municipality. Traditional leaders can assist in the spatial planning process as contributors of ideas and requests that they would want to see in their areas. The research could not establish whether traditional leaders still attend these meetings based on their views on SPLUMA. The role the research established is that of a participatory nature in the land planning process by the traditional leaders.

The study also established that sacred lands are slowly disappearing in the area which is a cause for concern to those who value their African cultural and heritage sites. It was established that traditional leaders have a role in preserving these lands for cultural purposes for generations to come. With the increase in population, the areas are being occupied and through the practices of land invasion filled up as well. The traditional leaders in some cases ask the municipality to assist in the fencing of these areas to prevent them from being invaded. Traditional leaders also host cultural ceremonies to remind people of the importance of their African cultural beliefs and sharing the knowledge of management of such lands. The findings of this study concur with those of Ombe (2003) and Izidine et al (2008) in that there is the need to preserve indigenous knowledge of land management systems in Africa.

The research also shows that traditional leaders are actively involved in land dispute resolution in their areas of jurisdiction. they carry out this role impartially. The disputes only reach the senior traditional leaders when the headmen/ headwomen have failed to resolve them in the communities they are leaders of. The research established that the attendants of these dispute resolution meetings are the disputing parties of the land. When parties are not

satisfied with the judgement given by the senior traditional leaders, traditional leaders may get assistance from COGTA. The research established that traditional leaders are arbitrators in dispute resolution in their areas of jurisdiction.

There are challenges that traditional leaders face in land administration in addition to those that have been dominant in the literature. The major problem that affects traditional leaders in their areas of jurisdiction is land invasion as responses from the key informants showed. It is not only a problem that is affecting traditional leaders but one that is national as well. More needs to be done to ensure such problems are dealt with as early as possible. Capacitating the traditional leaders with by-law knowledge and the power to enforce these is key. The current picture from the findings shows that traditional leaders are in a weaker position to deal with this problem. Similar to this problem is illegal land allocation in these areas of jurisdiction. divergent views were shared but the true identities of perpetrators of this behaviour could not be established.

6.3 Objectives Revisited

As was highlighted in Chapter 1, the study sought to understand the role of traditional leaders in land allocation. The study found out that traditional leaders are responsible for allocating land in their areas of jurisdiction. They give land to people who require it and the first preference is to people who reside in their areas or who have previously resided there but had moved. When traditional leaders allocate land, they record these and issue what is now known as the Tribal Resolution. The document was previously termed the Permission to Occupy document. This document indicates that the allocation of land to an applicant has been approved. Although traditional leaders allocate land, allocations of land they do are deemed insecure as they do not give the full title of the land to the land applicant. This is a problem as it deters applicants from doing long-term investments on the land that they hold as the land remains the property of the Department of Land Affairs. More needs to be done to ensure the security of tenure for all in rural areas in South Africa.

More so, the study also managed to establish the role of traditional leaders in land-use planning. They have a participatory role when it comes to land-use planning. Since the enactment of SPLUMA, they now operate in a system together with municipalities. They now have to work with other stakeholders in land administration when it comes to land-use planning. However, the final decisions on land-use planning rest with the municipalities according to SPLUMA, and what was also given by municipal officials and provincial government officials. Traditional leaders previously could determine land-use but this has

significantly changed. As was noted earlier this is why traditional leaders are not in favour of SPLUMA.

The research also sought to establish the challenges faced by traditional leaders in land administration. A plethora of challenges was established from the interviews that were conducted. Chief amongst these problems that were identified is land invasion. This problem is affecting both traditional leaders and BLM. There are people settling on land without having been given the Tribal Resolutions by the traditional leaders. This problem has to be addressed and traditional leaders need to be assisted in resolving this problem as they are losing control of the land under their jurisdiction. A similar to this problem is the one of illegal allocation of land. This is another challenge that is being faced by traditional leaders in Bushbuckridge Local Municipality. The research established that there are people who are not in traditional leadership structures who are in the bad habit of allocating land. This again affects how they manage land as it results in multiple allocations of a single piece of land.

The research also sought to understand how sacred lands are administered by traditional leaders. The research managed to get an understanding of this. A diversity of responses was given by the participants of this study. Some pointed to the place of burial as the sacred land, others pointed out that places where traditional ceremonies are held are the sacred lands while others pointed out these are disappearing quickly. As a result of the disappearance of the sacred lands, not much could be established besides that the traditional leaders raised that they are trying to educate the people on how to manage and preserve lands considered to be sacred. Traditional leaders are managing sacred land by infusing Indigenous Knowledge Systems into their practices of land administration. The ways that they learnt from their predecessors is what they are using to maintain these lands. The hosting of traditional ceremonies signifies how they are trying to manage the sacred land by sharing information on what needs to be done to preserve these areas.

Lastly, the research also managed to understand how land disputes are resolved by traditional leaders. Disputes that are resolved are the ones between the community members. The traditional leaders invite the disputing parties to a meeting so as to understand the problem and allow the parties to share their side of the story. The matters are first handled at the community level by the headman/woman. When they fail to resolve the issue, they refer the matter to the next or senior traditional leader and to the senior traditional leader of them all on their hierarchy. These most senior may also seek advice from the provincial government

which only recommends ways to look at a dispute. Thereafter the senior traditional leader takes the appropriate action from the advice that would have been given to them by the provincial government. The research also established that the disputes are handled impartially and fairly thus disputing parties are treated equally.

6.4 Limitations Revisited

This study encountered some of these limitations during the course of preparing to collect data and while collecting data as was highlighted earlier. Getting access to traditional leaders took time because of the Covid-19 restrictions and the protocols that were in place to speak to traditional leaders. To gain access to traditional leaders the researcher was assisted by officials from the Mpumalanga Provincial Department of Cooperative Governance and Traditional Affairs. Another limitation of this study was the Covid-19 restrictions that were in place in the country and the province. There was limited face-to-face interaction with the participants. The researcher had to conduct virtual meetings, which all the participants were comfortable using given the circumstance that faced us.

6.5 Recommendations

Informed by the finding and the discussion of the literature available on traditional leaders the research makes the following recommendations.

6.5.1 Codification of role of traditional leaders in legislative documents

Currently, traditional leaders operate in a vacuum as far as legislation on land administration is concerned. Ensuring that these roles identified above and many others are codified is key. This makes it possible to track accountability, record keeping and allocations in the traditional leaders' areas of jurisdiction. The issue of traditional leaders being the only institution with no clearly defined has been taking time to address. Codifying the role has to be looked into by the provincial government.

6.5.2 Curbing land invasion

The research recommends that there be more workshops on how to curb land invasion and illegal land allocation in the Province. These workshops have to include all institutions working on land in Bushbuckridge Local Municipality. There is also the need to come up with a land invasion policy which will go a long way in dealing with the problem that is affecting traditional leaders. This policy has to be crafted by the Bushbuckridge municipality together with the provincial government and traditional authorities.

6.5.3 Indigenous knowledge of land administration

Investment in indigenous knowledge of land management and preservation of cultural sites has to be looked into by provincial government departments working on rural land administration. Attention other countries give to the sacred areas has to be looked into if these areas are to be kept well. This may help in attracting more tourists to the area to learn more about this indigenous knowledge. The empowerment of the traditional leaders and other institutions working on the sacred land has to be addressed by the provincial government. Workshops and learning of the different ways previous generations managed land are recommended. Emulating the good and discarding the bad practices of land management will go a long way in preserving the sacred sites.

6.5.4 Strengthening cooperation in land planning

There is the need to encourage participation in land planning meetings, SDF drafting, and IDP drafting of the stake. Mutual cooperation has to be encouraged so as to have the different institutions working on land speaking with one voice. The municipality has to make sure that traditional leaders participate in the planning meeting and reinforcing that traditional leaders are part of a system of land planning. For this to happen codification of roles of each actor or institution has to be the first step that is taken by the provincial government.

6.6 Suggestions for future research

The research established the roles traditional leaders have in land administration. However, the researcher notes three areas that require further research. These are as follows:

- Tracing the institutional histories of the different traditional authorities in Bushbuckridge so as to preserve some cultural rites in land administration and nature preservation.
- Ways traditional leaders can be assisted in preventing and dealing with illegal land allocation and land invasion in their areas of jurisdiction.
- Understanding the land registration process in areas under traditional authorities.

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Appendices

Semi-structured Interview Schedule (For all the traditional leaders, municipality officials and provincial government)

Themes of the interview

1. Land Dispute Procedures
2. Sacred Land
3. Challenges in land administration
4. Land allocation and registration procedures
5. Common lands and grazing lands

Guiding Questions

1. What is the role of traditional leaders in handling land disputes?
2. What is the procedure in handling these disputes?
3. How many days do these proceeding normally take in resolving the disputes?
4. Who are the participants and their role in these courts to resolve land disputes?
5. How is sacred land administered by traditional leaders?
6. What role do traditional leaders play in administering the scared lands?
7. What is done to the offender of rules governing sacred lands if they are any?
8. Has the role of traditional leaders in managing land evolved over time or they have remained the same?
9. What are the challenges traditional leaders face in land administration?
10. What is the role of traditional leaders in land allocation?
11. How is the land allocated in areas of traditional leaders? Are PTO letters still issued?
12. How are common lands like grazing lands managed?
13. What role do you play in managing common lands such as grazing lands?
14. What is the role traditional leaders have in registering land allocations?
15. What is your role in ensuring fairness in allocation and disputes in land administration that involves women?
16. How have you been trying to resolve these challenges in land administration?
17. Do you experience land invasions/ illegal land occupation in your area? What is your role in dealing with such issues?
18. What is the role of traditional leaders in plan in land use planning?
19. Who make the final decision on land use between you and the municipality?

Approval Letter: Bushbuckridge Local Municipality



BUSHBUCKRIDGE
Local Municipality

Private Bag x 9308
Bushbuckridge
1280
R533 Graskop Road opp. Mapulaneng DLTC
Bushbuckridge
Co-ordinates: 31°3'59.796"E
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Email: info@bushbuckridge.gov.za

Website: www.bushbuckridge.gov.za

Enquiries: Mnisi M
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29 JANUARY 2021

Miss Maguranyanga M
BRAAMFONTEIN
JOHANNESBURY
2000

Tel: 0657267533
1805677@students.wits.ac.za

Dear Madam

RE: PERMISSION TO CONDUCT RESEARCH STUDY

The above is in respect of your request to conduct research under the topic is entitled " **The role of traditional leaders in land administration in Bushbuckridge Local Municipality , Mpumalanga Province**".

As a results, the municipality has no objection to the effect of your request. You are also advised that your interaction with the municipality shall be subjected to the policies as approved by the Council.

The municipality wishes you best of luck in your endeavour and the Skills Development Facilitator Ms Mnisi M.M is the contact person 060 5064 7520.

Kind regards

G.A. Nkuna
MUNICIPAL MANAGER

Approval Letter: Department of COGTA-Mpumalanga Province



co-operative governance
& traditional affairs
MPUMALANGA PROVINCE
REPUBLIC OF SOUTH AFRICA

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Litiko
Lekubusa
ngekubambisana
netebuholi bendzabuko

Departement van
Koöperatiewe Regering
en Tradisionele Sake

umNyango
wezekuBusa
ngokuHlanganyela
neeNdaba zamaKhosi

Ref : 3/6/P
Enq : Ms SM Mandlazi
Tel No.: 013 766 6557

Mr M. Maguranyanga
Wits University: School of Social Science
BRAAMFONTEIN
2000

Dear Mr Maguranyanga

REQUEST FOR APPROVAL TO CONDUCT RESEARCH

1. Reference is made to your request to conduct research for academic purpose.
2. Kindly be informed that approval is hereby granted to your good-self to conduct the research for the sole purpose of your academic studies and without compromising on the applicable ethical research standards.
3. The Department wishes you well in your research and studies.

Regards

MR S. NGUBANE
ACTING HEAD: CO-OPERATIVE GOVERNANCE AND
TRADITIONAL AFFAIRS

25/02/2021
DATE

