The Clash between Traditional and Modern Systems of Governance in the Durban Metropolis – A Tale of Two Administrative Civilizations

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1   Introduction

The post- apartheid constitution of South Africa created a three-sphere system of government in which local government is an equally ranked sphere as the national and provincial ones. The idea of an autonomous local government with full administrative and financial management capacities finds its origin in the Reconstruction and Development Programme (RDP) of 1994. It is in the RDP that the high-priority political objective of empowerment of individuals, communities and institutions was enshrined. These political objectives and principles shaped the Constitution in such a way as to promote civil society's involvement in political decision-making. Accordingly, it was thought that the sphere of local government was best placed for such an initiative.

In the spirit of the RDP, it is at the local level consisting of rural and urban municipalities or other metropolitan structures, that the public authority, communities, economic actors and citizens in general were expected to group together in the most harmonious and efficient manner, in order to identify and implement the means of meeting the communities needs (especially services and infrastructure). It is against this context, that the transformation of local government in South Africa was pursued.

Notwithstanding the spirit of the RDP to empower local communities and empower and enable them to participate in development issues at a local government level, in many provinces and especially in KwaZulu-Natal, the transformation of local government is challenged by another type of institutional and political force in the form of traditional authorities. This opposing forms of modern systems and traditional forms of governance has been an ongoing source of political conflict since democracy and especially in KwaZulu-Natal between traditional leaders and the state on the question of the exact roles and responsibilities of the latter in service delivery at a local government level.

Fuelling the complexity contained in the traditional systems of governance was the extension of the metropolitan area of Durban to include 16 tribal areas just before the 2000 local government elections. It is the only metropolis in the country that encounters traditional leaders in an urban setting. Despite intense opposition from traditional leaders to the Demarcation Board on the inclusion of land that has historically been under their administrative tutelage, the surface area (2297 km^2) of Durban Metropolitan Region (DMR) was extended by 68% compared to the previous Durban Metropolitan Area (DMA), (1366 km^2).

The expansion of the metropolis on traditional territory raised pertinent questions on the exact role of traditional leaders as against that of democratically elected councillors at both institutional and political levels, since the major prerogative of service delivery rests with local government. It is against this context that the paper examines the polarization-conflict nexus between traditional and modern forms of governance. The paper traces the cause of the conflict and examines whether this two opposing forms of governing systems can coexist in a co-operative administrative arrangement especially on matters related to service delivery.

2   Overview of Traditional Forms of Governance in South Africa

Indigenous forms of governance and its integration into modern systems of government have thus far proved to be difficult and problematic not only in the African continent, but also more particularly in South Africa. Although most constitutions of African countries make reference to indigenous

systems, in practice these institutions are marginalised, serving merely a symbolic rather than a functional role. More importantly, these institutions are known to be inconsistent with democratic principles of governance, despite their presence long before colonial rule became a historical reality (Ismail et al. 1997:117).

Like the rest of the African continent, indigenous local government in South Africa has been the center of political manipulation and conflict before and after democracy. For example, as early as 1847 the British colonial administration in Natal viewed the tribe as a basic unit to exercise authority and act as an agent of the colonial government. Consequently, Ordinance No.3 of 1849 made provision for the recognition of customary law as long as *'it was not repugnant to the civilised world'*. Chiefs were accorded judicial functions under the control of magistrates, although the extent of their jurisdiction was not specified (Zungu 1997:165).

Sithole (2000), an anthropologist and astute commentator on traditional leadership believes that traditional leadership in Southern Africa is an institution based on kinship rooted on the relationship of blood, fictive or distant between the leader and the people under his authority. Such an assertion is based on a number of writings of liberal historians who have dealt with the issue while concentrating on the Mfecane wars in the early part of the 19th century (Argyle 1978; Wright & Mason 1983). This period is characterised by a pattern of personal, collective and tribal struggles over hegemony, which were in the end instrumental in shaping the historical foundations of the institution of traditional leadership as Kuper (1993) has demonstrated. The period was prone with power struggles amongst groups of people and tribes with the ultimate defeated groups being subjudicated by the victors politically and economically.

Sithole (2000) demonstrates that the key element of traditional leadership is the close relation of the leader and his/her people, especially amongst the Nguni people. Thus the leadership succession is shaped by blood kinship as identity, leadership and inheritance passes from father to son. In fact even bourgeois historians have pinpointed the historical reality that the primary concern of traditional leaders during the pre-colonial period was their relationship with their people and not with geographical or land boundaries. Lamband and Thompsons (1989) historical work has demonstrated that boundaries have become an integral part of the traditional

leaders' power struggles only after the colonial conquest and the colonial administration's power plays and interference.

The Black Administration Act of 1927 (section 5(1) a) was the earliest and central legislative mechanism through which traditional leaders were co-opted into a colonial system of government. It empowered the Governor General or the State President to create new tribes, divide existing tribes and demarcate the area occupied by the members of the tribe (Zungu 1997:165-166).

Despite such political power plays on the part of the colonial administration, historical reality confirms that the institution of traditional leadership survived the system of indirect rule, especially in regard to the boundaries of Zululand and Natal, which were shifted continuously according to the political dictates of the ruling colonialist regimes (Duminy & Guest 1989). In fact the colonialists yielded absolute political power over traditional leaders and all indigenous people in their area and subsequently traditional leaders lost control of their economic, military and political affairs of the indigenous population.

The National Party upon coming to power further attempted to regulate the powers and jurisdiction of the traditional leaders. The Black Authorities Act (No. 68 of 1951) reorganized traditional authorities in tribal, regional and territorial authorities. In effect, this Act ensured that traditional leaders were dominant at all three levels (legislative, judicial and administrative) which opened the way for the apartheid regime to consolidate 'reserves' which for some indigenous people had become 'self-governing' whilst for others 'independent' homelands (Ntesebeza 2000:288).

During the period of 'self-government' and 'independent homelands', corruption and repression were features of traditional authority. Many of the problems of corruption among traditional leaders emanated from the lack of accountability, but more especially the salaries they received from the bantustan governments were grossly inadequate. Considering the formal duties assigned to traditional leaders (including legislative, judicial and administrative), their monthly salaries on the average in the 1980s did not exceed more than R700. Given this paltry recompense for their official duties it comes as no wonder that corrupt methods have been resorted to in order to sustain a material standard of living (Tapscott 1997:295).

Beyond their ceremonious duties, an important source of power for traditional leaders was the control and allocation of land. They abused power by charging unauthorised fees to applicants. In addition, they mismanaged state pensions and grants, tribal courts, and migrant labour applications to benefit them materially (Ntesebeza 2000:289). On the contrary, many traditional leaders fulfilled important day-to-day functions including dispute resolution, mediating with state authorities, operating the tribal courts and performing many minor official duties on behalf of the state with a certain level of credibility.

In so far as responsibility for infrastructural development and service delivery was concerned, traditional authorities hardly had any official responsibility (McIntosh 1995:65). Their role was relegated to being a representative for the relevant state department without much decision-making responsibility. In effect, traditional authorities were never empowered to deal with development issues and as such the system encouraged them to participate in party political activities. This is evidenced in KwaZulu-Natal where a substantial number of traditional leaders became members of the KwaZulu Legislative Assembly which ensured them a parliamentary salary compared to the meagre chiefly stipends which the apartheid regime made them dependent on (McIntosh et al. 1996:341).

It becomes apparent from the foregoing discussion, that the institution of traditional leaders during the colonial and apartheid legacy was largely under-developed, under-resourced and relegated to the periphery of affluent white South Africa. Through a complex set of legislation, the institution was transformed into a manipulative tool through which the 'cultural differences' of the black people were emphasized and used as a basis to balkanise the country. These areas came to be regarded as reservoirs of cheap labour for urban economic centres and mining conglomerates. It must be noted whilst these coercive methods of co-opting the institution of traditional leaders met with some success, many not only rejected co-optation but also took active steps to oppose the system (Discussion Document towards a White Paper on Traditional Leadership and Institutions, 2000:4).

3 Transforming the Institution of Traditional Leadership

Institutional Framework for Transformation

Currently South Africa has approximately 800 ruling chiefs supported by 1 000 headmen, who when combined have jurisdiction over 18 million people or approximately 40% of the population who are largely rural (Daily News 22/09/2000). The post apartheid government upon coming to power in 1994 provided a new sense of vitality for this institution in Section 12 of the Constitution (Act 108 of 1996).

Although the Constitution recognises the importance of traditional leaders, it fails to outline their exact role and function at a local level. Instead, the Constitution states, *'national legislation **may** provide for a role for traditional leadership as an institution at local level on matters affecting local communities'* (Section 212(1)). The full interpretation of this Constitutional provision is problematic as it suggests that the exact interpretation of what should be the role and responsibility rests with the central government.

It is such ambivalence that has prompted a leading ANC parliamentarian, but above all a traditional leader himself, to scathingly attack his own government in the treatment of traditional leaders. *Inkosi* Pathekile Holomisa had this to say on the treatment of traditional leaders by the ANC government:

> One of the ironies of post-colonial Africa is the ease with which its new rulers find comfort within the governance systems of their former oppressors, while they all invariably seem not to know what to do with the indigenous systems that have somehow managed to survive the colonial onslaught. There is usually no debate about whether or not the inherited white man's courts, his Parliament, his executive arm of government or his economic systems should be retained or discarded. The debate is about which Africans must occupy the newly vacated seats of power – political, economic, social and even cultural *(Mail and Guardian* 11-17/02/2000: 29).

This is a direct and undisguised full frontal attack on a government that has attempted through various negotiation forums and legislation to streamline

and smooth power relations between elected representation and traditional leverage of powers, especially in the rural areas that shelter the poorest of the poor and the majority of the victims of apartheid's economic and political brutality, but in the end seems completely undecided on the creation of the proper and acceptable channels that could ease conflicting situations.

Such a reality is patently obvious in the White Paper on Local Government (1998), which avoids taking any strong position on what the new roles and responsibilities of traditional leaders should be within the new democratic order. In fact the White Paper merely highlights what the roles and responsibilities had been like in the old dispensation. In the absence of any new national policy on the definition of the roles and responsibilities of traditional leaders, except for those contained in the White Paper on Local Government, is the only guide. Very broadly, the White Paper outlines the functions of traditional authorities as follows:

- acting as head of the traditional authority, and as such exercising limited legislative powers and certain executive and administrative powers;
- presiding over customary law courts and maintaining law and order;
- consulting with traditional communities through *imbizo* (meeting);
- assisting members of the community in their dealings with the state;
- advising government on traditional affairs through the Houses and Council of Traditional Leaders;
- convening meetings to consult with communities on needs and priorities and providing information;
- protecting cultural values and providing a sense of community in their areas through a communal social frame of reference;
- being a spokespersons generally of their communities;
- being symbols of unity in the community; and
- being custodians and protectors of the community's customs and general welfare.

More specifically, their role in the development of the local area and community under their tutelage include:

- making recommendations on land allocation and the settling of land disputes;
- lobbying government and other agencies for the development of their areas;
- ensuring that the traditional constituency participates in decisions on development and contributes to development costs; and
- considering and making recommendations to authorities on trading licences (White Paper on Local Government, 1998:96).

An important observation in the White Paper is that traditional leaders do no have direct decision making powers on development issues although some of their roles overlap with municipal functions. In instances were there is an overlap, it is the municipality that has jurisdiction and not the traditional authority. In other words, traditional authorities will be obliged to operate as part of the government in a local government structure.

The existing legislative frameworks politically emasculates traditional leaders, and this is especially true in the case of KwaZulu-Natal, where the political struggles for dominance between the Inkatha Freedom Party (IFP) and the African National Congress (ANC) have been well known for many years, and the *amakhosi* have been instrumental in providing support for the former at a grass roots level. The vital political role of traditional leaders for the struggle for political power and supremacy between the two largest parties in the KZN Province is adequately documented. Nonetheless, the most obvious terrain of struggle is in the field of service delivery for their constituency, characterized by confrontational antagonism between elected public representatives and traditional authorities (Bank & Southhall 1996). Obviously these struggles are more evident in areas where the traditional authorities support the IFP and where the municipal leadership is ANC-dominated. However, it is widely accepted that the lack of synergy, cooperation and coordination between these key service delivery stakeholders will be a serious impediment of the implementation steps towards development and growth. This is why it is important to examine the institutionalisation of traditional authority as a framework for co-operative governance.

Formulating Co-operative Governance Framework

Although much ambiguity exists on the exact roles and responsibilities of traditional leadership at a local level, provision is made for them to approach and lobby other agencies and spheres of government at both provincial and national levels through the houses of traditional leadership. The 1996 Constitution makes provision for the establishment of a National House of Traditional Leaders subject to relevant national and provincial legislation. The functions of these houses are to advise government on matters affecting traditional leadership, traditional communities and customary law. Interestingly, it is not mandatory for government to seek the House's advice before or during the submission of legislation and policy documents to Parliament.

In keeping with the constitutional provision, six provincial houses were established in terms of provincial legislation passed by the provincial legislatures having consulted traditional leaders. This combined, led to the formation of the National House of Traditional Leaders in terms of the National Council of Traditional Leaders Act of 1998. The national structure consists of 18 members (3 nominees from each of the six provincial houses).

Presently, the chairperson and all members of the National Council of Traditional Leaders are part-time members. The National House continues to lobby to become a full-time body, playing a more significant role in policy formulation and the finalisation of legislation. Legislation is being drafted to provide for the chair-person to be appointed on a full-time basis.

At the national level, the Department of Provincial and Local Government is responsible for the administration of traditional affairs. The provincial houses of traditional leaders interrelate with the provincial administrations responsible for the administration of traditional affairs. However, relationships with government and the functions of the provincial houses differ from province to province.

Insofar as the appointment of traditional leaders are concerned, customary practices within individual communities are taken into account. The provincial government seeks the advice of the Provincial House of Traditional Leaders or other functionary before the Premier makes an appointment. Existing regional authorities also make submissions especially in respect of succession of traditional leadership. The number of members of the six provincial houses at present is as follows: Eastern Cape 20; Free

State 15; KwaZulu-Natal 76; Mpumalanga 21; Northern Province 36; and North West 24.

In the post-democratic era, traditional leaders no longer enjoy remuneration or emoluments from their tribes; they are paid in terms of laws passed by central government on a uniform basis, without distinction on the size of the tribe. The remuneration of traditional leaders is regulated in terms of the Remuneration of Public Office Bearers Act of 1998. This Act makes provision for the remuneration at four levels: King/Paramount Chief level, Chief level, Provincial Houses level and National Houses level. In respect of the latter two, only allowances are paid. A proposal is made by the Houses to make their appointments permanent and paid salaries as full time members. The remuneration of traditional leaders poses serious questions on the nature of the relationship with government and accountability.

It is clear from the discussion that the two key legal documents dealing with the institution of traditional leadership, i.e. the Constitution and the White Paper on Local Government, stipulate clearly that the roles and responsibilities of traditional leaders in the new political dispensation are of no particular importance. The roles identified in the White Paper on Local Government are very similar to those of the apartheid regime. Interestingly, the White Paper acknowledges the important role played by traditional leaders in local government during the previous dispensation, but when it come to defining their exact role in the new political order, it dismisses this in anticipation of a White Paper on Traditional Affairs, which until today is still in its draft stage.

This raises an important question as to whether traditional leaders do in fact have a political role to play in the delivery of services. Considering the fact that the state accords very little importance in defining the roles of traditional leaders and its subsequent attempt at setting up provincial and national structures for traditional leaders in the form of CONTRALESA, is suggestive of conscious attempts on the part of the state to co-opt traditional leaders into a co-operative system of governance or worst, to annihilate them through a series of frustrating and complicated legal frameworks. This in essence, is tantamount to depoliticisation and alienation of traditional leaders. The protracted way the government, political planners and bureaucrats have followed in dealing with the roles and responsibilities of traditional leaders can be perceived as a delaying tactic to progressively and

patiently alienate traditional leaders from their community base and areas so that local citizens end up increasingly identifying with municipal structures and the services they offer so that they stray from the tutelage of traditional leadership structures.

It was such a 'strategic' choice of the government to sideline and alienate traditional leaders that made a senior ANC politician put his traditional leader's hat on and declare that:

> An erroneous point of departure [on the part of government] is the notion that if government resources and services are taken away from traditional leaders and are placed at the disposal of politicians then the people will abandon the former in favour of the latter. Besides anything else it is immoral for people to be made to choose between traditional leaders and service delivery – they deserve and are entitled to both.
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> Local government, like any other level of government, does not own land. In the urban areas land is owned either by the banks, through mortgage bonds, or by holders of the title deeds who have managed to pay off their bonds. In the rural areas tribal or communal land is owned by the tribe as a collective. Despite the fact that under apartheid laws, the state is the legal owner of tribal land, factually and morally the tribes own the land and, unless one is spoiling for a fight, no one can deal with it as he pleases.
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> Under African tribal law the custody of the land is entrusted in the traditional authority, that is, the head of the tribe and his counsellors. As trustee of the land the traditional authority is required to act at all times in the interests and according to the wishes of the owners of the land, the people (*Mail and Guardian* 11-17/02/2000: 29).

This is one of the reasons that have led traditional leaders throughout the country to build up their own political alliances before and after the 1994 elections. During the first democratic elections in 1994, the support of traditional leaders resulted in a combination of alliances and compromise with the two opposing political parties in KZN (ANC and IFP). CONTRALESA strongly supported the ANC hoping that in return the issue

of traditional leaders would be addressed by the ANC who was expected to be the overall election winner. As the process unfolded, however, the ANC was prepared to deal politically with the traditional leaders only within the framework of the ANC alliance partners and the interim constitution. The IFP with its rural based constituency negotiated a settlement with the ANC, which allowed them three ministerial posts in the government of national unity and a promise to address the issue of traditional leaders (Vawda 2001:1). It becomes apparent, that the system of traditional leadership offered an important and significant basis for a political trade-off between the two competing political parties in KZN. This political trade-off had undoubtedly compromised the position of traditional leaders, which resurfaced during the 1995 local government elections.

3   Governance and Service Delivery in the Durban Metropolitan Tribal Areas

Democratising Local Government – The Process of Demarcation
The re-demarcation of the boundaries of local authorities was the second most important step in the democratisation of local government in South Africa. This was not only for purposes of democratisation; it was intended for local authorities to carry out their development mandate in the provision of services.

In the discourse on demarcation, competing political and technical factors invariably influence boundary decisions. However, in making such decisions, one needs to be reminded that boundaries are not neutral lines. Often they determine the contours of political power (Cameroon 1999:4). Boundaries influence citizen's access to services and bring into question the financial consequences of such actions.

Bearing this in mind, the Municipal Demarcation Board was required to take the following into consideration when determining boundaries:

- interdependence between communities in the area in respect of settlement patterns, work, commuting, spending patterns and recreation;

- financial viability of the municipality for that area, including a viable tax base for the performance of its functions;
- sufficient financial and administrative capacity of the municipality to perform functions efficiently and effectively;
- topographical, environmental and physical characteristics of the area;
- existing functional boundaries, including tribal authority boundaries, magisterial districts and enumerator areas; and
- existing and future land usage, town and transport planning, including commercial, industrial, residential and recreational and amenity use (White Paper on Local Government 1998:99).

Based on the above principles, demarcation boards were established in the first half of 1994. In KZN the demarcation board became operational in September 1994. The provincial demarcation board had until 31 July 1995 to make its recommendations to the MEC in order to comply with election regulations. Due to the politically volatile situation in the province between the ANC and the IFP (with the IFP enjoying popular support in former traditional areas), the board was instructed to ensure that consultation takes place with every tribal authority (Pillay 1999:207).

Attempts by the demarcation board to set up consultative meetings with relevant stakeholders (*including the amakhosi*) was flawed due to the lack of representivity at meetings, antagonism towards the board, and lack of understanding of the process. Consequently, the demarcation board was unable to secure the views of all stakeholders in the tribal authority areas and consequently made its proposal by the 1 July 1995 so that the election deadlines may be met (Pillay 1999:207).

Political Competition to Govern the City

The Board's proposal for the re-demarcation of boundaries within the substructure level of the City of Durban and those external to it comprising mostly tribal land met with strong opposition from the *amakhosi* and the IFP particularly in KZN. At the substructure level, the two competing political parties (ANC and IFP) accused the other of manipulating the cities boundary

(which was historically segregated by apartheid) in order to preserve their political constituency.

Proposals from the Demarcation Board in July 1995 for the city proposed ten substructures based on 'population balance and community interests rather than economic viability' (Report on the KwaZulu-Natal Local Government Elections, 1996:24). For an example, the Indian areas of Chatsworth, Shallcross, Reservoir Hills and the white areas of Westville and Queensburgh were required to form one substructure along with the African area of Chesterville. In addition the Board also proposed the promotion of purely Black municipalities such as Umlazi (south of Durban) and Ntuzuma/Newtown/Inanda (townships and informal settlements).

The Demarcation Board came under attack by the MEC for Local Government and Housing who charged that historically disadvantaged areas stood no chance of standing on their own financial resources and the proposals made by the Board was tantamount to retaining apartheid style boundaries. The economic viability of the boundaries of the substructures was not only pursued by opposing visions for the best mechanism to deal with poverty, but also by strong overtones of party political interests. Under the ten-substructure proposal, the ANC stood a major chance of winning at least some of the substructures. However, finally, after extensive negotiations, it was agreed to adopt the MECs proposal (who himself was an IFP member) of six substructures in the metro on the grounds of economic viability (Polunic 1999:77-78).

It may be noted that despite the political contest for the inner city, the demarcation process ultimately confined itself to the primary objective of the exercise to create a sustainable municipality. The compromises reached by the ANC and the IFP were a politically strategic one.

Crossing the Boundaries of Tradition: Incorporating Peri-urban and Rural Areas in the DMR

The outer boundaries of the city was a serious point of political contest between the IFP and the ANC since it involved the inclusion or exclusion of tribal authorities located on the fringe of the metro. These areas were formerly administered by the KwaZulu homeland government and over time became functionally urban in character. The incapacity of the former

KwaZulu government to develop the area due to its communal land tenure status led to these areas being very poorly serviced and underdeveloped.

However, the Demarcation Boards proposals to include a significant portion of land under tribal authority into the metro were rejected by the IFP. The IFP was aware that the ANC support in the metro area was significant and conversely, its own support was rooted in peri-urban and rural areas. The incorporation of large portions of tribal land into the metropolitan area represented to the IFP a potential loss of control and a substantial gain to the ANC (Cameroon 1999:212). Consequently, local government election in KZN was delayed until March 1996 and the matter referred to the Electoral Court for a decision (Jeffery 1997:546).

During the Electoral Court proceedings, the two contesting political parties in a dramatic turn made a final attempt to resolve the matter. The outcome of the discussions led to a compromise, with the substructure boundaries being reworked with formal proclamation of the newly acquired areas being made on the 4 March 1996.

5   Competing Service Delivery Roles

Competing interest in service delivery has been a source of constant political conflict between the state and traditional leaders, which gained increased momentum just before the second local government elections held on 5 December 2000. The most controversial issue that escalated into conflict was the proposed amendment to the Municipal Structures Act (1998) (*Daily News*, November 28, 2000), which aimed to restrict the role and functions of traditional leaders in local government to that of customary law and community matters. This amendment provoked strong opposition from traditional leaders who felt that their functions were being defined no different to that in the apartheid-era (*The Mercury* November 16, 2000).

The Municipal Structures Bill (1998) made no provision for traditional leaders to participate in municipal councils resulting from the demarcation of boundaries that included areas formerly under traditional authority. The Bill sought to give traditional leaders 20% representation on municipal councils, reducing them to a minority (*The Mercury* 22/11/2000). Traditional leaders perceived that the installation of municipal authorities will supersede traditional leadership roles and instead of people seeing them

as agents of development, they will be viewed as part of the clientele system. Basically, traditional leaders could not expect municipal authorities to function and render services in the areas under their jurisdiction without usurping their authority (*Daily News* December 20, 2000).

Another dimension adding to the dilemma of traditional leaders was the controversial issue of service delivery in the newly demarcated areas. Municipal authorities will be expected to exercise control over pieces of land, which owes allegiance to traditional authority systems. This in effect will mean that traditional leaders will be excluded from participating meaningfully in the governance of these areas under their jurisdiction and in the future will have to show political subservience to elected councilors on service delivery matters (*Daily News* October 31, 2000). A direct outcome of this political vulnerability resulted in traditional leaders threatening to boycott the second local government elections since democracy.

The protest of traditional leaders on the Municipal Structures Bill (1998) was eventually heard by the state in the interest of political stability both in the city and the province. Compared to other provinces, KZN had a peculiar political landscape. The Provincial Legislature was dominated by the Inkatha Freedom Party (IFP) under the political leadership of *Inkosi* Dr Buthelezi, who himself is a traditional leader with much influence in the rural areas. On the other hand, the City of Durban is predominantly African National Congress (ANC) in character. Further, the *amakhosi* in KZN are known to have the largest constituency compared to their counterparts in the other five provinces who also adhere to traditional systems of governance.

On the 28 November 2000, the now deposed Deputy President Jacob Zuma together with a special cabinet committee on traditional leaders met with representatives of traditional leaders to resolve their grievance. The state committed itself to define the powers and roles of traditional leaders arising out of the newly demarcated boundaries. A joint committee was established with representatives of the state and traditional leaders. Further, a coalition of traditional leaders was formed comprising the national and provincial houses of traditional leaders, the Congress of Traditional Leaders of South Africa and the Royal Bafokeng nation (*Daily News* 12/12/2000).

On the reassurance of the state to address the concerns of traditional leaders and to make constitutional changes to accommodate their roles and functions, local government elections eventually went of on a good start on

the 5 December 2000. Although events leading to the conflict between the *amakhosi* and the State on their role in the delivery of services in the newly incorporated rural areas in the DMR, suggest that the former is a significant political actor, on the contrary, this assumption has proven to be invalid. Looking at the 2000 municipal polls, the ANC received 95 out of the 200 council seats and the IFP only 35. However, when one restricts the analysis to the wards, of the 100 councillor's who were elected by name by the people to represent the ward they belong to, one can see the relative importance of the ANC (61 seats out of 100) is stronger than suggested by the global results.

2000 Municipal Election Results in the DMR:
Number of councillors per party.

	AC DP	AI PP	ANC	DA	EC OP/ EA CE	IFP	IN DE PE ND	MF	NU CO	PAC	Total
Ward specific councillors	0	0	61	29	0	7	1	2	0	0	100
List specific councillors	2	1	34	24	1	28	0	8	1	1	100
Total	2	1	95	53	1	35	1	10	1	1	200

More specifically, when one examines the poll results for the traditional areas incorporated into the DMR, the result is more revealing. In the 16 of the 18 wards in the traditional area, in terms of average votes per ward, there was a two third majority vote for the ANC. This result is intriguing as these areas were supposed to be IFP strongholds and could not be included in the metropolitan area for this reason in 1995/96 (Khan & Lootvoet 2001:170).

The 2000 election results in the tribal authority area begs the provocative question as to whether traditional leaders have lost the battle in exercising their hegemony in what was once their political territory? Whilst it may be premature to make such an analysis, in the face of emerging new mixes in leadership in the traditional areas of the DMR, what is significant is

the dramatic change in political affiliation after the December 2000 elections with a two third majority support for the ANC compared to the IFP. This change in the political landscape of the traditional areas is more likely to marginalize traditional leaders further due to significant loss in political power. Strategically, it is politically expedient for traditional leaders, if they have to safeguard their hegemony, to be seen working in the interest of people through the dominant leadership structure in their area. In the absence of this co-operative relationship, traditional leader risk being far removed from development initiatives promoted by local government.

6 Testing out the Maturity of Political Relationship between Traditional Leaders and the State

After two years of investigation on the institutional frameworks necessary to accommodate the constitutional prerogative of traditional leaders to play a role in governance and service delivery matters, the Provincial and Local Governance Portfolio Committee finally recommended on the 28 October 2003 that the Traditional Leadership and Governance Framework Draft Bill (2003) be adopted by parliament. This Bill envisaged serving as an initial phase to accommodate the role of traditional leaders in matters of governance.

The process culminated through a wide range of consultative processes with different stakeholders. Not all stakeholders were in agreement with all elements of the draft bill. Traditional leaders in the public hearings argued that the Bill should not proceed into law and that the constitution should be first amended to give traditional authorities the same powers and functions as local government. There were also arguments in favor of the Bill and its aims and objectives. It was argued that in general terms the purpose of the Bill was to deal with the role and functions of traditional leadership in governance.

Currently the passing of the Bill has reached a state of deadlock since technical problems precluded it from parliamentary ratification. The detractors of the process allege that the Communal Land Administration Bill, the Property Rates Bill and the Traditional Leaderships and Governance Framework Bill do not complement each other since the roles are not yet clearly defined. Further the fragmented nature of management of this

institution has brought about greater complexities to bear in the administration of this system. Yet once again the corridors of modern politics are haunted by new challenges in determining the specific role and functions of traditional leadership in different areas, such as customary justice, land administration and welfare. Traditional leaders stressed that the Bill refers only to their 'functions', not 'powers'. Objections were received on finding a role for traditional leaders by allowing traditional councils to serve on land administration committees. The proponents of the Bill believe that it is forward looking and that it supports a role for traditional leadership, not just in the local government sphere, but also in all three spheres of government. This presented a compelling reason why traditional leaders should work within a legislative framework.

In a more placating note, a call for the way forward was made. It called for stakeholders to receive the Bill with an assurance that it will be reviewed over time to take account of the changes taking place as a result of transformation in the institution of traditional leadership. In dispelling the notion that it is not the end of the tunnel for traditional leaders as significant actors in governance and service delivery issues, the portfolio committee urged all stakeholders to appreciate that the processing of the Bill represents a phase in the,

> ... on-going process of defining the role of traditional leaders in our new system of democratic governance .... All stakeholders should be prepared to compromise in this phase. This does not mean that they cannot pursue their outstanding demands in future' (Provincial and Local Governance Portfolio Committee. Traditional Leadership and Governance Framework Bill: Finalisation The Parliamentary Monitoring Group 28 October 2003:3).

While the state tinkers on formulating appropriate statutes to regulate the role and function of traditional leaders, Durban in particular has taken decisive steps to accommodate traditional leaders onto its council, long before the Traditional Leaders and Governance Bill was approved by parliament. Currently, a traditional leadership forum has been established to consult on the development priorities in the tribal areas. Ironically, an ANC councillor acts as a go between the leaders, and the metropolitan council

chairs the forum. Traditional leaders already enjoy a monthly allowance of R3 500 per month from the council to cover their administrative costs but as yet do not enjoy formal representation except through the chair of the forum. From this turn of events it appears that traditional leaders are being inducted into the boardroom politics of the council. For the moment, the issue of traditional leaders is no longer being tested out in the rough terrain of the urban hinterland but in the boardrooms of the metropolitan council. At least for now these boardroom novices are being schooled by ANC cadres for the politics that is yet to unfold in the corridors of the city hall.

Although it may appear that traditional leaders have been co-opted into Durban's glittery boardroom politics in the spirit of good governance and service delivery through a forum, it is questionable as to whether this participatory structure is representative of all traditional leaders. In an interview with the chair of the traditional leader's forum that is an ANC councillor, scant respect was accorded for the justification of such an institution existing in the new democracy. The sentiments of this 'city father' are well captured in the following quotation from an interview:

> ... traditional leaders should not think that they enjoy special privilege due to their status .... Similarly Indians, Whites and Coloureds should be given a similar privilege due to their religious and customary practices. Their 'claim to be special citizens in the country' was looked upon scornfully and those who stay out of the forum were branded the 'mischievious' ones.

With such strong perceptions, the prospect for dissent on governance and service delivery issues is likely to embitter progress made towards co-operative governance.

However, although on the surface it would appear that commendable progress was made towards co-operative governance between traditional leaders and the metropolitan council, the maturity of relationship was tested out once again as the nations geared itself for the third local government elections in March 2006. The KZN agenda for a constitution making process was plunged into controversy during April 2005, once again on the role of traditional leaders and the Zulu monarch in a future dispensation. Some 5000 traditional leaders and their followers protested on the streets of Durban

denouncing the marginalisation of traditional authority in the proposed provincial constitution resulting in it being passed by a one third ANC majority, as the IFP walked out of the process. Whilst one is inclined to believe that the relationship between traditional leaders and modern forms of governance has begun to mature one begins to doubt such an assertion when traditional-weapon clad marchers show open resentment towards democratically elected councillors having more power compared to them. Statements such as *'the indunas and kings are our tradition'* (*Mail and Guardian* 8 April 2005) is a strong indication of the volatility besieging the institution of traditional leadership which is unleashed at politically strategic junctures in order to preserve its traditional hegemony.

Conclusion

Social and political polarisation are not momentary historical abortions, they are affected by a set of material circumstances, activities, struggles and processes. The mission and vision of South Africa's ruling party (ANC) dictated the re-demarcation exercise by the government were the material, political and economic realities of the past had to be redressed in the new democratic dispensation.

One of the creations of this re-demarcation exercise is the eThekwini municipality, which includes urban, peri-urban as well as rural areas, many of which have been historically administered and ruled by traditional leaders. The existing polarisation between traditional authorities and elected representatives is concentrated on a number of issues, one of the most important being service delivery, especially to semi rural and rural communities.

The White Paper on Local Government (1998) and subsequent legislation were instrumental in sharpening the contradictions between the state and traditional leaders as they widened basic ideological rifts existing between equally important institutions, which on many occasions are on an adversarial (if not openly polemical) relationship. These processes of polarisation are galvanised by existing and historically rooted political rivalry between the ANC and the IFP in the Province of KwaZulu-Natal, despite the fact that the eThekwini Municipality was easily won by the country's ruling party.

It has been assumed that the state's alienation of the traditional leaders has been seen, perceived or assumed as a deliberate attack on the poor communities served historically by traditional leaders and this could have detrimental results, given the lack of capacity of local municipalities.

Although eThekwini is generally accepted as a financially vibrant and administratively capable entity, widespread protests mainly of informal settlement dwellers, indicates that there are strong possibilities that rural communities disillusioned with the lack of service delivery could be next. This is particularly true, as the article has shown that the incorporation of peri-urban and rural areas into the eThekwini municipality has created a number of highly contentious issues associated with the demarcation process and beyond.

What Bills such as the Communal Land Administration Bill and the Traditional Leadership Governance Bill have done was to alienate traditional authorities further, instead of creating channels and mechanisms that could lead to a 'dual service delivery system', especially in the semi rural and rural communities.

The streamlining of the processes of service delivery to semi rural and rural populations is inextricably connected to a synergic and cooperative plan between all-political role players and stakeholders in the municipality. Nonetheless, the sidelining of traditional leaders can only offer short-term solutions to the burning issue of effective service delivery.

Without creating the necessary channels of communication, cooperation and synergy between traditional and democratically elected leaders, such a reality is a major challenge for the state. Political and social polarisation is today's realities, but tomorrow's dangers.

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