DUAL GOVERNANCE AND TRADITIONAL COMMUNITIES:

THE CASE STUDY OF THE MAMAILA (KOLOBETONA)

TRADITIONAL COMMUNITY

RESEARCH REPORT SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE MASTER OF ARTS DEGREE IN DEVELOPMENT STUDIES

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DECLARATION

I, Muvhulawa Faith Ramaboka, declare that this research report is my own original unaided work submitted in partial fulfillment of the requirements for the Master of Arts degree in Development Studies, School of Social Sciences; Faculty of Humanities at the University of the Witwatersrand. It has not been submitted before for any degree or examination at any other university.

Signed: **Muvhulawa Faith Ramaboka (695347)**

Date: **12 June 2014**

DEDICATION

I dedicate this research report to my family for the support, patience and understanding during my studies and for the many days I spent away from them.

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ABSTRACT

This study explores how the existence of traditional leadership alongside democratic governance within the local sphere of government affects traditional communities. It focuses on the relationships between traditional leadership and other key governance institutions at the local sphere; that is local government, administration of justice; community safety and land administration and how these relationships are translated in traditional communities. The key elements focused on include the roles of the different institutions, the role and position of the traditional community in governance, the need for institutions of governance to uphold their Constitutional mandates including the principles of democracy enshrined in the Bill of Rights within the Constitution.

Through the use of the case study method of research, focusing on the Mamaila (Kolobetona) Traditional Community and the Lemondokop Village in particular, the study affirms the position held by some scholars that there is dual governance within the local sphere of government where the institution of traditional leadership exists. Furthermore, this study reveals that the relationships between traditional leadership and the other institutions of governance vary depending on the mandate of such institutions within the traditional community. The question is how such varied relationships affect the traditional community.

To answer the above question I separated my findings into two chapters, focusing on perceptions and experiences of community leadership and community members respectively. This study shows that while dual governance is entrenched within the traditional community, and the key actors have found a way of accommodating each other and balancing their roles, the traditional community is at the mercy of traditional leadership because of the authority over communal land. The traditional community is not well conversant with the rights they have over the land and hence their development needs are driven by an elite who is more concerned about entrenching his authority than promoting community development.

ABBREVIATIONS AND ACRONYMS

ANC	African National Congress
CDW	Community Development Worker
CLARA	Communal Land Rights Act
COPE	Congress of the People
CPA	Communal Property Association
CPF	Community Policing Forum
CODESA	Convention for a Democratic South Africa
CONTRALESA	Congress of Traditional Leaders of South Africa
DOJ&CD	Department of Justice and Constitutional Development
DRDLR	Department of Rural Development and Land Reform
DTA	Department of Traditional Affairs
IDP	Integrated Development Plan
IFP	Inkatha Freedom Party
LED	Local Economic Development
NDP	National Development Plan
NHTL	National House of Traditional Leaders
SAPS	South African Police Service
TCB	Traditional Courts Bill

GLOSSARY

Kgoši	Senior traditional leader
Kgoro	Meeting place (the word *kgoro* has two meanings depending on the context-as a traditional court as well as a place where people meet to discuss issues of common interest). In this study the word is used in the context of both
Kgoro-sethope	A meeting reserved for identified people meant to discuss sensitive issues
Kgothekgothe	Community mass meeting
Legola	Village burial society
Letona	Headman
Letsogo la letona	Headman's assistant
Mohlakano	Community meeting
Moshate	Royal place
Mothelo	Tribal levy

CHAPTER 1

INTRODUCTION

INTRODUCTION

The recognition of the institution of traditional leadership in terms of Chapter 12 of the Constitution[1] has cemented the existence of the phenomenon of dual governance within the South African democratic governance system. Chapter 12 of the Constitution in turn gave birth to the White Paper on Traditional Leadership which "recognises that traditional leadership, as an institution located in the rural areas, has a role to play in the fight against poverty, homelessness, illiteracy, and the promotion of good governance".[2] The same Constitution establishes various institutions that have been given a mandate with regard to governance and development within the local sphere of government. The recognition of traditional leadership means that as an institution of governance at the local level it has to be taken into consideration when plans and decisions about traditional communities are made regarding development, service delivery and overall governance.

Venter and Landsberg (2006: 8) capture the constitutional recognition of traditional leadership by arguing that "the position of the ANC government is that traditional leaders have a cultural role to fulfill in African society and that they should assist the democratically elected government and its officials in developing their respective communities". Although government identifies the need to support traditional institutions and hence the establishment of the Department of Traditional Affairs (DTA), it also raises concerns on the need to assess the role of traditional leadership in the document "Towards a Fifteen Year Review Synthesis Report"[3] and comments that

> "It is too early to judge the success of these measures. Issues that require continuing assessment include whether the exercise of traditional power and authority reflects the spirit and letter of the Constitution, without the emergence of two classes of citizens:

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[1] Constitution of the Republic of South Africa, Act 108 of 1996.
[2] White Paper on Traditional Leadership, 2003.
[3] http://www.thepresidency.gov.za/docs/15year/part02.pdf, accessed 21/10/2013.

those ruled by democratically elected institutions and those ruled by unelected traditional leaders".

The above statement clearly reflects government's awareness of dual governance in traditional communities and therefore the need to determine effectiveness in relation to democratic governance as well as to identify mechanisms to ensure that there is no contradiction.

This study analyses dual governance in traditional communities. Within the South African context, I define dual governance as a system of governance within which both the modern political system (constitutional democracy) and traditional system (hereditary) co-exist. Some scholars refer to this setup as "the prevalence of two publics" (Ekeh, 1975), while others consider this arrangement as a "mixed polity" or a "dualism of structures of power" (Kyed and Buur, 2006). Ntsebeza (2006) argues that the phenomenon of acknowledging the role of traditional leadership in a Constitutional democracy is both "inconsistent and contradictory" and therefore a compromise to democracy. The area identified for this study is the Mamaila (Kolobetona) Traditional Community, with specific reference to the Lemondokop Village located within the Mopani District Municipality and Greater Letaba Local Municipality in the Limpopo Province. The aim of this study is to analyse the relationship between traditional leadership and democratic institutions of governance within the local sphere of government with particular reference to how such relationships affect traditional communities. This analysis is necessary drawing on the diverging scholarly views on the existence of hereditary leadership and democracy. It is important then to determine how such views are reflected on the ground.

Central to this study are the following governance areas: local government, land administration, justice and safety. These governance areas have ramifications for both the institution of traditional leadership and the current democratic government. Traditional leaders played a central role in all the above governance areas during the pre-colonial, colonial and apartheid eras. It is important to focus on these governance areas to determine how traditional leadership and democratic institutions of governance relate to each other and how such relationships affect the traditional communities, given the constitutional mandate of each democratic institution of governance and the continued recognition of traditional leadership as a governance structure within the local sphere of government. Areas of focus include the participation of communities

in processes geared towards governance, service delivery and development; the issue of decision making and how it unfolds within traditional communities; the position and role of the women and the youth within the governance setup of the traditional community as well as the relationship between role players in the community. These focus areas are central to this study because the democratic government through the establishment of relevant institutions and structures encourages communities to participate in activities geared toward the development of their communities. Unlike non-traditional communities, traditional communities have two centers of powers, one being traditional leadership and the other being the democratically established governance structures. Within this setup, governance is in the hands of such centers of powers and this study analyses how such a setup affects traditional communities.

South Africa is a representative democracy, in which representatives are elected by the people to govern on their behalf by observing principles of good governance such as being accountable to the people who elected them (Bekker, 1996). The elected representatives are expected to provide services in line with the mandate of government as per the needs of communities. If communities are not satisfied with the work that the representatives are performing they can remove such representatives through democratic processes. The South African government system has been decentralized to give room for effective administration. The local sphere of government is the sphere where the role of government is mostly felt "due to its proximity and intimate relationship with the communities it serves" (Van Niekerk, et al. 2001: 77). The recognition of traditional leaders in South Africa is also felt mostly within the local sphere of government where traditional communities are located, and where service delivery takes place. This recognition means that role players within the local sphere need to take into consideration the existence of the institution of traditional leadership when dealing with traditional communities.

During the pre-colonial, colonial and apartheid eras traditional leaders performed the roles that are currently being performed by other institutions of governance (Ntsebeza, 2006). The Constitution recognizes both the traditional governance system and the democratic governance system and allocates roles, functions and responsibilities to each in line with the model of democracy necessary for South Africa. In communities where the institution of traditional leadership exists there have been concerns of power struggles between the two systems, with the

result that this may impact on the communities. This challenge impacts on the ability of the two systems to work together for the benefit of the communities. In an era where many countries subscribe to the global agenda on development, and the need to achieve the eight Millennium Development Goals adopted by the UN in 2000,[4] governments strive to create institutions that would contribute to the realization of such goals, and South Africa is no exception. There is a need for institutions of governance to work in harmony to facilitate development. But this harmonization can only take place if roles and functions are clearly articulated to avoid and mitigate conflicts.

Current scholarly debates focus on the existence of traditional leadership within a democratic governance setup as well as examining the roles and relevance of the institution of traditional leadership in the development of rural communities within a democratic context. The Human Science Research Council (HSRC) refers to these governance systems as parallel, fragmented institutions of governance in which attempts are made to develop an approach that would reconcile them.[5] The establishment of the DTA with its vision of creating an effective and efficient institution of traditional leadership that enhances sustainable development and service delivery[6] is viewed as a strategic step toward the realization of the cooperative model for rural governance [7] envisaged to secure a place for the institution of traditional leadership in democracy. At the same time there have been interest groups who argue against certain laws that impact on the democratic rights of individuals. An example is the initiative by the Centre for Law and Society (previously the Law, Race and Gender Unit) of the University of Cape Town and other pressure groups to oppose the Communal Land Rights Act (CLARA).[8] This example is one among many of those that seek to highlight the challenge of accommodating the institution of traditional leadership within a democratic government.

The recognition of both traditional leadership and constitutional institutions affect traditional communities. As the constituency that both systems serve, these communities are at the coal-face

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[4] http://www.un.org/millenniumgoals/, accessed 02/10/2012.
[5] HSRC Seminar Series, Reconciling Africa's Fragmented Institutions., Centre for Africa's Social Progress: 03 August 2011.
[6] http://www.dta.gov.za/index.php/home/vision-and-mission.html, accessed 02/10/2012.
[7] The White Paper on Local Government, March 1998.
[8] Press Statement on the Constitutional Court judgment on the Communal Land Rights Act issued by The Law, Race and Gender Unit at the University of Cape Town (www.lrg.uct.ac.za), accessed 12/05/2012.

of the relationship between the two systems. The White Paper on Local Government acknowledges this issue by indicating that "the fact that some responsibilities of traditional leadership and municipalities overlap is a source of tension and has hampered development in certain rural areas" (1998: 77). The above implies that there is a challenge brought about by the existence of the institution, which if not addressed would affect government's developmental agenda in rural communities. One would have thought that the promulgation of the Traditional Leadership and Governance Framework Act 41 of 2003 would have provided clarity on the roles of traditional leadership. But traditional leaders still feel that government is deliberately ignoring the need to address this challenge. A statement issued by Inkosi Patekile Holomisa[9] called for government to clearly define the place, status, functions and powers of traditional leadership. This concern is raised amid the challenges by various interest groups of the constitutionality of the institution of traditional leadership. What Holomisa is driving at is that government has not sufficiently addressed the issue of the place and role of the institution of traditional leadership hence all the challenges brought against the institution. This critical challenge affects the way in which the two governance systems relate to each other and how they deal with issues affecting the traditional communities. The UCT Law, Race and Gender Unit on the victory against the CLARA commented that

> "Rural communities and civil society organisations concerned with democracy, rights and equality in rural areas should take the judgment as a direct call to prepare for the process of drafting new legislation to replace the CLARA. We call on rural communities and organizations to mobilise to ensure that replacement legislation is based on a proper consultative process. It is only through the participation of those directly affected that parliament can take into account the views and experiences of rural communities. The legislative process must make it possible for ordinary rural people, in particular women, to be heard, and not privilege traditional leaders as is the case with the Traditional Courts Bill that is currently before parliament. To give effect to the constitutional imperatives of tenure security and participation, we call on parliament to take pro-active steps to ensure that this time around the rural people whose land rights and tenure security is at issue are properly consulted and can engage effectively with the legislative process".[10]

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[9]www.polityweb.co.za, accessed 18/06/2012.
[10]Press Statement on the Constitutional Court judgment on the Communal Land Rights Act issued by The Law, Race and Gender Unit at the University of Cape Town (www.lrg.uct.ac.za) Centre for Law and Society, accessed 12/05/2012.

This pronouncement articulates the challenges that are brought by the existence of the institution of traditional leadership and the argument that it contradicts democracy. Government champions the role of community participation in decision making within the local sphere of governance. Any decision that impacts on communities should be derived from the participation of citizens. This stance is maintained to give effect to the Constitutional provisions which reject authoritarian rule and place significance on the rights of individuals, specifically women and the youth who are marginalized by the institution of traditional leadership. The above challenge embodies many of the arguments that traditional leadership is a compromise to democracy. A similar protest was registered when various pressure groups lobbied against the Traditional Courts Bill (TCB) which was later withdrawn on procedural grounds. The TCB aimed to, among other objectives, affirm traditional courts which are given the authority to administer justice within traditional communities. It was declared unconstitutional on the basis that it failed to take into consideration the role of women in the administration of justice and it also centers power in the hands of traditional leaders. This issue is further explored in chapter two. Below I outline the objectives for this study.

OBJECTIVES

Since the dawn of democracy in South Africa scholars have been analyzing the governance setup of the country, specifically the inclusion of the institution of traditional leadership within the democratic governance system. Arguments for and against the inclusion of the institution have been advanced and are still going on. Those who support the existence of the institution of traditional leadership argue that the institution is not only relevant to the democratic model of governance, but that it is also a significant history of South Africa which should be preserved because many people in rural communities subscribe to it. They also argue that the institution survived the colonial and apartheid eras which were hostile to the institution and therefore they see it as resilient and indispensable in South Africa.

Those who argue against the institution maintain that it is a relic of the past and should be discarded as it is no longer relevant in governance (Cousins, 2006; Ntsebeza, 2006; Mbeki, 1984). They argue that the institution in its current form was invented by the apartheid government to curb possible anti-apartheid and anti-Bantustan–system activities within

traditional areas. This is argued on the basis that the new governance system, democracy is not tolerant of traditional leadership because traditional leadership is incompatible with the principles of democracy enshrined in the Constitution specifically the Bill of Rights in chapter two. There are also concerns that tradition, culture and customs are collapsed with traditional leadership as Ntsebeza (2006) explains that it is difficult to comprehend why chieftainship is the sole bearer of these customary practices and traditions. The assumption that traditional leadership is the custodian of culture and custom means that traditional leadership is the only institution bestowed with the responsibility of championing such customs. This raises the question whether the above practices cannot survive without traditional leadership or whether it is imperative to recognize the institution of traditional leadership in order to preserve such customary practices. Put in another way one would ask a question whether people need the blessings of a traditional leader to practice their customs, and what customs do people practice. Although the discussion of the custodianship of culture is not central to this study, I have however brought it in line with the discussion about the constitutional recognition of the institution of traditional leadership which premises the recognition of traditional leadership on the practice of customs. During this study I also observed what the Constitutional recognition of traditional leadership based on customs and customary law meant for the traditional community and this is explored in chapters four and five.

For this study relevant literature mostly focuses on abstract and legal levels of the existence of traditional leadership such as the relevance of the institution of traditional leadership within democracy and the existence of traditional leadership and democracy side by side (Ntsebeza, 2006; Oomen, 2000); the role of the institution of traditional leadership in the context of democracy (Rangan and Gilmartin, 2002); the analysis of the legal landscape on traditional leadership (Claassens and Cousins, 2008). Less is known with regard to how this actually plays out on the ground. It is on the basis of the above gap that this study aims to bring to the fore how the recognition of traditional leadership alongside democratic institutions of governance plays out in traditional communities. This study is based on detailed empirical work obtained through first hand research in Mamaila Traditional Community. It contributes to the available body of knowledge on governance in South Africa with specific reference to dual governance in

traditional communities, with the purpose of highlighting the implications of such governance in traditional communities.

In order to explore the phenomenon of dual governance and the ways it affects traditional communities, this study is guided by a number of objectives. At the institutional level this study seeks to explore the nature of the relationship between traditional leadership and other institutions of governance within the local sphere of government in order to determine the effects on traditional communities. Scholars often argue for and against the existence of traditional leadership within a democratic government which establishes governance institutions responsible for development in communities. Against this background it is the aim of this study to determine how the above coexistence plays itself out in traditional communities.

The study also explores the perceptions and experiences of traditional communities with regard to dual governance and its implications on governance, service delivery and community development. It is critical to understand what the community members perceive and experience about the phenomenon of dual governance in order to determine the effects based on first-hand accounts. As the constituents that both traditional leadership and democratic institutions serve, it is also the objective of this study to explore the manner in which the traditional communities relate to the two institutions of governance. This is achieved by exploring the mechanisms in place for the two systems of governance to access traditional communities as well as how traditional communities gain access to such institutions. Service delivery and development are the responsibilities of the democratically elected government. Traditional leadership has been given the responsibility of facilitating community participation and the study also looks at how traditional leaders are performing such roles and what impact it has on community development.

The democratic government, in the Bill of Rights stresses the significance of upholding rights of individuals. It also highlights that the state may not unfairly discriminate anyone on the basis of gender and age amongst others. The institution of traditional leadership has often been accused of disregarding women and the youth in decision making and overall administration and governance in the community. It is therefore also the objective of the study to examine the position and role of women and the youth in governance and community development. This is

achieved by engaging community members, specifically women and the youth, as well as the leadership of the community.

In achieving the above objectives the study asks the question: How does the dual nature of government within the local sphere affect traditional communities? In addition to this main question, the following secondary research questions are central: How does the relationship between traditional leadership and democratic governance institutions within the local sphere of government affect traditional communities? What are the perceptions and experiences of traditional communities with regard to dual governance and what are the implications of such on governance, service delivery and community development? How do traditional communities relate to the two systems? What mechanisms are in place for institutions of governance in the local sphere to access traditional communities? What role does traditional leadership play in facilitating community participation in governance? What is the position and role of women and youth in governance and community development? All the above questions are addressed in the study through the analysis of data collected during fieldwork in the community.

STRUCTURE OF THE RESEARCH REPORT

In Chapter two I outline the critical body of knowledge available on the subject of democracy, governance and traditional leadership. I discuss a number of concepts that relate to this study. Firstly I discuss the concept of democracy in South Africa in relation to governance. I also focus on the concept of governance which is the fundamental pillar of a responsive and accountable government through which institutional performance is measured. In this regard select principles of good governance are discussed in relation to this study. A theoretical framework is also presented to highlight how the issue of dual governance is represented in relation to the ideology of governance. The theoretical framework also shapes the views on the institution of traditional leadership as well as democracy. I place the study within the context of the institutional theory which looks at how countries in their endeavor for globalization and development, adopt new institutions that are seen as stimulants of development and discard other institutions perceived as irrelevant and ineffective for development. North's new institutional theory is discussed in relation to the significance of institutions in governance in South Africa. Sen's development as freedom is also discussed in relation to the role that freedoms play in developing the capabilities

of individuals. The above conceptual and theoretical framework is essential in order to explain the context within which traditional communities find themselves with regard to government creating a conducive environment for community development.

I further engage literature on traditional leadership in relation to democratic governance. In this regard, two main schools of thought on the governance arrangements and the accommodation of the institution of traditional leadership within democracy are discussed. This discussion reveals how the issue of traditional leadership is viewed within the country as well as how traditional leadership is perceived with regard to the developmental agenda of South Africa. I also touch on the evolution of governance within traditional communities from pre-colonial to the post apartheid dispensation with the aim to show how governance evolved as well as how it affected communities where the institution of traditional leadership exists. A discussion on policy and legislation on the identified key governance areas is also presented with the aim of highlighting the roles assigned to different institutions *vis-a vis* traditional leadership.

In chapter three I discuss the qualitative research methodology that I have adopted for the study. This study uses the case study method and therefore the Mamaila Traditional Community and the Lemondokop Village in particular were identified as my unit of analysis. I have interviewed 42 participants aged 18 or above for this study and they represent different categories of people in the community. Of the 42, 20 participants are community leaders including representatives from Sekgosese SAPS, Greater Letaba Local Municipality, Sekgosese Magistrate Court and the Mamaila Traditional Leadership. The remaining 22 are community members from the Lemondokop Village. I discuss the purposive and random sampling methods used in identifying participants for the study. I also discuss the data collection tools used for this study; that is the interviews and participant observation. I also discuss the document analysis method in relation to the analysis of the Integrated Development Plans (IDPs) of the Mopani District Municipality and the Greater Letaba Local Municipality, the official files on the Mamaila Traditional Community in relation to the history of the community, specifically the establishment of Lemondokop Village as well as other sources of information such as newspapers on the subject of traditional leadership and governance.

Chapter four presents the research findings based on research conducted with the leadership of the Mamaila Traditional Community, which includes the senior traditional leader, the Lemondokop Village headman, the Mamaila Traditional Council, Sekgosese Police, the Greater Letaba Local Municipality and the Sekgosese Magistrates. I discuss the research findings in relation to the objectives set out above which focus on the relationships between role players. The above analysis is used to determine if the data collected answers the research questions, both primary and secondary.

Similarly, in chapter five I also present research findings with specific focus on research conducted with the community members with the aim of documenting the perceptions and experiences of community members regarding the existence of dual governance structures in the traditional communities. I specifically discuss the findings in relation to the role of women and youth in the community to determine the position of such within a traditional community which is based on customary practices.

In the concluding chapter six, based on the analysis in chapters four and five discussed above, I present lessons learned from the study. I attempt to answer the question I highlighted in this chapter as central to the study: How does the existence of traditional leadership alongside democratic governance affect the traditional community? By answering the questions I therefore discuss the objectives the study intended to achieve. This chapter also presents the conclusions drawn on the nature of dual governance in traditional communities and how it affects traditional communities.

CHAPTER 2

LITERATURE REVIEW

INTRODUCTION

Since the transition to democracy in South Africa, scholars have taken a keen interest in governance matters of the country. Particular attention has been paid to the existence of the newly formed democracy as well as the continued recognition of the institution of traditional leadership. Part of the reason particular attention is paid to this new form of government is that as a democratic state, South Africa accommodated the institution of traditional leadership in governance. This institution has been given authority in the administration of certain governance functions within traditional communities, such as land and justice. In order to understand dual governance in relation to this study this chapter focuses on key concepts that frame the study and these are democratic governance and traditional leadership. In locating the study within the discipline of development studies I have identified institutional theory as central to the study of dual governance with the view to answer the following questions: Why are institutions established? What purpose do they serve? What determines the course of institutional change? I also outline key policies and pieces of legislation on the identified governance areas that this study focuses on.

THE MEANING OF DEMOCRATIC GOVERNANCE IN SOUTH AFRICA

The transition from apartheid to democracy in South Africa was hailed as a step towards freedom. Songs were sung about liberation. Those who were subjected to many years of apartheid were happy that they would finally be free. Given the fact that South Africa was crafted through the lenses of apartheid it meant that the new regime had to dismantle everything that represented unfreedoms created by the ousted regime. It had to take stock of all institutions, organizations and structures that did not fit within its political ideology. As a sovereign state it had to reshape the whole country and this meant even the homelands and Bantustans were not excluded from this historic moment. But what does this mean for South Africa?

A consideration of the concept of democracy and its underlying principles and requirements is necessary for this study in order to understand what the coming of this new regime means for South Africans, particularly those citizens in Bantustans and homelands who were subjected to a different governance system from the rest of South Africa: governance by traditional leadership. The above analysis also assists in situating the governance system of South Africa within the global discourse on modern political governance. It also provides the basis to determine whether institutions of governance created or adopted from the previous regimes qualify to be considered democratic in the context of principles of democracy.

One of the founding provisions of the Constitution of South Africa highlights that "the Republic of South Africa is one, sovereign democratic state…"[11] The key word in this sentence is "democratic". Many scholars have attempted to define the concept of democracy. According to Bobbio (1990: 25) democracy is government by the people as opposed to government by one or the few. Van Niekerk, Van der Waldt and Jonker (2001: 52) also define democracy as a form of government that entails the rule of the state by the majority of the population. It is seen as the preeminent necessity to ensuring development in any state. There are many different types of democracies. The specific form democracy takes is contingent upon a country's socio-economic conditions as well as its entrenched state structures and policy practices (Diamond and Plattner, 2009: 4). Weale (2007: 18) argues that in a democracy "important public decisions on questions of law and policy depend, directly or indirectly upon public opinion formally expressed by citizens of the community, the vast bulk of whom have equal political rights". Similarly Diamond and Plattner (2009:4) argue that the modern democratic system is a system of governance in which rulers are held accountable for their actions in the public realm by citizens, acting indirectly through the competition and cooperation of their elected representatives. Considering that there are many forms of democracy, it is argued that representative democracy is the best form of democracy possible in a large state. South Africa has also adopted such a form of government. According to Bobbio (1990) since its inception in ancient Greek, the evaluative load of democracy has changed in line with popular support. This is measured against such forms of government as monarchy and oligarchy (ibid.).

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[11]Chapter 1 of the Constitution of the Republic of South Africa, 1996.

Although the concept of democracy has been used in different ways, currently there is consensus that polities must meet certain minimal conditions to qualify to be called democracies (ibid.). I list Dahl's (1982: 11) most generally accepted seven procedural minimal conditions that must be present for a modern political democracy to exist (quoted in Diamond and Plattner 2009: 9). According to Dahl, who refers to this form of governance as polyarchy, control over government decisions about policy is constitutionally vested in elected officials; elected officials are chosen in frequent and fairly conducted elections in which coercion is comparatively uncommon; practically all adults have the right to run for elective offices in the government; citizens have a right to express themselves without the danger of severe punishment on political matters broadly defined; citizens have a right to seek out alternative sources of information. Moreover, alternative sources of information exist and are protected by law; citizens also have the right to form relatively independent associations or organizations, including the independent political parties and interest groups. Diamond and Plattner (2009: 9) add two other conditions: Popularly elected officials must be able to exercise their constitutional powers without being subjected to overriding opposition from unelected officials; and the polity must be self-governing, it must be able to act independently of constraints imposed by an overarching political system.

Democracy as a form of government in South Africa is recognised in the Constitution[12] and it requires that elections be held to vote for representatives. According to Van Niekerk, Van der Waldt and Jonker (2001) the form of government that considers popular representation and majority rule is defined as liberal democracy. In line with the minimum requirements of democracy outlined above it is necessary to discuss what democracy means for traditional communities. There is no doubt that governance in traditional communities is different from governance in non-traditional communities or the rest of South Africa where the institution of traditional leadership does not exist. Government established institutions of governance within the local sphere. Some of these institutions have taken the approach of participatory democracy which advocates for the involvement of citizens in certain decision making processes such as development of IDPs in municipalities.

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[12] Section 1 (c-d) of the Constitution, 1996 provide that the state is founded on the values the supremacy of the constitution and the rule of law; of universal adult suffrage, a national voters roll, regular elections and a multiparty system of democratic government, to ensure accountability, responsiveness and openness.

Representative democracy is also aligned to the conditions outlined above and these should prevail and be adhered to for any democracy to achieve its objectives. On the basis of the above it is important to focus on another key concept of this study, traditional leadership within the context of democracy. To effectively discuss this issue I consider the above conditions in placing my argument within the existing literature on whether traditional leadership is or is not compatible with democracy.

The institution of traditional leadership is also recognized by the Constitution amid concerns that it is not compatible with democratic institutions (Ntsebeza, 2006; Rangan and Gilmartin, 2002; Claassens and Cousins, 2008; Walker, 2005) and therefore it should not be given any role in governance. According to Heller (in Hofmeyer and Williams, 2011) the legacy of customary rule and the still formidable powers enjoyed by chiefs creates decentralised despotism and a bifurcated state which creates separate development of the rural from the urban. He argues that recent legislative reform buttress the power of traditional authorities and therefore reverses the democratic gains of the post-apartheid South Africa. By accommodating the institution, government is therefore implying that the institution is democratic or has the potential of becoming democratic through the application of customary law which is subjected to the Constitution. It basically means that the institution has the ability to govern the majority of citizens who are located in the traditional communities in line with the principles of democracy outlined in the Constitution, although it does so with caution.

Section1 (d) of the Constitution of South Africa identifies universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness as some of the founding values of a democratic state. These are principles of good governance embedded within a democratic ideology. The above imply that any other institution of governance that deviates from the above values cannot be described as democratic. According to Karl and Schmitter (in Diamond and Plattner: 2009: 5) what distinguishes democratic rulers from non-democratic ones are the norms that condition how the former come to power and the practices that hold them accountable for their actions. According to Ntsebeza (2006:33) "the only way traditional authorities can be democratic, it seems, would be for them to abandon their hereditary status and subject

themselves to election by the people". This is one of the arguments advanced by scholars who argue that traditional leadership is not compatible with democracy.

Scholars who argue that traditional leadership has democratic elements which should be enhanced argue on the basis of its participatory approach to governance where decisions are based on direct consultation with community members. Weale (2007) argues that it is impossible to practice direct democracy on a large scale and a choice for direct democracy involves a choice for decentralization of power. Weale's discussion is very true for South Africa. While it is a representative democracy, at the local level it has infused the participatory approach through the decentralization of power and authority. Municipalities consult community members directly through the community participation programmes.

Another argument advanced is that traditional leadership is closer to the people and therefore is able to appreciate the challenges and needs of the communities. It is equally necessary to outline that at the local level of governance municipalities have a number of structures which are based within the same communities where traditional leadership is based. Community members have immediate access to the community development worker (CDW), the ward councillor and the ward committee, all equipped with the skills to address the needs of the community members. The political office bearers are voted for, and therefore people have the platform to vote them out should they not meet the community needs. The inclusion of traditional leadership has also created a situation that Mamdani (1996) refers to as "Citizen and Subject" which basically means that community members by virtue of being within the sovereign state of South Africa are citizens while at the same time they are subjects of traditional leaders by virtue of being within the area of jurisdiction of traditional leaders. This situation means that there are two centres of power and authority in traditional communities and therefore there is a need for them to coexist; cooperate and co-administer the traditional communities. The result if not managed properly becomes the battleground for political power struggles which should be avoided for the benefit of the citizens.

The discussion of the concepts of democracy and traditional leadership necessarily leads to the need to discuss the concept of governance as it is also central to the phenomenon of dual

governance which juxtaposes democracy and traditional leadership. It is considered dual governance because South Africa is a liberal state compared to the previous regimes that advocated for divide and rule (colonial) and separate development (apartheid) policies. Hyden in Bratton and Hyden (1992: 7) "defines governance as the conscious management of regime structures with a view to enhancing the legitimacy of the public realm". He suggests the existence of four properties bounding the governance realm and these are reciprocity, accountability, authority and trust. He further argue that these qualities are likely to be present in different degrees at any one time, but they all bear on key organisational dimensions in any given political system (ibid.: 12). According to Van Niekerk et al. (2001:64) governance refers to the ordering of a group, community or society by a public authority. In this instance the authority is government. The goal of government is to create a good quality of life for all citizens (Gildenhuys and Knipe, 2000: 44, 90). To achieve such a goal will require government to create an environment that provides equal opportunities for all individuals to develop maintain and enjoy a satisfactory quality of life without threats and constraints outside their personal and private environment (ibid.). In order to govern, government creates and establishes institutions. The way a country governs depends on the form of government adopted in that country. In South Africa the Constitution makes provision for the existence of three distinctive, interdependent and interrelated spheres of government, namely national, provincial and local. These spheres are given the mandate to govern. In such governance the state makes provision for the establishment of structures and institutions in accordance with specific laws.

In order to achieve optimal development scholars argue for the significance of good governance. It is the characteristics of good governance that are critical to induce the developmental agenda of the state. The Fifteen Year Review Report outlines that "The Constitution enjoins state institutions to be guided by the principles of openness and transparency and to provide citizens with information that is accessible, accurate and timely". This is translated through PAIA[13] and the Batho Pele Principles. [14] Human rights, accountability, transparency, participation, strengthening democratic institutions are some of the key principles of good governance. This study also taps into these principles in exploring dual governance in the Mamaila Traditional

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[13]Promotion of Access to Information, Act 2 of 2000.
[14]http://www.info.gov.za/aboutgovt/publicadmin/bathopele.htm, accessed 02/10/2012.

Community. The most significant way of governing is effected through the establishment of institutions with clear mandates in line with the political ideology of the state. In order to understand how significant governance is, it is necessary to discuss the significance of governance institutions. I adopt the institutions theory of governance which I discuss in the next section. But first it is important to discuss the concept of development as the ultimate goal of governments reflected in policies and plans that came after World War II. This links directly with the form of government a country pursues.

Any government that comes into power at any particular point in time is guided, in dispensing its role, by objectives which are reflected in its political ideology. The apartheid government while pursuing economic development also identified separate development (apartheid) as its key policy. This was aimed at achieving unequal development based on race. Traditional leadership is one tool that the apartheid government used to advance racial segregation by relegating blacks to ethnic identity. The democratic South Africa, while pursuing a non-racial state and the advancement of human freedoms, also appreciates the ethnic divisions entrenched by the successive colonial and apartheid regimes.

South Africa today is also pursuing development in all its facets and this is reflected in its adoption of the eight Millennium Development Goals. It is important to understand what development is in the context of this study and therefore a brief history of development is also essential as well as an explanation why effective governance is necessary to advance development. The overthrow of colonialism in the 1950s introduced new regimes for the less developed countries in terms of economic and social development (Thorbecke: 2006: 1). It also marked the beginning of serious interest among scholars and policymakers in studying and understanding better the development process as a basis for designing appropriate development policies and strategies (ibid.). Many theories were advanced to build the development doctrine. During the 1950-1960 era economic growth was synonymous with development as it was argued that economic growth would eliminate other associated income and social inequalities (ibid.: 3). With the realization that economic growth was not the panacea to problems in the developing counties, the objectives of development began to shift and embrace the need to address poverty alleviation.

Throughout the decades different definitions of development have been advanced in line with the objectives intended. In contemporary times development is measured in terms of addressing challenges that impact on the individual's ability to live a sustainable life. Sen (1999) argues that developing and strengthening a democratic system is an essential component of the process of development. He defines development as a process of expanding the real freedoms that people enjoy. He also argues that the expansion of freedom is viewed as both the end and means to development. Allen and Thomas (2000) identify three senses with which the terms development is used. Firstly they describe development as a vision, description or measure of the state of being of a desirable society; secondly they see development as an historical process of social change in which societies are transformed over long periods; and lastly they see development as consisting of deliberate efforts aimed at improvement on the part of various agencies, including governments, all kinds of organizations and social movements. Sen (1999) identifies political freedom as one of the instrumental freedoms and argues that they "refer to opportunities that people have to determine who should govern and on what principles, and also includes the possibility to scrutinize and criticize authorities…" He further argues that "even when people without political liberty or civil rights do not lack adequate economic security they are deprived of important freedoms in leading their lives and denied the opportunity to take part in crucial decisions regarding public affairs". This is also supported by other scholars such as Diamond and Plattner (2009) as quoted from Dahl (1982) in their list of essential principles of democracy. The above effectively means that without the possibility of determining who should govern them, people are controlled by unfreedoms that hamper their capabilities. One can argue then on the basis of the above that democracy is central to achieve the desired means and end of development. It points out to the significance of adhering to democratic principles and conditions in order to address developmental challenges. One key way of addressing unfreedoms that hamper development in countries is to establish a relevant form of government, and democracy is one such form of government hailed as the most successful by many countries in the current developmental era. Looking at the representative democracy that South Africa adopted it is then important to determine whether institutions of governance established help support the vision of government.

THE ROLE OF INSTITUTIONS IN GOVERNANCE

In linking the three central concepts outlined above in relation to this study I draw on North's institutions and institutional change theory. This theory is also necessary in locating my study within the discipline of development studies. North's (1990) theory of institutions emerged as a critique of neoclassical development theory which focuses on income as the determinant of economic growth and development. Institutional theory explains why institutions matter in the analysis of the success and failure of countries with regard to their social, cultural and economic aspects. Although North's theory of institutional change is primarily focused on economic development, it is applicable in other contexts, hence my adoption of his theory in governance. North defines institutions as "humanly devised constraints that structure economic, political and social interactions." Institutions include any form of constraints that human beings devise to shape human interaction. Institutional constraints include both what individuals are prohibited from doing and, sometimes under what conditions some individuals are permitted to undertake certain activities (ibid.). According to North, the role of institutions in a society is to reduce uncertainty by establishing a stable structure to human interaction. He identifies two forms of institutions, the formal and informal institutions and argues that both are essential in determining the path of government. Informal institutions are those institutions that include the sanctions, taboos, customs, traditions and norms of a group of people whether an ethnic group, a religious group or a state. Formal institutions include constitutions and laws among others.

Institutions evolve and as they do they continue to shape the choices available to people. One central aspect of institutional evolution is whether they are efficient in achieving set objectives of a particular ideology of the ruling party. For example, the democratic South Africa developed an entirely new Constitution of the Republic to align with the goals of the post-apartheid state. The apartheid policies and laws were considered necessary and efficient during the Apartheid South Africa to advance its objectives. By changing the constitution as an institution democratic South Africa has defined a new shape for the institutions of governance. Koelbe (2005) argues that "this new structure is guided by the interest of the parties negotiating a new dispensation". With regard to the accommodation of the institution of traditional leadership this phenomenon was more visible during the Convention for a Democratic South Africa (CODESA) negotiations where the Congress of Traditional Leaders of South Africa (Contralesa) argued for the role of

traditional leadership in the new dispensation. However the biggest influence came from Inkatha Freedom Party's (IFP) stance that they will only participate in the 1994 elections if the Zulu King is given the status of a constitutional monarch (Venter and Landsberg, 2006; Ntsebeza, 2006).

Malinowski (1945) on his discussion of the function and adaptability of African institutions argues that change

> "….often upsets an institution without reforming it, because…beliefs, ideas, and practices are welded into bigger systems. One kind of institution can be replaced by another which fulfils a similar function. Such change is difficult as it has to provide better that the previous. Chieftaincy shows such a great strength and endurance because it is associated with local religion and magical beliefs, with the tribesmen's acceptance of customary law as the only adequate expression of right and wrong. In order to uproot chieftainship completely it would be necessary to change law and religion, to refashion family life, and to stamp out all memories of the past."

Although Malinowski's argument was presented long before South Africa could realise a democratic state, it is proving true that as long as people's lives have not found meaning in newly established institutions, they will seek answers through the existing structures as they see it as the basis of all things supernatural and habitual. However one may add that the above is only true if the political elites of a particular regime believe the existence of such an intuition would benefit the citizens or if they want to adopt a patron-client relationship which would benefit both parties and usually undermine the development of the citizens.

North (1990) argues that institutions are the rules of the game in a society. They are a creation of human beings and they are altered by human beings. They shape human interactions and they also give certainty to life's challenges. In traditional communities traditions and customs are humanly devised informal constraint that people use to shape their interactions. The informal constraints however, are not static. They change as man finds alternative meaning to life. North cautions that informal institutions embedded in customs and traditions are much more impervious to deliberate policies. This he argues in comparison to formal constraints that may

change overnight as a result of political or judicial decisions. North's analysis is equally relevant to this study because if traditional leadership as a formally recognized institution (formal constraint) is disestablished through law, it does not necessarily mean that the norms, rules traditions and customs associated with people in traditional communities would be changed or fade away. Malinowski's analysis above comes into effect in this regard. But the central question is: Would people still find meaning holding on to their customs and traditions through the authority of traditional leadership? To this question I provide two answers-yes and no. I argue yes on the basis that if people do not find a suitable substitute to the current institutional arrangement they may hold on to the existing institution regardless of its legal status. Yes because change is a process and it may take longer to be realized especially if education is not made a central component of such an institutional change process; if the new institution does not provide certainty that people seek; and if the responsible authority does not show commitment to the new path of institutional change. I also argue no on the basis that if information is properly disseminated to the people and the principles of good governance are adhered to, custom would not be used to justify the existence of traditional leadership and community members would still value those customs they deem necessary for their everyday lives. Although change is a process it also allows for new institutions to be established and people would develop new institutions to resolve conflicts, distribute power through community structures. Democracy provides such an avenue for change.

Considering North's (ibid.) argument that history matters because the present and the future are connected to the past by the continuity of a society's institutions, apart from the fact that we can learn from it, it is important to determine the reasons for the changes that institutions go through. This in essence means we need to answer the question why institutions change and why such change is different for different countries. I have already mentioned that in a state the political ideology of the ruling party in government is central to the choice of institutions. What makes governments pursue and empower different institutions will help us understand the institutional path that South Africa took in accommodating traditional leadership as a governance structure when its political formation is based on contradictory principles as those underlying the Constitution which is referred to as the sovereign law of the country.

TRADITIONAL LEADERSHIP AND DEMOCRATIC GOVERNANCE

According to the Traditional Leadership and Governance Framework Act, 41 of 2003 (TLGFA) traditional leadership means the customary institutions or structures, or customary systems or procedures of governance, recognized, utilized or practiced by traditional communities. This definition is provided in recognition of the historical existence of the institution in relation to its role in governance. Since the inception of democracy in South Africa, traditional leadership has also been subjected to democratic rule. The Constitutional recognition of traditional leadership has been a subject of scrutiny ever since. This is basically because scholars compare objectives and roles that traditional leaders played in governance during the colonial era *vis-à-vis* the current democratic era. It is pitted against the ideals of democracy and it is found wanting though there are scholars who argue for its recognition. The recognition means that the institution is here to stay so long as it enjoys Constitutional protection. What is left for scholars is to unpack this phenomenon with the prospects of improving its role in governance or removing it from the umbrella of Constitutional protection. Some of the debates on this subject are captured later in this chapter. In this study, I also play my part in enhancing such scholarly debates.

The 15 year review on traditional leadership conducted by the HSRC concludes that

> "South African intellectuals are not in agreement about the relevance of traditional leadership in the South African political system. They are therefore generally ambiguous about traditional leadership core areas of operation and about their proposals on policy direction on traditional leadership. Within this generality there are those that are clear about the need to phase out traditional leadership from the South African political system and those who are adamant traditional leaders must be given administrative support and a flexible, mutually agreed, policy environment in which to work" (Sithole and Mbele 2008: 43).

This statement summarises the tone with which the recognition of the institution of traditional leadership within the democratic system is viewed. It is evident from Sithole and Mbele's statement above that there are two different scholarly views on the relevance of the institution of traditional leadership in South Africa. There are scholars who problematise the existence of traditional leadership within democratic governance and those who support the existence of

traditional leadership within democratic governance and these different views are discussed below.

Problematising the relationship between traditional leadership and democratic governance

Proponents of this view argue that the existence of the institution of traditional leadership within a democratic government compromises democracy and contributes to the failure of the state to provide service delivery and development to rural communities (Ntsebeza, 2006: 257). In Ntsebeza's argument he asserts that "the recognition of the hereditary institution of traditional leadership in the South African Constitution while at the same time enshrining liberal democratic principles based on representative government in the same Constitution is a fundamental contradiction" (ibid.: 256). He specifically focuses his attention on the role that traditional leaders play in land administration and argue that it is this arrangement that is crippling the country's efforts at democratising local government and developing rural areas. He attributes this to the democratic government's adoption of the apartheid policies that perpetuated tribalism, an agenda aimed at keeping the black people from urban areas. Rangan and Gilmartin (2002) like Ntsebeza argue that the Constitution has created contradictory conditions for pursuing land reform in South Africa. The first one they consider is that the Constitution continues to give effect to the institution of traditional leadership even after abolishing homelands, all in the name of a united South Africa which does not consider tribal affiliation as a feature of its form. They also consider the accommodation of traditional leadership in the Constitution while enshrining democratic governance based on elected representatives and which upholds the Bill of Rights as another contradiction. This argument is based on the nature of traditional leadership, which is hereditary and therefore is not aligned to democratic governance. In analyzing the above scholars' view, it becomes apparent that South Africa has a system of dual governance in rural areas where traditional leadership exists.

Athol Trollip's article,[15] "Chiefs rule by patronage not compatible with democracy",[16] also highlights the challenge of formally recognizing traditional leadership within a liberal democracy. He argues that it is not a challenge that the institution exist, however it becomes a

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[15]MP and Democratic Alliance's spokesman on rural development and land reform.
[16]http://www.bdlive.co.za/articles/2012/04/12/athol-trollip-chiefs-rule-by-patronage-not-compatible-with-democracy, accessed 16/09/2013.

challenge when a multitude of people are denied individual freedom to participate in economic activities because of their collective affiliation. He maintains that "collective allegiance to chiefs and tribal leaders has been the biggest stumbling block to development in Africa." Considering the reasons for the recognition of these institutions by the previous regimes, Trollip's comment maintains that a system of communal land ownership is detrimental to individual growth. One would argue that communal land ownership is a good system of land tenure as it provides the collective rights to the community, especially those residing in rural communities. The challenge, however is entrusting the institution of traditional leadership with the responsibility of land administration, which takes away the basic right and freedom of the community to make developmental decisions about their land.

Bentley argues that the recognition of traditional leadership in South Africa poses a great threat to democracy and human rights. She argues specifically that failure by the state to create a balance between the two institutions could impact on the rights and well-being of rural women (2005: 49-50). Ntsebeza and Bentley's arguments are also expressed by Parnell et al. (2002: 120-121) that traditional authority control over land can provide traditional leaders with sufficient influence to block rural councils' development ambitions. They also argue that traditional leaders are a threat to the constitutional mandate of the municipalities in that they have an ability to block the consultative efforts of municipalities. However, unlike Ntsebeza's stance on the role of traditional leadership in governance, Parnell et al. believe that if traditional leaders are properly integrated into local government, a good model of cooperation is possible. What is missing in Parnell et al.'s argument is proposing the form of "a good model of cooperation" in this regard.

The recent opposition of the Traditional Courts Bill by the Alliance for Rural Democracy, representing civil society groups, is a crucial example which highlights the challenges with dual governance. In this opposition it is argued that the Bill undermines the "Constitution's commitment to the social justice principles of equality, dignity and human rights, as well as the rights of ordinary rural people to participate in the formulation of laws that affect them."[17] Bentley also addresses the issue of dual institutions as reflected in the dual recognition of

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[17]http://constitutionallyspeaking.co.za/civil-society-groups-oppose-traditional-courts-bill/ article by Pierre de Vos, accessed 02/10/2012

women's rights and the powers of traditional leaders. She argues that the Constitution acknowledges the conflict of rights between the two and provides for a mechanism to address such conflicts.[18] The example cited above on the opposition of the Traditional Courts Bill bears testimony to the existing conflicts.

Mbeki, like Ntsebeza, puts forward the exposition that "if the Africans have had chiefs, it was because all human societies have had them at one stage or another. But when a people have developed to a stage which discards chieftainship, when their social development contradicts the need for such an institution, then to force it on them is not liberation but enslavement" (Mbeki, 1984:47). What Mbeki is driving at is that the institution of traditional leadership is no longer relevant and it should be done away with especially because he feels the institution existed to support the ideals of the previous regimes, and not because it was useful. The above position is also highlighted by the Development Dialogue (1987) with the statement that "Africa had neither history nor culture, and at best, if there was one, it was of no relevance today". This exposition implies that in the current context of development culture does not play any role in economic development, poverty alleviation, and social development in general.

The institution of traditional leadership existed then because there was no other form of government, and there is no doubt that its role was crucial. This is evident in the pride of people associating themselves with a particular ethnic group in terms of language, customs and traditions. Through culture contact and evolution a lot of cultural traits have been lost and some have undergone institutional change. In this regard the role of traditional leaders as custodians of custom is fading away. People in urban areas who have rural roots in traditional communities still practice their customs without necessarily having to request permission from the traditional leaders. If traditional leaders were custodians of culture it is because they were seen as the only authority figures. Today, families still practise their customs independent of the traditional leader.

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[18] See Bentley K.A. 2005 Are the powers of traditional leaders in South Africa Compatible with Women's Equal Rights? Three Conceptual Arguments. *Human Rights Review*. 6(4):48-68.

The most prominent custom of male initiation is riddled with controversy. Other communities in urban settings are able to conduct initiation schools though there have been arguments that they need permission from traditional leaders within which they fall ethnically. Currently there is no national policy to regulate initiation. The increased use of the formal health institutions, and the frequent number of initiates dying, has removed the value placed on initiation schools. After realizing the persistent death of initiates in the Eastern Cape particularly amongst the amaMpondo, Dr Rijken created a website to document these and make people aware of the challenges of the circumcision part of the initiation custom.[19] His efforts are seen as an attack on the institution of traditional leadership specifically the custom of initiation and traditional leaders have called for the shutting down of the website. Traditional leaders also argue that …"as custodians of this [initiation] custom [they] have not authorize this doctor to do what he has done.[20] This statement does not take into consideration the reasons the initiates gave informed consent. It is also not reflective of the voices of the people in traditional communities. To recognize an institution because it is "part of us" is not a valid argument in a liberal democracy, especially when the recognition is seen as an anachronism and strains the finances of the state which could be used for a worthy cause (Koelble, 2005). Financial analysis on the support provided to the institution reflects a waste of public funds.[21] All this is done in the name of supporting traditional leaders for them to play a meaningful role in their communities, the role of "supporting, assisting, contributing to" with the core function as custodians of customs.

Cousins (2006: 227) maintains that "structural unemployment, poverty, food insecurity, land hunger and continued rule by chiefs mean that the struggle for democracy, and against oppression and exploitation, continues". This tone maintains that the institution of traditional leadership is as obsolete as the apartheid policies that were used to oppress other racial groups and hence a lot of poverty specifically among blacks. He suggests that to defeat structural poverty will need the elimination of those "monopolistic privileges of…chiefly bureaucratic elites" (2006: 227). Murray and Williams (1994) also comment that the conflict between traditional structures and the ANC'S commitment to gender equality shows the incompatibility

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[19] Further information on this issue may be accessed through the website ulwaluko.co.za, accessed 28/01/2014.
[20] The New Age, 29 January 2014 page 25.
[21] Schedule 7: Explanatory Memorandum for Annual Recommendations for 2012/2013, Government Notice No. 583 of 26 July 2012 of the Independent Commission for the Remuneration of Public Office Bearers (http://www.remcommission.gov.za, accessed 23/03/2013).

of the two. This radical view is totally against the existence of the institution of traditional leadership within a democratic governance setup as it is seen as contradicting the ideals of a neoliberal democracy.

Mamdani (1996) brings out the dichotomy of the citizen and the subject and concludes that those who subscribe to traditional rule as subjects do so at a price. This also is a dichotomy of the old versus the new, where one is seen as modern and the other seen as backward. He argues that colonialism brought with it indirect rule which he refers to as "decenteralised despotism". In his argument he explains how the colonial masters used culture in Africa by giving powers to authoritarian rulers which in turn gave the colonial masters rule over Africa. Ntsebeza (2006) argues against the concept of decentralized despotism by highlighting that the previous regimes maintained tight control over traditional leadership so they could not exercise complete authority over their communities. Mamdani's (1996) concept of a clenched fist to denote the administrative, executive and judicial powers that traditional leadership hold is relevant to this study as it is the source of the dualism in governance. Mamdani's argument is critical for South Africa since there are ongoing challenges to the existence of the institution.

Trollip's argument that traditional rule by patronage is inconsistent with democracy is another perspective on the stance taken by politicians on governance. On her speech announcing the formation of a new political movement, Agang SA, Ramphele also commented that the dream for a better country "has faded for my sisters and brothers who live under the threat of being again made subjects of traditional chiefs and either unelected traditional leaders through proposed acts of our own Parliament".[22] Ramphele also attacked the institution of traditional leadership by indirect reference to the Traditional Courts Bill during her conversation with Madiba. She commented that "Tata, be careful not to end up in a situation where all your sacrifices as a freedom fighter are undermined by the inherent contradictions between customary law, or traditional law, or African law, and the constitutional law under which we live."[23] Even the leadership of the ruling party the African National Congress (ANC) was divided on the role of traditional leadership when debates and foundations for the new democratic government were

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[22]http://www.agangsa.co.za: Rekindling the South African Dream, accessed 17/02/2013.
[23]http://www.genderjustice.org.za, accessed 17/02/2013.

discussed. Lekota, before joining the Congress of the People (COPE), was quoted in the *Mail and Guardian*[24] to be unhappy with Contralesa "spreading its tentacles" into the Free State as Contralesa, led by Holomisa was seen to be taking a defiant stand on traditional leadership against government.

There are many questions one is encouraged to ask: If the colonial and apartheid regimes recognized traditional leadership to advance racial segregation and separate development, what are the reasons behind the current democratic government's recognition of the institution of traditional leadership in governance? Can custodianship of customs be a valid ground for the inclusion of the institution in governance? Does government need to recognize the institution of traditional leadership in order to preserve culture, traditions and customs? Could there be a better explanation, one advanced by Trollip above, that of rule by patronage? Or could it be the explanation by Levin and Weiner (1996: 107) that "the alliance between the ANC and "progressive" chiefs reflects a pragmatic politics of building electoral support"?

Support for the convergence of traditional leadership and democratic governance

Scholars who support the convergence of traditional leadership and democratic governance focus on the incorporation of traditional leadership in governance because of their democratic element.[25] Sithole refers to this ideology as organic democracy and argues that its proponents suggest traditional leadership is a different form of democracy (2009: 32). While Ntsebeza and others argue against the institution, Ismail (1999: 15) quoted in Ntsebeza (2006: 29) takes a more conservative approach and talks of the model of integration. He argues that "it is not possible to talk about African renaissance without detailed and systematic analysis of indigenous political systems on the one hand and comprehensive prescriptions on how to integrate these into the western model of liberal democracy, on the other." This argument maintains that there is no way that Africa can be successful politically while ignoring its indigenous forms of governance and this is because 'traditional leadership has shown an amazing degree of resilience" (Ismail, 1999: 1 quoted in Ntsebeza, 2006: 16). It is his argument that for effective governance in Africa

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[24] Mail and Guardian, 08 December 1995, Tension in ANC over traditional leaders, accessed 23/09/2012.
[25] See the report by the Economic Commission for Africa Southern Africa Office: Harnessing Traditional Governance in Southern Africa, November 2007.

planners should consider the existence of both traditional and modern forms of governance. Ismail argues that the traditional institutions and democratic institutions can exist in harmony, and complement each other for the benefit of the rural communities if efforts are made to determine how this can be achieved. Ismail's argument was played out when a traditional leader, Nekhunguni, welcomed people evicted from farms. He allocated them pieces of land for residential purposes although he lamented that "there is no assistance from the municipality or other government agencies in settling new arrivals in the village" (Wegerif M, et al., 2005: 3).

One argument closer to Ismail is highlighted by Osabu-kle (2000) who maintains that successful development in Africa is hindered by the imposition of Western forms of government. He argues that development can only succeed through the adoption of a system of governance which is compatible with the cultural environment of Africa. Kelsall (2011) addresses the possibility of considering the use of traditional institutions to solve developing world problems. He asserts that given the traditional leadership stance on social behaviour it might actually be well positioned to drive economic development initiatives as in many countries they still play a role in development. This argument is driven by the realization that the concept of good governance in Africa has failed because the western concept works against African systems of governance. Blair has also commented that there is a need to see development "through African eyes", a stance taken after the realization that the western model for third world development is not working because the developing countries' problems are multi-dimensional and therefore require an understanding of the political and institutional environment before any strategies are developed (Commission for Africa, 2005: 32). There is a mistake that government makes with regard to concluding that the institution of traditional leadership is synonymous with culture and traditions. This issue is well captured in the White Paper (2003: 20) which maintains that traditional leaders are the custodians of culture. This statement is problematic in the sense that it can have ambiguous meanings if not properly explained. It may mean that no individual is allowed to practice their customs and traditions without the approval of the traditional leaders. This is contrary to popular practice because people do perform their traditions and customs without necessarily seeking approval from the traditional leaders. In line with this challenge there is a need to delink traditions and customs from traditional leadership.

A third stance on the existence of traditional leadership within a democratic government is also becoming evident. Although scholars in this category acknowledge the existence of the institution of traditional leadership in a democratic government, they also caution against weak policies that may allow for the abuse of authority by the institution of traditional leadership. To avoid this they advocate for the development of policies that would provide for higher levels of oversight and accountability of the institution. Claassens (2001: 92) explains that "to counterpose democracy and tradition as opposites of one another hides more than it reveals. In many traditional societies the intricate rules, precedents and procedures which have been built up over generations ensure far deeper levels of public participation and debate than the mechanism of elections can achieve on its own". Claassens argues that it is critical for the development of South Africa to take into consideration the existence of the institution of traditional leadership, and integrate it into the democratic system of the country as this assists the government in addressing developmental challenges. She argues that the inclusion of the institution of traditional leadership in government may ensure maximum participation of community members as they identify with the institution.

Claassens' position is reflected in her argument that "customary courts are valuable institutions. They provide millions of South Africans access to justice they would not otherwise have. They are more accessible and affordable than existing formal courts and in general reflect the values of the people who choose to use them."[26] She however points out a number of issues that the TCB fails to consider and hence calls for the review of the TCB to close all gaps that might be open to abuse by traditional leaders, especially in relation to gender issues and accountability. This argument that traditional courts are more accessible than other courts may point to lack of trust in democratically established institutions that do have a mandate in fulfilling the needs of citizens.

Sithole and Mbele believe the institution of traditional leadership is a form of democracy, which when nurtured appropriately can benefit the country. This stance is also reflected by Amsden (2010: 65) on the role of institutions in the generation of employment for the grass-roots dependents when he maintains that "there is a need to strengthen the alliance between grassroots activists who are not hostile to government intervention and government bureaucrats who are

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[26] http:// mg.co.za, What is wrong with the Traditional Courts Bill? 2008-06-02, accessed 23/09/2012.

involved in poverty reduction". From this perspective traditional institutions and local government if they are to succeed in rural development, need to work together in line with government's vision of integrated rural economies. However, Cousins (2010: 67) argues that local institutions are vulnerable to power plays of elites and therefore measures to promote transparency and downward accountability are integral. He further argues that this can be achieved if central government plays the key role of ensuring accountability through oversight of local bodies and application of sanctions.

Oomen (2000) talks of "two bulls in a kraal". Taking a cue from nature Oomen's comparison of the two governance systems to two bulls implies that whenever this situation arises one will thrive over the other, one will have to surrender, take flight or be killed. Despite this situation Oomen argues that tribal councils can be reformed to embrace all interest groups such as women and the youth by adapting to the Constitutional provisions of fighting discrimination on the basis of gender and age, where necessary, while Cousins (2010: 67) argues for the vesting of communal land rights in community members rather than institutions. These observations point out that although there are scholars who have accepted traditional leadership, there is still a lot of debate on what roles traditional leaders should play with regard to governance, specifically within the local sphere of government.

After 20 years of democracy it is critical for us to assess the effect of this dual governance on traditional communities and determine whether there is a need to enhance it, or whether investing in this kind of relationship is detrimental to the development of the majority of citizens in traditional communities.

POLICY AND LEGISLATIVE PROVISIONS ON INSTITUTIONS OF GOVERNANCE
The ushering in of democracy in South Africa came with a lot of expectations, especially the many Africans who lived under successive oppressive colonial and apartheid regimes. It was seen as a government that would deal with all the oppressing laws of the past regimes, thereby ushering in a new era of equality in terms of race, gender and age. These critical elements are embedded in the Bill of Rights. The ambition of government is also evident in the preamble to the Constitution which highlights the importance of creating a unified democratic country based

on equality and respect for human rights.[27] Through the Constitution government has established institutions of governance which drive government's vision highlighted in the preamble. Each institution of governance is allocated roles and responsibilities. It also requires government to provide an enabling environment to allow for such institutions to perform their functions. The environment includes legislative measures which provide for the allocation of funds and monitoring of the performance of roles. On the other hand institutions are expected to be accountable with regard to the activities. This provision is central to the principle of good governance which advocates for accountability.

There are a number of institutions of government which have been allocated a role within the local sphere of governance. Key institutions include the municipalities, the judiciary represented by magistrate courts and the police. Government has also enacted pieces of legislation that reinforces the Constitutional recognition of the institution of traditional leadership. Below I discuss key policies and pieces of legislation relevant for this study**.**

Community safety

Section 205 of the Constitution recognizes the police service and provides that it must be structured to function in national, provincial and, where appropriate, local sphere of government. The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property and to uphold and enforce the law. The South African Police Service Act 68 of 1995 makes provision for the establishment of community police forums in terms of section 19. Section 18 (1) provides for the objectives of establishing such forums.[28] Section 18 (2) further provides that the provisions in section 18 (1) "shall not preclude liaison by the Service with the community by means other than

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[27]Constitution of the Republic of South Africa, Act 108 of 1996.
[28]http://www.saps.gov.za/docs_publs/legislation/juta/act68of1995.pdf, accessed 29/10/2013
(a)establishing and maintaining a partnership between the community and the Service;
(b)promoting communication between the Service and the community;
(c)promoting cooperation between the Service and the community in fulfilling the needs of the community regarding policing;
(d)improving the rendering of police services to the community at national, provincial, area and local levels;
(e)improving transparency in the Service and accountability of the Service to the community; and
(f)promoting joint problem identification and problem-solving by the Service and the community.

through community police forums and boards". I take this to also include partnering with traditional leadership in combating crime and providing safety to the community. Research conducted by the Centre for Law and Society reveals that "the typology of cases undertaken in Traditional Courts includes assault, murder and rape, to name a few, indicating that social contact crimes are at times being dealt with by the traditional justice system. On the other hand it is evident through SAPS reports that certain crimes, such as property related crimes, although they can be dealt with through Traditional Courts, are nonetheless taken to the police."[29] This report points to dual governance within the policing area and this study highlight how this duplication of roles affect the community members.

Administration of justice

The responsibility of justice falls within the mandate of the judicial authority. Magistrate Courts are responsible for the administration of justice within the local sphere of governance. Section 166(e) makes provision for any other court established or recognized in terms of an Act of Parliament, including any court of a status similar to either the High Courts or the Magistrates' Courts.

The application of customary law makes provision for the traditional courts to exist. It is at this local level that traditional communities also employ the use of traditional courts. In the absence of any legislation on the administration of justice, the traditional courts still apply sections 12 and 20 of the Black Administration Act of 1951. This Act empowers traditional leaders to administer justice with the help of the traditional council. The Department of Justice defines traditional courts as "Courts for Chiefs and Headmen".[30] A study conducted by Tshehla (2005) revealed that "the state's criminal justice system cannot substitute traditional forms of justice as practised within the institution of traditional leadership." The challenge on the TCB discussed in the first chapter represents a different view. Research conducted by the Centre for Law and

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[29] www.lrg.uct.ac.za/research/focus/justice/, accessed 17/01/2014.
[30] These courts have jurisdiction to hear certain matters on the level of magistrate's courts. They are designed to deal with customary issues in terms of customary law. An authorized African headman or his deputy may decide cases using indigenous law and custom (for example, disputes over ownership of cattle or lobolo), brought before him by an African against another African within his area of jurisdiction. These courts are commonly known as Chief's Courts. A person with a claim has the right to choose whether to bring a claim in the chief's court or in a magistrate's court. Anyone who is not satisfied with the decision in a chief's or headman's court can take their matter to the ordinary courts.(http://www.justice.gov.za/about/sa-courts.html, accessed 23/10/2013).

Society [31] reveals that there is a "blurring between cases dealt with in traditional dispute resolution forums and the criminal justice system. The above different views clearly indicate the existence of the phenomenon of dual governance in traditional communities and the need to resolve such for the benefit of the community.

Local government

The Constitution through section 40 (1) establishes the national, provincial and local spheres of government. In terms of section 152 (1) of the Constitution the objectives of the local sphere of government include among others the promotion of social and economic development; the provision of services to communities in a sustainable manner as well as ensuring the involvement of communities and community organizations in the matters of local government. Section 211 (1) of the Constitution recognizes the institution of traditional leadership subject to the Constitution and section 212 (1) provides for a role of traditional leadership as an institution at local level on matters affecting local communities. The local government is based on a system of democracy which highlights the significance of human rights, equality and freedom and leadership is based on people exercising their rights through elections. There have been reports of conflicts between traditional leaders and local government in relation to the issue of who has authority over traditional communities. A number of pieces of legislation have been enacted for effective service provision by municipalities. One key piece of legislation is the Local Government: Municipal Structures Act, 117 of 1998. It makes provision for the municipalities to accommodate traditional leadership in municipal councils as representatives of their communities (Section 81). The implication is that traditional leaders are expected to represent the needs and aspirations of community members as far as service delivery and development are concerned.

On his visit to the Eastern Cape, the former Deputy Minister of the Department of Cooperative Governance and Traditional Affairs, Yunus Carrim, asserted that "we are very impressed with progress, and this reconfirms our belief that while councillors and traditional leaders have distinct roles, they are first and foremost interdependent, and where they work effectively together and with communities, there can be significant improvement in service delivery and

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[31] www.lrg.uct.ac.za/research/focus/justice/, accessed 17/01/2014.

development."[32] According to Oomen (1999) the land allocation issue is also central to determining the relationship between traditional leadership and elected local governments. Drimie (2002: 110) observes that the IFP in Kwazulu-Natal had expected that traditional leaders "could serve as primary structures of local government whereas the ANC demanded democratically elected structures" These statements highlight the acknowledgement of the parallel nature of governance institutions at the local level and the struggle to forge an effective relationship between the two. What is left is to determine how this affects traditional communities.

Land administration

Traditional leaders in traditional communities have *de facto* rights over land administration acquired through years of habitual use. Currently the state holds land in trust on behalf of the communities. Cousins (2008: 20-21) argues that "the central issue across Africa is which local institutions should have authority over land matters." According to Drimie (2002: 111) "Amakhosi are very dependent on the function of land allocation as a source of power". This issue of land administration also impact on local government. To-date government's commitment to rural development is based on the availability of land for agricultural and non-agricultural activities which it believes will create an integrated and inclusive rural economy. Coupled with the role of local government in development, the administration of land is still a bone of contention in traditional communities. Communal land is held in trust by the state, but the overall administrative role is in the hands of traditional leaders as custodians of their communities. Oomen (1999) argues that development is often compromised as there is a challenge of who can dispose of land. The responsibility of service delivery has been allocated to municipalities which must access land for such reasons. Claassens (2001: vii) argues that the role of traditional leadership and elected local government in the systems of communal land rights is controversial in South Africa. The executive summary of the National Development Plan (NDP) 2030 maintains that

> "A layer of complexity comes from the role assigned to traditional leadership. Traditional leadership plays an important role in facilitating communication with South Africa's citizens to improve the effectiveness of developmental local government. However,

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[32]http://www.dta.gov.za/index.php/home/media-releases/6, accessed 20/02/2013.

confusion emerges when traditional forms of authority are legislated, as traditional leadership structures may then displace or duplicate the role of the state. This has potential to create a disjuncture between traditional authorities' land usage rights and the responsibility of municipalities to deliver services to that land".

The fact that the administration of land is in the hands of traditional leaders has sparked reactions from scholars. This is evident in the opposition of CLARA; citing the unconstitutional nature of the institution and the impact it has on the constitutional need for land reform, particularly on the rights of women to acquire land. The Department of Rural Development and Land Reform's (DRDLR) enactment of CLARA was meant to transfer ownership of land to the communities. Cousins (2006) argues that the solution for effective governance lies in encouraging progressive elements of civil society. He maintains this can be achieved by eliminating non-progressive institutions of government and promoting innovative institutional arrangements (ibid.: 241). Cousins (ibid.: 236-237) on development for rural livelihoods, also maintains that traditional leaders often contested the authority of the elected trustees CPAs established to take ownership of land administration. He blames this on inadequate government oversight and levels of support for the institutions and he suggests that there is a need to structure the institutions to ensure efficiency and effectiveness as well as to build systems to ensure monitoring and evaluation takes place. Rangan and Gilmartin (2002: 638) argue that there are three aspects that undermine democracy and one of them is the recognition of traditional leadership as it undermines the role of women in land administration and ownership. It has also been highlighted that "traditional leaders had the power to undermine stability in rural areas, should they be dissatisfied with the government's performance". [33] It can be argued that traditional leaders can undermine government programmes, should they believe it threatens the power they hold over land. Given the move toward rural development, and the need to promote good governance based on promotion of progressive institutions, it becomes a political and economic suicide to accommodate institutions that pull the objectives of government back.

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[33]http://mg.co.za/article/1995-12-08-tension-in-anc-over-traditional-leaders, accessed 23/09/2012.

Traditional leadership

Sections 211and 212 of the Constitution provides for the recognition of traditional leadership and the role of traditional leadership respectively. The White paper on Traditional Leadership 2003 also provides a policy position with regard to the role traditional leadership play in governance. Out of the Policy the Traditional Leadership and Governance Framework Act, 41 of 2003 (TLGFA) was enacted to provide the legislative environment on matters of traditional leadership. This piece of legislation makes provision for the recognition of traditional communities and traditional leaders. It establishes traditional councils which is an institution of governance within the traditional community.

The function of the traditional council is to manage the affairs of the community in line with customs as well as to assist the traditional leader in the execution of his or her daily duties. Apart from this role traditional councils are assigned supporting functions in relation to other institutions of governance at local level such as municipalities. Sections 19 and 20 are also central to the role played by traditional leadership in governance. Section 19 provides that a traditional leader performs the functions provided for in terms of customary law and customs of the traditional community concerned, and in applicable legislation. Section 20 (1) provides for the guiding principles for allocation of roles and functions to traditional leader or traditional councils. Of more relevance to this study is section 20(1) (b-c) which provides for the allocation of roles or functions in land administration and agriculture; section 20(1) (f-g) which provides for the allocation of roles or functions in the administration of justice and safety and security. Other structures such as the National House of Traditional Leaders (NHTL) and other houses in provinces are established to deal with matters relating to traditional leadership and also advise government on matters that impact on traditional communities.

The above analysis of policies and key pieces of legislation clearly highlights that government has allocated governance responsibility to a number of institutions. At the same time it has created a space for traditional leadership to play a role in governance in an already occupied space. What this means is that dual governance is an entrenched phenomenon which the implications of need to the explored.

GENDER, TRADITIONAL LEADERSHIP AND DEMOCRATIC GOVERNANCE

The issue of gender is at the centre of any discussion on governance, democracy and traditional leadership. The Constitution, in the Bill of Rights, prohibits any discrimination on the basis of gender. It sets the tone for all institutions of governance within the country to do away with gender discrimination. The TLGFA also commits to addressing gender discrimination by striving to achieve gender representation in its structures including the succession to traditional leadership positions. This move is based on the history of the institution of traditional leadership with regard to the position of women in leadership, decision making and overall governance backed by customs and customary law. The institution of traditional leadership is predominantly male, even after the Constitutional provision for the abolition of gender discrimination. There are traditional leaders who still fight to retain the status quo, citing the need to uphold culture and customs. A study conducted by Oomen (2000) revealed that women and the youth are often kept out of tribal meetings. Even in instances where they attend the traditional authority often has the final word. According to Rangan and Gilmartin (2002) the Constitution accords equal rights to women and men, but at the same time it endorses the exercise of customary law in the former homelands. This is contradictory because the creation of the institution is based on gender discrimination and the role of women is always marginal in line with customary law.

This constitutional contradiction was evident when the Constitutional Court [34] ruled that Nwamitwa is the heir to the throne of the Valoyi Traditional Community. This sparked a lot of reaction from traditional leaders and counter-reactions from gender activists. Contralesa took a stance to distance itself from participating in her inauguration as an indication they do not support a female traditional leader as it is against custom. Another unconstitutional stance was reflected when some traditional leaders opposed the same sex marriages arguing that it is culturally unacceptable. Such stances by traditional leaders are in direct attack on human rights and are seen as non-progressive.

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[34] www.constitutionalcourt.org.za, accessed 13/05/2012.

CONCLUSION

The reason institutions change is based on whether they produce desired results. In other instances institutions are retained if the political ideology of the ruling party provides space for the continuation of such institutions. If South Africa, by retaining the institution of traditional leadership, is able to create a conducive environment for people in traditional communities to develop, then there is a valid argument in accommodating the institution. On the other hand, if the recognition of traditional leadership and its informal constraints does not add value to government's developmental objectives and democratic ideals, then to recognize the institution is to deny people the freedom to be pioneers of their own development. With North's theory of institutions and institutional change this study highlights what it means to be a "citizen and a subject" in South Africa, to borrow from Mamdani's concept.

CHAPTER 3

RESEARCH METHODOLOGY

INTRODUCTION

Research is the systematic process of collecting and analyzing information in order to increase our understanding of the phenomenon being studied (Babbie, 2007: 107). Mouly (1978) defines research as a process of arriving at dependable solutions to problems through the planned and systematic collection, analysis and interpretation of data. Social science research in particular is concerned with the study of social phenomena, social groups, social institutions, human behaviour, personality traits and social attitudes with the aim of formulating general principles of social laws of human behaviour and of the social world (Young, 1939: 61).

RESEARCH APPROACH

As a social science research the study of the Mamaila Traditional Community lends itself to the qualitative research method with the aim of studying issues related to human behaviour and functioning (Strauss and Corbin 1999: 19). This research method is concerned with understanding the processes and the social and cultural contexts which underlie various behavioural patterns (Maree, 2007: 40). It is concerned with studying people or systems by interacting with and observing participants in their natural environment and focusing on their meanings and interpretation (ibid.). The nature of the problem investigated in this research, which is the phenomenon of dual governance in the Mamaila Traditional Community, is the reason behind the use of the qualitative method. The study attempts to uncover the community members and leaders' experiences and perceptions of the existence and functioning of the dual governance system within the community and how it affects community members in terms of service delivery and development.

The qualitative research method comprises a number of research designs which the researcher may employ depending on the researcher's philosophical assumptions as well as the appropriateness of the design to generate the kind of data required to answer the research question posed (Maree, 2007: 71). Researchers have the latitude to choose amongst qualitative

research designs such as conceptual studies, historical research, action research, case study research, ethnography and grounded theory. This study by focusing on the Mamaila Traditional Community as its unit of analysis used the case study research design. Allison (1996: 14) identifies case studies as a form of research design belonging to descriptive research. Descriptive research set out to seek accurate and adequate descriptions of activities, objects, processes and persons (ibid.). This study aims to shed light on the phenomenon of dual governance in the Mamaila Traditional Community within the context of the broader South African traditional leadership landscape.

Literature provides multiple definitions of case study research. Case studies are "in-depth studies of particular events, circumstances or situations which offer the prospects of revealing understandings of a kind which might escape broader surveys" (ibid.). Case study is a method of gathering facts regarding social situations or combination of interrelated factors, by which we can describe social processes or sequences of events in which human experiences occur (Young 1939: 230; De Vaus, 2001: 10). Yin (1984: 23) defines the case study research method as an empirical enquiry that investigates a contemporary phenomenon within its real life context when boundaries between phenomenon and context are not clearly evident and in which multiple sources of evidence are used. Maree (2007: 75) maintains that case studies offer multi-perspective analysis in which the researcher considers not just the voice and perspective of one or two participants in a situation, but also the views of other relevant groups of actors and the interaction between them." In studying the Mamaila Traditional Community, the research involved different role players in the community such as municipal representatives, youth, women and community representatives. In this regard I draw on Yin's definition of a case study method as this study draws on perspectives of the broader community.

DATA COLLECTION

A case study research design allows for the use of multiple techniques in gathering data. This is an advantage of the qualitative research as the researcher is able to get rich descriptive data. In carrying out this study I employed the following basket of data gathering techniques.

Interviews

The study employed the use of interviews as a basic data collection technique. An interview is a face to face research technique of data collection in which the research sets out to elicit information or opinion from a subject (Allison, 1996: 25). Interviews may be used as the only method of data collection or they may also be used as a part of a number of methods in the investigation of selected aspects of a common problem (ibid.: 102). In this study I used interviews as one of data gathering techniques for the collection of research data. The researcher may use a structured approach to the interview, with a research schedule to guide the research or the researcher may use an unstructured approach which allows the research to flow in a way the researcher feels may produce desired results. In this study I developed a research schedule with open ended questions to allow participants to expand and explain further particular points that I would have missed if it was a close ended questionnaire.

Qualitative research usually involves smaller sample sizes than quantitative research studies (Maree, 2007: 79). This is because the sampling in case studies is flexible as it allows for the researcher to increase the sample size during actual fieldwork until it reaches data saturation, at a point when no new themes emerge from the data collection process (ibid.). In total 42 participants above 18 years were interviewed between community leadership and community members. I developed interview schedules to guide me during interviews so as not to divert from the research focus. The objective of employing this method is that I needed more information from the participants with regard to how they relate to each other, and I did not want to confine their responses to a structured questionnaire because I would have missed out vital information regarding their perception and experiences. During certain interview sessions I was faced with the dilemma of having to accommodate family members who sat in as I interviewed participants. Not only did they sit and listen, at certain times they would cut into the conversation and commented. I had to accommodate their comments and put them on my reflection page to blend in their comments during analysis. Because I identified different categories of participants in the community; I could not use a "one size fits all" interview guide. I developed different interview guides for traditional leadership and municipalities, traditional leadership and magistrate courts, traditional leadership and police as well as community members. Purposive sampling was used with those known participants such as the traditional leaders and representatives of local

government. Random sampling was used for the community members so as to give them an equal opportunity of participating. Sampling is critical because it is not possible to interview everyone in the community (Punch, 2000: 54). The issue of gender representation was taken into consideration. Because of the overwhelming opposition against traditional leadership on the basis of gender discrimination, I have interviewed more female community members to understand the issue of gender relations. However this could not be applied in the traditional leadership category as there is only one female representative. On average each interview lasted for an hour and half. In breaking down the above figure I categorized the participants in the following manner (a detailed breakdown is attached as appendix 1):

CATEGORY	NUMBER	BREAKDOWN OF PARTICIPANTS	
Traditional leadership	10	Senior traditional leader of Mamaila Traditional Community	1
		Lemondokop Village Headman	1
		Headmen in the Mamaila Traditional Council	4
		Royal Council members	2
		Lemondokop Village Committee members	2
Municipal leadership	5	Greater Letaba Local municipality representative	1
		Ward councilor	1
		Community development worker	1
		Ward committee members	2
Community Safety representatives	3	Police commander responsible for community safety	1
		Community Policing Forum members	2
Sekgosese Magistrate Court	2	Magistrates	2
Community members	22	Female youth	6
		Male youth	5
		Female adults	6
		Male adults	5

During the planning period I identified a number of key institutions which are necessary to achieve the objectives of this study. In order for me to gain access I had to request permission through the formal institutional channels. However, there are certain institutions that proved difficult to gain access. The Mopani District Municipality is one such institution. I made several attempts to obtain permission but I was sent from one official to another. In the end I could not get any positive response. This challenge also meant that I would not be able to gain access to municipal council sittings which I had hoped to do. The district's website [35] is not updated as well, specifically on the section providing information on municipal council sittings. This would have provided me with information on dates for municipal council sittings. Since municipal council sittings are open to the public, it would have afforded me the opportunity to listen to the issues discussed.

With regard to the Greater Letaba Local Municipality I also could not attend any municipal meetings since such information was not available. The municipality website[36] only provides information pertaining to 2009 council meetings. Although I received a letter permitting me to interview a representative and also attend municipal meetings, it proved difficult to obtain assistance. The public participation manager who was identified by the municipal manager as the relevant individual to provide information pertaining to my study did not assist either. When I arrived for a meeting with him scheduled for 22 March 2013, he was nowhere to be found. When I called him to find out his whereabouts, he indicated he was not aware of the meeting. On my second scheduled meeting with the same public participation manager, he also did not avail himself, only to learn from his colleagues that he went to attend a special municipal sitting. However I was able to interview the municipality's spokesperson who was very informative.

Participant Observation

It is the objective of the study to record first-hand accounts of the processes that drive participation and cooperation within the community in relation to the two governance systems. In this regard I also used participant observation as a data gathering technique. This technique allows for a researcher to use an array of methodological techniques to generate multiple perspectives required. I combined direct observation, participation, interviewing and casual conversation to triangulate my findings (Adler and Adler, 2003: 44). Observation implies seeing

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[35] http://www.mopani.gov.za/index.php?page=councillor_meetings, accessed 27 August 2013.
[36] http://www.greaterletaba.gov.za/index.php?page=meetings, accessed 27 August 2013.

as well as observing with other senses (Henning, 2004: 82). In the context of this study observation entails both the use of observation as a discrete tool for gathering information as well as participating in the actions of the people in the research setting and getting to know their ways of doing things very well (ibid.). I attended three traditional court sessions and one special court session as a participant observer. While waiting for the traditional court to go on session, I sat in the administrative office of the traditional council, listened to the issues the community members brought to the office as an observer. The officials were aware of my presence as well as the purpose, but the community members thought I was also on the queue for assistance as they constantly asked me to go to the clerk for assistance as it was my turn. The issues brought to the office include payment of *mothelo (*levies); payment of fines; opening and registration of court cases; request for referral letters to institutions such as banks and retail stores where community members need to open bank accounts or apply for credit from retail stores.

My role as a participant observer during the traditional court sessions provided me a rare opportunity to view the traditional court both through the eyes of the community members and the traditional court members. As I sat there I was able to observe how the community views and relate to the traditional court as well as how the court makes its rulings. I attended three traditional court sessions in terms of their scheduled days i.e. every Monday, Wednesday and Friday. I further discuss this issue in the proceeding chapters on research findings.

Within the Mamaila Traditional Council, the other administrative office is the royal council office. The day to day activities of this office include administering the affairs of the royal family, appointment of headmen, and administration of customary practices such as initiation. It is also responsible for the collection of levies that are recorded into the Nahakwe Trust account, which is separate from the government account where most of the administrative funds are deposited. As I sat listening to one of the royal council representative lamenting about how government is unable to support this particular office, I realized that unlike the government office next door, no person came for assistance during my presence.

Municipal councils are mandated with the responsibilities of developing mechanisms to consult the community and community organizations in performing its functions and exercising its powers and traditional leaders are expected to attend the council sittings as ex-officio members

on behalf of the traditional council[37]. I also requested to attend municipal council meeting, but for reasons furnished above I could not attend any municipal council sittings.

Document analysis

The study also focuses on exploring documents such as newspaper articles, official communication, policies and plans on governance in relation to traditional communities. The use of documents as a data gathering technique includes a focus on all types of written communications that may shed light on the phenomenon under study (Maree, 2007). Using documents to gather data also helped me to corroborate the evidence from other sources. In this study an analysis of the Integrated Development Plans (IDP) reports helped me to understand the concerns that participants raised during interviews about issues such as land administration. Primary data, in the form of documents relevant to the study has been analysed. Documents that I analysed include the IDP of municipalities to determine the extent to which they embrace the needs of the community, the submissions and minutes of meetings of the traditional council to determine the issues discussed on community development as well as recent newspaper articles on traditional leadership and governance. These documents were accessed from the Department of Traditional Affairs Information Management Directorate, the district and local municipalities as well as different news publications acquired through print or online.

DATA ANALYSIS

My data collection focuses basically on three techniques, namely interviews, observation and document analysis. During interviews and observations I took field notes as an addition to recording the interviews. The notes helped me as there is one community leader who, although gave me permission to interview him, refused to be recorded. I transcribed all the data including the conversations during the three traditional court sessions I attended. By carefully reading through my transcribed data I was able to develop meaningful analytical units. This form of coding helped me to identify themes coming out of the study. According to Anderson (2007:1) this method is referred to as the Thematic Content Analysis and it enables the researcher to group and distill a list of common themes from the texts in order to give expression to the communality of voices across participants.

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[37]Section 81 of the Local Government, Municipal Structures Act, 1998 (Act 117 of 1998).

ETHICAL CONSIDERATIONS

This study focused on individuals who are 18 years and older and therefore did not have any ethical challenges relating to minor participants. Before I could embark on the study I obtained ethics clearance from the University of Witwatersrand, which is attached as appendix nine. During fieldwork, just before I could interview participants, I provided them with appropriate information on the purpose of the study and also requested written informed consent. The participant information sheet and informed consent form are attached as appendices two and three respectively. Informed consent is important because participants should not be forced to participate in the study. I stated upfront that participating in the study is voluntary and that participants may withdraw at any point in time without fear of prejudice. The written consent form was translated into the participants' language of choice which is Sepedi to ensure that the participants fully understood what they were consenting to. I only translated into Sepedi as the predominant language in the community. From my personal experience as a community member I know that Mamaila Traditional Community is not a homogeneous ethnic group as there is Tshivenda and Xitsonga speaking community members. I did not meet any challenges in this regard as I am a member of the community and therefore am conversant with all the languages and all community members understand Sepedi. The participants were also informed of confidentiality and anonymity to protect them from possible harm that may emanate from the study. I obtained separate consent with regard to the use of audio-recording during interviews so as to remain open and transparent in line with the objectives of the study and this is attached as appendix four. I also respected the decision of participants who allowed me to interview them but refused to be recorded.

CHAPTER 4

PERCEPTIONS AND EXPERIENCES OF COMMUNITY LEADERSHIP

INTRODUCTION

In this chapter, I explore traditional leadership's role in the community in relation to other governance structures such as the municipality, magistrate court and SAPS. This chapter is particularly based on the interviews held with community leadership. In this regard community leadership includes representatives from the Mamaila Traditional Council and the Lemondokop Village Council, Greater Letaba Local Municipality, Sekgosese SAPS and Sekgosese Magistrate Court. I specifically focus on the relationships between traditional leadership and the identified governance structures and how such relationship affects the community. In discussing these relationships I also highlight how the other governance structures see the role of traditional leadership in the community and how it relates to their mandates. The study shows that the relationship between traditional leadership and democratic structures of governance varies. One of the significant objectives of this study is to explore the role and position of women and the youth in governance and this study shows a lack of representation of women and youth in traditional leadership as compared to democratic structures.

The Mamaila Kolobetona Traditional Community is one of the 829 recognised traditional communities in South Africa.[38] It is located within the Limpopo Province within the current democratic governance arrangements. Historically it was classified to fall within the Lebowa Government by virtue of the language spoken which was classified as Sepedi. It falls within the Mopani District and Greater Letaba Local Municipalities respectively. The Mamaila Traditional Community is part of a bigger ethnic group known today as the Balobedu.[39] Although the Mamaila people still refer to themselves as Balobedu they broke away from the main group, the Balobedu ba Modjadji, during the 1920′s and formed an independent tribe.[40]

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[38] Department of Traditional Affairs: Training manual on government programmes and legislation impacting on the institution of traditional leadership (unpublished).
[39]http://www.mamaila.org/history/, accessed 15/10/2013.
[40]http://www.mamaila.org/history/, accessed 15/10 2013.

This traditional community was recognized in 1957 through proclamation number 1111 of 26 July 1957. This is a community of people who were forcefully removed from their ancestral home in Nahakwe (just a stone throw away from their current location) under the Betterment Scheme and categorized as Pedi. The area where the Mamaila Traditional Community is located is also home to those who were originally members of other ethnic groups, for example Vhavenda. This is evident through the disputes between the Mamaila Traditional Leadership and Muila Traditional Leadership with regard to the Muila graveyards located within Mamaila (File No. E/1/2/11/89, letter dated 13 July 1983).[41] The Muila people wanted government to request *Kgoši* Mamaila to allow the protection of their royal graves within the jurisdiction of the Mamaila Traditional Community. The request was granted with conditions. Since its forceful removal to the current location the current senior traditional leader is the second generation of traditional rule. The system of traditional leadership is hereditary as it flows through the blood line. However, it follows the male primogeniture rule, where only males succeed to traditional leadership position.

The Mamaila Traditional Community is made up of six villages each with its own leadership structure. The highest office of traditional leadership in the community is the traditional council situated in the main village Mamaila which is the seat of the traditional council and the home of the senior traditional leader. The traditional leader in the execution of his duties is assisted by the traditional council, of which he is the chairperson. The royal council is also responsible for supporting and guiding the traditional leader- although at the level of the royal family-for him to perform his functions according to their customs. At the village level the highest authority is the headman who is responsible for the administration of the village. In the execution of his duties he is assisted by a village committee inclusive of community members assigned to different portfolios. The Lemondokop Village is further sub-divided into sections and these are allocated to headman's assistants (*matsogo a letona)* who report to the headman. These structures are related to each other in a hierarchical manner. The headman's committee report to the headman, who in turn reports to the senior traditional leader through the traditional council and the traditional court. The senior traditional leader, as the highest authority communicates to the community through the headman, who brings back reports and information from the traditional council to the village. The headman in turn reports to the community through his assistants

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[41]Mamaila Local Government, File No.5/2/9/103.

unless if there is an issue that should be addressed by him directly, which in this instance they use the village *kgoro* to communicate.

The traditional council office is also used as an information centre. The municipality uses the same office to disseminate information about municipal services, updates and feedback to the community on their requests. Other departments also use the traditional council to provide services such as training. As I was attending one *kgoro* session at the traditional council, Treasury officials came to train community members on the processes of tendering. People who need to certify their documents have an opportunity to use the traditional council as a police reservist is deployed every Monday at the traditional council.

The Lemondokop village is one of the six farms proclaimed under the Mamaila Traditional Community. Lemondokop is the farm proclaimed in 1984 (Government Notice R26 of 09 November 1984) to belong to the Mamaila Traditional Community. Originally this piece of land was an agricultural land laying fallow and belonging to the then government. When I asked participants how Lemondokop became a village under Mamaila they explain that the then Gazankulu Government was encroaching on the farms of village members in the Mamaila Traditional Community and the traditional leader applied to government to obtain the farm Lemondokop because people were keen on farming. This application is noted in correspondence 3/4/4 (a) in the Mamaila Local Government File No.5/2/9/103 dated 25 August 1981. However there is another version as to the reason for the establishment of the village-that the traditional leader informed all families practicing witchcraft to move to Lemondokop. Contrary to the first version which is supported by documented evidence, the latter version does not have any evidence or supporting documents and therefore does not reflect the truth. However it is not surprising to get such reasons as the daily lives of the villagers are based on superstition.

It is important to examine the reason for the inclusion of Lemondokop within the jurisdiction of *Kgoši* Mamaila. The application, as per the file noted above, indicated that Lemondokop should fall under Mamaila "because the people of *Kgoši* Mamaila are residing at Lemondokop from 1972". These people according to the application were moved from other farms that belonged to Mamaila. The application was granted. This incorporation did not take into consideration the people who were already occupying the area and surroundings. And therefore by virtue of being within the jurisdiction of *Kgoši* Mamaila all people became subjects of *Kgoši* Mamaila and hence

are subjected to his authority in terms of customary law and customs. The question one may ask is whose customs and customary laws are the people subjected to? It is also relevant to argue that since all people in the Bantustans during Apartheid were expected to fall under one traditional authority or another, the people did not have an option.

It is difficult to obtain the profile of a traditional community within the context of municipal boundaries as the latter are not based on the existing traditional community boundaries. It is equally difficult to obtain the profile of the Lemondokop village as the local municipality does not profile municipal areas on the basis of villages but on the basis of wards. So information pertaining to planning is based on wards which do not take into consideration the existing area of jurisdiction of the Mamaila Traditional Community. This is one indication that traditional leadership is not integrated into local government. Within a single ward one finds two or more villages that fall within two different traditional communities. This scenario means that administratively the traditional community boundaries are dissected into parts which are administered by different ward councillors. For example the ward councillor for ward 14 is responsible for Lemondokop Village and Vaalwater 1 and Vaalwater 2[42]. This administrative area allocated to the ward councillor has nothing to do with the traditional leadership. Again this may mean that in developing plans for the ward, the traditional council has no place or role. But because the ward councillor and ward committee members are also traditional community members, they find themselves having to deal with traditional leadership in executing their duties.

Lemondokop is rich with arable land. After all it is situated in the area where ZZ2[43] is farming. Considering that the people there were moved from Mamaila to Lemondokop for farming (correspondence refers to the Lemondokop villagers as farmers (file no.6/9/3/10/2, dated 08 January 1986), it is not surprising why the village has produced nine commercial farmers of which three are female youth, three are female adults, two male youth and one male adult.[44] Residents say that during the Lebowa Government there used to be irrigation schemes where community members produced for both subsistence and commercial purposes. However, today most of the irrigation schemes are lying fallow because of water shortages. Given this historical

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[42]http://www.greaterletaba.gov.za/index.php?page=wards, accessed 15/10/2013.
[43] An agricultural enterprise, http://www.zz2.biz/, accessed 15/10/2013.
[44] Telephonic Interview with the CDW, 21/10/2013.

infrastructural investment, Lemondokop has the potential of becoming a driver of economic activity in agriculture as outlined in the NDP (pp 196-213).[45]

GOVERNANCE STRUCTURES WITHIN THE TRADITIONAL COMMUNITY

The primary governance structure within the community is traditional leadership. At the traditional community level there is a senior traditional leader who is assisted in the performance of his duties by the statutory structure called the Mamaila Traditional Council. The TLGFA outlines the roles of both the traditional leader and the traditional council. The TLGFA recognizes that "a tribal authority that, immediately before the commencement of this Act, had been established and was recognized as such, is deemed to be a traditional council contemplated in section 3 and must perform the functions referred to in section 4: Provided that such a tribal authority must comply with section 3 (2) within seven years of the commencement of this Act". The above provision maintains that for a traditional council to have a legal status it should be reconstituted to accommodate the principles of democracy which the institution is subjected to. At the time of this study, all traditional councils in Limpopo had not been reconstituted which means they carry an illegal status. The above effectively mean traditional communities in Limpopo Province are administered by illegal traditional councils as their time for reconstitution has lapsed.

The Mamaila Traditional Council comprises of 11 members of which only one is female. Gender is not an issue they take seriously in the community although legislation provides that "at least 30% of members of the traditional council should be women" (Section 3 of the TLGFA). Therefore the traditional council does not fulfill the constitutional requirement of gender representivity.

Another structure, acknowledged by government to play a central role in traditional leadership, though not a statutory structure is the Royal Family. Located within the highest office of the traditional community, the Mamaila Royal Family is basically responsible for the identification of a successor should the senior traditional leader passes on or is removed for any reason. It is also responsible for the provision of guidance to the traditional leader in the execution of his

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[45]Chapter 6 of the NDP Vision 2030 focuses on achieving an integrated and inclusive rural economy by 2030.In achieving this objective the NDP proposes a differentiated rural development strategy focusing on agricultural development based on successful land reform, employment creation and strong environmental safeguards among others. This strategy will be realised through the expansion of irrigated agriculture and dry land production, beginning with smallholder farmers where possible.

duties in accordance with customary law and the customs of the Mamaila Traditional Community. During research it emerged that the royal family plays a more significant role in the community-that of guiding the traditional leader in making decisions on land administration.

At the Lemondokop Village level there is a headman (*letona*) recognized and remunerated by government. The role of *letona* in terms of section 19 of the TLGFA is not different from the roles allocated to senior traditional leaders. However, the Act makes provision for the performance of roles in terms of customs and customary law. The customary hierarchy on the ground ensures there that there is differentiation of roles. The Lemondokop Village is also subdivided into four sections namely Nyakelang, Iketleng, Phothulogang and Phelandaba for the administration of the village. Each section is allocated to *letsogo la letona*, who, though not recognized nor remunerated in terms of the TLGFA, reports to the headman. Together with other identified members they form the village committee which is responsible for dealing with traditional leadership issues at village level including advising the headman. Issues they deal with include the allocation of residential sites, allocation of farming land, the control of the use of the community graveyard as well as dealing with cases brought before the village *kgoro*. The headman (representing the village) reports village issues to the senior traditional leader (within the traditional council).

There is a noticeable lack of visibility of women and the youth in traditional leadership structures responsible for governance. Women are only visible in the private care environment dealing with community development initiatives such as home-based care, funeral societies and grocery clubs but not in public governance spaces. These are initiatives aimed at social and economic development of the community. There is only one female who is a member of the traditional council. However she finds space in the council by virtue of being the most significant member of the royal council and a sister to the senior traditional leader. Ordinary women are not represented. When I asked some traditional council members why there is insufficient number of women in the council, some argued that "*women are busy with their daily chores*". *Kgoši* said that as the royal council they are considering the issue of gender. Considering the patriarchal history and nature of the institution of traditional leadership, and the argument I advanced above that the tribal authorities in Limpopo have not been reconstituted, it is not surprising that the traditional council post-1994 is still male dominated. The above challenge implies that the voices of women are not heard when decisions are taken in the traditional council.

The same challenge that women face also affects the youth. There are no youth representatives in the traditional governance hierarchy. Traditional council members argue that the youth do not want to be in the traditional council because they are more concerned with getting jobs to enhance their livelihood. However the youth argue that the traditional leadership institution as a whole does not represent the community. It represents the aspirations of people over power and authority. Participant CM37 argues that the institution is not inclined toward inclusivity as it still operates the way it used to ten or twenty years ago. "*As the youth we do not live in the past, the institution must catch up with the aspirations of the people*". He further argued that the institution is not playing its role. His central argument was that "*why do we need traditional leader when we have municipality that provides services for us. Traditional leadership should be educating people about our culture and tradition, where we come from, when was Lemondokop established, let's say for example through Lemondokop Day or Mamaila Day which will encourage even the youth to dance for the traditional leader*". In this instance participant CM37 supports the constitutional recognition of traditional leadership as the custodian of culture and custom. When I asked him what customary roles do traditional leaders play in the community he argued that the role of traditional leadership in leading the community is visible in many ways. According to him "*the headman in the village ensures that when there is a funeral every Wednesday men gather together to dig graves under the supervision of one committee member chosen by the community. If there is no traditional leader families would be forced to dig graves for their loved ones*". But participant CM37 takes offense when traditional leadership in the name of culture and custom takes twelve year old girls to initiation schools to teach them how to please a man instead of teaching them the do's and don'ts of sex and HIV/AIDS. He blames this on the lack of education on the part of traditional leadership and argues "*they don't know how to blend culture and civilization or make a transition without losing who they are*".

The Mamaila Traditional Community falls within the Mopani District and Greater Letaba Local Municipality respectively. However different villages of this community are administratively assigned to different wards for example Lemondokop falls within ward 14. Within the community the highest office is the ward councillor who is assisted by the community development worker in the identification and provision of services for the community. There are also ward committee members who are allocated the same administrative village sections as

traditional leadership within the village. They are assigned different portfolios such as safety and security, health, electricity committee and water committee.

Government has also made provision for traditional leaders to participate in local governance for the benefit of traditional communities. At the same time there are different structures at community level that are allocated responsibilities in service delivery and governance. At the traditional community level the senior traditional leader and the traditional council are responsible for the overall administration of the traditional community. At the village level the headman is the eyes and ears of the senior traditional leader, collecting information on people's needs to the traditional council. The village headman is also responsible for the administration of justice. Every second Sunday there is a village *kgoro* were cases are discussed and resolved. This is also a platform for the municipality and other stakeholders to inform communities of programmes and services for the community.

The issue of land administration in traditional communities is still a contentious subject. Except for a few traditional communities who own traditional community land, communal land is still held in trust by the Minister of Rural Development and Land Reform. However this position is not properly understood by the community and stakeholders. According to the community members the land belongs to *Kgoši* Mamaila. Even stakeholders such as municipalities agree that land belongs to *kgoši*. One of the participants I interviewed narrated a story of how the villagers in Lemondokop, when they were angry with *kgoši*, told him to carry his father's soil (land) and take it with him and leave their Lemondokop soil. During interviews this statement did not reflect the participants' knowledge of land ownership. It only reflected anger directed toward the traditional leader as he was perceived to have failed to act per the villagers' request.

Land issues have always been thorny between government, the people and traditional leadership. Lemondokop Village is adjacent to the Senwamokgope Township proclaimed in 1962 (proclamation R 293 of 1962 as amended). In the development of the township, the Trust Farm, Vaalwater which originally belonged to *Kgoši* Mamaila was incorporated. This was not welcomed by the traditional leader and the community representatives as they argued that gradually the Mamaila Traditional Community would lose the land as it is possible that the Township would be expanded in future to accommodate industrial development. The Mamaila leadership argued that taking the land would be tantamount to "land robbery" because the

presiding magistrate argued it was a trust farm whereas the community knows that the land belongs to Mamaila. However they also submitted that if the farm is taken they should be compensated with another farm as was the case with Lemondokop.[46]

Today this very same challenge finds expression in recent requests for land by the municipality as well as community members who argue that traditional leadership blocks development as they refuse to make land available. The 2013/2014 IDP (pp 43-46) of the Greater Letaba Municipality identifies "*the vacant land parcel in Senwamokgope between the built area and the college as ideal for shopping/convenience centre development. There is already a proposal submitted by developers to build a shopping centre/mall in Senwamokgope.*" At the same length the document presents the challenge that "*it is worth noting that the above areas are under the ownership of private individuals with the exception of the farms Worcester, Vaalwater and Roerfontein which are state owned and under the guardianship of Tribal Authorities. There is a need for land for Greater Letaba Municipality to implement and to promote agricultural and tourism activities and this land will serve as the theatre to actualise the Vision Statement of the municipality*". The same response given by traditional leadership then is still applicable: Traditional leadership will not release land for free. This was the comment from the traditional leader when I presented to him the municipal challenge that traditional leadership blocks development. There seem to be subtle power struggles hidden behind the authority over land. While it seems there is not sufficient information to traditional leadership on how to deal with land issues versus the need for community development, on the part of the municipality it seems they are aware of the processes that should be followed.

Another key governance area in the community is safety. Safety is primarily the responsibility of the Department of Police represented by SAPS at the local level. The Lemondokop Village is serviced by the Sekgosese Police Station located within the Senwamokgope Township. In terms of the SAPS legislation, CPFs are a useful tool to effective policing in the community and this should be established in each community. The role of CPF is to assist the Police in ensuring there is safety in the community. In Lemondokop the CPF has also been established to address such policing issues in partnership with the police and other relevant stakeholders such as the Ward Committee which also deals with safety issues.

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[46] Minutes of the Mamaila Tribal Authority held on 13 January 1982.

The Limpopo Government has made provision for the employment of traditional police in terms of the Public Service Act. Each traditional community in Limpopo has a tribal police whose role is to deliver summons from the traditional court to the community. The tribal police also play the role of a messenger. During the Apartheid era traditional leaders used to arrest and detain community members who committed crimes and in many instances one often hear of how a community member was beaten up for stealing a goat or for failing to pay levy or a fine. Although this role is now the responsibility of the Police traditional leadership stills enjoys such a privilege because they still "arrest" community members. During one of the court cases I attended a community member refused to appear before the traditional court. In addressing this challenge a traditional court member offered to go and fetch the perpetrator for her to appear in the court. The Police representative I interviewed also agreed that traditional leaders are allowed to arrest and detain any community member "*as long as he or she is more that 18 or less that 60 years old*" (CL16). He however disputed that traditional leaders have tribal police.

Basically the role that traditional leadership plays in community policing is similar to the role played by the CPF and SAPS. Although traditional leaders are aware of cases they should not deal with, they continue to play a central role in policing. I asked CL16 whether the cases they deal with as the police in the township are different from the cases they deal with in traditional communities. Participant CL16 argues there is no difference. The senior traditional leader also argued that traditional leadership is crucial in policing and community safety because "*…even townships have committees that resolve cases before they are taken to the police station, only if they are not resolved",* comments the senior traditional leader.

With regard to the administration of justice, there are two governance structures within the community. The Sekgosese Magistrate Court, situated within the Apartheid created Sekgosese Magisterial District is the lowest court provided with the role of dispensing justice in terms of the Constitution. This court is responsible for all civil and criminal cases within its area of jurisdiction, of which the Mamaila Traditional Community falls under. The Mamaila Traditional Court, situated in the capital of the community is also responsible for addressing cases from villages within its area of jurisdiction. The Apartheid legislation [47] gave traditional leaders powers to try cases and they were also given powers to detain and refer cases to the Sekgosese Magistrate Court. The Traditional Courts Bill which was withdrawn was meant to repeal the said

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[47]Section 12 and 20 of the Black Administration Act, 38 of 1927.

Act. In the absence of such traditional leaders still apply sections 12 and 20 of the Black Administration Act, 38 of 1927 to administer justice. CL20 argued that there is no direct relationship between the traditional court and the magistrate court. The relationship is facilitated through the police. But the argument that CL19, CL1 and other community leaders indicated that the magistrate do refer cases back to the traditional leader is an example of a direct relationship. Although CL20 argued the relationship is realized through the police, I witnessed during a court case how an old lady came to the traditional court with a letter and she said the magistrate told her to come back to the traditional court.

PERCEPTIONS AND EXPERIENCES OF COMMUNITY LEADERSHIP

Role of traditional leadership in governance

In order to set the tone for the presentation of findings of the study there is a need to look at the perceptions of the community leadership with regard to the role of traditional leadership. This is necessary because the study is based on the discussion of dual governance in communities where there are traditional leaders. While the Constitution has recognized the institution there have been calls by some scholars to do away with traditional leadership as it is argued to be a contradiction to democracy. The perceptions presented in this chapter help understand how different stakeholders who engage the institution of traditional leadership on a daily basis view the existence of the institution in line with the two schools of thought. I have given participants unique codes to be able to identify who made the comment and which structure or institution they represent. Detailed information on the codes given to participants is attached as appendix one of this document.

There is a Sepedi expression which is used in the description of the significance of the institution of traditional leadership-"*naga ya tloka bogoši ke mojano",* loosely translated it means a country without a (traditional) leader is a country in chaos. The above expression is explained by Participant CL1 to mean that "*if there is no traditional leader people will do as they please".* This expression is also used by those who believe the institution of traditional leadership is significant in the community. Members of the traditional and village councils believe that the role of the traditional leader is to protect the community. CL5 considers that the role of the traditional leader is "*to listen to the needs of the community and then inform the municipal ward councillor about the needs of the community".* CL13 argues that "*traditional leaders were able*

to address the needs of their communities. They were able to bring water to the needy. Now they cannot do it because they don't have any resources. We used to pay levy for our own services. Sometimes we would also contribute money". CL6 sees the existence of traditional leadership as the legitimate authority in traditional communities. He comments *"it is impossible to live without traditional leadership. The municipality found traditional leadership and they were developing their community".* CL11 believes that *"we cannot wish them away. It will be difficult to have a community without traditional leadership. There won't be survival without traditional leaders. They bring the community together. Yes, Yes, let's take the Mamaila Community, without the traditional leader, how are those people supposed to live?"* Embedded within these are roles that traditional leaders used to perform before the advent of democracy and the roles that they are perceived to be playing in the democratic dispensation.

Relationship between traditional leadership and other governance structures

In order for community members to obtain services from different governance institutions, it is important to determine how such institutions relate to traditional leadership. The Greater Letaba Local Municipality is represented by the female ward councillor within the community as the highest political authority. In the execution of her duties she must liaise with traditional leadership from the village level to the traditional community level. When I asked community leaders about the relationship between traditional leadership and municipalities they indicated that the relationship is good. The municipal representative comments that *"traditional leaders also play more or less the same role as municipalities. They have decision making authority on land issues, influencing the prioritization of service delivery. They also have a platform to raise issues about their communities in the municipal council. The advantage with them is that they can communicate with all structures of government. They do have such a platform" (CL12).* She further adds that *"municipality works well with all traditional leaders. When they work councillors include traditional leaders to understand municipal processes. We agree on everything, decisions taken by mayor and traditional leaders. There is understanding and good cooperation. The traditional leaders know the role of municipality. We are also invited to attend workshops. We are also involved in the issuing of residential stands, taking into consideration the reasons for the request of the stand. For example, we cannot allow a stand to build a beer hall next to the school as it will affect the children. There is planning and consultation between the two structures. We start with the traditional council and then to the municipal council. In the community we cannot have a meeting without the knowledge of the headman so that he should*

not be surprised. They are invited and decisions are consultative. I also attend the kgoro on Sundays. During kgoro sessions I also assist where community members don't understand certain issues by explaining to them if the issues are within the mandate of the municipality." The 2013/2014 IDP also alludes to the issue above in that *"GLM [Greater Letaba Local Municipality] has a good relationship with the 10 traditional leaders. These traditional leaders serve in the council of the Municipality. The municipality has established a Traditional Leaders Forum which sits on quarterly basis with the Mayor of the municipality".*[48]

Notwithstanding the good relationship highlighted above, the local municipality and the district municipality identify the authority that traditional leadership have on land as a challenge. In identifying key spatial challenges in the 2013/2014 IDP the Mopani District Municipality identifies multiple centres of power in land administration and identifies traditional leaders as one such centre of power that creates a challenge in spatial planning.[49] This is in reference to the land ownership because land within the municipality is mostly within the hands of either traditional leaders or private owners and the municipality finds it difficult to access such land. According to the Greater Letaba Local municipality's 2013/2014 IDP traditional leaders are seen to be blocking the development of community facilities through their authority over land. It highlights the challenge that "the majority of the traditional leaders are reluctant to release land for development".[50] In addressing this, the municipality plans to engage traditional leaders to release land. This challenge was also identified by participant CL11 in this sense: *The biggest challenge is to obtain land for development of traditional communities. We had a case, it is more than 5 years now, with the traditional leaders in Rotterdam DuvulaMahuntsi. We cannot develop the community without the authorization and permission of the traditional council. Squabbles and fights among and within the traditional council that include fights for leadership mean we are unable to bring services to the community. There are many proposals from developers but because of the dynamics of traditional leadership profit it becomes a big challenge".* In response to the challenges raised above traditional leadership argue that *"the municipality wants to take land for free and when they take they benefit from it without compensating the community"* (CL1*).* Participant CL6 also adds that *"...the traditional leader refused to give them land because they want to take land for free. He will only give them land if they are going to*

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[48]www.GreaterLetaba.gov.za , 2013/2014 IDP, accessed 03/10/2013.
[49]www.Mopani.gov.za, 2013/2014 IDP, accessed 03/10/2013.
[50]www.GreaterLetaba.gov.za , 2013/2014 IDP, accessed 03/10/2013.

compensate the community". Although the municipality and traditional leadership agree that the relationship is good there is an undercurrent of a conflict brought about by the land issue.

The relationship between traditional leadership and the Sekgosese SAPS is perceived as *"good...because when we embark on rural safety meetings in the station the traditional leaders are invited and included in our meetings. They are also responsible for minor cases and for serious cases they refer those to the police"* (CL16). This is also confirmed by CL1 who explained that *"the traditional council attends forums to strengthen the CPF.* He added that *"the police protect the community. Sometimes community members come to the traditional court and we resolve the cases without the police. Cases that we cannot deal with include rape, murder and witchcraft and we refer these to the police"*. The community is not happy with traditional leadership because they argue they fail to address issues of witchcraft and they also point fingers at the police for failing to deal with the issue.

The two magistrates from the Sekgosese Magistrate Court I interviewed maintained that although they do not work with traditional leadership the role that traditional leaders play in the administration of justice is very important. They feel that dealing with cases in the traditional court or the Magistrate Court is a basket of choice for traditional communities because *"one can decide whether he is going to take the matter to the traditional court or whether he is going to report it to the police and then it comes to this court"*. However participant CL20, a magistrate, cautions that this might also be a disadvantage because it might lengthen the process of resolving the case if one starts at the traditional court.

The two magistrates were inconsistent on the issue of referrals between the magistrate court and the traditional court. While participant CL20 argued that they do not refer cases back to the traditional court, participant CL19, also a magistrate, argued that there are cases that when brought to the magistrate court, *"we do understand that they must go to the traditional court, issues of allocation of residential sites, boundary issues, most of such issues we don't know them"*. Participant CL1 also argues that other people prefer to take their cases to the magistrate court and the magistrate refers them back to the traditional court. During a traditional court session I attended, a lady presented a letter and informed the traditional court that she was referred back by the magistrate court. My analysis of participant CL20's comment is that as a magistrate she understands the implication of excluding citizens from accessing justice as the

Department of Justice has made provision that "a person with a claim has the right to choose whether to bring a claim in the chief's court or in a magistrate's court".[51] She is aware that they are not supposed to refer the cases back to the traditional court, and if she admits she is actually admitting that the magistrate court is breaking the law by offering a separate justice system for specific cases to people in traditional communities. Therefore in accommodating traditional leadership, citizens are denied the right to choose the justice system they prefer.

Access and provision of services to the traditional community

Access to the traditional community is through the traditional leader. Any stakeholder who intends to engage the community cannot do so without the knowledge and approval of traditional leadership. Because of the "good" relationship developed between traditional leadership and other stakeholders, there is overall agreement that traditional leadership is the entry point to the traditional community. According to CL11 "*when the municipality needs to have public consultation we request the ward councillor to inform the traditional leaders to check if they are fine with the mohlakano. However they do not deny the municipality access to the community*".

Before the municipality can have a *mohlakano* with the community the mayor goes to the traditional leader to meet and greet him to show respect and honour for his authority within the community. It is a protocol gesture that before any person does any official business in the community they should acknowledge traditional leadership. Participant CL14 adds that "*we work with the traditional leader. We can never do anything in the community without informing the traditional leader. Our traditional leader is in Mamaila. Let's say there is someone who wants to teach people about computers (I am giving this example because it is something that has happened before), he/she will never do that without consulting traditional leadership. We advise him to first report at the traditional leader, who should confirm through the ward councillor or committee because such a person cannot start without informing the councillor, who will refer him to the traditional leader*".

Other Departments also utilize traditional leadership as an access point for community moblilisation and communication centre. The Department of Health has established home-based care centers in the community and they also had to ask for permission from the traditional leader.

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[51]http://www.justice.gov.za/about/sa-courts.html, accessed 29/10/2013.

In addition to the local clinic, the traditional council is also used as a depot for condoms where the community can freely access them. The Department of Treasury sometimes trains people in tendering processing and they use the traditional council office as a multi-purpose centre for training purposes. When the municipality holds its community meetings they request the traditional leader to inform the community. Because the traditional leader's objective is to entrench his authority, the fact that stakeholders acknowledge his presence is sufficient for him to give them a go ahead.

Perhaps to understand the motive behind going through the traditional leader in accessing the community there is a need to understand the authority of the traditional leader. All the participants I interviewed responded that the land belongs to *Kgoši* Mamaila, when I asked the question *"to whom does the land belong"?* This is the underlying reason why all other stakeholders cannot go to the traditional community and provide services without acknowledging the traditional leader. He is seen as the protector of the community as well as the community assets. Only one participant argued that *"Kgoši Mamaila is the administrative authority of the land. However land belongs to all of us, traditional community, and the municipality. The use of land is planned beforehand and it involves all stakeholders such as Environmental Affairs"* CL13.

Community leaders appreciate the role played by traditional leadership in community mobilization. Municipality and traditional leadership had a lot of tension during the early years of democracy as captured by participant CL12 who said *"initially traditional leaders used to think we are taking their jobs. As a councillor I am supposed to meet the people and give them reports on their needs but traditional leaders used to think we were taking their responsibilities. The best thing is to involve the traditional leaders and inform them of everything"*. They have sorted this out even though there is still need to improve as reflected in the IDP 2013/2014 (pp 204) which identifies the need to strengthen relationship with traditional leaders and appeal for availability of land as its short and medium term strategy. Before democracy traditional leadership was the only authority in traditional communities and people acknowledged their existence. However with the coming of democracy traditional leaders felt local government was bound to replace the authority they held. It is then on the basis of this argument that municipality had to find a working relationship for the benefit of the community.

The municipality has entered into a compromise relationship with traditional leadership. The fact that traditional leadership holds authority over land administration is a challenge to the municipality which it alludes to throughout the IDP document. In order to fulfil its role of service delivery, the municipality uses the IDP as a planning document and the achievement of plans reflected in the IDP document relies heavily on the availability of land. By acknowledging the land challenge above while at the same time acknowledging traditional leadership as the structure creating this challenge, the municipality acknowledges that for as long as traditional leaders hold power to the land, the municipality will continue pacifying the institution in order to be able to provide development to the community.

For the Sekgosese Magistrate Court, this relationship is mutually beneficial to them and traditional leadership. This is supported by the fact that the Sekgosese Magistrate Court is mandated to deal with all cases reported to them but they sometimes refer cases back to the traditional court. The traditional court on the other hand strengthens the authority of the traditional leader over the community. Magistrate CL19 captured it well by observing that "*traditional courts, another thing that is beneficial in our area, it reduces the cases that are supposed to be dealt with by the modern courts which makes it possible for us to reduce the load so that we don't have to always send them back. That is beneficial to all*". She further observed that "*...most of the cases from the traditional court do not reach the magistrate court which lessens our work. Mostly traditional cases are petty like somebody's goat ate another person's mielies, those are such cases*". In the process of reducing the number of cases traditional community members become subjects not by choice but by coercion.

The situation is no different with the Sekgosese SAPS. If they are able to reduce the number of cases reported to them and focus more on serious cases, this may provide them with ample time to provide community policing. If the traditional leader is able to summon community members to the traditional court and in the process generate revenue for the traditional court, this may equally strengthen the authority of the traditional leader.

CONCLUSION

The relationship between traditional leadership and the other institutions of governance identified as central to the study is generally perceived to be good within the community on the basis of the interviews conducted with different leaders. However the comment that the

relationship is good does not reveal the actualities on the ground. The relationship between traditional leadership and other governance structures are at varying levels depending on the nature of the services the stakeholder brings to the community.

On the basis of the above analysis, one question should be asked, how do these varied relationships affect the traditional community? The following chapter attempts to provide answers to this question by analyzing data collected primarily from community members.

CHAPTER 5

PERCEPTIONS AND EXPERIENCES OF COMMUNITY MEMBERS

INTRODUCTION

This chapter explores the relationship between traditional leadership and other institutions of governance within the local sphere with specific focus on interviews conducted with community members. The objective of the chapter is to present the perceptions and experiences of community members on the existence of dual governance structures in the traditional community and how this affects traditional communities. I also explore the position and role of women and the youth in the community to determine their position within a traditional community which is based on hereditary rule through male primogeniture. This chapter focuses on the role of institutions of government in relation to North's institutional theory which determines how institutions evolve and what influences the change. Although government has established a number of institutions to provide services in the local sphere, the retention of traditional leadership means that government is able to provide arguments for the accommodation of an institution that otherwise is viewed as duplicating roles of other governance structures.

In line with the thematic content analysis method this chapter highlights the varying degrees community members perceive dual governance on the basis of their experiences. There are those who support the existence of traditional leadership in governance as compared to the municipality. This is not because they do not see the municipality as the relevant authority; it is rather the challenges they face with regard to service delivery. Community members perceive the role of traditional leadership as that of protecting the community against witchcraft and the administration of land and therefore they hold traditional leadership accountable for the misfortunes associated with witchcraft in the community. Traditional leadership holds exclusive rights to the administration of communal land. The above means that there is no other structure that has the power and authority to take decisions on communal land without the permission and involvement of traditional leadership. Community members as well rely on traditional leadership for access to business, residential and agricultural land.

With regard to the administration of justice, the magistrate court is not directly represented within the traditional community as it is situated outside the jurisdiction of the traditional community, in this regard people do not have a day-to-day association with the magistrate court and therefore their perception is based on what they *believe* the relationship and role of the magistrate court and traditional court is. With regard to policing and safety the Sekgosese Police Station is directly responsible for policing in the area and therefore has a direct impact in the traditional community primarily through the CPFs. The relationship between the community and the police consists of other levels such as traditional leadership and the ward committee which also play a role in community policing.

The Mamaila Traditional Community and the Lemondokop Village is not a homogeneous community. The main ethnic group is the Pedi[52]. There are also the Vhavenda and Vatsonga who were assimilated through betterment planning and the formation of tribes who now also understand the Sepedi language although they still identify themselves as either Vatsonga or Vhavenda. However, others have voluntarily joined the community from different communities, farms and clans which has created a heterogeneous community. As in the words of Participant CM26 who argued that *"I don't see the role of kgoši. I only know the story of Tshwale, I don't belong to Kgoši Mamaila. We are the Tshwale people; this is the reason we are now fighting for our land because we have been assimilated into the Mamaila Traditional Community. I don't want to be under Kgoši Mamaila. He is not my kgosi".* By virtue of residing within the jurisdiction of the Mamaila Traditional Community and Lemondokop Village all community members are expected to pay allegiance to traditional leadership. Whenever I travel to Lemondokop (I am a member of the traditional community through marital ties) every day I hear Tsonga music in the community. Each family within the community practices its own customs and traditions to a larger extent independently of the traditional leader. The question that needs to be addressed is: How does this heterogeneous community transform traditional leadership into the custodian of customs? How does this custodianship role transform traditional leadership into a key governance institution which requires legal recognition and remuneration? What are those traditions and customs and who defines such?

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[52] The 1996 Constitution of the Republic of South Africa recognises the Sepedi Language. However there have been debates about whether the use of the term Pedi refers to a certain category of people in the Limpopo Province or embraces all those who fall within the Northern Sotho Group. The SA government website (www.gov.za) list Sesotho sa Leboa as the language for the above group and not Sepedi.

To answer the above questions I refer to data from my fieldwork interactions, my informal discussions with community members as well as document analysis of other sources. There is no indication that the community has ever gathered to celebrate such oneness based on the recognition of their customs. Although it was not the objective of this study to determine the ethnicity of each community member I interviewed, it came out as I asked the names of the participants as well as the understanding of the history of the community. In this regard I established that the community is not ethnically homogenous. I therefore conclude that this description of the community as a traditional community based on customs is a legacy of the apartheid planners. What the democratic government did was to affirm the position of the predecessor without interrogating the meaning of this recognition.

During fieldwork, women lamented that they are told not to wear skirts above the knees when attending funerals and they are told not to wear pants during the male initiation schools season. They are told that all these rules should be observed because they are customs. The women argue that they were never consulted. There are other community members who argue that these "*customary considerations are deliberated on by the community as a whole during kgoro*". In analysing the conflicting views evident in fieldwork I came to the conclusion that as a male dominated institution traditional leadership still has the authority to decide what is customarily right or wrong and this can have a gender bias. This is also supported by the fact that the key leading structure in the community, the traditional council predominately consist of males with the exception of one female. I should also acknowledge that during interviews no male participants complained about any customary constraint unlike women who regularly raised this as an issue. Another justification may be that because the majority of those who argue that they are not consulted are young females, and the comment they made that they are not interested in traditional leadership, this becomes a disadvantage as critical decisions are taken on their behalf. When I asked them why they did not request clarity on such customary pronouncements they commented that "*kgoši will tell us to go and stay in Senwamokgope [an adjacent township] if we do not want to do as he says.*" If community members are consulted and reach consensus on what they define as custom, they may adopt such rules, but they are currently used as a tool to award a certain group of people governance status rather than reflecting community agreed customs.

If the Constitutional recognition of traditional leadership is based on customs and customary law, then for the Mamaila Traditional Community this does not represent reality on the ground as the community members were not assimilated through homogeneity or wars of conquest, but the grand design of apartheid.

It cannot be disputed that traditional leadership, as the only form of governance before the advent of colonialism, had the responsibility of giving identity to their "subjects". But within the current context all people within and without a particular ethnic group give meaning and effect to their ethnic identity. However the most important challenge is that for traditional leaders to protect and preserve the custom they had to be recognized and allocated a seat in the echelons of governance. If this is the argument, then every other individual who preserves values, norms, traditions and language and transmit same to the next generation should also be rewarded. Moreover, people who stay in non-traditional communities do practice their customs. The slaughter of a bull to appease the ancestors by Yengeni[53] in the Township of Gugulethu[54] is one such example. The question one should ask is whether people who do not pay allegiance to traditional leadership are not entitled to their customs. Another question to raise is whether government is doing justice to the large number of people in traditional communities in subjecting them to traditional governance in the name of culture and custom. Government should rather motivate the recognition of traditional leadership as a governance institution on the basis of whether communities want to retain the institution or not. Apart from this government should determine what role traditional leaders need to play vis-à-vis the community. This can only be achieved through dissemination of proper information and an honest debate on the significance of traditional leadership within the democratic context.

ROLE OF TRADITIONAL LEADERSHIP IN THE COMMUNITY

The way traditional leadership is viewed within the community varies across age groups and the positions community members occupy within the community. It is necessary to consider the traditional governance hierarchy which starts with the village headman and his committee to the senior traditional leader and his council when exploring the relationship between traditional leadership and community members. The immediate traditional leader for the Lemondokop villagers is the headman and therefore relational issues start within the village.

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[53]http://www.iol.co.za (20 January 2007), accessed 17/10/2013.
[54]Gugulethu is a township in the Western Cape Province. Currently there are no recognised traditional leaders in the province.

The current Lemondokop Headman was elected by community members after they stoned to death the previous headman as a result of witchcraft accusations leveled against him. After his death none of his eligible children could take over because they were afraid. Recently there is a call from the community that one of the stoned headman's children should assume the hereditary headmanship position. They are even considering a female (daughter of the stoned headman I also interviewed). This move is contrary to popular practice in communities because usually if one member of a family is accused of witchcraft all members are banished from the community. This is also an important aspect of community relations and power struggles considering that participant CM29 argued that *"we were used by some elements within the community who wanted the headmanship position. Our headman was not a witch. The community has realized that and they want to make things right. One of his children should take over as the next hereditary headman."* The above observation is critical in dissecting the power relations between the community and elites who benefit on community members' fears and the overwhelming superstitious worldview.

Mostly the community relates to the headman and his assistants with regard to court cases that are taken to the village *kgoro*. The village *kgoro* does have the authority to sentence individuals. However all the monies collected from fines are taken to the Mamaila Traditional Council and the headmen are expected to submit reports of the village issues every time they attend the traditional court. If the village *kgoro* is unable to address the case it is referred to the traditional court in the Mamaila Traditional Council. Community members are expected to report all deaths in the community to the headman. Another role that the community believes belongs to traditional leadership is to address the issue of witchcraft in the community. There is an overwhelming belief in the presence of witchcraft in the community. The Lemondokop Community members believe that there are many instances where people's deaths are associated with witchcraft. Considering the example provided above of the headman who was stoned to death, it is obvious that their lives are embedded in mystical beliefs although there are other factors such as hatred, revenge and power mongering that may influence the accusations. One participant maintains that *"the community is angry. The kgoši says they cannot banish them [those accused of witchcraft]. The community members stoned and killed my father when he was accused of being a wizard. But now we ask him [the traditional leader] to banish the witches and he refuses. All he does is to drive around without helping the community"* (CM21). During my

last research visit to the Lemondokop Village there were stories about a young man who is believed to have been killed by some individuals within his paternal family. It is argued that these individuals visited him at the local hospital. After this visit it is alleged that he sent a message (through sms) to his maternal family alerting them that if he dies it is because such individuals visited him. This created a problem in the community as it is alleged that the maternal family announced the existence of the sms at the graveyard. Because it is said that the family is influential, there is nothing the community can do about it. I also often hear during informal discussions people lamenting that they cannot develop successful businesses in the village because once the witches know they would make sure one does not succeed. Its either they will force one to give them credit and refuse to pay, because forcing them to pay comes with its own consequences, one may be bewitched or the money they would pay back would be bewitched so that the business owner may either lose the business or die. These are more examples of how superstition has taken a centre stage in the lives of people.

The education provided by the police during door-to-door campaigns has done little to dispel the challenge in the overwhelming belief in witchcraft. The senior traditional leader and the council members understand their role in relation to witchcraft issues. Community members reveal that when "*we report to the traditional leader he tells us that the law is against accusing people of witchcraft*". However this does not necessarily mean traditional leaders and council members do not believe in the existence of the phenomenon of witchcraft in the community. Participant CL6, who is also in traditional leadership, argues that the law does not allow them to deal with witchcraft issues. He argues that "*…the police don't want to get involved. They tell us that there is lack of evidence, and if they must deal with it they need evidence. My younger brother also died of poisoning*". This is a typical example of challenges of institutional change that Malinowski (1945) referred to and the traditional leader is seen as the only authority figure who should address the challenge.

The youth do not hold traditional leadership in high esteem. They argue that he has no roles in their lives because he cannot give them any jobs. They argue that *kgoši* wants levies for the residential areas. The responses they gave reflect that they do not know exactly the role of traditional leadership. Participant CM34 argues that "*they [traditional leaders] don't have any role, but all they want is our levy. If we go now and tell them that we don't have water, what decisions are they going to take?*"A family member interfered and commented that "*when you*

have issues you take them to the traditional leader, like if people are fighting, society members also refer their issues to the traditional leader if one member does not want to pay. The only role of traditional leader is to deal with cases." Similarly CM24 commented that *"they don't have any work they do because they don't act. People are dying and we know people get sick and die but here they are killing people by poisoning. Even kgosi is silent he does not say anything. The headman was voted for but he is not doing the job he is expected to do"*. In other instances where people get frustrated about the issue of witchcraft they also blame the police. Participant CM21 argues that *"when we cry to Mr Matlou [A police officer in the Sekgosese Police Station] about people dying of poisoning he tells us to take the issue to the traditional leader. The traditional leader is working with the police. We go to kgoši who refers us to the police and vice versa. So they bribe each other and they ignore the problem. It is not like we are afraid of the police we can put the law into our hands.* Although CM33 agrees that traditional leaders block development, he however holds has a different view on the existence of traditional leadership. He argues that *"if they remove traditional leaders we won't afford services. With kgoši we only pay R20 levy per annum whereas with the municipality we would have to pay a lot of money for the services"*. He further agrees with most participants that the levy they pay belongs to the traditional leader although he adds that even the provincial government gets money from the traditional leader. The biggest issue he complained about with the monies they pay is that the traditional leader does not account.

The perceptions on the role of traditional leadership are influenced by what community members believe traditional leaders should be doing for them. Most community members do not consider traditional leadership as a role player in governance issues. They don't see any role on service delivery and development. Rather they view traditional leadership as an authority responsible for resolving witchcraft issues. The inability to resolve such witchcraft issues result in community members arguing that traditional leadership has no role in the community.

RELATIONSHIP BETWEEN THE COMMUNITY AND TRADITIONAL LEADERSHIP

It has been indicated through official communication between traditional leadership and government during the apartheid regime that there have always been people in the community who did not want to fall under traditional leadership because they see the institution as protecting its own interest by only appointing family members into traditional leadership positions. The case brought against one of the village members in nearby Sephokubye Village on 27 January

1987[55] who organized the school committee and encouraged community members to contribute money for the building of a school is a prime example. The traditional leader wanted his brother, whom he appointed as a headman to collect the contributions. The efforts by the community member were seen as a direct attack on the authority of the traditional leader because the accused member was "a politician". The above scenario also points to another challenge, besides the issue of people not wanting to pay allegiance to traditional leadership: this is the issue of power relations represented on the one hand by traditional leadership, and on the other hand by individuals who represent political affiliation, which has often been viewed as an enemy of traditional leadership.

Most people in the community indicated that although they know that the senior traditional leader is Mamaila, they have never seen him, and many say that *"he has never visited the Lemondokop Village"*. Residents complain that the last time they saw him was when they stoned the previous headman to death. In this regard one community member commented that

> *"We prefer the democratic government because traditional leadership cannot help us. If they are useful they should have done that a long time ago. Currently we do volunteering services, Khuduwane Home Based Care- named after him. Community members came up with the idea. Kgoši had no role except to give it his name. The Department of Health and community members donate materials to assist the sick. We check patients of all illnesses to make sure that they do their clinic follow-up, children are immunized, and we encourage people to take their pills."*

If we go by the above comment then Sen's (1999: 31) point features well that "if a traditional way of life has to be sacrificed to escape grinding poverty or miniscule longevity, then it is the people directly involved who must have the opportunity to participate in deciding what should be chosen". The question is: is there anyone who is willing to listen to the voices of community members with regard to their aspiration pertaining to governance? Below I have put an excerpt of an interview I held with CM17 on the community's relationship with traditional leadership. There are many issues that characterize their relations. The most outstanding issue out of this excerpt is that although the participant argues traditional leadership has no role, they continue to submit to his authority because they stay on his land.

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[55]Minutes of a meeting between the Sephukubye School building committee and Mamaila Local Government (Sephokubye is one of the villages within the jurisdiction of the Mamaila Traditional Community).

Researcher: How does the community relate to traditional leadership?

Participant: The better one is the municipality. Traditional leadership is troublesome, municipality is right because this is my place and the municipality does not give unnecessary rules. The traditional leader always give us laws and rules such as, this year you are not allowed to plough. The municipality provides me with all things I need. I don't have to pay levy like we do with the traditional leader.

Researcher: Why do you pay levy?

Participant: They [traditional leaders] just tell us that every year we need to pay an amount of R20 as levy.

Researcher: Who owns the land?

Participant: Mamaila owns the land.

Researcher: What is his role in the community?

Participant: There is nothing that the traditional leader helps us with. We do not benefit anything from this land. We survive on social grants. We are told to come and pay levy we don't even know why we pay it.

Researcher: And you do not ask why you should pay levy?

Participant: He says the land belongs to him, if you ask what you are paying for, he will tell you that you are paying for the land. It's his land.

Researcher: When you pay levy where does the money go?

Participant: It is his land. He uses it as he wishes. It is his money. Even when people pay fines, say for instance people are fighting they are fined. If they register for a society they pay a fee. People are dying and all he cares about is making money.

Researcher: What does he say about people dying/poisoning and bewitching each other?

Participant: He says he is not interested and when people go to him to tell him to chase those who are witches in the community he says he is not chasing any person out of the community.

Researcher: What reasons does he give?

Participant: We don't know he says the law governing such issues is administered by the police. He says the law does not allow him to chase people away.

Researcher: What do you say as the community?

Participant: We do not support that law because he says he governs us, so in a way he say we are governed by government and we are also governed by him, which means he only wants our assistance and he does not care about us.

Researcher: What kind of assistance does he need?

Participant: *Money, money is the only thing he wants. If you don't pay he sends bouncers [traditional police] who sometimes beat people up or force you to go to moshate [traditional council]. Even society women when there is a case he wants money. He can even ask for as much as R3000.*

Researcher: And you don't know what happens with the money?

Participant: No we don't know.

Researcher: What is going to happen?

Participant: We will choose municipality. They provide services such as road maintenance, for example in Senwamokgope. Here when someone dies in a community, you are told a number of customary things that you should not do such as do not play music during the funeral day. What is customary about that when people are killing each other? When there is a funeral on Friday people are barred from playing music. But on Saturday people are not barred from playing music. How does that tradition vary?

Researcher: What is wrong with traditional leadership?

Participant: There is still a lot of oppression with traditional leadership. Because there is nothing the traditional leader is doing. When we go to funerals they tell us the dress code and if you do not wear it you are fined. If I plough or decorate my home when there is a funeral I am fined. We are not supposed to do anything when there is a funeral. If there is an initiation school in Mamaila we are barred from playing music, women are told not to wear pants for the whole month, but skirts. If we ever try to tell him he will say we must go and stay in the Senwamokgope Township. He only impose his laws on us in Lemondokop because we are afraid of him, in other areas he does not have a say.

Researcher: What role does the municipality play?

Participant: If we call them and tell them there is no water they bring water tanks. But if we tell Mamaila, there is nothing he is going to do about it. If you have a case and you refuse to appear in the village court they send the traditional police to fetch you. Sometimes they use force. But if I resist there is nothing they can do. But then I will have to go and appear in the traditional court at the Mamaila, when I get there if I was to pay R400 I end up paying R1000. If I take them to the police they won't even entertain the case. I would rather go to court with the traditional leader.

Researcher: Do you have a choice of going to the magistrate or traditional court?

Participant: There is choice and the traditional leader does not refuse, it's just that people are so used to the traditional court.

Researcher: Are there any cases from the magistrate court that are referred back to the traditional court?

Participant: No there aren't any. But sometimes when you report a case to the police they tell you that you should try and resolve it as a family or go the headman. But they determine the severity of the case first.

Researcher: Do you have a civic association?

Participant: It disintegrated, because they put people who could not even write their names. It used to be very useful in the community. The current people are not reliable. We want municipalities because the traditional leader does not have any role but all they want is people's money whereas they are doing nothing in the community. We also need development in the community which the municipality can provide. I walk a long distance to catch a taxi to Duiwelskloof. There was supposed to be a shopping complex in Senwamokgope but the people who have businesses around bribed the traditional leader not to allow the shopping complex because it will destroy their businesses. He tells people to ask for land from him. We want the complex but the traditional leader because his area surrounds the township, he will have to give permission. We also heard that he wants it to be done where he stays. He has also refused the establishment of a taxi rank. It is bad because we end up buying goods that have expired. Mamaila is not educated, they just bribe him with any amount and he accepts. The town we use is not very far but we pay a lot of money. R50 to and from town is too much. They also do not allow for the buses. Mamaila allowed the taxi people to block buses which are cheaper because they bribe him.

The above excerpt is an indication of general community attitude toward traditional leadership. Throughout interviews I heard similar complaints from other community members. CM21 puts it that *"municipality should destroy traditional leadership because they [the municipality] do everything for us, e.g. food parcels. Traditional leaders must just look after their cattle because they don't account, they chase us away. Even the headman does not have any help. We want the municipality. We will pay levy to the municipality. Municipality provides support during burials. Traditional leaders take our money and buy their children cars. We are tired of traditional leaders we need municipalities"*. I also noted how with each question I asked CM17 and CM21 linked it to the discussion of traditional leadership in the community. It is important to understand how the community views the issue of land ownership and what it means to them. Already the above conversation has revealed the view held by some community members about

their relationship with land. There are also different levels of understanding of how the municipality operates within the community with regard to the collection of levies. While one participant indicated with the municipality they would not have to pay levy, another participant commented that it would be better to pay levy to the municipality because "*we know they will use it to provide services to us*".

WHO OWNS THE LAND?

The saying that the traditional leader administers land on behalf of the community does not hold water, at least not in the Mamaila Traditional Community. In the community during the apartheid era land was taken from the traditional community without any compensation. This is evident in the proclamation of Senwamokgope as a township which was developed from land taken from the traditional community. Today the township is unable to grow because the traditional leader argues the municipality wants to take his land without any compensation. For the traditional community this is a challenge because it takes away their most prized possession, land. If they lose land they do not exist. On the other hand, this situation has an impact on the community in a negative way. The township is closer to most of the villages within the community. If the township develops further into a town this would benefit the community by creating jobs, better livelihood, save money on travelling to Modjadjiskloof and bringing more essential services nearer to the people.

The municipality believes the land administrative role allocated to the traditional leaders gives them authority to block development. In their IDP document the municipality identified a number of townships including Senwamokgope as their key economic centres which should be developed. They also indicated that these plans cannot be realized because traditional leaders refuse to give them land.[56] Oomen (2000: 66) summarises this challenge well when she argues that "on paper the elected municipalities are responsible for development in their areas. But the traditional authorities have the power to give out land, and in that capacity they can keep municipalities hostage, together with all the plans for hospitals, housing projects or roads. As a result, these projects often end up failing, caught up in the tangle of local power politics". The comments by community members that the traditional leader is blocking the building of a mall support Oomen's observation.

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[56]www.GreaterLetaba.gov.za , 2013/2014 IDP, accessed 03/10/2013.

"Land belongs to Mamaila" is the overwhelming response to the question I asked community members. Even most community leaders hold the same view. What is the meaning of this? One community member said "*it is his land, so we must pay levy because we stay on his land, when I was born I was told this is his land*". This position is also confirmed by CL7 who argues that "*government has taken over the administration of our finances and as royal family members we do not benefit from our land*". Participant CL1 also commented that "*decisions pertaining to land transactions are taken by the traditional leader and the royal family.*" Although there are arguments that there is community consultation, community members cannot speak with authority on decisions affecting land because of the perception they hold that land belongs to the traditional leader. This is reflected in their arguments that they cannot ask the traditional leader anything because it is his land. When I applied for permission to conduct research within the community, the response came from the royal council (permission letter is attached to this report as appendix nine). One would have expected the response to come from the traditional council which is the governance structure of the community and the custodian of communal land. In reality this is not the case. The community members did not know of my research until I requested the leadership to announce during *kgoro* so as to obtain participants. This is also an issue that other institutions of governance deal with when they need land to develop communities. The same perception that Mamaila owns the land drives them to ask for permission from the "authority" without taking into consideration the role and position of the community members. The Greater Letaba Local Municipality also outlines this as a challenge when they argue that there is enough land within the municipality, however it is owned by the state with authority of traditional leadership. The Municipality believes that this situation frustrates their plans with regard to local economic development (LED) which is based on the availability of land.[57]

Community members' assumption that land belongs to the traditional leader is a challenge because they cannot hold him accountable for any issue, let alone land issues. They are happy to be staying on his land and therefore they believe they have an obligation to pay levy, sort of a business transaction. You pay to stay. CM34 argues that "*He [the traditional leader] says the land belongs to him, if you ask what you are paying for, he will tell you that you are paying for the land. It's his land.* In an official communication dated 23 January 1979 between the traditional council and the Minister of Bantu Administration, the senior traditional leader of

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[57]http://www.greaterletaba.gov.za/index.php?page=idp, page 42-43, accessed 15/10/2013.

Mamaila Community requested that all people who moved to Senwamokgope Township should pay allegiance to him because he is their chief. He also advised that people who came from other traditional communities should pay allegiance to their traditional leaders. This meant that the people in Senwamokgope were expected to pay tribal levies as well as the municipal levies they were paying for the services rendered. However, this never happened. This issue of land administration in traditional communities reflects a continuation of the legacy of traditional leadership under the apartheid regime where community members were expected to pay levies to the traditional leader. In the context of the current democratic government community members are still expected to pay such levies. The question one asks is whether traditional leadership accounts for such monies collected from community members. This issue is discussed in the following section.

ACCOUNTABILITY OF TRADITIONAL LEADERSHIP

There are three key governance areas where traditional leadership has to account to give effect to the principles of good governance. The first area is the traditional council as a community governance structure given the mandate to administer the affairs of the community in line with customs. In the Limpopo Province monies of all traditional councils are deposited into the D-Account of the Department of Cooperative Governance, Human Settlements and Traditional Affairs (CoGHSTA) of which the Director-General is the accounting officer.[58] This is done to ensure accountability of community funds. For a traditional council to access the funds, they have to follow proper requisition processes which are based on an annual projected budget of that particular traditional council. This is one element that causes friction between the CoGHSTA administration office and the royal council office located within the same traditional council (TC). The administrative office has the responsibility of accounting for all the finances of the TC. There is a register that the administration staff uses to record all the monies from levies and fines paid to the traditional council. An individual is then issued with a receipt as proof of payment. The royal council members complain that government does not want them to access their money. In order to address this challenge the royal council opened their own Nahakwe Trust Account which is not accounted for by government, although CL40, a government official, indicated there is knowledge of the existence of such an account. All the monies that are received from any royalties and business transactions within the community are deposited into this trust account.

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[58] Limpopo Traditional Leadership and Institutions Act, 2005 (Act 6 of 2005).

Section (4) (3) (b) of the TLGFA provides that "a traditional council must meet at least once a year with its traditional community to give account of the activities and finances of the traditional council and levies received by the traditional council". This provision is made to ensure that traditional leadership, through the traditional council, accounts to the community. However community members argue that there has never been any form of community meeting addressed by the traditional leader on the basis of the above. Participant CM24 argues that "*at some point the community collected R35 per family to assist with water but now the money is gone and no one wants to account. If the community agrees to remove the traditional leaders, we will remove them*". She further commented that "*Our building where we hold kgoro is dilapidated but people are refusing to contribute money to fix it because traditional leaders do not account. They must account before we contribute again*". These comments speak to section 7 of the TLGFA which makes provision for the withdrawal of the recognition of traditional communities. Although the law exists to make provision for the withdrawal of the recognition of the traditional community, community members do not possess the information on the laws governing traditional leadership and the role of the community in traditional leadership.

The issue of financial accountability raises another question: what entails an annual budget drawn by the traditional council? CL40 responds that "*It is mainly based on the needs for the administration of the traditional council, things like stationery. However if we need money for acquisition of, say chairs for the traditional council or the village kgoro, we get it through the supply chain system of CoGHSTA in the form of the service or a cheque to procure the goods. All headmen in villages when they need stationery they request it from us*". When asked about the dilapidated Lemondokop Village *kgoro* building he responded that the community contributes to build their own office. Given the comment made by CM24 that they would not contribute because traditional leadership does not account, the villagers will continue using a dilapidated village *kgoro* so long as they do not hold traditional leadership accountable for the community assets.

The second area of accountability, which is linked to the first, is the administration of land. By *de facto* rights which were obtained through years of habitual use, traditional councils have exclusive right to the administration of communal land. However there is currently no legal instrument conferring that authority on traditional leadership. Although CL1 agrees that the

responsibility of land administration lies with the royal family, he also indicated that "*as the traditional leader I am responsible for land administration but if someone needs land for big business, the Department of Land Reform and Rural Development is involved in facilitating the process. During this process all community members are involved in decision making as they have to be consulted"*. It is only as far as big business ventures are concerned where the community is involved, for the rest of land administration issues traditional leadership has the sole responsibility. Whatever benefits are drawn from such transactions remain the privilege of the traditional leader. Government does not know the state of affairs in relation to land administration in traditional communities otherwise they would not leave an unaccountable structure to run the affairs of the community. The information I received from CL40 that land administration is the responsibility of the royal council (including my own experience on the application to conduct research which I alluded to above) mean that government is not able to monitor the performance of this role of land administration. This is a challenge because the traditional council should be the governance structure responsible for land administration. The traditional leader and the royal council monopolises the communal land administration as a personal and royal family asset. The traditional council only deals with land allocation of residential sites whereas critical land transactions are done by the royal council. The failure of government to develop policy (although CLARA was enacted and withdrawn) in this respect is perpetuating a practice that is denying the community the right to decision making on community assets.

The third area of accountability is with regard to the administration of justice. The Department of Justice and Constitutional Development (DoJ&CD), as the custodian of the Black Administration Act has the responsibility of monitoring the performance of traditional courts. However, there are no monitoring mechanisms or accountability systems. Although the clerks in the traditional council office keep record of all cases (they are also members of the traditional court, they sit during court proceedings and record all the issues, remind the traditional court members of certain issues and often go to an extent of asking questions to the plaintiff and defendant as I witnessed during traditional court sessions) they are the ones monitoring the functioning of the traditional court on a day to day basis. Even when they are trained together with the traditional court members, they are not empowered to deal with the law, their role is administrative. Participant CL40, who is an official in the traditional council, argued that it is them (officials) who monitor the traditional court. By monitoring he refers to the filing of court cases, the issuing

of letters for summons and the payment of fines as well as attending court sessions to record proceedings. The aspect of monitoring whether the traditional court is operating within the necessary legal framework is absent. Participant CL20 argues that the DoJ&CD provides necessary training to traditional leadership on how traditional courts should operate. She commented that *"they were trained last year, all traditional authorities were trained by the Department of Justice"* when I asked her about the role of the DoJ&CD the in traditional courts. She however indicated that *"we do not monitor their work. If a person is not satisfied with the ruling by the traditional court he can make an appeal to this court, to the magistrate court. And in the past six years I have not heard an appeal from them"*. The above quote clearly indicates lack of accountability and therefore does not bring into effect the principles of good governance which government has made a pillar of democracy.

THE COMMUNITY AND THE MUNICIPALITY

James (2007) refers to traditional leaders as brokers or intermediaries and argues that traditional leaders do not want communal land individualized because they fear they might lose control over the people. She points out that communal land ownership "lays the ground on which chiefs……can build up political followings on the basis of land access" (ibid.: 203). Kant, on the analysis of individual liberty and power, quoted in Bobbio (1990) observes that

> *A government founded on the principle of benevolence towards the people, like the governance of a father over his children, in other words, a paternalistic government, in which the subjects like minors which cannot distinguish between what is good and what is bad for them, are forced to adopt a passive role, and must look to the sovereign to determine the nature of their happiness, expecting nothing except what he chooses to bestow on them: such a government is the worst possible despotism one can imagine.*

The above observation is an indication of the governance relationship with regard to the role of community members in municipal processes. Residents have an opportunity to report issues affecting the community to either the municipality or traditional leadership. The issues will then be referred to the relevant structure within the community. Traditional leaders are the unnecessary middlemen who masquerade as representatives of the communities while they benefit from such an unhealthy relationship. Municipal access to traditional community is dictated by the institution of traditional leadership. If the municipality needs to hold a consultative session with the community, they need to first inform the traditional leader in the

community. Informing the traditional leader means explaining the purpose as well as getting support and approval from the traditional leader. Before the municipality meets with the community, the traditional leader calls a *kgothekgothe* (meeting to be attended by all community members) to discuss and make submissions to the municipality through traditional leadership.

After the traditional leadership meeting with the community in which a report of the needs is prepared, it is handed to the municipal ward councillor. This does not prevent the municipality from engaging the community. It rather reinforces the authority of traditional leader. It tells the municipality that the space it needs to utilize is controlled by another structure and therefore success depends on the recognition of the other structure. CL11 captures this by commenting that "*when we need to have public consultation the municipality requests the ward councillor and the ward committee members to inform the traditional leaders to check if they are fine with the meeting. However they do not deny the municipality access to the community*". On the other hand the same participant argues that "*we cannot ignore traditional leaders. We cannot pretend we don't know their issues. They are consulted by municipalities. The challenge is to address community needs as well as traditional leaders' needs. Traditional leaders contradict government in assisting the community with services whereas they themselves are not doing anything for the community. If there were no traditional leaders things would be different, the municipality would organize community service delivery without traditional leaders, we would have more audible communities*". This ambiguity reinforces the issue of power relations within the local government space between traditional leadership and municipality. James' (2007) concept of brokers and intermediaries fits perfectly the explanation of the role of traditional leadership with regard to the relationship between the municipality and the community.

From many interviews, community members are generally happy with the role that the municipality is playing in the community. However they are not satisfied with the pace of the municipality in terms of service delivery as well as the many processes it takes for the municipality to resolve community issues. The municipality cannot make decisions on land development without the blessing of the traditional leader. Although they showed disappointment with the ward councillor for not taking time to address their challenges, on average community members would rather be led by the municipality since they have an opportunity of removing a municipal leader if he or she does not take into consideration their service delivery needs. During an informal discussion I listened to how CL14, who is also a ward

committee member, aspired to being elected as a ward councillor. She argued that since the current ward councillor has run for two terms it is impossible for her to be elected again and therefore anybody can be elected. When I interviewed her she painted a picture that all is well in the community. Now in an informal environment she changes tune. I however asked her why she did not tell me during our interview session and she just laughed. CM33 argues that her (the current ward councillor) term is almost over and *"we will choose a person who will assist us with our needs"*.

Apart from seeing the role of the municipality in the provision of services, community members, especially the youth believe that the municipality's role goes beyond the provision of services. A female youth I interviewed commented that *"Municipality gives us jobs in the community. We vote for the municipalities. When there is no water the municipal truck brings water. When there are funerals the municipality clears the streets leading to the funeral home and also brings water for them. The municipality also helps the poor. Currently I am working with EPWP which the municipality facilitated. The traditional leader just wants to own the land but he has no role"*. It is important to note the comparison that community members make when outlining the role of the municipality. Like the above example, community members compare the role of the traditional leader with the role of the municipality.

Some community members prefer traditional leadership to be given a budget to provide services to the community. They argue that the municipality is far from the people, does not listen to people's needs and takes time to respond. Although they agree that it is the role of the municipality to provide services, they turn to traditional leadership with the hope that they may be assisted. They also argue that if traditional leaders and municipality do not work together, people will not get services. One female farmer, CM 29 is satisfied with the role of traditional leadership as she argued that *"as a business woman in the community the councillor will tell you where to get off, as a farmer I go to kgoši because he helps me with the land"*. Another community member, CL17, who is also a member of the Community Policing Forum (CPF) commented that she prefers traditional leadership to municipality because the municipality has many channels and procedures and you never know if your query will be addressed at the end of the day. She also believes that if traditional leaders are given an opportunity of managing financial resources like the municipality *"we will never lack water"* (CL10). The municipality is blamed because when community members ask for services such as water the ward councillor

responds by saying *"you want me to urinate so you can get water"*. But they are also happy that her term is almost over and they will choose a representative who will listen to them.

Community members are proactive in their approach to service delivery. Based on the history of traditional rule where community members used to contribute money toward their water provision, the situation is no different today. There have been contributions towards building a school, which was entrusted to one prominent community member. The community members argue they do not know what happened to the money. In 2011 the community contributed money towards the fixing of borehole pumps and it also disappeared. In the words of participant CM 39*"the oldest section of the community has never had water until the councillor came in. She works hard to bring water. The borehole pump keeps on breaking. Where is the traditional leader in all these? Magoši must go so that we can vote for the municipality. We will vote for the municipality, they will show us direction. It is better to pay levies for municipalities which give us jobs. If your parents die the traditional leader does not assist with anything whereas the municipality will make necessary plans for you to get jobs and grants"*. I noted during December 2013 that the old diesel borehole pumps have been replaced by electric pumps. Now the villagers get water every second day. This is because pumps are alternated between two village sections. During my interview with CL12, the ward councillor, she indicated that she made a request to the municipality for the erection of high mast lights in ward 14, where Lemondokop Village falls under. I also noticed during December 2013 that two high mast lights were erected. Community members are happy that the municipality is finally taking the issue of service delivery seriously. In this discussion there is no mention of traditional leadership which comes back to the acknowledgement by community members that service delivery is the responsibility of the municipality.

The traditional leader invites the municipality representatives when there are meetings in the traditional council that requires stakeholders. After attending the court session on 21 January 2013, I was given two invitation letters to deliver to the ward councillor and the CDW. They were invited by the traditional leader to attend the meeting organized by Treasury aimed at empowering people who aspire to have businesses and those who are already in business. The subject matter was to train people on tender processes.

The relationship between the community and the municipality is based on the services that the community feels are the responsibility of the municipality to provide. There are fewer community members who argue that they do not prefer municipalities, rather opting for empowering of traditional leadership in terms of provision of resources such as budget. Many of the community members prefer municipalities to traditional leadership because they argue that if they are not satisfied they have recourse. Although they indicated disappointment in the slow pace of service delivery they argue that there is marked difference from the apartheid times when traditional leaders performed local government roles. The perceptions of community members reflect a need for a better life while at the same time acknowledging the centrality of traditional leadership in the community. On the whole it also shows that those community members benefitting from traditional leadership tend to support the role of traditional leadership. An example is the farmer's comment presented above. However the youth hold a different view. The most important need for the youth is jobs and they argue that traditional leadership has no role in this regard and therefore they do not identify with traditional leadership.

THE COMMUNITY AND POLICE

The community perceives the role of the police as that of dealing with criminals in the community as well as assisting in witchcraft cases. According to participant CM41 "*police are used to us they don't do anything about witchcraft cases. Report cases to the police and they will not act*". When I asked participant CM28 what the relationship between traditional leadership and the police is in the community he commented that "*I don't know, what I know is that the police and the community disagree with each other on how to deal with the issue of witchcraft accusations*". Another participant CM24 argued that "*the traditional leader is only responsible for court cases. If there is a case that the headman can't resolve it is referred to Mamaila. If it fails it goes to the police, sometimes they call the police to arrest a person who refuses to go to the traditional court. Traditional police give letters of summon to the perpetrators. Police station takes you by force*". I noted how participant CM24 defined the mode of enforcing the law in the last two sentences. He compared the role of the SAPS with the role of the traditional police in enforcing the law. This perception may mean that community members prefer traditional leadership than the police in dealing with cases.

There is a service delivery partnership between the police and the traditional council. Each Monday a police reservist, who is also a member of the community, is deployed to the Mamaila

Traditional Council to assist with the certification of copies of identity documents and other documents. This is the initiative of the traditional council after realizing that people travel for kilometers to the nearest police station for certification of documents. However, the Lemondokop residents are closer to the Sekgosese Police Station located in the Senwamokgope Township and therefore it is easier for them to utilize the police station for the certification of documents than going to the traditional council. There is no payment that is made in both instances because the service is free. There is a dichotomy between this partnership and the one that was forged with the municipality where the traditional leader took an issue with the ward councillor issuing Lemondokop community members with letters as proof of residential address for them to open accounts in furnisher shops, clothing stores, bank accounts or any other service that require such a letter. This shows that depending on the function, traditional leaders are prepared to cooperate so long as the other structure is not encroaching on the territory that gives power to traditional leadership.

The police maintain that the existence of traditional leadership is an advantage to policing in the area because they have authority to identify perpetrators where ordinary community members fear victimization. The police work hand in hand with the community through the Community Policing Forum (CPF). There is a challenge with regard to strengthening the functioning of the CPF in the community. One former member, CM27, argued that she stopped being in the CPF because it creates tensions with community members. When a person is reported to them they are expected to reconcile the two, but usually the accused would start fighting them and asking them who they think they are. This often sows hatred and divisions. She commented that in this circumstance the traditional leader should deal with such cases because he has authority to summon people to come to the traditional court. Another CPF member argues that "*we assist the police on most of the issues that happen at night and the police are not aware. As CPF we are able to write a report and submit to the police. We do not take our report to the traditional leader. We work directly with the police*" (CM28). There is another angle to this issue. Another CPF member argued that when there are issues in the community they first determine which issues should go to the traditional leader before going to the police. This is another example of the multiple authorities of power dealing with the issue of community safety and policing. There is duplication of roles because sometimes cases that are referred to the traditional court are also dealt with by the police. But because of the relationship between traditional leadership and the police, community members are referred back to traditional leadership.

While the police do not agree that they sometimes arrest perpetrators as requested by the traditional leader, the traditional court session I attended revealed a different story. In one of the court cases they dealt with some members wanted to request the police to bring the perpetrator to the traditional court but in the absence of the traditional leader the request was not granted. The community members also agree with traditional leadership that the police often arrest people at the request of the traditional leader.

While the objective of community policing is prevention of crime and the encouragement of safety of community members, in traditional communities this responsibility of the police is stretched through different authorities that strive to achieve community safety. The relationship between the police and the community is good as far as community policing is concerned. It only becomes a challenge when the police abscond from their responsibility to accommodate traditional leadership. What is essential is that if government has to define a role for traditional leadership with regarding to community safety, there is a need to identify roles exclusively for traditional leadership. However, this also has a negative side to it. It would mean that the majority of community members in traditional communities are denied freedom to be assisted by the police in favour of traditional leadership.

THE COMMUNITY AND JUSTICE

Superstition plays an important part in framing the worldview of the community members. There is a strong belief in the existence of witchcraft in the community. Community members see the role of the traditional leader as that of protecting the community from witchcraft and therefore see him as responsible for addressing issues of witchcraft. My research came at a time when the community was unsettled with the spate of "unexplained deaths" that they attribute to witchcraft, specifically poisoning. For the community, there is nothing out of the ordinary in requesting the traditional leader to address this problem. One community member argued that "*in the past we used to stone witches to death or ask the kgoši to banish them, but now all we ask is for the traditional leader to banish them as the law does not allow us to kill people accused of witchcraft*". Another community member argued that "*the police are also members of the community and they know what we are talking about, so they advise us to seek revenge but they must not know*". In this regard community members feel the traditional leader is letting them down and he does not care about them.

Scholars who hold the view that traditional courts are an effective and efficient mechanism of dispensing justice in traditional communities should consider the implications to community members who fail to honour the summons to appear before the traditional court. While it may appear that it is closer to the people and it metes out restorative justice it is an expensive justice system to community members of whom the majority are unemployed or rely on grants. One may be fined R3000 for disregarding a court summon and this amount increases as more calls are made for one to pay the fine, or this punishment may also be displayed in the denial to access to services such as graveyards until a person pays such a fine. It would perhaps be a justifiable cost if the funds generated from such fines are used for the benefit of the traditional community. However, community members insist that they do not know what happens to the monies they pay to the traditional council.

Lack of information contributes to the subjection of community members to traditional courts. Community members do not know that they may opt out of the traditional court system if they so wish. Therefore it is seldom that they would challenge the decision of the traditional court. One participant argues that if you refuse to go to the traditional court when you are summoned *"they tell you to go and stay in the neighbouring Senwamokgope Township which is not under traditional leadership"*. Abuse of authority by community leaders and magistrate courts also contributes to the subjection of community members to traditional courts. Community members explained that sometimes when they report cases at the Sekgosese Police Station they are told to *"go back to the traditional leader as the case is customary in nature and therefore should be dealt with in the traditional court"*. CM29 argues that *"when we report cases to the police they refer us to the traditional leader for example to deal with issues of stolen cattle, cattle eating someone's maize"*. In other instances community members who take their cases to the Sekgosese Magistrate Court are also given referral letters to consult the traditional court. CL3 comments that *"the magistrates are able to advise the community members to come back to the traditional court. I am speaking with authority and I have evidence that they do refer them back to the traditional court"* This statement speaks to the kind of relationships between community members and the magistrate court within the context of traditional leadership.

Normally dispute resolution in the community flows from the family as a basic unit up to the traditional court. If family members report a case to the headman they are first encouraged to

resolve it at home. If that fails it goes to the village *kgoro*. The administration of justice is one area that traditional leadership enjoys support. The village holds its *kgoro* every second Sunday to resolve disputes and discuss other village matters. This arrangement is not cast in stone as I witnessed one Sunday how the *kgoro* was postponed because there was a funeral. It was then moved to the following Sunday. Those issues that are unresolved are forwarded to the traditional community *kgoro*, which sits three times a week. The traditional court members are well conversant with their mandate as well as the mandate of the magistrate courts. They understand they cannot deal with cases relating to murder, rape, witchcraft or any case involving grievous bodily harm.

Below I detail the significance and challenges with the administration of justice by traditional leadership on the basis of the participant observation done during the three court sessions. Such an account I give below reflects how community issues are dealt with by the traditional court.

On Wednesday 23 January 2013, in the case of two brothers fighting over body lotion (of course this was hiding more deep-seated issues between the two), the younger brother was judged to be disrespectful, and was requested to apologise to his elder brother and promise never to bother him because if he did he would be fined. Besides the arguments advance by both brothers in the traditional court, the verdict that the younger brother was disrespectful was based on previous evidence on the conduct of the younger brother. After weighing the evidence and the arguments the chairperson of the traditional court advised the younger brother not to offend his elder brother. The conversation in giving judgment flowed like this:

Chairperson: If you were listening to the traditional court, you would agree that you are the one who is wrong. You are the one who is constantly bothering your brother. If you agree with the court, please ask for forgiveness.
Offender: Brother, please forgive me.
Chairperson: Hold him with your hand and tell him that it will not happen again.
(Offender extends hand towards elder brother).
Chairperson: Please pay the R25 to close the case, your elder brother opened the case.
Offender: I was on my way to work when I was informed to come to the court, so I do not have the money now.

Chairperson: You do not have the money? We give you until this Friday. You should bring it to the office and you must know that if you don't bring it we include the fine and you will have to pay R150.

He was advised to appreciate the support that his brother provides to him considering that even his grandmother did not want anything to do with him. This is evidence that the traditional justice system is based on restorative justice which is aimed and ensuring social cohesion from the smallest unit in the community, the family. As one participant from the magistrate court puts it *"they relieve the heavy burden from the formal courts because they are able to deal with petty issues."* In this case the fight over body lotion is an example of a petty civil issue.

I observed that there is consultation among the traditional court members. The chairperson of the traditional court allows the public to assist in addressing the issues. In the case above, a woman from the gallery stood up and told the younger brother to respect his elder brother, which was adopted by the court members. This restorative justice element is also visible and evident in the way the traditional court deals with the financial aspect of the court. If two people bring each other to court, one pays the levy for the opening of the court case and the other pays the levy for the closing of the court case. This does not take into consideration who won or who lost the case. This system is employed to enforce the customary laws regarding the payment of tribal levies. However it is critical to note that the amount requested and the fine to be imposed translates into a very expensive traditional justice system. This does not take away the element of its cost effectiveness on the basis that it is closer to the people in terms of using less money for transport to the traditional court as compared to the magistrate court.

The traditional court is closer to the people. This is not in relation to distance because the distance between the two is not that big. Lemondokop residents travel for about 7km to the traditional court whereas the distance to the magistrate court is about 15km. This observation is based on the mode of transport needed and the time it takes to get to the two courts. While issues are initially dealt with within the village to determine if they should be reported to the traditional court, this offers an avenue to address community issues without escalating them into cases because sometimes they are addressed within the village. It is only those issues that are not resolved that are referred to the traditional court. In this regard a person would have to travel the 7km to the traditional court. It is also efficient with regard to the time factor. Community

members have alluded to the fact that transport is a problem in the community. One may wait for three hours to get transport. To get to the magistrate court one needs at least two different taxis and in the process endure the long waiting time and queue before the taxi gets full.

There is speedy resolution of cases brought to the traditional court. Most of the cases brought before the traditional court are resolved within the set court date. An old lady was referred to the magistrate court and the magistrate referred the matter back to the traditional court. There is no mechanism for referral of cases, unlike in the old order where traditional leaders used to fill referral forms. The traditional leaders complain that the support given to the institution is not sufficient. However there are other cases that are complicated and need certain witnesses to be available for them to be finalized. Let us consider the case of a football executive who reported his ex-wife to the traditional court. The issue brought to the court concerns a child who was staying with his father after the parents divorced. The father argued that he wanted to take the child to school and now the mother is hiding the child in Gauteng. The father argued that the child should come back and finish his education and after that he may decide what to do with his life. It was noted that the ex-wife in question is a daughter to one of the traditional court members who was then requested to call her (they gave him a phone to call her during the proceedings of the court) for her side of the story. The challenge however is with regard to the determination of jurisdiction over issues. The above issue raised is the issue of who has custodianship over a child and the traditional court is not empowered to deal with such cases. In the application of customary law the traditional court ends up dealing with cases beyond their jurisdiction. This case was however not resolved during the three court sessions as it depended on the availability of the mother. What was particularly interesting with this case was how the plaintiff justified reasons for bringing the case to the traditional court. He argued that he does not want to create animosity between him and the mother of the child as taking it to magistrate court would mean battles between them.

One aspect of the traditional court is that it is evidence-based and this is reflected in the case against the *legola* (burial society) women. The *legola* women from Sephokubye, one of the villages under Mamaila, complained that one of the members is requesting them to bury her dead even when the constitution does not cover the condition. The traditional court, referred to the constitution of the *legola* that was signed by all members and stamped by the traditional council, and found out that indeed the request of the member is not covered in the constitution. The court

took its decision on the basis of evidence which in this case was the *legola* constitution that was approved by all members. The women were also advised to be proactive by reviewing their constitution in dealing with the *legola,* instead of waiting for challenges.

The traditional court is judicious because in dealing with a variety of court cases, it determines the suitability of a case for public consumption. Certain cases pertaining to families are dealt with behind closed doors without the members of the public in attendance. Only the members of the traditional court and the affected parties are involved. I was fortunate to attend one such session where a man came to request the court to allow him to take another wife. His argument was that the wife he is married to stays in Gauteng with him and she refuses to come home and take care of his mother. Court cases are reported beforehand and community members are given dates on which to appear before the court. This makes it easier for the court to determine cases for public consumption. I was allowed access to such a *kgoro-sethope* sitting where the court members listened carefully to the issues raised by the man. The verdict given was that the man may marry a second wife provided that he considers the implications in terms of laws governing marriages.

At least during the three court cases I attended parties were given an opportunity to present their cases. An exception is the story narrated in the administration office about a man who brought his wife to be cautioned by the elders not to deny him his marital rights. The chairperson invites the traditional court members to comment on the case and to cross question the plaintiff and defendant. After this the chairperson invites the ordinary community members who are present to also comment. They are also allowed to advise the court. However the final word lies with the chairperson, who after speaking would check with the members if they agree with his verdict.

While people prefer the traditional court because of its proximity it is also used as a coercive force to generate finances for the traditional council. When a person reports a case, as the plaintiff they are expected to pay an amount to the value of R25. When the case is closed another R25 is paid by the defendant. Apart from paying such an amount individuals are also fined if they are found guilty. On the first day of my participation during the court session, I noticed that people who have not paid the fines are summoned to the traditional court to explain why they have not paid. One man was told that if he misses the payment as he promised the fine would go up, even after he has indicated he was looking for a job.

The traditional court displays gender bias during court sessions. Apart from the visible absence of women in the traditional court (only one woman is a member), the way they address certain cases does not consider women's unequal positions of power in society. The case of the court allowing the man to take a second wife is an example. The court took a decision to allow the man to marry a second wife without listening to the other side of the story. Another question one should ask is whether the traditional court had jurisdiction over this matter. As I was sitting in the Departmental administrative office of the traditional council, the Home-Based Care women came to distribute condoms. One of them asked me if I knew how to use a female condom and I said yes. This prompted a serious discussion on the use of condoms by women in the community. One of the women said "*we encourage women to take condoms, but they are ashamed because they will be labelled loose women*". An official added that "*you should see how these men [referring to the traditional court members] judge these cases where women are involved*". She recounted that one of the male community members came to report his wife to the traditional court. The issue was that the wife had asked the husband to use a condom, to which the husband felt that she is either sleeping with other men, or she is denying him his conjugal rights. The court, in judging this case argued that the woman should never repeat what she did because she is married and therefore her husband is entitled to his rights.

The above scenario shows that in the quest to bring justice in the community the traditional court still critically overlooks issues of gender. They failed to judge the case on its merit by listening to only one side of the argument. Apart from that it is as though women do not have rights—like the right to say no. The absence of women's voices in traditional leadership governance also contributes to this skewed position. The above case study clearly articulates the challenge of traditional leadership in uplifting gender issues as required in the Bill of Rights.

Community members are given dates to appear before the traditional court on the basis of a case opened. There are those community members who refuse to be summoned to the traditional court. This often results in fines that they should pay. Failure to oblige means that the individual will be punished by other means, denying them access to community services such as graveyards. In some instances the traditional court deals with cases beyond their jurisdiction simply because it happened within their area of jurisdiction. The case of primary schools versus the crèches is a prime example of the authoritative nature of the traditional court. The crèches around Mamaila Traditional Community brought a complaint that the primary schools were

taking the kids who are not yet ready for school, thereby depleting the crèches. Both the representatives of the crèches and the primary schools were summoned to the traditional court to explain the issue. Since it was during school, the teachers had to skip lessons to attend the court. The principals cautioned that if the traditional court keeps on taking cases that are outside its jurisdiction it will create animosity in the community, because people would not respect the court. In giving judgment the senior traditional leader argued that the case has been referred to the Department of Education District Office for resolution and therefore the crèches should wait for the District Office to finalise the matter. He also indicated that community members have a right to come to the traditional court as their "parent" though he cautioned that they should start with traditional leadership before moving to other levels of authority. Through observation I realised that the principals were not happy because a traditional court member teased one of the school principals on his way out he deliberately returned a sour face to the member and kept on saying *"eish eish"* to indicate how unhappy he was with the whole process.

In another case a woman refused to be summoned to the traditional court and one of the court elders volunteered to go with the headmen of that village and bring her to the traditional court. This is equal to sending the police to arrest a person. The argument of the court elder was that if they give the headman a letter to summon her to the traditional court she would not come. In this regard he requested the court to send them as messengers (this is because no member of the court can take a decision which is not deliberated and agreed upon by the traditional court) to bring the woman to court. He further commented that

> *"When a person is summoned to the traditional court, we have an arrangement with the police. We are able to request the police to go and fetch the person and bring him to the traditional court. This is a challenge because some people just disrespect the court and when we refer their cases to the magistrate they are sent back to us".*

The above request to summon the woman to the court was not supported by the court because the senior traditional leader was not present on the day of the court. It was then resolved that the issue of sending the police to summon her would be decided upon on Monday when the senior traditional leader is available.

A similar case was brought to my attention during an interview with magistrate participant I refer to as CL20. She narrated a story of a traditional leader who reported one of his subjects to the

police and the case was referred to the magistrate court to be addressed as a civil matter. The case opened against the community member was that he was summoned to the traditional court and the verdict was passed as guilty to which he admitted. However the challenge was that he refused to be sentenced (in this regard a sentence means he had to pay a fine). I asked the magistrate how they deal with such issues and the following discussion ensued:

Researcher: Ok I am still interested in the issue of people not wanting to be sentenced, if, if, let us take there is a case within the community, a person is requested to come and stand before the traditional court that person has a right to say no I am not coming, and there is absolutely nothing that they can do.

Participant: I have an example of something like that but it is for the different court, not for us. It's in Belleveu.

Researcher: Oh Belleveu, how do I get access to this, not to use this but just to refer to the case study.

Participant: You will have to go… this is a Bolobedu matter and it involves a civil matter.

Researcher: Cos it will be interesting for me to know how the issue unfolds and it is resolved.

Participant: The person made an oath, see, pleaded guilty and then he refused to be sentenced.

Researcher: He pleaded that he is guilty in the traditional court, but he refused to be sentenced?

Participant: Yes.

Researcher: So what is the way forward?

Participant: You must ask the kgoši, the court, what are they going to do?

Researcher: Now the matter is brought to the court what are you going to do?

Participant: It is a civil matter

Research: Are you going to take it back to the kgoši?

Participant: No, we don't refer.

Researcher: What is going to happen?

Participant: The civil matter will have to be finalized.

Researcher: I am trying to foresee the outcome.

Participant: It's a pending matter I can't discuss it.

Researcher: Oh?

Participant: I am just showing it to you to show there is practical example of that.

Researcher: I understand the complexity of dealing with it, because you said it cannot be referred back to the traditional court and at the same time there is nothing that you can do about a person who refuse to be sentenced by the traditional court, I am thinking maybe, if it's a

criminal issue, maybe that person who is fighting against him can then lodge the issue again with the court.

Participant: *Yes if it is not a criminal issue it can go to civil court.*

Researcher: *So in this case this one will go to civil court?*

Participant: *It's a civil matter.*

I noted how the participant deliberately did not want to respond whether as a court they are supposed to address the matter. She indicated that I must ask *kgoši* how the issue would be resolved. This is an affirmation that they cannot force the community member to allow to be sentenced by the traditional court. Only *kgoši* will determine what is to happen. Since the court cannot force the person to pay the fine, the community member would then have to deal with the consequences of disregarding the traditional court decision. The justice system has left a void with regard to securing individual right to freedom in the traditional community.

Despite the challenges identified above, the traditional court is treated with respect. No member of the public is allowed to leave once the court is in session. An exception was noted in the case of the crèches versus the primary schools who were allowed to leave because "*the kids were waiting for them*" as pronounced by the chairperson of the traditional court. It is often said that women cannot wear pants to the traditional court. But during observation there were women from the crèche who wore pants. One of the court members advised me when I enquired why they were wearing pants that "*there is a dress code here, women should not wear pants or short skirts, they should cover their heads and shoulders, but this only applies when the court is in session. If you look around you will see women coming into the office dressed in pants. It goes with circumstances*". The above scenario shows flexibility, institutional changes and concern for community development instead of rigidity associated with conservatives trying to enforce static customs.

The implication of the dual justice system

The existence of traditional courts alongside magistrate courts presents a separate justice system for the people in traditional communities. This is well captured in the article by Andisiwe Makinana[59] who reflected on the comment made by a representative from the Eastern Cape Province that "*the province would not accept a Bill [Traditional Courts Bill] that creates a*

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[59]www.mg.co.za, Accessed 16/10/2013.

separate justice system for rural people to that of other people in urban areas". While people in non-traditional communities have full access to the justice system, the majority of community members in traditional communities are expected to utilize traditional courts for similar cases.

The traditional justice system is currently an indispensable dispute resolution mechanism in the traditional community. However the problem is that it is used as a tool to exert the authority of traditional leadership over the people. The explanation by participant CL20 that community members may opt out in favour of the magistrate courts only applies in paper. In actual practice there is no way out. CL20 also made a practical example of a traditional leader who reported a community member to the magistrate court for refusing to pay fine. The traditional leader had expected the court to force the community member to pay the fine. This example also illustrates how government has failed to provide information on the status of traditional courts to community members. Government should provide information and education to traditional communities on the position of the traditional courts versus the magistrate courts. People need to know that they are allowed to opt out of the traditional court without losing access to key benefits in the community or without being victimised. Whether the DOJ&CD would be able to monitor the traditional courts in this respect is another debate because currently there are no monitoring mechanisms in place. This is observed by CL20 when she commented that

> *We do not monitor their work. If a person is not satisfied with the ruling by the traditional court he can make an appeal to this court, to the magistrate court. And in the past six years I have not heard an appeal from them.*

The above observation reveals more than it hides. Considering the punishment that people get for not adhering to the traditional court it is possible that although they might be aggrieved after the case, the fear of the repercussions outweighs the need for justice. It might also mean that the people are basically satisfied with the traditional court system. With regard to the former there is no mechanism to ensure the traditional court does not abuse its authority and therefore the principles of good governance are not adhered to. With regard to the latter CL19 summarises it by arguing that "*because as courts it is not many people who know and understand the modern justice system, but the traditional leaders, it makes them…what can I say, they are able to know that we have this person who can be able to assist in this regard, but can advise them on whether the case is supposed to go to the magistrate court or the case must start at the police station*". Information is necessary to empower community members on their rights as well as empower traditional leaders on the implications of the administration of justice and how to deal with

challenges. Although the magistrates maintain that there are community outreach programmes to train traditional leaders on the administration of justice, it appears that traditional leaders are aware of the policy gap and are using it to their advantage.

WOMEN AND GOVERNANCE WITHIN THE TRADITIONAL COMMUNITY

One of the main reasons the Traditional Courts Bill was challenged was based on how it took away women's rights. Traditional leadership continues to be patriarchal even in a political dispensation that advocates gender equality. In the Mamaila Traditional Community the court comprises of 21 members of whom 20 are males, which leaves only one female who is also the sister to the traditional leader. Apart from the headmen from the six villages, most of the members of the court are from the royal family. The senior traditional leader pointed out that they are in the process of reconstituting the court and therefore they were going to consider the gender issue. One participant, CL5 raised the concern that it is difficult to have women as court members because of the frequency of the court which impacts on their daily chores. CL3 argues that *"it is really important for women to play a role in development. At the moment women don't really understand, even when they hear about rights they do not know what rights and who should advice them. For them to effectively play a role in development, it is important that they first be educated about their rights"*. This observation means that so long as women are not going to empower themselves they will remain sidelined in key decision making processes within traditional leadership. In other governance structures such as municipalities, magistrate courts and the police women are given similar roles to men in line with the constitutional provisions. According to CL6 women are not interested in traditional leadership because *"they run after politics"*. However participants CM28 and CM21, as community members, take a different position from CL6. They argue that *"traditional leadership is the privilege of the men and if you find yourself in their midst you will feel out of place"*. The only female members in the traditional leadership structures perform administrative roles, safe for the only female member in the traditional council. It is therefore not surprising why the only female member in the village council was performing the role of an administrative assistant. Although she stopped working in the traditional council, when I asked CL6, he maintained that she just quits and did not want to provide further information. He ended by arguing that it is because she wanted to pursue politics.

The Mamaila Traditional Community respects the significance of property ownership in the community. Women are allowed to own property such as residential sites and land for farming.

According to CL15 there are 9 farmers in the community of which 5 are females. They request land from the traditional leader as the administrative authority although they have to follow the proper channels as outlined in the traditional governance structure. The land is acquired free without any payment to traditional leadership. The headman also pointed out that if a woman is married all the property rights are vested in the husband. The woman takes over as owner when the husband passes on. Patriarchy is prevalent in South Africa and even women who are married in terms of common law forfeit their own surname in favor of the matrimonial surname. Thereafter reference to the family is made through the male name by virtue of the surname.

The issue of property ownership has developed to a level where women are allowed to own property and register land under their names. However this only applies to unmarried or single women who choose to own land for both residential and agricultural use. Contrary to documented practices of gendered land allocation in traditional communities, land allocation in the Mamaila Traditional Community is not done on the basis of gender but need.

YOUTH AND GOVERNANCE WITHIN THE TRADITIONAL COMMUNITY

The village *kgoro* is inclusive of all age groups as well as a good representation on gender, but this is only as far as attendance is concerned. Decision making is still the privilege of the adult males. In the traditional community court youth are only visible when summoned to the court to either account, or act as a witness, as in the case of the two brothers above. "*The challenge is that the Mamaila Court takes place during the week and most of the youth are trying to get jobs to make a living*", one participant advised.

The youth I interviewed indicated that youth are not interested in traditional leadership. Although they acknowledged that the role of the traditional leader is to take care of his community, they do not see him playing any role in governance. This is because they see him as having no role in their livelihoods. Their main concern is finding employment and they consider this a municipality responsibility (CM29, CM21 and CM22 share the same sentiments). The youth will only attend the *kgoro* when they believe there are prospects of getting a job as the *kgoro* is used as a multipurpose centre. Like the CPF, municipal representation in the community is inclusive of males and females, young and old. In the words of CL3 "*the youth know that they fought for democracy. But what surprises me here is that the youth just want to be given free things they don't want to work for anything. They don't even want to attend community meetings called by*

the traditional leaders or any other leaders. Even in political involvement they have lost hope". But CM37 disputes the fact that they disregard traditional leadership. He maintains that traditional leadership is central in the community, but there is nothing the institution is doing for the people. He asks the question

> *What is the role of a traditional leader when we have a councillor who brings us water? Why should we study and learn about a King from France when we have our own traditional leaders. They have never met the community, not even to celebrate our heritage. Why do we not have Mamaila Day or Lemondokop day, why is there not a museum to educate the youth about our history, where we come from as well as our culture?*

The above issues are central to the discussion on dual governance. CM37 believes if there is nothing traditional leaders are doing in the community, then their existence is not necessary, although he also believes they should play a key role in uplifting their culture and tradition. He maintains that he has never attended the *kgoro* because there is a lot of disrespect among members. He argues that *"you will find a very young man swearing at an elderly person and the village council does not do anything about it. These things that I hear people say also discourage me from going to the kgoro"*. The unavailability of youth in traditional governance structure means that decisions taken in the *kgoro* binds all community members and the youth do not get their voices across. They are denying themselves freedom to contribute to the development of their community.

CONCLUSION

This chapter highlights the perceptions and experiences of community members with regard to the existence of traditional leadership within a democratic governance system. Through an analysis of data gathered from interviews with community members the findings show that the Mamaila Community and Lemondokop Village is not homogenous in terms of ethnicity. People were made subjects of traditional leadership by the apartheid government. The chapter also addresses the recognition of traditional leadership on the basis of custom as an insufficient justification for the recognition of traditional leadership, let alone the governance role they have been given. I have also presented how the existence of traditional leadership alongside other democratic governance institutions affects traditional community members negatively in relation

to the provision of services and development. In the preceding final chapter I draw conclusions by summarizing the findings of the study in order to present lessons from the study.

CHAPTER 6

CONCLUSIONS

INTRODUCTION

This chapter summarises the main objective of the study: what dual governance means for the community members residing in traditional communities. It draws from the perceptions and experiences of community leaders and community members discussed in chapter four and five respectively. I provide the conclusion below with reference to the scholarly debates on the existence traditional leadership within a democratic setup. I also conclude the study in line with North's institutional theory which maintains that institutions matter in governance.

According to Tocqueville, quoted in Bobbio (1990: 52), "democracy denotes a society inspired by the ideals of equality, a society which will eventually come to overwhelm traditional social structures based on immutable hierarchies." This argument is central to many scholars who perceive traditional leadership as an institution that does not support the ideals of democracy. I have based my study on this contradictory nature of traditional leadership and democratic government. However I have gone beyond the abstract conclusion and focused on empirical evidence to understand what this contradiction means in traditional communities.

THE MEANING OF THE RECOGNITION OF TRADITIONAL LEADERSHIP

There is ample scholarly evidence that traditional leaders were responsible for governance in the pre-colonial era because they were the only responsible authority. However there is disagreement on the argument that the colonial and apartheid regimes used traditional leaders to advance their own policies of divide and rule as well as separate development. There are also arguments on the objectives of the current democratic era in recognizing the institution of traditional leadership.

It would appear that the integration model that government envisaged for the local sphere in areas where traditional leadership exist is the result of a not well thought of pronunciation of the recognition of traditional leadership. Government did not have clear cut policy direction with regard to what the recognition of traditional leadership would mean to the citizens in the traditional communities. At the same time government entrenched the existence of traditional leadership by recognizing the existing boundaries of traditional communities created by the

previous regime. This study shows that there is a direct relationship between the authority traditional leaders hold over land and their roles in different democratic governance structures, or at least "the free ride" over community members and other governance structures. In simple terms the recognition and role of traditional leadership is directly linked to their control of traditional communal land, a phenomenon that many scholars highlighted (Ntsebeza, 2006: 34; Drimie, 2002: 111; Levin and Weiner, 1996: 106). The relationship between traditional leadership and the community and other institutions of governance is purely based on the pseudo-authority of traditional leadership over the asset of the community, land. If the integration model is to be explored it would mean that the traditional community jurisdiction would have to be dismantled and reconfigured in line with the ward system of municipal administration. But this would also affect the authority of traditional leadership because there would not be any jurisdiction for the traditional leader which would take away the authority.

The recognition of traditional leadership is facing a critical challenge both from scholars and citizens who believe traditional leadership is a compromise to democracy. The TLGFA is constantly under scrutiny for the establishment of undemocratic traditional councils which form the basis of most arguments against the institution besides the argument that the institution itself is undemocratic (because it is basically hereditary). The CLARA drafted to give community access to their land has been declared unconstitutional on procedural grounds. The TCB has also been withdrawn in part because of fears that if is recognized in its proposed form, would entrench gender discrimination and deny individual right to the choice of the justice system. The Municipal Structures Act has been criticized by traditional leaders on the basis that it denies them access to meaningful participation in municipal councils where decisions on community development and governance are made. The contestation is that traditional leaders need powers to vote during deliberation whereas they are ex-officio members. This status is given to them because they are not eligible to vote as they are not elected representatives. The above scenario points to the lack of understanding, challenges the integration model as well as the coercion used by both government and traditional leaders at varying levels to entrench traditional leadership.

Government's recognition of traditional leadership is found wanting for a number of reasons. In the Limpopo Province traditional councils still function as traditional authorities and are yet to be

gazetted with defined areas of jurisdiction.[60] The apartheid-created tribal authorities have not been reconstituted in line with democratic ideals since the promulgation of the TLGFA in 2003. This indicates government's challenges with supporting the institution as reflected in the case study of the Mamaila Traditional Community. The reasons provided for the failure to reconstitute is lack of adequate funds. What is even clearer is that government did not properly assess what the maintenance of the institution would cost to the state after recognition.

But does the reconstitution of traditional councils give any different meaning to the traditional community? I would argue that it does not, at least not for the Mamaila Traditional Community. I argue on the basis that the legal requirement on the reconstitution of traditional council is meant to create a democratic structure which in actual fact is far from being democratic. Section 3 of the TLGFA provides for the establishment and recognition of traditional councils and provides that the membership should be based on 60% members selected by the traditional leader and 40% elected by the community. Although the traditional councils run for a five year term, the risk is that the 60% would stay intact so long as they fulfil the wishes of the traditional leader. The only changing structure would be the 40% elected members. The implication of the above is that the traditional community would still be run by people chosen for them, who will only account to the traditional leader.

The biggest challenge is denying people the freedom to choose the institutions that should be responsible for their governance when there is such choice available for them. Sen (1999: 32) argues that those affected should be given the freedom to participate in choosing what can or cannot be done in the name of tradition. If community members are sent back to the traditional leader because their issues are customary in nature then surely we have "citizens and subjects" in a democratic state. How democratized is the local government sphere? Another challenge is denying people freedom by withholding information about their civic rights. Sen argues this challenge constitute the unfreedoms that people endure. Government has not managed to inform the people in the community about their rights to land ownership and administration. Neither do people know legislation impacting on traditional leadership. This is reflected by the overwhelming response by participants that land belongs to the traditional leader. There are those community members who do not know that they may choose to use democratic structures such

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[60] Report on the assessment of the state of governance within the area of Traditional Affairs (http://www.dta.gov.za/index.php/publications/documents/cat_view/42-documents.html).

as the police, CPF and magistrates rather than traditional leadership. There are also those who know they may opt out. But both these two groups are constrained by the type of relationships created between traditional leadership and such structures. Overlooking traditional rule bears consequences that no community member would be able to carry on their own. After all life in the traditional community is communal and relies heavily on decisions made on what associations are allowed and what are not.

THE EFFECT OF DUAL GOVERNANCE ON TRADITIONAL COMMUNITIES

Indeed there is dual governance within the local sphere of government. The relationship between traditional leadership and the other institutions of governance identified for this study varies depending on the mandate of such institution within the community. With local government the study found that the relationship is that of compromise and accommodation as traditional leaders hold administrative powers over traditional community land. What remains is the question how such varied relationships affect the traditional community. In terms of the traditional leadership/local government relationship this means that communities are at the mercy of brokers who determine how their development should be shaped, specifically in relation to municipalities accessing land for development. Traditional leadership is the middle man entrusted with decisions pertaining to traditional community development. What this means is that for local government to access land it is imperative for them to go through the intermediary or they risk not obtaining any land and consequently inadequate development in the community.

The relationship between traditional leadership and the magistrate court is mutually beneficial to both institutions because the administration of justice by traditional leaders reduces the number of cases that might otherwise over-burden the magistrate court. On the other hand it entrenches the authority of traditional leadership within the traditional community as people are forced to use the traditional court because of fear of discrimination. On the issue of the administration of justice the community uses both the traditional justice system and the magistrate court. However the above becomes a challenge when community members are coerced to use one system when they have an option to choose. The resultant consequence is that traditional leadership entrenches its power at the mercy of the community while the magistrate court absconds from its roles in pursuit of reduction of cases to deal with.

The relationship between traditional leadership and SAPS is equally beneficial to both institutions as the traditional leadership role of policing also reduces the number of cases to be dealt with by the police while at the same time "bolstering chiefly power". This is because the CPF is a structure created to deal with community safety and policing in the community. It is the link between the community and the police. However there is also traditional leadership which should be catered for by compromising the relationship the community members have with the police. The issue of the safety in the community is also a challenge because both traditional leadership and the police abuse the power they hold over traditional community. Although the overall objective is to provide safety in the community, forcing community members through the use of traditional police to appear before the traditional court is forcing them to abandon citizenship in favour of subjection to traditional authority.

The governance role that traditional leadership plays in traditional communities reflects the slogan "government *for* the people". If government needs to give meaning to the essence of governance *by* the people, it should strengthen monitoring mechanisms to ensure accountability of traditional leadership as provided for in legislation. The poor availability of women and the youth within traditional leadership structures is an indication that traditional leadership has not transformed in line with democratic principles. The role of all interest groups within traditional communities in decision making and governance should be strengthened to ensure that the community benefits optimally from their land and also participate in their development.

According to Allen and Thomas (2000:40) there is also a danger of trusteeship where elites believe they should "do development for other people". The above authors ask the question: can the interest of those being developed be represented through the actions of an agency "entrusted with acting on their behalf"? The authors argue that people should be empowered to become agents of their own development and this can only be achieved through radical changes to power structures and institutional arrangements, specifically those that do not add value to the developmental objective of individuals.

CONCLUSION

Traditional leadership is still deeply embedded within the daily lives of community members. Tampering with a long standing pattern of governance in traditional communities is a challenge that would require great effort. Institutional change has the potential of destabilising societies.

Any new structure that takes over from traditional leadership in governance, specifically in land administration may face resistance from traditional leadership and community members. As argued above by Malinowski (1945), North (1990), Diamond and Plattner (2009) and Weale (2007) institutional change is an unavoidable process. What is essential is to put mechanism in place to ensure smooth transitions. In this study I have noted that some democratic institutions that are expected to provide basic everyday solutions are detached from the people and therefore do not give any meaning to the substitution of habitual institutions. People still feel they would rather use the traditional court that provides accessible, speedy resolution than the magistrate court that is detached. In the process they are denied freedom to choose who should govern them.

In a situation where assets are involved there is bound to be elites who take advantage of the situation. In an environment where institutional change is eminent, any community structure that may be established to deal with assets of the community has the potential of exploiting the community for its benefit. Therefore there is a need for checks and balances that should guide the administration of such community assets. It is in instances like this where people end up arguing that the previous institutional arrangements were better though not effective. But Karl and Schmitter (in Diamond and Plattner, 2009: 8) argue that the central question is not whether or not there will be a political elite or even a professional political class, but how these representatives are chosen and then held accountable for their actions.

This study has shown that while dual governance is entrenched within the traditional community, and the key actors have found a way of accommodating each other and balancing their roles, the traditional community is at the mercy of traditional leadership because of the authority over traditional communal land. The traditional community is not well conversant with the rights they have over the land and hence their development needs are driven by an elite who is more concerned about entrenching his authority than promoting community development.

Government is not fulfilling its constitutional mandate of providing access to information in traditional communities particularly on the existence of traditional leadership and its role in the community, specifically in governance. While it has established institutions of governance at the local sphere it has also created space for traditional leaders to perform the same roles. The result is a dual governance system for the people in traditional communities. Besides the unjustifiable consumption of state finances in the form of salaries, allowances and other benefits, this research

suggest that traditional leadership enjoys support from either an uninformed public or a public that is afraid to speak out. Policy options that may advance development in traditional communities are not explored in the interest of preserving traditional leadership which uses community members' lack of information and fear to entrench its authority. Bolstering traditional leadership's significance at the expense of the community is an issue government needs to consider in giving effect to democratic governance. Principles of good governance such as accountability and participation are not adhered to. Similarly ideals of a democratic state governance system are not respected, what with the sidelining of the youth and women! In this regard government has a role to review the role of traditional leadership in governance to determine whether this is good for the traditional communities or not. Government needs to find other reasons for the continued remuneration of traditional leaders. However this should not be based on custom as the study has demonstrated that traditional leaders are not the sole custodians of culture and custom. The fifteen year review by the Presidency[61] in 2008 maintained that there is a need to assess the accommodation of traditional leadership to determine whether the subjection of traditional communities to elected and unelected governance structures is good for such communities. I argue; this is the time to assess the role of traditional leadership and the effect on traditional communities. After all the people shall govern!

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[61] http://www.thepresidency.gov.za/docs/15year/part02.pdf, accessed 21/10/2013.

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Appendix 1: Table of Participants

Participant	Gender	Age group	Structure
COMMUNITY LEADERSHIP			
CL 1	Male	Adult	Traditional leadership
CL 2	Male	Adult	Traditional leadership
CL 3	Male	Adult	Traditional leadership
CL 4	Male	Adult	Traditional leadership
CL 5	Male	Adult	Traditional leadership
CL 6	Male	Adult	Traditional leadership
CL 7	Male	Adult	Traditional leadership
CL 8	Male	Adult	Traditional leadership
CL 9	Male	Adult	Lemondokop Village Committee
CL 10	Male	Adult	Lemondokop Village Committee
CL 11	Female	Adult	Greater Letaba Municipality
CL 12	Female	Adult	Greater Letaba Municipality
CL 13	Male	Adult	Greater Letaba Municipality
CL 14	Female	Youth	Greater Letaba Municipality
CL 15	Female	Youth	Community Development Worker
CL 16	Male	Adult	SAPS
CL 17	Female	Adult	CPF
CL 18	Female	Youth	CPF
CL 19	Female	Youth	Magistrate
CL 20	Female	Adult	Magistrate
COMMUNITY MEMBERS			
CM 21	Female	Youth	Community member
CM 22	Female	Youth	Community member
CM 23	Female	Youth	Community member
CM 24	Female	Youth	Community member
CM 25	Female	Youth	Community member
CM 26	Female	Adult	Community member

CM 27	Female	Adult	Community member
CM 28	Female	Adult	Community member
CM 29	Female	Adult	Community member
CM 30	Female	Adult	Community member
CM 31	Female	Adult	Community member
CM 32	Female	Adult	Community member
CM 33	Male	Youth	Community member
CM 34	Male	Youth	Community member
CM 35	Male	Youth	Community member
CM 36	Male	Youth	Community member
CM 37	Male	Youth	Community member
CM 38	Male	Adult	Community member
CM 39	Male	Adult	Community member
CM 40	Male	Adult	Community member
CM41	Male	Adult	Community member
CM42	Male	Adult	Community member

Appendix 2: Participant information sheet

<div align="center">

PARTICIPANT INFORMATION SHEET

</div>

RESEARCH TOPIC: DUAL GOVERNANCE AND TRADITIONAL COMMUNITIES: THE CASE STUDY OF THE MAMAILA (KOLOBETONA) TRADITIONAL COMMUNITY

Hello

My name is Faith Ramaboka, a Masters student in Development Studies at the University of the Witwatersrand. I am conducting research on Dual Governance and Traditional Communities: the case study of the Mamaila Kolobetona Traditional Community. I am expected to complete this research project in partial fulfillment of the requirements of the Masters Degree I have enrolled for. My research seeks to reflect issues that traditional communities face with regard to service delivery and development within the context of traditional leadership and other governance structure within the local sphere of governance.

This research focuses on traditional communities and it requires that I collect empirical data which I will analyse to be able to come up with a report. For me to achieve this I need to conduct interviews with participants. This interview session will last for 1h30 minutes on average. There are questions that I am going to ask. I am going to request you to sign a consent form if you agree to be interviewed. As I conduct the interview I will be taking notes on what you will be saying. In addition to taking notes, if you agree, I will audio-record the interview so that my report will provide accurate information.

Please note that participation in the research is voluntary and if you chose not to participate, you will not be affected negatively in any way. If you chose to stop participating in the research, you are allowed to do so and you will not be prejudiced by your decision to withdraw from the study. I promise to keep the information you give me confidential. Only my supervisor and I will have access to the research data. Should a need arise for publication of the report anonymity will be maintained so that people would not link you with the information.

At the moment there are no risks involved with the research study. This study is conducted for academic purposes and therefore does not have any direct personal benefits on the part of the participants associated with it. If you have any questions you may contact me on the details below.

Faithm.faith@gmail.com or 695347@students.wits.ac.za / Tel: 071 473 0891/082 494 3300

<div align="center">

Student signature

_____

</div>

Faith Ramaboka

Appendix 3: Participant Consent Form

PARTICIPANT CONSENT FORM

I_____ (title) _____**AGREE** to participate in this interview as part of the study on **DUAL GOVERNANCE AND TRADITIONAL COMMUNITIES: THE CASE STUDY OF THE MAMAILA (KOLOBETONA) TRADITIONAL COMMUNITY**

I confirm that I understand: *(Please put a cross if you agree)*

What participation in this research project means	
That my participation is voluntary	
That I have the right not to answer any questions I don't feel comfortable with	
That I have the right to withdraw from the study at any time	
That the information I share with the researcher will be kept in strictest confidence	
That every effort will be made to ensure my identity remains anonymous	

Signature: _____

Place: _____

Date: _____

Appendix 4: Participant Audio Recording Consent Form

<u>**AUDIO RECORDING CONSENT FORM**</u>

RESEARCH TOPIC: DUAL GOVERNANCE AND TRADITIONAL COMMUNITIES: THE CASE STUDY OF THE MAMAILA (KOLOBETONA) TRADITIONAL COMMUNITY

<u>Participant Consent</u>

I _____ (title) _____**AGREE** to

allow all of my participation in the interview to be recorded using an audio recording device.

I understand that this device is being used to accurately record what I say during my participation

in this study and will later be transcribed and used in the final research report.

Signature: _____

Place: _____

Date: _____

Appendix 5: Interview guide

<div align="center">

INTERVIEW GUIDE

</div>

TOPIC: DUAL GOVERNANCE AND TRADITIONAL COMMUNITIES: THE CASE STUDY OF THE MAMAILA (KOLOBETONA) TRADITIONAL COMMUNITY

*(The purpose is to guide the researcher in obtaining in-depth information. This interview guide is applicable to **traditional community leaders and municipal representatives**).*

SECTION A: GENERAL QUESTIONS

1   Please assist me in understanding the Mamaila Traditional Community (with particular reference to Lemondokop village) in relation to its area of jurisdiction, history, development, economy, livelihood and governance.

2   Do people have access to electricity; water; sanitation and other basic needs? Please elaborate.

3   What are the structures involved in the governance and development of the community?

4   Who is responsible for decision making in the community with regard to governance, and development?

5   What is the role of the different interest groups in this community with regard to governance, development and service delivery?

- The role of traditional leadership.
- The role of women.
- The role of the youth.
- The role of the larger community.

6   What is the role of the municipality within the community? Please include the role of all structures such as the ward councillor and ward committee.

7   What is the role of traditional leadership within the community? Please include the role of all structures such as the traditional council and the royal family.

8   Please describe the relationship between traditional leadership, the community and local government? Please give examples

9   How does the municipality gain access to the community?

SECTION B: PROVISION OF BASIC SERVICES

10 Who is responsible for the identification and provision of community needs such as water, electricity, health and education in the community?

11 How are community needs identified? Please outline the process.

12 What is the role of the community (including women and the youth), traditional leadership and the municipality in the identification and provision of community needs?

13 What is the relationship between traditional leadership, local government and the community in the identification and provision of basic services?

14 Are there benefits with regard to the current authority responsible for service delivery? Please give examples.

15 Are there challenges with regard to the current authority responsible for service delivery? Please give examples.

16 How does the current setup on the issues of service delivery impact on the community? Please explain.

SECTION C: LAND ADMINISTRATION

17 Who is responsible for land administration in the community?

18 What is the role of the community (including women and the youth), traditional leadership and the municipality in land administration?

19 What is the relationship between traditional leadership, local government and the community in the identification and provision of basic services?

20 How do members gain access to land?

21 Are there benefits with regard to land administration by the current authority? Please elaborate.

22 Are there challenges with regard to land administration by the current authority? Please elaborate.

23 How does the current setup on land administration impact on the community? Please explain

SECTION D: CONCLUDING QUESTIONS

24. What are the benefits or challenges of traditional leadership to the community? Give examples.

25. What are the benefits or challenges of local government to the community? Give examples.

26. Are there benefits of having both traditional leadership and local government in governance? Please elaborate

27. Are there challenges of having both traditional leadership and local government in governance? Please elaborate

28. How does the existence of traditional leadership alongside local government impact on traditional communities? Please elaborate.

29. Is there a preferred governance setup in this community? Please elaborate.

We have come to the end of our interview. If there are other issues or questions related to this research that you would like to talk about, feel free to do that. Thank you very much for your time.

Appendix 6: Interview guide

<p align="center">**INTERVIEW GUIDE**</p>

TOPIC: DUAL GOVERNANCE AND TRADITIONAL COMMUNITIES: THE CASE STUDY OF THE MAMAILA (KOLOBETONA) TRADITIONAL COMMUNITY

*(The purpose is to guide the researcher in obtaining in-depth information. This research schedule is applicable to **Sekgosese Magistrate Court and traditional leadership***

<p align="center">**<u>ADMINISTRATION OF JUSTICE</u>**</p>

1. Please tell me your position within this institution.
2. Who is responsible for the administration of justice within the traditional community and where do they derive the mandate from?
3. What is the role of traditional leadership in the administration of justice in the traditional community?
4. What is the role of the community (including women and the youth) in the administration of justice in the traditional community?
5. What is the role of the magistrate court in the administration of justice in the traditional community?
6. What is the relationship between traditional leadership, the community and the magistrate court in the administration of justice?
7. How are cases dealt with between traditional leadership and the magistrate court? Please outline the process.
8. Are there benefits with regard to the administration of justice in the traditional community by the current authority? Please elaborate and give examples.
9. Are there challenges with regard to the administration of justice in the traditional community by the current authority? Please elaborate and give examples.
10. How does the current setup on the administration of justice impact on the community? Please elaborate and give examples.

We have come to the end of our interview. If there are other issues or questions related to this research that you would like to talk about, feel free to do that. Thank you very much for your time.

Appendix 7: Interview guide

<div align="center">

INTERVIEW GUIDE

TOPIC: DUAL GOVERNANCE AND TRADITIONAL COMMUNITIES: THE CASE STUDY OF THE MAMAILA (KOLOBETONA) TRADITIONAL COMMUNITY

*(The purpose is to guide the researcher in obtaining in-depth information. This interview guide is applicable to **SAPS and traditional leadership**).*

</div>

1. Please tell me your position within SAPS. Who is responsible for safety and security within the traditional community?

2. What is the role of traditional leadership in the safety and security of the traditional community?

3. What is the role of the community (including women and the youth) in the safety and security of the traditional community?

4. What is the role of SAPS in the safety and security of the traditional community?

5. What is the relationship between traditional leadership, the community and SAPS in the safety and security?

6. Are there benefits with regard to the administration of safety and security by the current authority? Please elaborate and give examples.

7. Are there challenges with regard to the administration of safety and security by the current authority? Please elaborate and give examples.

8. How does the current setup on the safety and security impact on the community? Please elaborate and give examples.

We have come to the end of our interview. If there are other issues or questions related to this research that you would like to talk about, feel free to do that. Thank you very much for your time.

Appendix 8: Interview guide

INTERVIEW GUIDE

TOPIC: DUAL GOVERNANCE AND TRADITIONAL COMMUNITIES: THE CASE STUDY OF THE MAMAILA (KOLOBETONA) TRADITIONAL COMMUNITY

*(The purpose is to guide the researcher in obtaining in-depth information. This interview guide is applicable to **Lemondokop Village Community Members**).*

1. Please assist me in understanding the Mamaila Traditional Community (with particular reference to Lemondokop village) in relation to its area of jurisdiction, history, development, economy, livelihood and governance.

2. Do people have access to electricity; water; sanitation and other basic needs? Please elaborate.

3. What are the structures involved in the governance and development of the community?

4. Who is responsible for decision making in the community with regard to governance, and development?

5. What is the role of the different interest groups in this community with regard to governance, development and service delivery?

    - The role of traditional leadership.

    - The role of women.

    - The role of the youth.

    - The role of the larger community.

6. What is the role of the municipality within the community? Please include the role of all structures such as the ward councillor and ward committee.

7. What is the role of traditional leadership within the community? Please include the role of all structures such as the traditional council and the royal family.

8. Please describe the relationship between traditional leadership, the community and local government? Please give examples

9. How does the municipality gain access to the community?

10. How does the existence of traditional leadership alongside local government impact on the traditional community in relation to the following:

- Provision of basic services such as water, schools, health care, education, maintenance of infrastructure
- Administration of land.
- Safety and security
- Administration of justice

11. What are the benefits or challenges of traditional leadership to the community? Give examples.

12. What are the benefits or challenges of local government to the community? Give examples.

13. Are there benefits of having both traditional leadership and local government in governance? Please elaborate

14. Are there challenges of having both traditional leadership and local government in governance? Please elaborate

15. Is there a preferred governance setup in this community? Please elaborate.

We have come to the end of our interview. If there are other issues or questions related to this research that you would like to talk about, feel free to do that. Thank you very much for your time.

Appendix 9: Permission to conduct research: Mamaila Royal Council

Mamaila Royal Council
P.O. Box 493
PAULUSWEG
0814
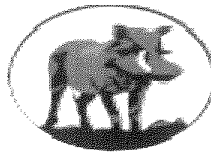
Http:// www.mamaila.org
Fax: 0865 163 225
Cell: 083 439 5320
: 079 126 3969

DATE 13/08/2012

Ms. Faith Ramaboka
18 D Liebenberg Street
Danville Ext 8
PRETORIA
0183

● Ou`r Ref: -   08/012

To; whom it may concerned

Subject: Permission to conduct research.

1. The afore-mentioned matter has reference. Dated: - 08/012.
2. The Mamaila Traditional Authority is under Chief K.S. Mamaila, administered by NAHAKWE TRUST as mandated by the Royal Council and our community/Tribe.
3. This serve as permission, as requested by Ms. Faith Ramaboka to conduct a research on our Tribal Authority pertaining to her studies. The Royal Council of Mamaila has taken a resolution to agree to be taken as a case study for the afore-mentioned applicant.
4. Hope you`ll make favorable consideration on that regard.

Regards

_____

F.M. Mogale
Mamaila Royal Council/NAHAKWE TRUST
lefamogale@mamaila.org
079 126 3969

Greater Letaba Municipality

P.O Box 36, Modjadjiskloof, 0835
Tel (015) 309 9246/7/8
Fax (015) 309 9419
Email:greaterletaba@glm.gov.za

Enquiry: Chuene K.R   03 September 2012

Faith Ramaboka
18D Liebenberg Street
Westview
Danville Ext 8
Pretoria

Madam

Re: APPLICATION TO CONDUCT A RESEARCH

1. The above mentioned matter bears reference.

2. Be informed that Greater Letaba Municipality dohereby approve your application to conduct a research as per your request.
3. Take notice further that the approval is subject to the following conditions:
   3.1 Information to be acquired should be specifically for research.
   3.2 The Municipality should be informed of any intended interview and the participants thereof.
   3.3 Information acquired should be treated with confidentiality especially which will be obtained from the council sitting.
4. Greater Letaba Municipality wishes you for a successful and fruitful research hereon.

Yours Faithfully

Mkansi T.H

Acting Municipal Manager

Appendix 11: Permission to conduct research: South African Police Service

SAP 21

SUID-AFRIKAANSE POLISIEDIENS   SOUTH AFRICAN POLICE SERVICE

Verwysing Reference	2/1/2/1
Navrae Enquiries	Col Mashile Major Montjane
Telefoon Telephone	015 290 6090/ 6202
Faksnomme r Fax number	015 230 1023

ORGANIZATIONAL DEVELOPMENT
SOUTH AFRICAN POLICE
POLOKWANE
LIMPOPO

A: National Commissioner   (Att: Major Gen Menziwa)
      South African Police Services
      Pretoria
      0001

B: Faith Ramaboka
      18 D Liebenberg Street
      West view
      Danville Extension 8
      2000

AUTHORITY TO CONDUCT RESEARCH ON THE IMPACT OF DUAL
GOVERNANCE ON TRADITIONAL COMMUNITIES: MAMAILA KOLOBETONA
TRADITIONAL COMMUNITY CASE STUDY: RESEARCHER: FAITH RAMABOKA

A.1. Copy for your information.

B.1   Your application for authority dated 27-06-2012 to conduct the
      research indicated above refers.

   2. An authority is therefore granted with conditions that such research is
      conducted within the given scope.

   3. You are also advised to adhere to the provisions of the National
      Instruction 1/2006 on research in the SAPS.

...LIEUTENANT GENERAL
PROVINCIAL COMMISSIONER
LIMPOPO PROVINCE
T.S MPEMBE

DATE: 2012-08-16

Appendix 12: Ethics clearance certificate

Research Office

HUMAN RESEARCH ETHICS COMMITTEE (NON MEDICAL)
H120714   Ramaboka

CLEARANCE CERTIFICATE	**PROTOCOL NUMBER H120714**
PROJECT TITLE	The Impact of Dual Governance of Traditional Communities: The Case Study of the Mamaila (Kolobetona) Traditional Community
INVESTIGATOR(S)	Ms M F Ramaboka
SCHOOL/DEPARTMENT	Development Studies
DATE CONSIDERED	20 July 2012
DECISION OF THE COMMITTEE	Approved Unconditionally
EXPIRY DATE	31 July 2014
DATE 24 July 2012	**CHAIRPERSON** (Professor T Milani)
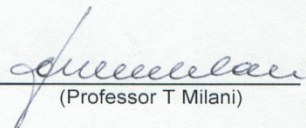
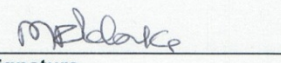**DECLARATION OF INVESTIGATOR(S)**

To be completed in duplicate and **ONE COPY** returned to the Secretary at Room 10005, 10th Floor, Senate House, University.

I/We fully understand the conditions under which I am/we are authorized to carry out the abovementioned research and I/we guarantee to ensure compliance with these conditions. Should any departure to be contemplated from the research procedure as approved I/we undertake to resubmit the protocol to the Committee. **I agree to completion of a yearly progress report.**

_____   12 , 09 , 12
Signature   **Date**

PLEASE QUOTE THE PROTOCOL NUMBER ON ALL ENQUIRIES