



HAL
open science

Tribal Authority and Service Delivery in the Durban Uni-City

Sultan Khan, Benoît Lootvoet

► **To cite this version:**

Sultan Khan, Benoît Lootvoet. Tribal Authority and Service Delivery in the Durban Uni-City. Rencontres scientifiques franco-Sud-Africaines de l'innovation territoriale, Jan 2002, Grenoble - Avignon, France. pp.20. halshs-00749461

HAL Id: halshs-00749461

<https://shs.hal.science/halshs-00749461>

Submitted on 7 Nov 2012

HAL is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

Colloque Recompositions territoriales, confronter et innover, Territorial restructurings, comparisons and innovations. Proceedings of the French-South African meeting on territorial innovation. Actes des Rencontres franco-sud-africaines de l'innovation territoriale janvier 2002

Partie II Villes secondaires, confins et métropoles : l'innovation au cœur ou à la périphérie ?

Sultan KHAN (University of Durban-Westville)

& Benoit LOOTVOET (IRD) :

Tribal Authority and Service Delivery in the Durban Uni-City

Tribal Authority and Service Delivery in the Durban Uni-City¹.

Sultan Khan, Dr. Lecturer University of Durban-Westville

skhan@pixie.udw.ac.za

Benoit Lootvoet, Chargé de Recherche, IRD

lootvoet@paris.ird.fr

Abstract

The institution of traditional leaders during the apartheid era was strongly aligned to different political forces and was manipulated to serve the divide and rule strategy of the then Afrikaner Nationalist government. However, upon democracy in 1994 this institution began to assert its authority in matters of governance and service delivery. The volatility of this institution manifested itself prominently in the Province of KwaZulu-Natal and more particularly in the Metropolitan Area of Durban in the context of the two demarcation processes held in 1995 and 1998. Although the demarcation processes subtly served as catalysts to raise the ire of traditional leaders, more importantly their need to be significant actors in matters of service delivery at a local level attracted much attention from the national government. Despite this, the role of traditional leaders in service delivery is far from being resolved. In the absence of any policy on their role in service delivery, traditional leaders adopt new interlocutory strategies with elected councillors in the Metropolitan Area of Durban in order to exercise their hegemony and avoid the risk of being totally marginalised.

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 with the national and provincial governments. The idea of an autonomous local government with full administrative and financial management capacities impregnated the fundamental texts of the ANC, for example the Freedom Charter and the Reconstruction and Development Programme (RDP)². The latter being the project for South African social renewal that Nelson Mandela put forward as the government’s policy framework upon his accession to the Presidency in 1994. A logical outcome of this policy framework, was the high-priority political objective of community empowerment, which was finally enshrined in the Constitution.

¹ Communication également présentée au colloque « Gouvernance et Gouvernement urbain en Afrique Australe » de Lusaka en Novembre 2001 (IFAS-IRD) et à paraître dans les actes.

² The Freedom Charter is a set of original political mandates formulated in the early 1950s by the ANC for the liberation of the country. Upon coming into power in the early 1990s, the RDP translated into action political objectives based on the Freedom Charter for the democratisation of South Africa.

The new majority, comprising the ANC, aimed to equip the country with the institutional means in order to completely dismantle the apartheid system and also to obliterate all the general principles of discrimination, segregation, inequality and injustice, which characterised the former regime. One of the means of ensuring democracy was the better redistribution of wealth and economic efficiency through the establishment of local jurisdictional entities governed by authorities with real competencies and means of action.

It was at the local level that public authorities, communities, economic actors and citizens in general were expected to work together in the most harmonious and efficient manner so that the needs of the population, services and infrastructure could be identified and implemented. 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 to participate in development issues at a local government level, in many provinces and especially in KwaZulu-Natal, the transformation of local government is facing a challenge in the form of traditional authorities. This overlap of modern systems and traditional forms of governance was a source conflict until recently in KwaZulu-Natal, in which traditional leaders questioned the exact roles and responsibilities of the State, including those relative to service delivery.

In 2000 the metropolitan area of Durban, was dramatically extended by the inclusion of rural and semi-rural areas. The local government’s main prerogative is to implement local development policies, especially through service delivery, and consequently it must also address the backlogs of these new metropolitan areas. As these areas consist of 16 tribal areas, it is difficult to ignore the importance of traditional leaders. The very fact that tribal areas have been included within the metropolitan area is indicative of encounters between urban and rural forms of governance. It is in this context that the paper raises the following questions:

- to what extent can traditional leaders play a role in service delivery, if not as policy makers, but at least as lobbyists and, how does this interfere with their traditional functions; and
- in terms of re-prioritising service delivery, what are the consequences of including rural and semi-rural areas in the metropolitan area.

The paper commences with a brief overview of traditional leaders and local governance in apartheid South Africa. This is followed by a discussion of the transformation of this system and its structure, as it exists today. Finally, the issue of governance and service delivery in the new Durban metropolitan is presented, with particular focus on the question as to whether traditional leaders have a particular role to play in the context of a rapidly changing local government environment.

2) Brief Overview of Traditional Leaders and Local Governance in apartheid South Africa

Indigenous forms of governance and its integration into modern systems of government have thus far proved to be difficult and problematic in African countries, and in particular, in South Africa. Although most constitutions of African countries make reference to indigenous systems, but in practice, governments have given more a symbolic rather than a functional role, and often have

marginalized these institutions. More importantly, these institutions according to some analysts are inconsistent with democratic principles of governance, despite their existence long before colonial rule (Ismail et al, 1997:117)

Like most of the African continent, indigenous local government in South Africa has been the center of political marginalisation before and after democracy. For example, as early as 1847 the British colonial administration in Natal viewed the tribe as a basic unit to maintain and the tribal authorities as agents 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". Chiefs³ were accorded judicial functions under the control of magistrates, although the extent of their jurisdiction was not specified (Zungu, 1997:165).

However, the Black Administration Act of 1927 (section 5(1)a) further attempted to co-opt traditional leaders into the colonial system of government. It empowered the Governor General or the State President to create new tribes, to divide existing tribes and to demarcate the area occupied by the members of the tribe (Zungu, 1997:165-166).

Upon coming to power, the Nationalist Party further attempted to regulate the powers and jurisdiction of traditional leaders. The Black Authorities Act (No.68 of 1951) ensured that traditional leaders were dominant in tribal, regional and territorial levels. This opened the way for the apartheid regime to consolidate "reserves", which for some had become "self-governing", whilst others had become "independent" homelands (Ntsebeza, 2000:288

Under the homeland system during apartheid, chieftainship was no longer a strictly hereditary right. The appointment of all new chiefs had to be ratified by the homeland government. Traditional principles for the appointment of tribal councillors were ignored, with only some councillors actually being elected and the chief appointing the vast majority himself. As a result, tribal authorities lacked the subtle control measures that moderated the power of the chiefs in the pre-colonial period. Under apartheid, the constitution of the homelands allocated 50% or more of the seats to chiefs as *ex officio* members, ensuring that the balance of power remained in the chief's favour (Tapscott, 1995:294).

An important instrument of power for traditional authority was the control and allocation of land. As a consequence of the apartheid laws and influx control measures, the rural homeland was the only place in which the majority of Africans could legitimately claim a piece of land. Although the land was not substantial, it provided a home for an individual's family. The chiefs had the power to decide on issues such as land ownership as well the power to remove individuals from their land (Ntsebeza, 2000:289; Tapscott, 1997:294-296).

The role of the traditional leader was relegated during apartheid to being a representative for the relevant state department without much responsibility for decisions on service delivery. In effect, traditional authorities were never empowered to deal with development issues and as such, they searched for alternative methods of recognition through party political activities, especially

³ There is some sensitivity attached to the use of the term “Chief” or “Chieftainship” since these terms are associated with the colonial practice of destroying the original social organisation of pre-colonial Africa and replacing it with leadership structures alien to their culture.

within the IFP. This is evidenced in KwaZulu-Natal where most of the traditional leaders became members of the KwaZulu Legislative Assembly that was created under the apartheid regime. Secondly, it ensured them a parliamentary salary, compared to the meagre chiefly stipends they had before (McIntosh et al, 1996:341).

Basically, the institution of traditional leaders during the colonial and apartheid legacy has been largely under-developed, under-resourced and relegated to the periphery of relatively affluent white South Africa. Through a complex set of legislation, the institution was transformed into a tool through which the “cultural differences” of the black people were emphasised and used as a basis to balkanise the country. These areas came to be regarded as reservoirs of cheap labour for urban centres and mining conglomerates. It must be noted that despite these coercive methods of co-opting the institution of traditional leadership, there were some who not only rejected co-optation but also took active steps to oppose it (Discussion Document towards a White Paper on Traditional Leadership and Institutions, 2000:4).

In the section that follows, the response of the post apartheid government to this contested institution is examined.

3) Transforming traditional leadership: What is at stake in the new institutions?

Institutional Framework for transformation

Currently South Africa has about 800 ruling chiefs supported by 1 000 headmen. Their authority expands over 18 million people or approximately 40% of the population who are largely rural (*Figure 1*). The Government of National Unity (GNU) upon coming to power in 1994 recognised the importance of this institution in Section 12 of the Constitution (Act 108 of 1996).

Although the Constitution recognises the importance of traditional leaders, it falls short of outlining 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 in that it suggests that it rests upon the central government to interpret the exact roles and responsibilities of traditional leaders.

Surprisingly, the White Paper on Local Government (1998)⁴ did not renew any approach of the traditional leadership. In fact the White Paper simply 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, definitions contained in the White Paper on Local Government are the only ones to go by. Broadly speaking, the White Paper outlines the functions (sometimes very vague) of traditional leaders as follows:

⁴ Within the framework of the Constitution, the White Paper establishes the basis for a new developmental local government that is committed to working with citizens, groups and communities.

- 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* (meetings);
- 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 general spokespersons for 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 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 not have direct decision-making powers on development issues, except in the event of their roles overlapping with municipal functions. In instances where 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.

Institutionalising Traditional Authority – Framework for co-operative governance

Although much ambiguity exists about 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. It must be noted that 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 legislation passed by the provincial legislatures and in close consultation with traditional leaders. This combination 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 has strongly indicated its need to the government to become a full-time body, and to play a more significant role in policy formulation and in the finalisation of legislation. Legislation is being drafted to provide for the chairperson to be appointed on a full-time basis.

The Department of Provincial and Local Government is responsible for the administration of traditional affairs at the national level. 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.

Specifically concerning the appointment of traditional leaders, 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. Overall, KwaZulu-Natal represents 40% of the total membership.

Long before the legacies of colonialism and apartheid, traditional leaders enjoyed a position of unique privilege and authority in their community. They served as repositories of wealth and dispensers of gifts. These privileges were curtailed drastically by colonialism and apartheid. In the era of democratic governance 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, regardless of 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 last two, only allowances are paid. A proposal has been made by the Houses to make the appointments of traditional leaders in the Provincial and National Houses permanent and remunerated as full time members. The remuneration of traditional leaders poses serious questions as to the nature of the relationship with and accountability to the government

4. Demarcation of the metropolitan area and the new political deal

A direct consequence of the local government democratisation process was the demarcation of boundaries. Boundary reforms are known to have the side effects of political and territorial rivalries. Looking at some international examples such as the USA, Nigeria, Britain, and Western Europe when cities have tried to expand into suburban or rural areas they have sometimes encountered certain opposition. Some of the major reasons for resistance include concern about the loss of local autonomy, increased distance between voter and local government and concerns about higher taxes.

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. Boundaries influence citizen’s access to services and bring into question the financial consequences of such actions (Cameron, 1999:4).

In the South African context, the decision to demarcate new boundaries as a pre-requisite to the implementation of the new form of local government was inspired by the fact that many boundaries irrationally divided settlements based on the previous legacy of apartheid. In effect, this had disempowered municipalities intending to plan and provide for the needs of communities within the integrated social and economic area of the settlement (White Paper on Local Government, 1998:98).

Based on the above principles, demarcation boards were established in the first half of 1994. In KwaZulu-Natal the Demarcation Board became operational in September 1994. The provincial Demarcation Board had until 31 July 1995 to make its recommendations to the MEC (Minister of Executive Council) in order to comply with election regulations. Due to the volatile political 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 took place with every tribal authority (Pillay, 1999:207).

Political conflict over the proposed inclusion of peri-urban and rural areas in the DMR

In 1995, 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*⁵ and the IFP in KwaZulu-Natal. At the substructure level, the two competing political parties (ANC and IFP) accused each other of manipulation of the city’s boundary (which was historically segregated by apartheid) in order to protect their own constituency.

In July 1995 the Demarcation Board for Durban 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 example the Indian areas of Chatsworth, Shallcross, Reservoir Hills and the mainly white areas of Westville and Queensburgh were to form one substructure along with the mainly 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, Peter Miller who charged that historically disadvantaged areas stood no chance of standing on their own financial resources and that the proposals made by the Board were 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

⁵ The term *amakhosi* is a Zulu word referring to traditional leadership in general. *Inkosi* refers to one particular traditional leader.

poverty, but also by nuances of party political interests. Under the ten-substructure proposal, the ANC stood a major chance of winning at least some of the substructures. However, after extensive negotiations, it was agreed to adopt the MEC’s (who himself is an IFP member) proposal of six substructures in the metro on the grounds of economic viability (Polunic, 1999:77-78).

The outer boundaries of the city were a serious point of political contest between the IFP and the ANC since they 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 and its communal land tenure arrangements led to these areas being very poorly serviced.

However, the Demarcation Board’s proposals to include a significant portion of land under tribal authority in the metro were rejected by the IFP. The IFP was aware that 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. Consequently, local government elections in KwaZulu -Natal were delayed until March 1996 and the matter referred to the Electoral Court for a decision.

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

It is important to note that despite the political contest for the inner city, the demarcation process confined itself ultimately to the official objective of the exercise to create sustainable municipalities. Despite this, the compromises reached by the ANC and the IFP were also politically motivated. This was exacerbated by the fact that the ANC’s political support base is more prominent in the city compared to the rural areas of KwaZulu-Natal, which are significantly dominated by the IFP.

In addition, it is worth making reference to the June 1996 local government election results in KwaZulu-Natal. As anticipated, the ANC won an overwhelming victory in the city. According to Polunic (1991:110) the ANC’s victory may be partially attributed to the Special Electoral Court’s decision to exclude traditional areas. Significantly, in the iLembe regional council (the rural local authority surrounding the Durban metropolitan area, which was later included in the Uni-City boundary) the ANC won 32% of the vote. One of the major reasons cited by the ANC for its poor election results in the rural areas was the strong presence of the *amakhosi* who prevented it from campaigning in these areas. Interestingly, 20% of the rural councillors comprise of *amakhosi* with a very strong IFP alliance (Polunic, 1999:114).

Nevertheless the 1995/1996-demarcation process was not the only one that South Africa has experienced since the regime change. The establishment of a modern system of local government followed a three-phased process:

1. the pre-interim phase which began on 2 February 1994, with the promulgation of the Local Government Transition Act (LGTA) and which was completed with the first local elections in November 1994 or May/June 1996, according to the Provinces in question;
2. the interim phase, initially foreseen for a duration of 3-5 years, which began at the time of the first local elections and ended when the practical implementation of the new 1996 Constitution at the local level was possible; that is to say, from the local elections which were held in December 2000; and
3. the final phase, based exclusively on the new 1996 Constitution, from December 2000.

Bearing this in mind, the Municipal Demarcation Board⁶ was required to take the following into consideration when determining boundaries at the end of the interim phase:

- 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).

Governing through Service Delivery

The interim phase was, in a certain manner, a municipality viability test-period. Considering that many municipalities were not economically and financially viable, the national government decided to redraw the municipality map and a new demarcation process was launched in 2000. The 883 South-African municipalities settled for in the transition phase were reduced to 284. This re-demarcation process was also the pretext of reinforcing the metropolises. As part of extending their areas, the concept of “Uni-City,” which substitutes for the former metropolitan divisions into districts and centralises the power at a unique council, was implemented.

As a result of the demarcation process that preceded the 2000 municipal elections, the surface (2297 km²) of Durban Metropolitan Region (DMR), is 68% larger than that of the previous Durban Metropolitan Area (DMA), (1366 km²). This expansion of the metropolitan territory consists mainly of rural and semi-rural areas. One of the noticeable characteristics is that most of them are tribal land. Sixteen traditional authorities exert customary rights on these areas. Therefore we have to acknowledge that what was a “reason for war” a few years ago i.e. the inclusion of rural areas within the metropolitan area, was made possible in 2000. All of this certainly reveals a radical shift in the strategies of the stakeholders be they political parties or

⁶ In terms of Section 155(3)(b) of the Constitution an independent Municipal Demarcation Board will have to be established during 1998 with the purpose of establishing an area that will co-ordinate between municipal, provincial and national functions, integrated social and economic planning, development and an inclusive tax base.

traditional leaders. Obviously, as rapid as the shift was, it was characterised by political conflicts that needed to be defused.

Central to this conflict is the proposed amendment to the Municipal Structures Act (1998), which aimed to restrict the role and functions of traditional leaders in local government to customary law and community matters. This amendment provoked strong opposition from traditional leaders who felt that their functions were being defined in ways similar to those prevalent in the apartheid-era.

The major point of concern for traditional leaders was that the Municipal Structures Bill (1998) made no provision for their participation in municipal councils resulting from the demarcation of boundaries, which included areas formerly under traditional authority. The Bill offered representation, as observers in the council of the municipality, to 20% (i.e. 3 or 4 out of the 16 in Durban) of the traditional leaders who have their land within a specific municipal area. Traditional leaders perceive that the installation of municipal authorities will supersede traditional leadership roles and instead of people seeing traditional leaders as actors of development, they will be seen as under the tutelage of the local government. Basically, traditional leaders can expect a loss of power and authority when new municipal authorities function and render services under their jurisdictions,

Risking the credibility to govern democratically

The conflict between traditional leaders and the State on the newly demarcated boundaries evoked much concern about the future political stability of local government (in its second term of office) due to widespread threats from the *amakhosi* to call for a boycott of the local government elections.

The protest of traditional leaders on the Municipal Structures Bill (1998) did not go unheard by the State. The State did not want the second democratic local government elections to be at risk of being derailed, especially in KwaZulu-Natal, where the *amakhosi* are still very influential. Compared to the other provinces, KwaZulu-Natal has a peculiar political landscape. The Provincial Legislature is 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 is predominantly African National Congress (ANC) dominated.

The *amakhosi* in KwaZulu-Natal are known to have a larger constituency than any of their counterparts in the other five provinces. To illustrate, in KwaZulu-Natal the *amakhosi* comprise a King, 277 chiefs, 8 deputy chiefs, 10 000 headmen and have jurisdiction over 23 regional authorities and 4 community authorities. Furthermore, as noted, the KwaZulu-Natal Provincial House of Traditional Leaders has a larger number of than any of the other provinces (40% of the national total). Given the fact that most traditional leaders in KwaZulu-Natal align themselves politically to the IFP, it is no wonder that traditional leaders in this province enjoy significant

power. Further, regarding the KwaZulu-Natal Ingonyama Trust Amendment Act (1997)⁷, the King in KwaZulu-Natal is vested with powers to administer and manage land falling under the jurisdiction of tribal authority for the benefit, material welfare and social well-being of the members of the tribes and communities as set out in the KwaZulu Amakhosi and Iziphakanyiswa Act (1990) (KwaZulu-Natal Ingonyama Trust Amendment Act, 1997, Section 2(b)). This ownership of land by traditional leaders has always been an important source of power.

As stated earlier, the voices of the *amakhosi* did not go unheard by the State. On the 28 November 2000, the Deputy President, Jacob Zuma, together with a special cabinet committee on traditional leaders met with representatives of traditional leaders to resolve their grievances. 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. In addition, a coalition of traditional leaders was formed comprising of 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).

Who governs? The outcome of the electoral result

Based on the reassurance of the State to address the concerns of traditional leaders and its commitment to make constitutional changes to accommodate their roles and functions, local government elections finally went off well on the 5 December 2000. Despite this positive outcome, the issue of traditional leaders is far from resolved. Even now, just after the December local government elections, tensions continue to fester themselves between the State and traditional leaders on the pre-election promises to recognise the role of traditional leaders in development issues that refer, amongst other things, to service delivery. On a more positive note, the State has prepared a draft Discussion Document towards a White Paper on Traditional Leaders, which is receiving the attention of different stakeholders.

The conflict between the *amakhosi* and the State on their role was often presented as a political rivalry between the IFP (supported by the *amakhosi*) and the ANC. Nevertheless, the results of the polls do not reflect this.

Looking at the 2000 municipal polls, it appears that 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 councillors’ who were elected by name by the people to represent the ward they belong to, one can see that the relative importance of the ANC (61 seats out of 100) is stronger than suggested by the global results.

⁷ In terms of this Act 56% of land from the former KwaZulu Homeland government is held in trust by the King. The Act requires that this land be held in Trust on behalf of the traditional authority and the King of the Zulu nation is the primary guardian.

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

| | ACDP | AIPP | ANC | DA | ECOP EACE | IFP | INDE PEND | MF | NUCO | 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 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.

5. Governance and service delivery in the new Durban Metropolitan Region: Any roles for traditional authorities?

Service delivery profile of traditional areas in the DMR

As a result of the demarcation process that preceded the 2000 municipal elections, the surface of Durban Metropolitan Region (DMR), 2297 km², is 68% larger than that of the previous Durban Metropolitan Area (DMA), 1366 km². This expansion of the metropolitan territory mainly consists of rural and semi rural areas. One of their most noticeable characteristics is that most of the land is tribal. Sixteen traditional authorities exert customary rights on these areas.

In terms of governance, in addition to the fact that the inclusion of such areas has introduced new interlocutors for the local government, an element of complication must be pointed out. The demarcation of the 18 wards (the constituencies of the municipal councillor’s) covering the 16 traditional authorities’ areas does not match with the limits of these areas. For example, some wards sprawl into several tribal areas, which means that one councillor has to deal with several chiefs, and, conversely, some large tribal areas cover, at least partly, several wards.

To draw the profile of these tribal areas, we worked on the “gross” tables that Urban Strategy, a planning service of the municipal administration, is busy compiling in order to nurture a GIS on the Uni-City area that has been divided into 406 planning units. The data used by Urban Strategy comes from various sources: the national census 1996, the quality of life survey 1999, various

sectorial surveys conducted in 2000 at the local level in order to prepare for the implementation of the Uni-city, etc.

According to our estimations, the metropolitan tribal areas correspond approximately to 62 planning units (PUs) covering a surface of 870 km², which is 93% of the surface that was added to the metropolitan area. The population of the 60 PUs (out of 62) for which we have demographic data, is 410 618.

Consequently, the “non-tribal areas” of the DMR represent 344 PUs spreading on 1427 km². The population: 2 342 492 inhabitants, has been evaluated for 319 out of the 344 PUs.

Although it would have certainly been more relevant to distinguish between several categories of areas (former African townships, squatter camps, etc.) we will only be comparing the characteristics of the tribal areas and those of the rest of the metropolis. Considering the database to manipulate, a more refined exercise of comparison would have been too much time consuming.

Durban is sometimes presented as an “Indian city” because there is a concentration of the majority of the South-African people who originate from India. However there are no Indians in the metropolitan tribal areas. Indians represent a quarter of the population of the rest of the metropolitan region (*Figure 2*). Not surprisingly, Black people exclusively, inhabit the tribal areas. Their demographic characteristics are quite specific. The average household size is 5.4 persons against 4.1 for the rest of the metropolis and the people are significantly younger than the inhabitants living in the other areas. In the tribal areas, 47% of the population are less than 10 years old and only 9.8% are 50 or more. The percentages are respectively 36.5% and 13.5% for the former DMA (*Figure 3*).

This age structure most likely determines the employment conditions within the area. Only 1 out of 6 people settled in the tribal areas is employed, that is a rate that is twice inferior to the one of the rest of the metropolitan area (*Figure 4*). Obviously, that explains the particularly low level of household income in those areas. If one takes the households for which the income is known, one notes a tremendous percentage (21.8%) of the households without any declared resources. Furthermore, only 1 household out of 4 earns more than 18 000 Rands per year. The figures are respectively 11.9% and 52.5% for the rest of the metropolis (*Figure 5*). The level of poverty of the tribal areas poses the problem of the public services affordability. On the hypothesis that the income data is accurate, it is difficult to imagine that these people living on the periphery of the city can afford to pay for electricity, water or telephones.

With regard to the investments in service delivery that are at stake, we have calculated that the people who live in the traditional areas are, on an average, 30 km (STDEV = 9 km) far from the central business district (CBD), 8 km (STDEV = 5 km) distant from the nearest transport node and 12 km (STDEV = 5 km) from a commercial centre.

Within the metropolitan tribal areas, 40% of the land is considered as “undeveloped” (*Figure 6*). However, if one considers certain topographic constraints: steep slopes, rocky and unfertile soils, etc., one might wonder whether there would have been any possibility of development of this land. It is noticeable that agricultural activities spread across a small 16 % of the land, that is less

than half of the surface occupied by the “peri-urban settlements” (35%). The proportion of the area that was classified as properly urban is small: 5%, of which 2.1% is formal and 2.9% is informal.

It is not surprising to find that 36% of the tribal area habitat consists of traditional dwellings (3% in the other areas of the Durban metropolitan). Nevertheless, informal dwelling is less developed than elsewhere (15% against 22%), probably because of the control of the land use by the traditional leaders. One can also note that the houses built on properly demarcated plots in the tribal areas represent more than 30% of the dwellings, which is a proportion that is not that different to the one in the DMA: 40% (*Figure 7*).

Accessibility to basic services such as electricity, water, refuse removal or sanitation is still substantially lower in the tribal areas than in the other areas of Durban (*Figure 8*). Some improvement between 1996 and 2001 is noted, especially concerning electricity. At present, more than the two thirds of the households potentially have access to the electricity grid (84% for people living in the other metropolitan areas). Nevertheless, the backlogs the local government has to address are still huge. Just over one household in 5 has access to running water in the tribal areas⁸. By contrast, the proportion was up to two thirds in the former DMA in 1996.

The analysis of the data that we have compiled concerning the level of “community services” reveals some unexpected results (*Figure 9*). If we hypothesise that the database we have worked with is complete and accurate, the number of clinics (0.66) and of schools (6.26) per 10 000 inhabitants is higher in the tribal areas than in the rest of the DMR (respectively 0.48 and 3.20). Obviously, one might object that a comparison on the basis of the number of classrooms (instead of schools) would have been more relevant. However the gap is possibly due to the fact that the densely populated squatter camps, or former black townships, would be less equipped with such infrastructure than settlements within the rural and semi-rural areas of the metropolis. On the other hand, there are no fire stations, police stations or post offices within the tribal areas.

Competing interests in service delivery –What roles for traditional leaders!

Contrary to the perception that traditional leaders are opposed to change and steeped in tradition, their ability to adapt to (or to use according to their own interests) modern systems of governance and accordingly, contribute to service delivery, is not impossible. If one refers to Mary Galvin’s⁹ fieldwork in KwaZulu-Natal and, specifically within the DMR, to Shahid Vawda’s¹⁰ work and to our own interviews, it even seems that they develop an offensive strategy to impose themselves as compulsory interlocutors in matters of service delivery. It is astonishing to note that the development committees that the traditional leaders created in the 1980s were reinforced as early as 1994 upon the announcement of the RDP. Typically, at present, each *inkosi* area of the DMR

⁸ Figures for 1996, those for 2001 are not available for water delivery in the database we have used.

⁹ Mary Galvin is former academic who has been working with a membership based NGO involved with rural communities in KwaZulu-Natal since 1992. We used some of her unpublished field notes that she kindly placed at our disposition.

¹⁰ Shahid Vawda is an anthropologist at the School of Governance, University of Durban-Westville who was kind enough to make available his comments on his own fieldwork regarding traditional leadership within the DMR.

is equipped with a development committee to which specialised sub-committees (water, electricity, etc.) report.

At least at the scale of rural and semi-rural areas of the Durban metropolitan region, these development committees working under the control or at the initiative of the traditional leaders, seem to be far more organised and efficient than the Community Development Forums (CDF) that were generated by the public authorities in order to boost the participation of every citizen during the process of the local government implementation. Furthermore, in many of these areas the community development forums do not exist at all or, if they do, they are completely under the umbrella of the development committees.

It would be interesting to know whether this dynamic is specific to Durban. However, it conforms to what Mary Galvin observed while studying the rural communities in KwaZulu-Natal during most of the nineties:

- the majority of *amakhosi* were pleased to welcome development as long as it did not challenge their authority;
- the recognition of the *amakhosi* and their role in the planning and approval of the projects is critical to development projects.

Thus, it becomes apparent that, whatever the traditional authorities’ degree of receptivity to development initiatives, including service delivery, they try to keep them under their control as a new means to safeguard or strengthen their status.

New patterns of interlocution between councillor’s and traditional leaders

One can easily imagine that their willingness to do so is exacerbated by the uncertainty about their legal roles and the fact that they now have to deal with elected councillors in their areas of jurisdiction. This is compounded in light of competing mandates and interpretations about who represents the people. In so far as the predominance of competing interest in development is concerned, the *amakhosi* complain that councillors are distant from local areas, their interventions are inappropriate to local needs and they are hardly consulted on development planning issues. The *amakhosi* generally perceive that councillors approach development in a top down manner by simply contracting private sector firms to implement projects. Indeed, to preserve their influence over the people of their areas, the traditional leaders are keen to make it understood that they are the most appropriate interlocutors in the matter of service delivery. Accordingly, they claim that, even though they represent “tradition”, they are more capable than the councillors who are assimilated into the “modern democracy”, to guarantee the expression of the peoples’ needs.

While doing her most recent enquiries, Mary Galvin has identified four types of relationships between councillors and the *amakhosi*. The first relationship is the one that can be described as “blocked”, where councillors are prevented from working in the area. It may also happen that the councillor’s go about their duties without recognising or communicating with the *amakhosi*. In both cases the development of the area is strongly impeded. The second type is “cooperative”, in which well-known and trusted individuals are elected onto the council. These councillors tend to work closely with the *amakhosi*. In the third type, there is a “division of roles” resulting in

respect for the responsibilities they have accorded to each other. Lastly, “open conflict” may result due to different groups in the community taking up sides on the unresolved authority structure of the *amakhosi* and the councillor.

Contrary to the assumption that the *amakhosi* and councillor’s are in a state of constant conflict, in our field work we have noted a major shift towards making efforts to conceive a framework of mutual co-operation and co-existence. In our encounter with a councillor, we were informed that he had to convince the traditional chiefs that it was worthwhile working with him. He had a problem of credibility with the chiefs and because of this he was obliged to organise numerous meetings in order to progressively appear in their eyes as a trustworthy, capable and harmless interlocutor. It was implied that he could not expect to operate efficiently without the assent of the chiefs.

When the *amakhosi* seem to be positively disposed towards working co-operatively with the councillors, one wonders whether this change in attitude is not simply a tactful one. The comment of an *inkosi* during our fieldwork shows such a change in attitude:

“There is no animosity between traditional leaders and councillors because the latter are considered or looked up to as elected delegates who serve communities. Traditional leaders accept the fact that local government is a new phenomenon in so called ‘tribal areas’ and that they are closely connected to the workings of councillors’ in meeting the needs of the community”.

This illustrates the fact that the chief thought that it was in his interest to co-operate with the councillor if he wanted to exert any influence on him and to show to the population that he was taking care of their needs.

What becomes clear is that both the *amakhosi* and councillors have no alternative but to co-exist and hence become compatible in determining development outcomes. An important observation by Galvin (2001) is that the so-called traditional and modern are not mutually exclusive since the new reality is the unfolding of new forms of leadership that mix in the spirit of co-operation.

Political marginalisation versus co-option of traditional leaders

Finally, this co-operation between the *amakhosi* and councillors raises an important question as to whether local government has succeeded in neutralising the former by co-opting it as a stakeholder in development initiatives. On a more provocative note, it may be questioned as to whether traditional leaders have lost the battle in exercising any socio-political influence. 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 probably the illustration of the change the traditional leaders made for themselves. Strategically, it is politically expedient for traditional leaders, if they have to safeguard their influence, 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 leaders risk being far removed from development initiatives promoted by local government.

Local government attempts to involve traditional leaders or their representatives on the Board of Development projects in keeping with the spirit of co-operation, the actions of planners or other specialists of governance who strongly suggest that they have either not yet seen the relevance of including traditional leaders as significant actors in development initiatives or are uninformed of the leadership dynamics unfolding in the traditional areas of the DMR. It further provokes the question as to whether the position of the consultants and planners conforms with that of policy makers who would be keen to marginalise as much as possible the influence of traditional leaders.

Interestingly, the document about the notion of Area Based Development and Management (ABM) was published in July 2001 at the request of the metropolitan administration. This document seeks to evaluate ‘to what extent ABM can deepen and extend democracy, promote integrated development, focus investment resources and rationalise service delivery’ in the new Durban Uni-City. The starting point of the reflection was a double observation. On the one hand, the creation of a large Uni-City had the advantage of better conceptualising a global vision for the metropolis and in particular, of better implementing desegregation policies. On the other hand, such centralised governance is not perfectly adequate for assuring that the needs of the people are correctly met. Hence, this objective of balancing the top-down logic of government with bottom-up planning and budgeting initiatives is more likely to promote genuine participatory development. All of these are theoretically conceivable since the Municipal Structures Act (No 117 of 1998) empowers the metropolitan authority to implement sub-councils and ward committees as institutions of development participation: the ABM structures might operate at this level (Uni-City 2001:77).

However, an important observation in the ABM model is that no reference is made to the role of the traditional authorities in the delivery of services. This, however is problematic considering the fact that large rural areas included in the DMR conform to traditional authority structures and an omission of this nature further attempts to marginalise the influence of traditional leaders.

Conclusion

The transition of local government to democracy in the post apartheid era has put the capacity of traditional leaders to test. Whilst this institution was the object of many manipulations during both colonial and apartheid times, it seems that it has tried to assert itself more prominently as a significant political actor since the emergence of the democratic era.

The protests of traditional leaders over their roles and responsibilities unfolded vehemently in KwaZulu-Natal and Durban, more particularly because of the strong and complicated alliance with the IFP. This is witnessed by the IFP succeeding in delaying the first local government election in 1995 pleading the cause of the traditional structures that were supposedly manhandled through the process of decentralisation. The recognition of the traditional authorities was then put on the table for consideration.

Closer to the second local government elections in 2000, as the traditional leaders saw no significant progress about a better and clearer definition of their roles, they threatened to call for a

boycott of the municipal elections. Their demands were placated by the State with a promise to deal with their concerns in a White Paper on Traditional Leaders, which is currently under review.

Finally, both the process of re-demarcation of the municipalities preparatory to the elections and the elections themselves took place without any major trouble. More surprisingly, the re-demarcation process achieved some goals that were inconceivable a short while ago. For example, the Durban metropolitan area was extended by almost 70% by the inclusion of rural and semi-rural areas that are still under the authority of traditional chiefs.

One can then make the assumption that this appeasement of the local political context is due to a radical shift in the strategy of the traditional authorities that realised that they would more surely exist if they were not perceived as wheels of a political party. Although this “de-politicisation” process is not absolutely new (it was initiated with subtlety in the eighties by the ANC which supported the creation of Contralesa), it seems to have gained in vitality over the recent years.

Furthermore, one can also wonder whether this lack of clarity about the prerogatives of the traditional leaders, which also means uncertainty about their future, has not pushed them to “occupy the field” in order to demonstrate that as long as matters of governance are at stake in their areas, it is difficult to get round their influence or authority. Thus, it would be the reason why they are careful to strongly intervene in all issues relating to service delivery planning or organising in their areas. They know that it is the most critical political, sociological and economic issue that the Local Government has to deal with. If they stay out and do not compete with the municipal authorities in this field, they will definitely be marginalised.

Subject to more in depth investigations, it would appear that a consensus has emerged amongst the traditional leaders whose chiefdoms were integrated into the DMR. Apparently they have given up directly opposing the local government. They have thought that a strategy of partnership would be more efficient to ascertain their position. All that is not without any risk and depends on their ability to ensure a strong influence on, and support from the population living in their chiefdoms.

By confronting on the one hand all the investments (amount, type, priority, rationality) that have been planned through the metropolitan capital budget and, on the other hand, the aspirations or claims of the chiefs with regard to the development of their area, a better illustration of how each other’s powers are balanced will be more illuminating.

Reference List

CAMERON, R., 1999, *Democratisation of South African Local Government – A tale of three cities*. Pretoria, JL van Schaik.

Department of Local Government and Housing Report. 1996. *Report on the KwaZulu-Natal Local Government Elections held on June 1996*. Pietermaritzburg. Publisher?

Department of Provincial and Local Government. 2000. *Draft Discussion Document towards a White Paper on Traditional Leadership and Institutions*. April. Place, Publisher

ISMAIL, N., BAYAT, S. & MEYER, I., 1997, *Local Government Management*. Thomson Publishing.

KHAN, S. & LOOTVOET, B., 2000. “Infrastructure, Service Delivery and Development: A Few considerations from the example of Durban”, Three Cities Conference. University of Durban-Westville. November.

KwaZulu-Natal *Ingonyama* Trust Amendment Act, 1997, RSA.

NTESEBEZA, L., 2000, “Traditional authorities, local government and land rights”, in B. Cousins (editor.), *At the crossroads – Land and agrarian reform in South Africa into the 21st Century*. Cape Town.

MCINTOSCH, A., 1995, “The rural Local Government debate in South Africa: Centrist control or local development”, in P.S. REDDY (ed.), *Perspectives on Local Government management and development in South Africa*. Pinetown, Kohler Carton and Print.

MCINTOSCH, A., SIBANDA, S., VAUGHAN, A. & XABA, T., 1996, “Traditional authorities and land reform in South Africa: Lessons from KwaZulu-Natal”, *Development Southern Africa*. 13(3), 339-356.

Ministry for Provincial Affairs and Constitutional Development. 1998. *White Paper on Local Government*. March. 165 p.

PILLAY, U., 1999, “Demarcating South Africa’s metro areas: a cautionary lesson from the Durban Metropolitan Area”, in R. Cameroon, (editor.), 1999, *Democratisation of South African Local Government – A tale of three cities*. Pretoria:JL van Schaik.

POLUNIC, J., 1999, *The Transformation of Local Government in KwaZulu-Natal*. PhD Dissertation. University of Natal.

TAPSCOTT, C., 1997, “The Institutionalisation of Rural Local Government in Post-Apartheid South Africa”, in W. HOFMEISTER, & I. SCHOLZ, (editors.), *Traditional and Contemporary Forms of Local Participation and Self-Government in Africa*. Johannesburg, Konrad-Adenauer-Stiftung.

Uni-City. 2001, *An investigation in approaches to and the implementation of Area Based Development and Management in Durban*, Policy Research Paper. July. Durban.

VAWDA, S., 2001, *Municipal Demarcation, Boundaries and the Power and Functions of Traditional Authorities*. Unpublished Paper. University of Durban-Westville, School of Governance.

ZUNGU, S., 1997, “Traditional leaders’ capability and disposition for democracy: The example of South Africa”, in W. HOFMEISTER, & I. SCHOLZ, (eds.), *Traditional and contemporary forms of local participation and self-government in Africa*. Johannesburg, Konrad-Adenauer-Stiftung.