

**THE ROLE OF TRADITIONAL LEADERS IN THE PROMOTION OF
MUNICIPAL SERVICE DELIVERY IN SOUTH AFRICA**

by

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LIST OF ABBREVIATIONS

ANC	African National Congress
BEE	Black Economic Empowerment
CODESA	Congress of Democratic South Africa
CONTRALESA	Congress of Traditional Leaders of South Africa
IDP	Integrated Development Plan
IEC	Independent Electoral Commission
IFP	Inkatha Freedom Party
HRSC	Human Research Science Council
MDM	Mass Democratic Movement
MEC	Member of Executive Council
M&F	Mutual and Federal
MOU	Memorandum of Understanding
NP	National Party
PGM	Platinum Group Metal
PFMA	Public Finance Management Act
OMSA	Old Mutual South Africa

RBA	Royal Bafokeng Administration
RBF	Royal Bafokeng Finance
RBH	Royal Bafokeng Holdings
RBI	Royal Bafokeng Institute
RBN	Royal Bafokeng Nation
RBR	Royal Bafokeng Resources
SABS	South African Bureau of Standards
SADT	South African Development Trust
SETA	Sector Education Training Authority
SALGA	South African Local Government Association
SWAPO	South West Africa People Organisation
TLC	Transitional Local Council
TMC	Transitional Metropolitan Council

SUMMARY

This thesis explored the role of traditional leaders in the promotion of municipal service delivery. The study focuses on three main areas, namely the history and development of public administration, the effects of government environment on traditional leaders and a case study of the Royal Bafokeng Administration.

To achieve the objectives of the study, it is necessary to indicate the objective of local government outlined in the Constitution of the Republic of South Africa 1996. The Constitution states the following objectives: the provision of services to communities in a sustainable manner, the promotion of social and economic development, as well as the involvement of communities and community organisations in the matters of local government.

The quest for a better municipal service delivery cannot be achieved in isolation from the integration of traditional leaders into the South African Public Service. The integration of traditional leaders into the South African Public Service is to ensure that municipal services are rendered equitably, efficiently and effectively.

A comparative analysis of the role of traditional leaders in the Republic of South Africa, Namibia, Swaziland, Lesotho and Botswana shows that, should African traditional leadership and governance be fully integrated into the South African Public Service structures, municipal service delivery will be accelerated. The study suggests that recognition of the role of traditional leaders in the promotion of service delivery will help to expedite the redress of municipal service delivery imbalances and inequities in the rural disadvantaged communities in South Africa.

The study analyses the following question: to what extent can traditional leaders provide and add value in the promotion of municipal service delivery which will contribute to the new constitutional democracy in South Africa? The study examines the present state of the role of traditional leaders in the promotion of municipal

services by studying three local government cases namely, Botswana tribal authorities, the Modjadji Tribal Authority and the Royal Bafokeng Administration.

The study suggests that there is an urgent need to integrate traditional leaders into the local government structures to assist in clearing the municipal service delivery backlog.

This thesis also suggests that the South African traditional leadership system be compared with its Southern African counterparts such as Botswana.

CHAPTER 1

RESEARCH PROBLEM AND RESEARCH DESIGN

1.1 INTRODUCTION

The aim of this study is to investigate the role of traditional leaders in the promotion of municipal services. A thorough investigation of the process of municipal service delivery by traditional leaders will create an understanding of the significant role that traditional leaders can play in promoting municipal services.

The institution of traditional leadership has been in existence on the whole continent of Africa from time immemorial. The African people knew no other form of government. Contrary to popular belief, the African ruler's power was never absolute in the past. However, in the South African context, the institution of traditional leadership was undermined and eroded by forces of imperialism and colonialism. The study intends to explore the history and development of public administration and the pre-1994 situation with specific reference to the history of traditional leaders in South Africa. The relation between leadership and governance, types of policy initiatives and their significance pertaining to traditional leaders is explored in detail.

Thirdly, it is important for this study to use relevant case studies on traditional leaders in South Africa such as the Royal Bafokeng Administration. The role of Congress of Traditional Leaders of South Africa (CONTRALESA) and the government's position on traditional leadership are discussed in detail. The use of case studies pertaining to traditional leaders provide clues and suggestions about what avenues to follow. It saves time and avoided making errors, duplication and unnecessary repetition.

Fourthly, an analysis of the effects of the government environment on traditional leaders in the three spheres of government is provided. The analysis consists of the economic, political, legal and social environment. The policy implication of the 1996 Constitution and its significance to different stakeholders concerning traditional leaders are outlined.

Finally, the aforementioned issues open the possibility of investigating the role of traditional leaders in municipal service delivery. What progress has been made, what went well, what went wrong and what should be done? Since 1994, controversy has been raging over the role of traditional leaders in local government. The passing of the Local Government Transition Act. no, 209 of 1993, the Local Government Municipal Structures Act. no, 117 of 1998 and the Local Government Demarcation Act. no, 27 of 1998 fuelled the controversy.

The passing of the above legislation provide for a restructured local government system, the demarcation of municipalities and the 2000 municipal elections that ushered in a new local government system. The controversy arose because the new municipalities cover the whole country including the rural areas under the jurisdiction of traditional leaders. In rural areas, municipalities have powers and functions that largely overlap those exercised by traditional leaders.

In October 1994, the Congress of Traditional Leaders of South Africa held a workshop and the following resolutions were adopted:

- ❖ Traditional leaders have the right to put their names forward for election to public office; provided that once they are elected, they must vacate their position as traditional leaders.
- ❖ The Constitution must acknowledge and protect the status of traditional authorities as fully-fledged primary local government structures in rural areas. This means that all functions and powers guaranteed to local government should also be accorded to rural local government. The structures of local government should be such that:
 - ❖ traditional areas of jurisdiction are regarded as rural local government areas;
 - ❖ elections are held in such areas;
 - ❖ traditional leaders of the area are automatically members of the council

District councils should be established to combine rural and urban local municipalities on a sub-provincial basis. These councils could render particular services on behalf of or in partnership with all municipalities, whether urban or rural. Traditional authorities could also request local and provincial governments to render services on their behalf. The senior traditional leader of the rural municipality is afforded *ex officio* participation in the district councils in addition to indirectly elected representatives from the various urban and rural municipality structures.

- ❖ Traditional authorities should in their capacity as rural municipality, render services to all individuals residing in their areas of jurisdiction irrespective of their gender, community affiliation, race or language. The powers of the provincial houses of traditional leaders should in general be strengthened and expanded and the same applies to the National Council of Traditional Leaders. The fact that the houses in terms of the interim Constitution, 1993 have only advisory powers and that their advice can be ignored by the provincial legislature and Parliament, undermine their credibility and legitimacy. The respective houses of traditional leaders should at least have powers regarding those matters pertaining to the powers and functions of rural local government structures, the demarcation of rural government areas, the organisation of district councils and matters that directly affect the culture, customary laws, communal land, conventions and usages of communities served by traditional authorities.

- ❖ The provisions of customary law and the Bill of Rights should be placed on an equal footing, which means they should be interpreted in a harmonious manner. Only when an irreconcilable conflict occurs, should the provisions of the Bill of Rights be binding on all. The Bill of Rights should therefore state explicitly that all its provisions should be interpreted in a manner that respect, uphold and further the interests and beliefs of customary law (Keulder, 2000:4).

1.2 THE IMPORTANCE OF THE STUDY

It is of vital importance to explore the role of traditional leaders in the promotion of service delivery because traditional leaders have historically been the basis of local government in most of Africa. In pre-colonial Africa, societies were ruled by kings supported by a hierarchy of chiefs and council advisors selected from their communities.

Traditional leaders served as political, spiritual and cultural leaders and were regarded as custodians of the values of society. They safeguarded the welfare of their people by providing them with land for their subsistence needs through agriculture and for grazing. They also provided for the very poor and orphaned. They were responsible for the defence of their people against external aggression and for keeping law and order in their communities. They resolved disputes and inspired unity among their people (Rugege, 2000:13).

The fact that traditional leaders can rise to the challenge of providing credible governance that will contribute significantly to the new constitutional dispensation is explored. The study focuses on the following aspects:

It explores the possibility of finding an appropriate, relevant and value- adding role of traditional leaders in the promotion of municipal service delivery. It also analyses whether traditional leaders are only recognised or are participative in the new constitutional dispensation.

The aspects focused on are as follows:

- ❖ rediscover and incorporate the role of traditional leaders in the promotion of the municipal service delivery;
- ❖ discover alternative ways of ensuring full participation of traditional leaders in service delivery;
- ❖ face contextual realities;

- ❖ search for principles of an Afro-centric approach, which empower traditional leaders.

Chapter 12 of the Constitution of the Republic of South Africa, 1996 as amended by the Constitution of the Republic of South Africa twelfth Amendment Act, 2005 section 211 (1) (2) and (3) establishes the institution, status and the role of traditional leadership, according to customary law, subject to the Constitution. According to subsection (2), a traditional authority that observes a system of customary law may function subject to any applicable legislation and customs that include amendments or repeal of that legislation or those customs. Subsection (3) states that the courts must apply customary law subject to the Constitution and any legislation that specifically deals with customary law.

According to section 212 (1) (2) the Constitution of the Republic of South Africa, 1996 national legislation may provide for a role for traditional leaders as an institution in the local sphere matters affecting local communities. Subsection (2) deals with matters relating to traditional leadership, the role of traditional leaders, customary law and customs of communities observing a system of customary law, namely:

- a) national or provincial legislation may provide for the establishment of houses of traditional leaders;
- b) national legislation may establish a council of traditional leaders.

The above sections of the Constitution of the Republic of South Africa, 1996 confirm the relationship between traditional leadership and public administration. South African public administration advocates the guidelines emanating from community values without contextualising them into the values of specific communities, be it Western, African or otherwise. These guidelines; namely thoroughness, balanced decision, fairness and reasonableness, effectiveness and efficiency, as well as religious consideration identified by Cloete (1995:78-83) dominate the concept of *public administration*.

The theory and practice of public administration adopted and adapted a generic and neutral approach towards community value systems. When a neutral approach is applied to understand the essence of community values and belief systems, dysfunctionality becomes the outcome at all levels of interactions between the public officials and members of the community (Tshikwatamba, 2004:256).

Hanekom and Thornhill (1982:128), explain that it is only when the system of community values exists that reference can be made to a community. Hanekom and Thornhill (1982:128), further contend that in the South African context, because various communities share common values based on religion, language and culture, it is essential to isolate the components before establishing commonalities. The assumed commonalities, if identified, require extensive analysis at the content level before they are accepted to the groupings. Cloete (1995:78-83), assumes that these guidelines are values in themselves. On aggregate the impression created is that the guidelines inform values which should be perceived to inform the guidelines (Tshikwatamba, 2004:256).

Mulemfo (2000:44) argues that colonisation deprived the African people of their cultural dignity. The Africans were made to accept that their cultures were no longer valuable for the development of Africa. The cultures and values of the African people were uprooted and Africans themselves began to overlook their cultural heritage. In order to make the concept of an African renaissance more palpable and relevant to the lives of the African masses, their cultural orientation should be viewed as an important asset.

Owing to the scope of government activities, public officials constantly have to deal with officials whose functions involve other fields of knowledge. So, for instance, natural scientists, medical practitioners, geologists, historians, agriculturalists and psychologists are employed in government institutions. If public administrators and public managers ignore the knowledge to be gained from other disciplines, they could be inefficient and ineffective. The practice of public administration cannot take place in a vacuum. It is important in government institutions that constant interaction takes place between public administration and experts of other disciplines (Du Toit and Van der Waldt, 1997:49).

The indigenous people living in South Africa when Europeans arrived in various parts of the country were nomadic people who moved from place to place with their cattle. The settlements which were more or less comparable with white urban areas were tribal settlements established in the African territories which later became known as Qwaqwa, Boputhatswana, Venda, Gazankulu, Kwa-Ndebele, Lebowa, Kangwane, Ciskei, Transkei and Kwa Zulu under the former government (Cloete, 1997:3).

It has already been explained that Africans lived and are still living in tribal villages in their traditional territories. These tribal villages are referred to as informal urbanisation. An advantage of tribal villages is that the people construct their own houses with the aim to keep their self-respect and independence. The people also meet their own needs according to their expectations (Cloete, 1997:9).

The literature on indigenous administration is insufficient. Lungu (in Ismael, Bayat and Meyer, 1997:118), for example, observes that existing descriptions of indigenous administration come mainly from anthropologists and historians and little from administrative theorists. The tribe is the basic political unit of the indigenous communities replete with instances of local government. Each tribe retains its own name, manages its own affairs, occupies a specific territory and acts as a single unit in a battle.

Although chiefs and headmen made decisions through councils of indunas (advisers, ministers) they also extended the decision-making circles to include all adults through village forums. Thus there were mechanisms to consult the general community. It is this open-forum approach to decision-making that made the leaders of Nguni speaking tribes (Zulu, Ndebele and Shangaan) popular (Ismael *et al.*, 1997:119). A second feature of interest to local government is decentralisation of monarchical systems, especially in religious ritual kingdoms. The tribal chiefs performed the duties of territorial chiefs and acted as vassals serving the paramount chief or king. Ranking below territorial chiefs were headmen responsible for village administration. It is worth noting that in some instances headmen continued to be elected by the community while in others their ascendance to powers were hereditary. The subdivision of tribes into territorial chiefdoms and villages inevitably led to a certain measure of autonomy for rulers at those levels (Ismael *et al.*, 1997:119).

According to Mulemfo (2000:48), human beings have the ability to organise and govern themselves in an accurate and sensible way and according to their contexts. When the Western colonialists came to Africa, they found that the indigenous people of Africa were organised and had government bodies according to their contextual realities.

The traditional governments were a big threat to the colonialists who wished to impose colonial ideas on colonised areas. In order to succeed in the colonial endeavour, the colonialists either persuaded traditional chiefs or kings to obey the new colonial ways of government or just used force to destroy all existing structures. It is important to note that the traditional African governments were not organised in the same structural manner as Western models but, without any disrespect, this political tradition served African societies much better than the present political systems derived from those imposed on societies for a period of hundred years by European colonial powers. African traditional leaders played an important role looking after the public affairs of the people and territories (Mulemfo, 2000:48).

In terms of section 152 (1) (b) of the Constitution, 1996, municipalities are responsible for ensuring the delivery of basic services to all South Africans. Therefore it is of vital importance for traditional leaders to participate in policy making and policy implementation in rural areas to ensure that municipalities deliver way that is sustainable, equitable, efficient and effective services.

Public administration consists of various functions and one of them is public policy. Policy influences service provision in the local government sphere. It is of vital importance for the traditional leaders to participate in policy-making in the local government sphere in order to improve service delivery.

Hanekom and Thornhill (1995:54) define *policy* as a desired course of action and interaction which is to serve as a guideline in the allocation of resources necessary to realise societal goals and objectives, decided upon by the legislator and made known either in writing or verbally. In the public sector, policies are the output of the political process and serve as initiators for executive action.

A considerable number of factors always serve to change the nature and the extent of the activities undertaken by public institutions. These factors must always be watched and taken into account for the purpose of making new policies or adapting existing policies (Cloete, 1998:133).

Cloete (1998:133-136) describes the main factors that influence public policy as follows:

❖ Circumstances

This means the total environment as determined by time and place in which the authorities operate. It includes the state of community life as regards economic, technological and social matters. Even geographical and climatic factors can exert an influence on these.

❖ Needs and expectations of the population

Every public institution exists to satisfy the real needs and the justified expectations of the population. Public institutions do not start providing services without due cause. There will first be a period during which the public will become aware of a need, and then the public or interest groups will start making representation to the authorities to satisfy the need.

❖ Policies of political parties

In most states, there will always be two or more opposing political parties in continuous rivalry to gain power and rule the country. The parties base their claims to power on their respective views with regard to various policies and these views may fundamentally affect the activities of the executive institutions.

❖ Activities and representation of interest groups

In the Republic of South Africa as in most other states, members of the population have created numerous associations with similar interests, e.g. workers or employee

associations and industrialists. These groups are continually engaged in making representations to various authorities about changes in policy.

❖ Personal views of political executive office-bearers

Political executive office-bearers are ideally placed to influence the policies of the institutions entrusted to them. These office-bearers are leaders in the legislative institutions, which have the final say in policy matters.

Research and investigations as well as the views and experience

Nowadays public institutions do research on an ever-increasing scale and this could inevitably have an influence on policy matters.

Policymaking is inherently political and is an outcome of a political process that involves negotiation, bargaining, persuasion and compromise. Policies involve the participation of government institutions, political parties, interest groups and other role-players such as the media (Van Niekerk, 2001:113).

The process of policy analysis is a series of intellectual activities carried out within a process comprised of activities that are essentially political. These political activities can be described usefully as the policy-making process and visualised as a series of interdependent phases arrayed through time: agenda-setting, policy formulation, policy adoption, policy implementation and policy assessment. Policy analysts may produce information for policy analysis relevant to one, several, or all the phases of the policy making process depending on the problem faced by the client (Dunn, 1994:15).

Policy can be initiated through interest groups acting on behalf of society. The role of public managers in this context is to involve all role-players from society and encourage public participation in the policy-making process. They should constantly make a needs analysis in the various communities to improve the general welfare. Public managers serve as means of communication between society and the legislative

authority through which policy-relevant information is conveyed (Du Toit and Van der Waldt, 1999:210).

There are many ways for people trying to affect the degree of attention given to particular items. These people are sometimes called policy entrepreneurs with the willingness to invest personal time and energy in, for example, publicity campaigns, direct contact with decision-makers, petitions and publicity drives. People can be involved in major institutions, such as the media, political parties, interest groups that provide access to decision makers (Denhardt, 2006:52).

Members of public and non profit organisations play important roles in building the policy agenda and shaping legislative policy, but are also involved in policy making as part of the implementation process (Denhardt, 2006:54).

Traditional leaders cannot be neutral about public policy making. There is an interface with the communities in the local government sphere and traditional leaders can identify problems and participate in policy formulation. The participation of traditional leaders in the policy making process will enable them to promote the general welfare of the public they service.

1.3 PROBLEM STATEMENT

The plain wording of section 157(1) (a) of the Local Government Transition Act, no. 209 of 1993 does not do justice to the dramatic change it brought to the old institution of traditional leaders. As stated earlier, prior to the implementation of the Local Government Transition Act. no. 209 of 1993, traditional authorities performed many local government functions in rural areas. The Constitution makes a unequivocal choice for a Western type of democracy for local government. It reserves local government decision making for democratically elected representatives (De Visser, 2004:90).

In terms of chapter 3 of the White Paper on Traditional Leadership and Governance 2002, Section 3.1, it is evident that the current constitutional dispensation does not vest traditional leaders with administrative and legislative powers. Section 3.1 states

that traditional leaders have over the years performed various governance functions. These functions were not exercised in the unified territory called South Africa, as this only came about later with the formation of the South African state in 1910. The institution therefore, was never a government of South Africa. The institution operated within the defined limits of its prescribed jurisdiction. The institution was, however, affected by colonisation as it altered its functions and roles.

Given the new order, it is clear that the institution cannot be restored to its traditional or pre-colonial form. It has to adapt to a Western democratic change. It also means that the system was egalitarian because traditional leaders treated all their subjects equally even though their leadership style was often autocratic. Thus society were not rejected to a discriminatory practice as they experienced under colonialism. Traditional leadership is a creature of custom and generally carries out customary functions. In the current formalised governmental structures traditional leaders should be acknowledged as supporting structures in the delivery of services to communities in rural areas.

Rugege (2000:13) states that by virtue of the constitutional provisions in Chapter 7 of the Constitution, 1996 spelling out the functions of 'wall- to- wall' municipalities, the powers and functions of traditional leadership and traditional authorities, whether under customary law or statute are by implication curtailed.

The impact of the Constitution, 1996 is compounded by the fact that, traditional leaders are afforded *ex officio* council observer status by the Constitution. The 1996 Constitution establishes their *ex officio* status but the Municipal Structures Act no. 117 of 1998 relegated their influence to a nonvoting role. The reduction of the status of traditional leaders unleashed a political battle, which came ahead in the run- up to the 2000 elections and has remained largely unsolved to date. Traditional leaders seek recognition in local government in rural areas i.e category C municipalities (De Visser, 2004:90).

According to Mabutla (2001:1), the growing tension needs the government's immediate attention. The role of traditional leaders in the Republic of South Africa has remained a controversial issue. The continuing dialectical clash between forces of

modernity for development and the persistent strength of traditional leaders is still an issue in the country. Traditional relations and social structures are crumbling, while the new relationship remains to be formed. Traditional leaders constitute a form of local government in terms of indigenous law. They were previously mandated to legislate on specific functional activities of local government in charge of development. The previous apartheid regime silently manoeuvred to subjugate some traditional leaders while removing others from power. The same government designed and employed policies that were strategically and tactically ideal to keep itself in power while using traditional leaders for its own benefit. The new Constitution of the Republic of South Africa, 1996 recognised traditional leaders and made provision for them to establish a national body that will be part of the deliberation in the Parliament. However, the role of traditional leaders in the local, provincial and national sphere of government is not clearly defined.

Traditional leaders, both chiefs and headmen, still have the powers and functions accorded to them under colonialism and apartheid as contained in various pieces of pre-1994 legislations. The Black Administration Act, no. 38 of 1927, the Black Administration Act, no. 68 of 1951 and the Regulations prescribing the duties, powers, privileges and conditions of service were established to govern the affairs of traditional leaders. Some of the roles of traditional leaders under the preceding legislation were as follows:

- ❖ to promote the interests of the tribe or community, support and actively encourage the moral and social well-being of the traditional leaders;
- ❖ report any condition of unrest or dissatisfaction to the government;
- ❖ inform the people about new laws, orders and instructions;
- ❖ convene meetings of the people when requested by government and ensure attendance.

The initiatives of the South African democratic system to accommodate traditional forms of governance are outlined in Chapter 11 of the Constitution of the Republic of

South Africa, 1996, protecting the institution and status of leaders. The government acknowledged the importance of traditional leadership in South Africa by enacting the Traditional Leadership and Governance Framework Act, no. 41 of 2003 in order to clarify the role, traditional leaders should play. Secondly, the Communal Land Rights Act, no. 11 of 2004 was also promulgated with the intention to resolve land tenure problems in the rural areas of South Africa.

The promulgation of the preceding two pieces of legislation do not clarify the role of traditional leaders. There is a need to explore this situation because there are problems that are associated with the unclear role of traditional leaders. Regardless of the government's initiatives of democratising traditional leadership, there is still tension between democracy and traditional authorities.

The Constitution recognises traditional leaders and envisages a role for them in local government. Thus Section 211 of the Constitution 1996 states, "The constitution, status and role of traditional leadership according to customary law, are recognised, subject to the Constitution".

A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, including amendments to or repeal of that legislation. Traditional leaders have argued that the provision is too vague and that the role needs to be clearly spelt out as done with elected municipal councillors. That role is subject to the Constitution and at the same time, requires the extension of elected municipalities to areas under the jurisdiction of traditional leaders assigning them specific powers and functions. It does not spell out a specific role for traditional leaders, but awards power to the national legislature to pass legislation to provide for a role of traditional leadership as an institution at local level (sphere) on matters affecting local communities (Rugege, 2000:16).

Traditional leaders of all political persuasions are dissatisfied with their constitutional and legal position with regard to governance. They argue that their status and powers and functions have been whittled away under the Constitution and the post-1994 government. Traditional leaders further argue that the Constitution should have spelled out their functions as it did for municipalities. As this has not been achieved, it

is further argued that the national legislation referred to in Section 212 of the Constitution of, 1996, which was supposed to set out their role, should have been processed at the same time as the legislation for local government such as the Local Government Municipal Structures Act, no.117 of 1998, and the Local Government Municipal Demarcation Act, no.27 of 1998.

Parliament has a statutory duty to pass legislation on any matter within the framework of the Constitution; what is important is the extent to which traditional leaders are offered an opportunity to make inputs on what roles relate to the institution 's leadership. During the pre-colonial era, autonomous chiefs or kings governed most communities. The authority of the chief or king was hereditary and in him was vested almost all political, economic and social power. The policies of the colonial era and apartheid era tried to dilute the institution of traditional leadership. The policies in the colonial era and even the current constitutional arrangements did not succeed in establishing a successful system of traditional leadership. The question is what does the new democratic dispensation in South Africa do regarding the role of traditional leadership because it is the indigenous form of government that was practised for many years before colonialism? As explained earlier, democracy is a borrowed form of government from Europe and the United States of America.

Therefore, the research problem is to determine to what extent the role of traditional leaders can contribute to the existing local government structures in South Africa.

1.4 RESEARCH QUESTION

To what extent can traditional leaders provide and add value in the promotion of municipal service delivery which will contribute to the new constitutional dispensation of South Africa?

1.5 RESEARCH OBJECTIVES

The objectives of this study are:

- ❖ to investigate, compare and analyse the role and functions of traditional leaders in the promotion of municipal service delivery in South Africa;
- ❖ to reflect on the relationship between traditional leaders and local, provincial and national government by investigating the formal and informal arrangements existing among them;
- ❖ to provide an overview of the roles assigned to traditional leaders, by indicating their functions, decision-making powers and administrative functions pertaining to municipal service delivery;
- ❖ to provide possible lessons for South Africa deduced from these experiences.

The research provides a theoretical exposition of traditional leaders in South Africa. It investigates and identifies strategies that can be utilised to ensure that the traditional leadership as institution is fully integrated into the new constitutional dispensation. The study also recommends measures that will enable the government to define the clear role of traditional leaders in the promotion of municipal service delivery. It will also contribute to discover how traditional leaders could be fully integrated in the new constitutional dispensation. Finally, the key outcome of this research is to provide both the government and the public within a framework with which to understand the role of traditional leaders.

1.6 FOCUS OF RESEARCH

The current status of traditional leaders is recognised by national legislation. However, the role of traditional leaders in the promotion of municipal services is not clearly defined. The traditional leaders' functions and powers are limited and rural municipalities are vested with powers and functions that largely overlap those exercised by traditional leaders.

1.7 LIMITATIONS OF THE STUDY

Some of the respondents have shown reluctance in disclosing important information because of the fear of endangering their relations with their country 's ministry of local government. Traditional leaders have been reluctant to disclose some of the confidential information deemed as sensitive information. The different tribal authorities in South Africa differ considerably. Therefore, it was decided to investigate three particular communities intensively to determine common characteristics that may be used in determining generic trends.

1.8 RESEARCH DESIGN

The qualitative methodology is used to investigate the role of traditional leaders in the promotion of municipal service delivery. Data was collected by means of document study and interviews. The interviews were conducted with traditional leaders, selected from three tribal authorities. The tribal authorities of the three communities with whom the interviews were conducted are listed in alphabetical order as follows: Botswana, Modjadji, the Royal Bafokeng Administration. Tribal Authority. Participants from all these tribal authorities ranged from two to eight traditional leaders. Open-ended questions were asked in a relatively informal format. Participants were encouraged to answer the questions honestly and as broadly as possible. Where necessary, issues that needed clarity were followed up so that the discussion could flow. Interviews were recorded. The purpose of the interviews was to assess the participant's knowledge, experience and views regarding the promotion of municipal service delivery through the contributions traditional leaders. Four traditional leaders, (13) headmen, one member of the Botswana Parliament and seven tribal authority officials were interviewed.

1.8.1 Data collection methods

❖ Population and sampling

Participants were selected from tribal authorities representing the three communities in Botswana and South Africa. The positions of all participants were recorded so that sampling could be determined. The researcher secured a list of all traditional leaders

from tribal authorities. The list was used as a sampling frame for interviews with traditional leaders, members of traditional councils, headmen and the officials of tribal authorities. To obtain a systematic sample of (25) research participants, traditional leaders, headmen and officials of tribal authorities were drawn systematically from the total population by using the registered lists from all these categories.

1.9 DEFINITION OF KEY TERMS AND CONCEPTS

1.9.1 Chief

The chief is the most important figure in the central tribal government and is the eldest son of the reigning chief's principal wife. The chief holds a hereditary position and is therefore generally the most senior member of the most senior lineage and clan in the tribe. Although the chief is qualified by birth to succeed the father, there is a need for formal designation, training and inauguration as chief (Zungu,1992:162).

1.9.2 Local government

A working definition of local government attributes to it the following features, namely a defined geographical area and resident population for which the local government is responsible; the authority to provide services to the public; and plans for the development of the locality (Craythorne, 1997:28).

1.9.3 Municipality

In terms of section 151 subsection (1) of the Constitution, 1996, the local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic of South Africa. Subsection (2) states that the executive and legislative authority of a municipality is vested in its municipal council. In terms of subsection (3), a municipality has the right to govern on its own initiative, the local government affairs of its community, subject to national and provincial legislation as provided in the Constitution. Subsection (4) states that the national or provincial government may not compromise or impede a municipality's ability to exercise its powers or perform its functions.

1.9.4 Municipal services

The Local Government Municipal Systems Act, no. 32 of 2000 defines basic municipal services as municipal services necessary to ensure an acceptable and reasonable quality of life and if not provided, would endanger public health, safety and the environment.

1.9.5 Traditional leadership

Traditional leadership is an institution governing a particular tribe according to customary law and has developed over many hundreds of years in Africa. It has served the people of Africa through wars, periods of slavery, famine, freedom struggles, economic and political restructuring and during colonial and apartheid periods (De Villiers, 1997:39).

1.10 SUMMARY AND SEQUENCE OF CHAPTERS

The study is divided into six chapters forming a sequential whole. Chapter 1 serves as an introduction to the study. In this chapter, the research problem is identified and listed. Ten pertinent issues regarding the role of traditional leaders in the promotion of municipal services in Botswana, the Phokeng and Modjadji districts in South Africa are identified as follows:

- ❖ training
- ❖ municipal services rendered by traditional leaders
- ❖ land allocation
- ❖ customer service
- ❖ staff shortages
- ❖ communication

- ❖ infrastructure development
- ❖ the impact of legislation on traditional leaders
- ❖ challenges faced by traditional leaders pertaining to municipal service delivery
- ❖ source of revenue

The aims and objectives of the study are formulated based on the 10 issues identified for research purposes,

Chapter 2 deals with the history and development of public administration. In this chapter, the historical antecedents of public administration with specific reference to the European, American and South African developments are discussed in detail. Public Administration, the nature of public administration, the purpose of public administration, new public management and the functions of public administration are discussed in detail.

Chapter 3 concerns the legal, political, social and cultural as well as the economic environmental components. The main objective of the chapter is to establish to what extent the government's macro environment has impacted on traditional leaders.

A brief historical background and the role of traditional leaders from 1847 to 1994 as well as the Royal Bafokeng Administration case study is the subject of Chapter 4. The history of the Royal Bafokeng traditional leadership system is discussed in detail. The Royal Bafokeng nation corporate entities and the Mutual and Federal as well as Fraser Alexander transactions are discussed. The Royal Bafokeng governance and the Communal Land Rights are fully discussed in this chapter. The Impala Platinum mines and Royal Bafokeng Nation Royalties are also discussed. Royal Bafokeng customary law structures and the road building by the Royal Bafokeng and the National Government are discussed in this chapter. The municipal services rendered by traditional leaders are outlined. The chapter also entails a comparative study among different traditional leadership systems of, for example, Botswana, Swaziland,

Lesotho, Namibia and the KwaZulu-Natal Kingdom. The main objective is to establish to what extent they differ from the Royal Bafokeng Administration regarding municipal service delivery.

Chapter 5 outlines local government service: selected case studies comprising empirical evidence gathered by means of interviews to validate arguments raised in the chapters regarding the role of traditional leaders in the promotion of municipal service delivery. For this purpose, interviews were conducted in five tribal authorities, namely Balete, Kweneng, Modjadji, the Royal Bafokeng Administration and Tlokweng. The responses were analysed to determine the role of traditional leaders in the promotion of municipal service delivery.

Chapter 6 provides a summary, conclusion and recommendations based on the research as a whole.

CHAPTER 2

THE HISTORY AND DEVELOPMENT OF PUBLIC ADMINISTRATION

2.1 INTRODUCTION

Traditionally the study of Public Administration concerns the administrative activities required to govern and the administrative requirements to give effect to governmental policies. The contemporary state has developed to such an extent that the area of study of the Discipline needs to be reconsidered to be able to provide training and research in relevant matters. The demand for efficient and effective public administration and management within a globalising world context contributes to the need for re-assessment of the domain. It has to be established whether the term public sector could still be identified unambiguously. It seems as though scholars of Public Administration should reconsider the area of study and even commence discussions with related disciplines in an effort to enhance the knowledge base of the Discipline and to improve the quality and service rendering by employees with a sound ethical base and properly trained in the art and science of administration, management and governance(Thornhill, 2008:2).

Public administrators work at all levels of government both at home and abroad. The substantive fields within which public managers work, range across the varied interests of government and public affairs from defence and national security to social welfare and environmental quality, from the design and construction of roads and bridges to the exploration of space and from taxation and financial administration to human resource management. Though public administration varies tremendously in its scope and substance, those who work in public organisations share certain commitments. Among these, none is more important than commitment to public service (Denhardt, 2006:1).

Henry (2001:2) remarks that public administration is the device used to reconcile bureaucracy with democracy. Public administration is a broad ranging and amorphous combination of theory and practice; its purpose is to promote a superior understanding

of government and relationship with the society it governs. It also aims to encourage public policies that are responsive to societal needs and to institute managerial practices attuned to effectiveness and efficiency and the deeper human requisites of the citizenry.

According to Mutahaba, Baguma and Halfani (1993:6), before colonialism, African governance systems varied according to the level of development and the socio-political systems in place. Generally administrative systems in Africa lacked the attributes of a modern state. Colonialism to a great extent supplanted or suppressed the various traditional administrative organisations and with them their administrative cultural values. In most parts of Africa, the traditional administrative organisations were done away with and replaced by bureaucratic organisations styled after the system in the mother country. The evolving public administration culture manifested itself more significantly in three important aspects: management styles, management of financial resources and management of information. Public administration had to be oriented towards development as well as be responsive to the interests and expectation of the governed. It had to recruit personnel with a greater range of knowledge and skill.

Dimock and Dimock (1969:3) refer to public administration as the accomplishment of politically determined objectives. More than the technique or even the orderly execution of programmes, however, public administration is also concerned with policy, for the contemporary world bureaucracy, it is a major contributor to policy-making in government.

As a field of practice, public administration is as old as human society; as a theory, Public Administration goes back only about a century and as an academic subject it is now taught in most countries in the world, although in many instances only since the end of World War 2, when the practical demands of statehood and economic development needed to be met to support the political independence of the emerging nations. In all governments, the most influential category of employees is administrative, a group having influence on the shaping of policy and the law. Administration exists to perform the enabling actions required to provide services

directly to the citizen, are in the form of e.g protection, regulation or more tangible activities such as water supply and schools (Dimock and Dimock, 1969:4).

In this chapter, the historical antecedents of public administration with specific reference to the European, United States of American and South African situation are discussed in detail. An overview of public administration, the nature of public administration, the purpose of public administration, new public management and the functions of public administration are given.

2.2 THE HISTORICAL ANTECEDENTS

Evidence exists that the Egyptians practised decentralisation and the use of staff advice 2000 years before Christ. The mere physical presence of the pyramids confirms that there had to exist formal plans, organisation, and leadership and control systems. How else would it have been possible to build a structure covering as much as 13 acres? Construction is estimated to have taken the labour of over a hundred thousand men for 20 years. To put this into perspective this achievement is equivalent to administering an organization three times the size of the Shell Oil Company. Clearly such an undertaking indicates the effective practice of administrative functions (Robbins, 1980:34).

Two other institutions that contributed to the development of organisation design and administrative theory are the Roman Catholic church and the military structures. The Roman Catholic church has endured nearly 2000 years with a simple five-level hierarchy. In the Catholic Church, the chain of authority moves from the Pope to cardinals to archbishops to bishops and finally to parish priests. Military organisations are also singled out as contributors to the field. The use of staff support advice, uniform methods for performing tasks and discipline were practised by Alexander the Great, Hannibal, Caesar and Napoleon. More recently, the armed forces serve as a major source of studies in leadership, authority and conflict (Robbins, 1980:35).

2.2.1 The history of public administration in the European context

The European development of the science of Public Administration consists of the oldest public administration representatives who were German and Austrian Cameralists. Already active in the middle of the sixteenth century; the German and Austrian Cameralists became notable in the eighteenth century. The administrative bureaus called *Kammern*, chambers or cameras were studied in Germany. The aforementioned administrative bureaus were also called budgetary procedures, administrative technology and the art of administrating or *Verwaltungskunst*. Public Administration studies were half scientific, half routinely descriptive, involving the primitive, haphazard mixing of information about political economy, taxation, politics, governing, assorted statistics and accounting. The work of the Cameralists provided the basis for the development and growth of the European pattern and standard for administrative services (Langrod, 1961:72). The Cameralists approached the problems of administration or the carrying out of political policy from one fundamental point of view. The central concern of their studies was the concept and functions of the *Polizei* or police. The police in Europe was the grandfather of the modern public administrator. The Cameralists' studies were published under the heading of police studies (Langrod, 1961:73).

Public administration in Europe consists of the following two generations: the pre-generation and the first generation. The abovementioned generations will be discussed in detail below.

2.2.1.1 The pre-generation

The pre-generation includes thinkers such as Plato, Aristotle and Machiavelli. Until the birth of the national state; the emphasis lay principally on the problems of moral and political nature and on the organisation of the public administration. The operation of this administration was a less urgent problem. From the sixteenth century the national state was the reigning model of the administrative organisation in Western Europe. These states needed an organisation for the implementation of law and order and the setting up of a defensive structure. The need for expert civil

servants, with knowledge about taxes, statistics, administration and the military organisation, grew (Anon,2007:1).

2.2.1.2 The first generation

Lorenz von Stein from Vienna is considered the founder of the science of Public Administration in 1855. Public Administration was considered to be a form of administrative law. Lorenz von Stein's opinions were innovative in several respects:

- ❖ the science of Public Administration was considered a melting pot of several disciplines such as sociology, political sciences, administrative law and public finance. Public Administration was an integrating science;
- ❖ Public administration was an interaction between theory and practice. For example the practice was considered to be the leader, but the theory had to form the base; and it was suggested that public administration should strive to adopt a scientific method

White (1955:1) argues that the building of the pyramids was an administrative achievement of the first order as well as a remarkable technical accomplishment. Managing the affairs of the Roman Empire with the means then available was a huge task, well performed for centuries. Organising the national state out of medieval feudalism and creating disciplined armies from an undisciplined crowd of armoured knights were administrative as well as political feats.

2.2.2 The history of public administration in Britain

The history of public administration in Britain dates back to 1215 when King John introduced a new era in the government and administration of England. The privileges and rights of the elite and clergy of Britain were guaranteed with the signing of the Magna Carta at Runnymede. These guarantees were later embodied in further legislation in Britain and have become the cornerstone of English laws. With the expansion of the British Empire during the sixteenth to eighteenth centuries many existing British laws and practices were made applicable to the overseas possessions.

The questions that arise are: to what extent were privileges and rights embodied in laws and practices of the British Empire made applicable to its territories for example, South Africa, especially the Cape Colony, Natal, the Transvaal and the Orange Free State? What was the line of thinking of the British government when it was decided to make British practices applicable to the South African colonies, and to what extent is the South African system of government and administration based on the British philosophy of government and administration ? (Hanekom and Thornhill, 1982:11).

According to Caiden (1982:8), the genesis of modern public administration is to be found in the organisation of the king's household in a country where the crown had many rival contenders and where the church assumed responsibility for social services. Household officials could be divided into two groups: one responsible for personal services to the monarch and the other distinguishable by education, special skills and superior functions, responsible for the administration of the king's lands, his finances, justice and the raising of armies. Amenable to the crown's will and dependent upon its pleasure the latter group exercised delegated powers. The officials were drawn from educated classes of the bourgeoisie and the clerics and enjoyed, in practice, permanent tenure and a certain amount of discretion. The officials gained positions through patronage and purchase in turn for which the fees and prerequisites of office were kept. Over the course of time, officials often developed proprietary claims to positions. The official's business was to make the monarch the richest and most powerful person in the country and also to enrich themselves. The aims of the king were to dominate the royal household, have full control over officials and enlarge the power of the crown (Caiden, 1982:8).

The officials employed by the king regarded delegation of authority as inheritable freehold. The vacancies were filled by co-optation and profits were made from farming taxes, billeting of troops, contracting supplies and communications and placing of relatives and friends as sinecures (Caiden, 1982:8).

Gradually crown administration and finances became separated from the management of the king's household the complex duties of the state were consolidated into compartments headed by ad hoc bodies of officials emphasising collective leadership. In this way, a greater measure of uniformity was produced at the centre. Field

administration still remained autonomous. National administration at this stage was confused, cumbersome and slow.

The scope of government depended at the king's will and inclination and the extent to which the rivals could be persuaded among the clergy, nobles and the burghers to accept his authority. Decision-making was centred on the king's court but depended on local enforcement. Public service was confined to law and order, regulatory activities and selected public works. Even warfare was limited to small armies, which were quipped with a premium on ritual. Technological aids were simple. Governmental functions were integrated with other societal institutions and barely consolidated internally into specialised areas (Caiden, 1982:9).

The eighteenth century heralded the age of reason with the scientific challenge to religion and the application of scientific thought to human society. The reorganisation of government created a favourable climate to meet the challenges of rural displacement, industrialism, technological advances, large scale warfare and middle class professionalism.

The divine right of kings was one of the first victims. Republicans deposed kings in some countries altogether or absolute powers were strictly regulated and controlled by the aristocrats and middle class. The king's household either disappeared altogether or was more closely defined. Persistent threats to the polity from within and without forced the central authorities to extend influence over local administration. The central authorities directly assumed concentrated services. The nation-state began to establish its own educational system in competition with the church and to seek competent staff outside traditional sources. Antiquated methods and procedures were exposed and more efficient methods and techniques substituted (Caiden, 1982:9).

Government needed bigger armies, better weapons, consistent supplies, more money, different forms of taxation, new organisations for the administration of social services, better policing and more inspectors, greater co-ordination, uniformity and standardisation and higher efficiency. Moreover, the people demanded better communications and postal facilities, relief from poverty, oppression, distress and insecurity and equality before the law with abolition of legal disabilities and ancient

privileges. New social classes and changes in social structure brought demands for participation in government and the employment of more businesslike methods in public administration (Caiden, 1982:10).

According to Mutahaba *et al.* (1993:6), before colonialism, African governance systems varied according to the level of development and the socio-political systems in place. However, their administrative systems lacked the attributes of a modern state. Colonialism to a great extent supplanted or suppressed the various traditional administrative organisations and with their administrative cultural values. In most parts of Africa, the traditional administrative organisations were done away with and replaced by bureaucratic organisations styled after the system in the mother country. The evolving public administration culture manifested itself more significantly in three important aspects, namely management styles, management of financial resources and management of information. Public administration had to be orientated towards development as well as responsive to the interests and expectations of the government. It had to recruit personnel with a greater range of knowledge and skill.

According to Hanekom and Thornhill (1982:20), the colonial policy provided for the introduction of political institutions and the franchise into those colonies that received, enjoyed and used these powers wisely and moderately as viewed by the colonial powers. In granting political rights to the colonies, a uniform model was followed throughout the British Empire, whereas with the establishment of self-government in the colonies, a specific approach was followed. The first step after conquest was the establishment of military government which was an interim measure until matters were stabilised to accommodate a colonial model of government as viewed by the colonial powers. The second step was to establish crown colony government which provided for a crown-appointed governor entrusted with all legislative, executive and judicial authority of the colony. Later an advisory council on which the colonists had representation assisted the governor in administering the colony.

It should be emphasized that the governmental systems introduced in the British colonies were based on a Western ideology and Western value systems.

The British politicians and public officials' Western orientated beliefs and ideals were embodied in the approach followed when the government, administrative institutions and practices were introduced in the British colonies. There was a continuous changing of British foreign and colonial policies; undue influence was exerted by British officials appointed to colonial service both in Britain and in the colonies; ideological reasons were used for transferring British systems and practices to the colonies. It could be argued that the colonies were compelled to accept a system of government and administration that had the following characteristics:

- ❖ it was beneficial to the mother country;
- ❖ the system of government applied to, transferred to, and made applicable by law in the colonies was designed to ensure that the sovereign power of England remains paramount and that British interests in foreign countries were protected;
- ❖ the system of government and administration created for colonies was founded upon uniformity , the prevention of maladministration and the promotion of civilisation as defined by the British and Christianity throughout, for example Southern Africa; and
- ❖ government institutions such as Parliament, the municipal councils were created not merely for administrative convenience, but in the hope that it might prove a step towards a federation of for example British South Africa.

It could be deduced that the systems established in the colonies did not acknowledge the traditions and customs of the indigenous population. It thus did not cater for the specific norms and values of each tribal authority which existed. The systems were mere duplications of the British system. Thus the colonial systems were not characterised by justness, equality and efficient service delivery. Paternalism and racially based practices were often introduced to the detriment of the indigenous population. These practices became ingrained in the systems which developed under successive White governments and difficult to evaluate without stabilising the current traditional authorities.

The origin of the guidelines or normative factors of the present South African public administration can be found in the approach to and the system introduced by the British government in their colonies. (Hanekom and Thornhill, 1982:35-36).

2.2.3 The history of Public Administration in America

The United States of America has apparently developed a science of Public Administration on its own without any reference to European practices and without any knowledge of similar developments elsewhere. Thus American students of Administration act as though a scientific interest in Public Administration developed fully grown out of Woodrow Wilson's article without any historical antecedent (Langrod, 1961:69). In the USA, the history of administration is traced to the work of the early authors such as Frank Johnson Goodnow and William F. Willoughby and the deans of the public administration movement, namely Leonard D. White and John Gaus. An entirely new literature of Public Administration has been growing rapidly out of the American approach. However it was conceived in a strange isolationism with complete disregard for the historical developments utilised in Europe one or two centuries ago. Thus American studies in Administration tended to ignore the fact that many serious methodological, expository and comparative studies have been made elsewhere and in other languages than English (Langrod, 1961:70). However Woodrow Wilson himself and other early American scholars of Public Administration looked across the Atlantic to Europe for the beginnings of their new science (Langrod, 1961:70).

In the United States of America Woodrow Wilson was the first to consider the importance of the science of Public Administration. In 1887, Woodrow Wilson in his article: The study of Administration argued as follows:

- ❖ separation between politics and public administration;
- ❖ consideration of the government from a commercial perspective;
- ❖ comparative analysis between political and private organisations and political schemes;

- ❖ reaching effective management by training civil servants and assessing their quality

The separation between politics and the public administration has been the subject of fierce debates for a long time and the different points of view on this subject differentiate periods in the science of Public Administration (Anon,2007a:2). The discussion about the separation between politics and public administration continued to play an important role up to 1945. Early authors on the science of Public Administration, Luther Gulick and Lyndall Urwick, integrated the ideas of earlier theorists like Henri Fayol into a comprehensive theory of administration. The scholars of the science of Public Administration believed that the thoughts of Fayol offered a systematic treatment of management, which was unique at that time. It was opinionated that this could be applied to the management of companies as well as to public institutions. The separation of the two disciplines was discouraged and a single science of administration, could not develop. Later on the science of administration would focus primarily on governmental organisations and succeeded in developing on its own (Anon,2007a:2).

After 1945, the third generation arose and the ideas of the first and second generations were questioned. Initially, the distinction between politics and public administration was strongly familiarised by the third generation, but discussion would continue. Because of the unsuccessful American intervention in Vietnam and the Watergate scandal politics got discredited and in the eighties there was again a plea in favour of bureaucracy especially in America. Public Administration had to detach itself from Political science and is currently reorganised as a separate science (Anon.,2007a:3).

2.2.4 The history of public administration in the South African context

Public administration practised in the Western world was brought to South Africa by the Dutch settlers who settled at the Cape of Good Hope on 6 April 1652. The Dutch practices were adapted by the British after taking over the Cape of Good Hope from the Dutch in 1806.

In this section, the development of public administration at the Cape of Good Hope and afterwards in Natal, the Orange Free State and the Transvaal, which were the territories that became the Union of South Africa in 1910, will be explained in detail.

2.2.4.1 Cape of Good Hope under the Dutch regime

During the first period of the Dutch ruling the Cape of Good Hope between 1652 and 1795, the inland expansion of the territory was gradual and the population growth was slow. In 1795, the total white population of the Cape of Good Hope was 15 000. The population lived mostly off farming in rural areas. The result was that the public administration needs of the territory were limited and largely restricted to the maintenance of law and order. The second Dutch regime from 1803 to 1806 was too short to result in distinctive developments in the field of public administration.

2.2.4.2 Cape of Good Hope under the British regime

The first period of British rule of the Cape of Good Hope was between 1795 and 1803 and it was too short to lead to major developments in public administration. After the British took permanent possession of the Cape of Good Hope in 1806 there was a bigger inflow of immigrants. The white population increased to 377 000 in 1891. This rapid population increase created a greater need for a new and more comprehensive public administration.

After 1806, there were no drastic changes in the public administration of the Cape of Good Hope. Indeed, from 1834 to 1838, the colony lost a substantial part of its white population to Natal, the Orange Free State and the Transvaal during the Great Trek. Nevertheless, the British governors changed the governmental and public institutions and practices gradually to meet the needs of the changing circumstances. The public administration of the Colony was placed on sound footing from 1850 onwards after the first public service regulations were made, soon after the British annexed the Cape of Good Hope, and subsequently legislation was passed to ensure orderly financial administration of the Colony (Gildenhuys, *et al.*, 1988:81-82).

2.2.4.3 *KwaZulu-Natal*

When the white Voortrekkers settled in Natal after 1834 the settlement had little opportunity to develop into a state before the territory was annexed by Britain on 15 July 1842. The governmental and administrative institutions and practices developed for this Colony corresponded with the existing system in the Cape of Good Hope.

2.2.4.4 *Orange Free State and the Transvaal*

The Voortrekkers managed to develop the Orange Free State and the South African Republic (Transvaal) as independent republics with own governmental and administrative institutions and practices. These two territories however were conquered by Britain to become British colonies after the Anglo-Boer War from 1899 to 1902. The British modelled the governmental and administrative institutions and practices for the Orange Free State and the Transvaal on those existing the Cape of Good Hope (Gildenhuis *et al.*, 1988:82).

2.2.4.5 *Unification*

The result of the aforementioned developments was that by 31 May 1910 (the date on which the four colonies known as the Cape of Good Hope, Natal, the Transvaal and the Orange Free State were united to form the Union of South Africa, the British colonies mentioned above had more or less similar governmental and administrative institutions and practices. A general characteristic of administrative systems of the four provinces was that they were unified systems for the purposes of financial and personnel administration. Career systems for the purposes of personnel administration existed in each of the four colonies. Each of the four colonies had its own system of municipal government and administration. These systems, however, differed only in detail because all of them were modelled on the system developed in the Cape of Good Hope in 1836 (Gildenhuis *et al.*, 1988:83).

The administrative system of the Union of South Africa established on 31 May 1910 provided for a number of state departments, which functioned under the control of the Treasury as far as financial affairs were concerned and the Public Service

Commission as far as personnel matters were concerned. The number of state departments was changed to meet the needs of changed circumstances and to give effect to the notions of political office-bearers or leading officials. Significant developments after World War 2 between 1939 and 1945 were, firstly the establishment of a number of public corporations at the central level of government. Secondly, the granting of self-government and independence to the black national states after 1948 resulted in the development of 10 further governmental and administrative systems in the area which became the Union of South Africa in 1910. Thirdly, the doubling of the number of municipal authorities after the 1960s as local authorities were established for the urban areas populated by Blacks, Coloureds and Indians (Gildenhuys *et al.*, 1988:83).

2.3 PUBLIC ADMINISTRATION

According to Van Wyk *et al.* (2003:60) the term Public Administration (with capital “P” and a capital “A”) refers to the academic discipline in Universities, restructured technikons and technical colleges . The term public administration (with a lower case “p” and lower case “a”) refers to the activities performed by officials in supervisory posts, both strategic and operational within the public sector.

Klinger (1983:6-7) states that public administration includes the functions performed by administrative agencies at each level of government and related administrative and judicial activities. Public administration and the agencies, administrators and employees involved, do not exist in a void. A host of environmental factors affect what public administrators do and how they should do it. These factors in the context of public administration include cultural values, environmental conditions, interest groups, political parties and laws.

Values are the underlying beliefs and sentiments that people have concerning the nature of public administration, its purpose and the expected behaviour of public agencies and administrators towards citizens.

Academic thought on Public Administration in South Africa seems to have been in a state of limbo since the late 1960s. This observation is based on the fact that the

dominant approach in literature, discussions and teachings on Public Administration during this time has been based on a generic administrative model. As an analytical tool, the model has become so deeply entrenched in the approach of South African Public Administration teaching that it practically resembles a dogma. This entrenchment has, to a large degree, led to stagnation in academic thought and discussion regarding a general theory of Public Administration (Hanekom, Rowland and Bain, 1986:58).

According to Gladden (1972:3) administration in simpler terms is an ingredient of social activities and therefore universal, operating as a matter of course wherever a few persons operate to attain some objectives. Administration in fact is that sector of social activity performed by officials in supervisory posts which is involved in the running of daily activities. Public administration in particular is the type of administration that is involved in the conduct of communal or public affairs by the various public bodies.

Swain (1987:1) states that public administration involves getting done what governments do. Public administrators' decision making processes involve government employees. However government employees work within a complex environment, which makes heavy demands upon them and leaves them only partially in control of their assigned duties. Public administrators, especially working in the national sphere are also directly affected by international, economic, political and military conditions. The national government strives to develop and maintain effective international relations with other nations.

Marais (1991:221) argues that one of the persistent ideas within the study of Public Administration is the bureaucratic model of Max Weber. It has been thoroughly criticised since it was first propounded. It has been proved that a pure bureaucratic model never existed and cannot exist in practice. Marais (1991:221) further states that the environment of public administration had changed intrinsically since Weber propounded the bureaucratic model; it has also been proved that the demands of modern civil service go far beyond the narrow prescriptions of the Weberian model. As a theory in Public Administration it is too limited to be of use and as an instrument of prediction it falls dismally short; but in spite of this, it remains a point of departure

for many writers (Marais, 1991:221). Weber succeeded in identifying the advantages of hierarchical organisational structure. However it was based on the German political theories. It does not necessarily provide for the traditional African systems which provide for common values and negotiated settlements and authority based on tradition.

As far as governmental institutions are concerned, the Weberian hierarchical model applied in most public institutions. The model ensures that public employees keep to the habitual rules and regulations and thus ensure that policies are being executed as envisaged by the governing structures (Marais,1991:221). Thus the persistence of the bureaucratic model remains in operation, not necessarily due to its academic correctness, but due to its usefulness to persons considering themselves secure within the prescriptive model. The bureaucratic model proposed by Weber is not quoted to prove that it was indeed the most appropriate for early twentieth century public services, it is still possible to utilise strictly defined hierarchical lines, unambiguous lines of authority and adhere to rigidly prescribed organisational structures (Thornhill, 2008:60).

The word bureaucracy carries both favourable and unfavourable meanings. Even in its derogatory sense, bureaucracy has two contradictory meanings. On the one hand, bureaucracy refers to red tape, inefficient, negative, impolite and unhelpful to citizens seeking services. On the other hand it conjures up visions of a body of all too efficient exercisers and often abusers of power arbitrarily deciding matters without due process. Bureaucracy has a neutral or even a favourable meaning in the professional study of administration. Here it refers to the formal rational organisation of relations among persons vested with administrative authority and the staffing of administration with qualified, fulltime, salaried public servants (Fesler, 1980:2-3).

The public service has moved beyond the confines and limitations of the turn of the century. The quality of personnel has improved through increased levels of education and in-service training. More particularly, the level and intensity of participation of public servants in the social, economic and even political life of many countries have increased to such an extent that public servants can no longer afford to be the mere

applicator of rules and regulations but have to contribute to the improvement of existing practices (Marais, 1991:238).

Public administration is part of a much wider sphere of administrative activity, which is universal in its operation. Public administration consists of all those operations having for their purpose the fulfilment of public policy. Government operates at several levels and in different forms as different types of government seem likely to call for different types of public administration. Normally, the government consists of central, regional and local government levels. National government has the assistance of the most important branches of public administration namely the central departments under their ministerial heads and staffed by public officials appointed according to the relevant legislation. In the modern welfare state this administrative set-up has to provide the nation with a great variety of services often calling for widespread decentralization (Gladden, 1966:16).

Nigro and Nigro (1970:11) define public administration as co-operative effort in a public setting. It covers all three branches, which are executive, legislative and judicial, and their interrelationships. It has an important role in the formulation of public policy and is thus a part of the political process. It is different in significant ways from private administration and is closely associated with numerous private groups and individuals in providing services to the community.

After World War 2 the concept of public administration expanded. Scientific management and the emphasis upon efficiency were not abandoned, but it was recognised that there was much more to public administration than management techniques and processes. The preoccupation with organisation charts and formal lines of authority changed to include a much broader focus, namely the analysis of organisations as social systems in which the workers interact in many different ways frequently at variance with the directives and views of those officials in charge. The principles approach was repudiated and the quest commenced for administrative science founded on a new basis of behavioural research testing hypotheses in different kinds of organisations (Nigro, 1970:14).

The values and ethics of public officials were dealt with to some extent in the post-World War 2 literature. However, they were not particularly emphasised. In the 1970s, the values and ethics of public officials were made critical issues by the new public administration movement, mostly younger scholars in the field. New public administration postulates that public officials should drop the facade of neutrality and use discretion in administering social and other programmes to protect and advance the interests of the less privileged groups in society. Client- focused administration is recommended along with debureaucratisation, decision-making and decentralisation of administrative processes in the interests of themes in public administration (Nigro, 1970:14-15).

The action of public administration has to do mainly with government institutions producing specific products and services for the benefit of society. Governments are expected to render particular services to society. In some cases, private institutions are not interested in producing certain products and services because there are no profits in such service delivery. The result is that governments have to accept responsibility for rendering these services. (Du Toit and Van der Waldt, 1997:8).

According to Hattingh (1986:1), public administration as an activity has definite origins and has developed into what it is today. Public administration is needed when people work together to perform and achieve a common goal together. There is enough proof that orderly communities existed thousands of years before Christ. Wherever people formed communities, there were common needs. The communities were willing to conclude an agreement with government to ensure an orderly existence. In terms of this agreement, the government would govern on behalf of the community. This community meant, inter alia , that the freedom of individuals were limited to a certain extent, but that the government has a duty towards the individual and the community. This duty means that the government has to promote the interests of the community by rendering common or collective services such as defence, water and health to the inhabitants. Each government requires public administration for it to render these collective services. One can therefore trace the origins of public administration to the people who came together to make a living in particular circumstances and within particular geographical localities. As a result of prevailing

circumstances, people have specific needs for collective services to be rendered for the benefit of a community (Hattingh, 1986:1).

The following main factors contribute to the origins and further development of public administration from a Western perspective:

- ❖ **Human needs:** The most basic human needs for survival are water, food and shelter. The earliest humans lived on the basic means provided by nature. Nature did not always make it easy for people to meet these primary needs. There is therefore an important relationship between the level of development of a particular community and the community' level of needs for services rendered by government through public administration.
- ❖ **Common needs:** Settled communities were formed because people are social beings and can meet basic needs easier in a group. Initially these settlements were in small groups and individual members could meet basic needs. As the number of people in communities increased and people became more sophisticated, it became increasingly difficult for needs to be met by individuals. People can for instance buy food, clothing, a house, a car, pay for water and electricity. However owing to restrictions placed on individuals by the orderly coexistence of people, it has become impossible for individuals to meet basic needs for water and electricity. The result is that these services have to be rendered by someone else. Typical needs which cannot be met by the communities include the provision of water and electricity, refuse removal and roads. Individual needs become common needs.
- ❖ **Increasing needs for services:** In today's sophisticated communities, governments must render a multitude of services to the citizens. Owing to urbanisation and the consequent high concentration of people in one place, the need for services grow along with cities. In South Africa there is an increasing need for government services not only due to population growth but many communities are relatively disadvantaged in respect of basic needs met.

- ❖ Need for better distribution of services: The common need for guidance and services across the country was a decisive factor in the division of government authority and services into three levels: central government, regional government and local government. The common need for security, for example, can be met better by central government since the central governing body is responsible for protecting the country's inhabitants against external aggression and internal strife. At regional level, provincial governments can meet the needs experienced specifically at regional level, for example the development of the region. At local government level, the need for specific services could be better met by local authorities such as the provision of water and electricity (Du Toit and Van der Waldt, 1997:22-24).

According to Fesler (1980:1-2), public administration was never defined as a field that commands general assent. Examples of public administration abound from the prosaic delivery of mail, collection of trash and licensing of motor vehicles to the dramatic putting of a man on the moon and the dispatching of peace corps volunteers. Hodgkinson (1978:151), contends that one of the difficulties of discussing administration with understanding lies in the fact that some of the text books lack scientific substance and do not provide a clear meaning of public administration.

The difficulty of matching the stated goal with the administrative requirements are compounded in the modern complex organisation by what can be called the hierarchic dilemma. What occurs, is that the distribution of power becomes out of phase with the distribution of organisational rewards. In the pathological sense, monetary and status accrue disproportionately to the administrative responsibility, while employees become increasingly conscious of power implications of their technological expertise. This leads to conflict in the hierarchy lacking specialisation. Thus insecure or incompetent administrators may exacerbate the rift by resorting to reaction 'dramaturgy' (Hodgkinson, 1978:154).

Another increasingly recognised deficiency in administration arises from the interaction of workload, time and information flow. Managers notoriously tend to dispose of time as a resource through diaries and structured appointment routines. They are often ostensibly very busy employees who appear to work longer, if not

harder than their fellow organisation members (Hodgkinson, 1978:155). However the question should be posed. Do they produce the results anticipated?

2.3.1 Foundations of public administration

Public administration is a special field of activity characterised by historically foundations, which serve as guidelines and norms according to which the activities of those in public employment have to be guided. The guidelines, which can be identified but not quantified, can be divided into three main groupings namely the nature of the political dispensation, societal values and norms and the rules of administrative law (Hanekom and Thornhill, 1995:18). The three groups as described briefly below are particularly identifiable in formally organised states with stable governments reasonable for satisfying identified societal needs:

2.3.1.1 Nature of the political dispensation

The Republic of South Africa is a democratic state (Constitution,1996, section 2). Thus it is obvious that the principles according to which a democratic state functions should be present in the activities of those in public service:

- ❖ every political office-bearer and every appointed public official should, in the execution of official work, show responsibility to render work of such a high quality that accountability should be ensured;
- ❖ official action at the executive level should acknowledge political supremacy.

2.3.1.2 Social values and norms

Since societal values and norms do not stand apart from government and administration, no official may act contrary to them. Acknowledging societal values and norms entail the execution of administrative, managerial and functional activities by the official in such a way as to show:

- ❖ honesty and probity;
- ❖ fairness and justness towards every citizen, irrespective of race, language, religion or political views;
- ❖ diligence and the willingness to make sacrifices;
- ❖ respect for the religious values inherent in a community;
- ❖ the endeavour for efficiency by ensuring that the greatest measure of qualitative and quantitative satisfaction of societal needs is achieved with the resources available

The social values and norms do not address current special issues such as equity and gender equity. In contemporary society equity is a major concern and political sensitive matter. Therefore it should specifically be mentioned even in the case of traditional authorities. In most cases (except Modjadji) the lineage is patriarchal and does not accept women as chiefs. Thus, although the Constitution, 1996 provides for equality in the Bill of Rights it is still not fully accepted in all communities or tribes. Thus, it remains a matter that requires attention.

2.3.1.3 *Rules of administrative law*

In performing administrative, managerial and functional activities public officials should take into account both the rules of natural justice and the rule of law. Thus it follows that:

- ❖ public activities can be undertaken only once they have been authorised by a legislative institution (Parliament, municipal council);
- ❖ public officials may not exceed authority;
- ❖ public officials may not cede authority to others without due processes are honoured;

- ❖ prescriptions regarding administrative activities should be followed rigorously (Hanekom and Thornhill, 1995:19).

Stillman (1991:5) states that administration is undoubtedly a science and no science can be improved if discoveries and observations of successive generations are not connected in the order in which they occur. One person invents a means of executing; the latter reduces a truth to a formula and human gather fruits of individual experiences on its way and gradually forms a science. Democracy pushed to its furthest limits is prejudicial to the art of government and for this reason it is better adapted to people already versed in the conduct of government. This is the environment within which managers in the public sector have to manage to achieve goals stated in political terms.

2.3.2 The nature of public administration

The co-ordination of humans and materials are required to achieve specific goals. Like administration in the private organisations, public administration is concerned with accomplishing identifiable purposes in public institutions. There are two ways in which the term public administration can be used. Public administration is concerned with the achievement of goals to benefit society as a whole as opposed to goals of e.g trade unions and businesses. Public administration is therefore concerned with servicing the state (MacRae and Pitt, 1980:7).

The state is uniquely placed in a society. It operates in the name of its people. In terms of administration, the state contains a specialised group of people, namely the “government” which establishes priorities for the delivery of services. The government, therefore can be said to provide policies aimed at establishing the goals or ends to be attained for society while public administration is concerned with creating the framework for achieving them. Public administrators deal with the activities as identified by government as compared with private administrators who are concerned with the goals of private organisations (MacRae and Pitt, 1980:7).

Traditionally, public administration is considered as the accomplishing side of government. It is supposed to consist of all activities involved in carrying out the

policies of elected political office bearers and activities associated with the fulfilment of those policies. This focus on the means and ends of government defines public administration, at the start of the twenty first century, perhaps the most important field in the study of governmental systems (Starling, 2002:1-2).

According to Caiden (1982:4), some social problems in societies do not respond adequately to individual initiatives. Effective remedial action requires the organised efforts of the whole community. Such collective problems range from child-rearing, food gathering and protection from wild beasts in primitive societies to urban blight, carcinogens and delinquency in contemporary societies. How people are organised as a public collectively in which mutual obligations are recognised and duties to handle common problems and achieve common goals, constitute the subject matter of public administration.

Contemporary society is an administered society and large organisations dominate the social landscape, though small organisations provide the background, foreground and much of the interest in the picture. There are scholars who argue that administration is the same whether in business firms, government agencies or non-profit and private concerns. Schools of management exist that are premised on the notion of generic management even though within the curricula of those institutions are divisions of public management and courses specifically focusing according to these proponents on public management. If there is nothing unique to public organisations, then there is no need to study public management as a separate field. However, such views ignore the unique role of politics in public services and thus in managing such services (Lerner and Wanat, 1992:1-2).

According to Cloete (1986:3), the words public and administration are used to refer to the administrative 'processes' (which are in fact functions), which must be carried out and which are inextricably linked with the functional activities (just as oil and fuel are inextricably linked with the engine of a motor vehicle) of the various public institutions. Examples of functional activities are nursing in the case of hospital and education in the case of training and development. However it must be borne in mind that wide ranging public activities are usually classified into three main groups, namely:

legislative,

executive

judicial activities

It should also be explained that the term public administration is in fact a broad term used to describe the administrative activities carried alongside the many functional activities of the different categories of public institutions.

People often erroneously assume the introduction of public management into the theory and the practice of public administration suspends, subsumes or replaces that discipline. This fallacious assumption is especially prevalent among those who view public administration as merely a process. Public administration is a system consisting of identifiable functions. Public management consists of functions carried out within public administration. The study of public management does not suspend the need to study public administration as a whole with its own societal contexts, structures and functions. In this sense, public management represents foci of separation within public administration. Theoretically and practically such focuses are useful for managing public institutions. These foci do not negate the need to study other aspects of public administration (Schwella, Burger, Fox and Muller, 1996:5).

Public administration is aimed at policy execution and also in policy formulation. It has other meanings as well, but these provided above are sufficient to orientate and offer clarity to introduce the subject. What a government accomplishes for society depends on what policies are formulated and adopted and on how effectively these are put into practice.

Administration is a function common to all group efforts public, civil or military, large scale or small scale. It is a function in a department store, bank, a university or high school, a railroad and a city government. Administration in its broadest sense is a generic noun. When the adjective public is added it defines administration as applicably to the public sector i.e. to governmental institutions. Thus the development of a public school, a public road and government department fall within the domain of

public administration. Although it varies in form and objects and although the administration of public and private affairs differ at many points, there is an underlying similarity in the function wherever observed. Defined in the broadest terms public administration consists of all those operations having for their purpose the fulfilment of public policy. This definition covers a multitude of particular operations in many fields, such as the delivery of letters, the sale of public land, the negotiation of a treaty, the award of compensation to an injured workman, the quarantine of a sick child, the removal of litter from a park, the manufacturing of plutonium and licensing the atomic energy (White, 1955:1). Thus in the public sector efficient public administration is a precondition for efficient policy execution.

2.3.3 The purpose and scope of public administration

The immediate objective of public administration is the most efficient utilisation of resources at the disposal of employees. Good management seeks the elimination of waste, the conservation and effective use of people and materials and the protection of the welfare and interests of employees. In their broader context, the ends of administration are the ultimate objects of the state itself such as the maintenance of peace and order, the progressive achievement of justice, the instruction of the young, protection against disease and insecurity and the adjustment and compromise of conflicting groups and interests. What administration is called upon to do varies with people's expectations of the services they should receive from government.

Two centuries ago most people expected little but oppression from government. A century ago people expected chiefly to be left alone. Now they expect a wide range of services and protection from internal strife and external aggression. Throughout the Western world, the demands made by people upon governments have increased. This trend inevitably means more administrative agencies, more officials and more urgent demands for administrative skills (White, 1955:3-4).

From a Western perspective and based on the requirements of a contemporary state public administration could be discussed and justified under the following headings.

However it should be noted that in a traditional African system these functions cannot be classified as rigidly as outlined due to customs and traditions.

2.3.3.1 Policy formulation and execution

When the government has adopted a policy, it means that the elected policy-makers have enacted e.g a law forbidding, directing and permitting members of the society to behave in specified ways. The law is a merely printed document. The task of the public administrator is to translate statute into changed behaviour by individual members of society, to convert words into action, form into substance (Fesler, 1980:2-3).

Administration's second role is in the policy formulation process. This role is played at two stages of the process as follows:

- ❖ before the constitutionally empowered legislature and chief executive have made the policy decisions;
- ❖ after the statutes have been enacted or issued on executive orders and passed on to administration.

At the first stage, proposals for statutes and for amendments of statutes flow from many sources. Administrative agencies are among the most important sources of policy (Fesler, 1980:2-3).

2.3.3.2 Large- Scale and small-scale administration

Public administration is large-scale administration. The American federal governments' s total receipts from public in the calendar year 1976 equalled a third of the combined sales of the country's 500 largest industrial corporations. The government of the 10 000 municipalities with not more than 1000 inhabitants to serve is clearly engaged in small-scale administration (Fesler, 1980:4-9).

In South Africa housing and the eradication of informal settlements remain at the forefront of the national government infrastructure investment plans. It impacts significantly on employment creation and poverty reduction. In the past three years, the municipal infrastructure grant programme has spent about R32 billion. Over the next three years, infrastructure grants to municipalities is R67 billion. A further R45 billion will be spent on the Breaking New Ground housing programme. The investment in roads and public transport constitute the largest areas of expansion of public sector spending. They are prioritised as part of the national government 's response to the current deterioration in employment and economic activity (Manuel,2009:15).

2.4 THE DEVELOPMENT OF PUBLIC ADMINISTRATION

For many years, scholars of Public Administration ignored managerial philosophy because it was argued that the management philosophy examines the utilisation of means of production for gaining profit, while public administration is aimed at studying government institutions which are service orientated. Gradually it was realised, however, that administration as organised institutional group action can also be managed (Botes, Bynard and Roux, 1992:240).

Traditional systems and institutions were not designed to respond to demands for social and economic developments. They were expected to be responsive to the needs of the people. They did not recognise the function of rectifying malfunctioning social systems. They were not concerned with the encouragement or support of economic growth or the distribution of the benefits of that growth as with the allocation of resources to assure continuing profits and revenue to government or rather to those who control the government (Gant, 1979:18-19).

Gant (1979:19-20) states that the term Development Administration was coined in 1955 or 1956. It seemed to be a simple and clarifying way of distinguishing the focus of administration on the support and management of development from the administration of law and order. In some respects, it is the counterpart of the term *development economics* which came into renewed and heightened usage with the growing impact of planning in newly independent countries after World War 2.

There is general agreement that it is useful to distinguish development administration from other types of administration as a separate focus for research. The term *development administration* became a fashionable expression at some stage in the past, but is somewhat artificial. Its meaning is unexplored and deceptively vague and it is in danger of becoming merely a slick expression for efficient public administration. Development Administration adds nothing to professional vocabulary or views about the challenges facing public administration. To assert that development administration is the process of guiding an organisation towards the achievement of development objectives tells little more than that development administration is the administration of development (Waldo, Savage, Gunnell, Diamant, Ilcham, Sherwood, Jowitt and Bock, 1970:47- 48). It could therefore be deduced that no justification exists for the term development administration as all administration is used at development.

2.4.1 New Public Management

In the last quarter century there has been a significant shift within the field of Public Administration. Traditional values and norms have been undermined in a number of ways. One aspect of this trend is the emergence of a concept which became known as New Public Management (NPM). At the most basic level this concept promotes the public sector use of private sector management techniques. Due to a number of pressures, NPM spread across the world influencing various states. However, there are reservations over the general applicability of NPM, especially in the developing world. Those who favour a more traditional approach believe that more must be done to address the issues of capacity building before NPM reforms are implemented (Baird,2004:1).

NPM is guided by the principle that the economic market should be used as a model for political and administrative relationships; however, there is no clear consensus in the precise definition of NPM with different scholars and practitioners focusing on different aspects.

One basic definition that encompasses the major themes consists of the following five key factors:

- ❖ the adoption of private sector management practices in the public

sector;

- ❖ an emphasis on efficiency;
- ❖ a movement away from input controls, rules and procedures toward output measurement and performance targets;
- ❖ a preference for private ownership, competitive provisioning and contracting out of public services; and
- ❖ the devolution of management control with improved reporting and monitoring mechanisms.

Another important aspect of NPM is the rigid separation between policymaking and service delivery, which signifies a shift away from the policy-administration continuum (Baird,2004:2). When taken together, these five factors will form the definition of NPM .

Alongside this concept is the concept of capacity building which is extremely important in any discussion of public administration in the developing world. Capacity building relates to the enhancement of capacity, where capacity means the ability to carry out a particular task or function. NPM has two dimensions: internal organisational capacity, of human resources, management or leadership, financial resources, physical/logistic resources, and information resources; and external or institutional context within which the mobilisation and use of organisational capacity occurs which are factors emanating from the economic, social and political environment. In this context the task or function which is to be carried out, is that of administration, and as such capacity building refers to the promotion of the resources and environment necessary for efficient administration (Baird,2004:2).

While NPM deals with the content of reform, capacity refers to the ability of Administration as a whole to ensure efficient service delivery. For many scholars who study the developing world, NPM should be a secondary thought. It should be addressed once capacity building measures have been introduced, enhancing the basic skills and tools of administration. After steps have been taken to improve capacity then it may be appropriate to advocate NPM reforms, but for many experts in public administration the initial goal should be limited to the establishment of traditional administration (Baird,2004:2).

The term *new Public Management* was first used in 1991 as a label to denote recent administrative reforms. Thus it is important to emphasise that reform agents did not

use this term when launching administrative reforms in the 1980s and early 1990s, even if the reform content was later classified as new public management. In contrast to general change processes, reform involves deliberate change. To label new public management a new approach has an element of intentional effort by political office bearers to change the structure and processes followed by public sector (Christensen, 2002:267).

New public management consists of two main features. The first one is the primacy of economic norms and values. The second feature is the hybrid character of new public management. The abovementioned features will be discussed in detail below.

2.4.2 The primacy of economic norms and values

The main feature of new public management is its one-dimensional emphasis on economic norms and values. This implies an ideological dominance of economic norms and subordination to them of many traditionally legitimate norms and values e.g broader political concerns, sector political goals, professional expertise, and different considerations becoming more evident. In new public management, this dominance is also connected to strong and often not well-founded opinions based on economic theories and management theories about how an efficiency focus should change the formal organisation of the public sector, the procedures used, the expertise needed and its relationship to the private sector.

New public management is essentially a concept of generic management because it is argued that management faces similar challenges and hence should be approached in similar ways not differentiated according to structure the environment within which management takes place. The new model of public management challenges both the traditional notion of the welfare state and the role of the citizen in the state (Christensen, 2002:268-269).

2.4.3 The hybrid character new public management

Even though the new public management cultivates economic values and objectives it is still a loose and multifaceted concept, embracing diverse elements which comprise

a kind of shopping basket for reformers of public administration. The main components of new public management are hands-on professional management which allows for active, visible, discretionary control of an organisation by officials who are authorised to manage; explicit standards of performance; greater emphasis on output control; increased competition; contracts; devolution; desegregation of units; deregulation; customer service orientation and private sector management techniques. Tension arising from the hybrid character of the new public management, which combines economic organisation theory and management theory, could detract from the main focus i.e on the delivery of services.

The tensions result from centralising the tendencies inherent in contractualism as against the revolutionary tendencies of managerialism. The first set of ideas comes from economic organisational theories such as public choice and principle agent theory and focuses on the primacy of representative government over bureaucracy as a corps of appointed officials. The implication of this paradigm is that the power of political leaders must be reinforced to retain their authority against possible bureaucratic tendencies. This concentration of power requires attention to centralisation, co-ordination and control, and contractual arrangements are main devices for attaining the stated goal (Christensen, 2002:269).

2.4.4 The new institutional framework: national and provincial government

The three branches of government are the legislature, executive and judiciary. The legislature consists of Parliament, provincial legislature, local government. The legislature approves legislation. The executive authority consists of the cabinet or government, provincial executive council and the council itself in the local government sphere and it carries out policy. The judiciary consists of the courts, and it interprets such legislation.

Government departments in the national sphere are headed politically by ministers who are also members of the executive authority. There are also links between the administration and the legislature, in that the legislature body authorises policy, which is implemented by the officials under the direction of the respective political office bearers. There are also links between the administration and the judicial arm of

government, in that the courts can review the actions of government (Christensen, 2002:269).

2.5 THE FUNCTIONS OF PUBLIC ADMINISTRATION

Public administration consists of the six generic administrative functions as basis for managerial functions. They are policy-making, organising, public finance, and public personnel management, procedures, control and rendering account.

The six generic functions of administration are all essential building blocks in the practice of any public institution and no institution can function on efficiently or will continue to exist without all these building blocks. On the one hand, there are the administrative functions and actions necessary for determining and carrying out aims and projects and, on the other hand, there is the functional or technical component requiring specialised knowledge, for example, the construction of dams and roads, medical care, hospital services, educational services and customs and excise inspections (Botes, Fourie and Roux, 1992:240).

The generic administrative and managerial functions will be discussed in detail below.

2.5.1 Policy- making

Public administration comprises various functions. One of them is public policy. Policy formulation influences service provision at every governmental sphere. It is of vital importance for the communities to participate in policy making in order to improve service delivery.

Hanekom and Thornhill (1995:54) define *policy* as a desired course of action and interaction which is to serve as a guideline in the allocation of resources necessary to realise societal goals and objectives, decided upon by the legislator and made known either in writing or verbally. In the public sector, policies are the output of the political process and serve as initiators for executive action.

There are always a considerable number of factors that serve to change the nature and the extent of the activities undertaken by public institutions. These factors must always be monitored and taken into account for the purpose of making new policies or adapting existing policies (Cloete, 1998:133). Cloete (1998:133-136) describes the main factors that influence public policy as follows:

- ❖ **Circumstances:** This means the total environment as determined by the time and place in which the authorities operate. It includes the state of community life as regards economic, technological and social matters. Even geographical and climatic factors can exert an influence on these.
- ❖ **Needs and expectations of the population:** Every public institution exists to satisfy the real needs and the justified expectations of the population. Public institutions will never start providing services without a need of having been identified. There will first be a period during which the public will become aware of a need, and then the public or interest groups will start making representation to the authorities to satisfy the need.
- ❖ **Policies of political parties:** In most states, there will always be two or more opposing political parties in rivalry to gain power and rule the country. The parties base their claims to power on their respective views with regard to various policies and these views may fundamentally affect the activities of the executive institutions.
- ❖ **Activities and representation of interest groups:** In the Republic of South Africa, as in every other state, members of the population have created numerous associations with diverse interests for example, workers or employee associations and industrialists. These groups are engaged in making representations to various authorities about changes in policy.
- ❖ **Personal views of political executive office-bearers:** Political executive office bearers are ideally placed to influence the policies of the institutions entrusted to them. These office-bearers are leaders in legislative institutions, which have the final say in policy matters.

- ❖ Research and investigations as well as the views and experience of officials: Nowadays public institutions do research on an ever-increasing scale and this inevitably has an influence on policy matters.

Policy-making is inherently political and is an outcome of a political process that involves negotiation, bargaining, persuasion and compromise. Policies involve the participation of government institutions, political parties, interest groups and other role-players such as the media (Van Niekerk *et al.*, 2001:113).

Dunn (1994:15) states that the process of policy analysis is a series of intellectual activities carried out within a process comprised of activities that are essentially political. These political activities can be described usefully as the policy-making process and visualised as a series of interdependent phases developed through time: agenda-setting, policy formulation, policy adoption, policy implementation and policy assessment. Policy analysts may produce information relevant to one, several, or all the phases of the policy-making process, depending on the problem faced by the client for policy analysis.

According to Van der Waldt and Du Toit (1999:210), policy can be initiated through interest groups introducing policy. The role of public managers in this regard is to involve all role-players from society and encourage public participation in the policy-making process. Public managers should constantly make a needs analysis in various communities to improve the general welfare. Public managers serve as a means of communication between society and the legislative authority through which policy-relevant information is conveyed.

There are many ways in which people try to affect the degree of attention given to particular items. These people are sometimes called policy entrepreneurs and are willing to invest personal time and energy in projects such as publicity campaigns, direct contact with decision makers, petition drives and many others. Policy entrepreneurs can be involved in major institutions, such as the media, in this process political parties and interest groups that provide access to decision-makers (Denhardt, 2006:52).

Members of the public and non-profit organisations play important roles in building the policy agenda and shaping legislative policy, however the involvement in policy-making as part of the implementation helps to expedite the process (Denhardt, 2006:54).

2.5.2 Public human resources management

The South African public institutions increased constantly in number since 1910. The activities of the existing institutions also increased. These expansions were caused by a number of factors. Firstly, the population of the Republic of South Africa increased rapidly from a total of about 6 000 000 in 1911 to 22 000 000 in 1970 and an estimated 41 000 000 in 1996 (Cloete, 1997:10).

Secondly, the Republic of South Africa underwent substantial development particularly during and after the period of the World War 2 between 1939 and 1945. This development required more and more services from the increasing number of public institutions; for example, education and tax collection services increased in pace with economic development.

Thirdly, the educational development of the population created new needs, which had to be satisfied by public institutions. For example, there was an increasing demand for improved schools and universities.

Fourthly, the people could learn because of better education, improve their economic and social circumstances with the result that they required and could afford better services, which were previously regarded as luxuries, for example, communication, transport and recreational facilities and services.

Fifthly the increasing prosperity of the growing population also results in social dilemmas such as drug and alcohol abuse as well as criminality which have to be combated by public institutions.

Sixthly, as a result of scientific and technological developments, public institutions can undertake services, which were previously beyond their reach. For example, the

research findings in the fields of social and natural sciences cause the activities of public institutions to change and expand. For example new developments in medicine allows people to grow older and thus require more social assistance.

The aforementioned developments brought about needs for a greater number of goods and services to be rendered by the public institutions. The required services also become more complicated demanding the employment of more skilled workers (Cloete, 1997:10-11).

The Constitution 1996, provides for Parliament to be the legislative authority in and for the Republic. In practice, it means that all human resource administration in the Republic of South Africa will be subject to the provisions of the Constitution and acts of Parliament. This statement applies in particular to the public service where the Public Service Commission Act, no. 30 of 1996, the Public Service Act 1994, Proclamation 103 of 1994 and other pieces legislation prescribe the personnel policies and administration.

According to Schwella *et al.* (1996:13), public resource management is not practised in a vacuum. As public resources are used to pursue policy objectives, it becomes clear that a number of contextual variables influence the management of these resources. This notion also finds support in the open system theory where the influence of the environment is an important variable in describing and explaining management and organisational phenomena.

The environment of public resource management can be conceptualised using general or specific environmental components as departure points. The environment can be divided further into the components of its general environment, namely the political environment, the economic environment, the social environment, the cultural environment and the technological environment. It also distinguishes specific participants, namely regulators, suppliers, consumers and competitors (Schwella, *et al.* 1996:14).

Human resources planning is a critical subset of an organisation's strategic planning efforts. Without a thoughtful plan, each line manager must decide how to allocate

resources and prioritise unit activities with guidance only from the next higher echelon. Agencies that take the time to plan are better able to co-ordinate the efforts of various units towards agreed upon objectives.

Planning is a fact of agency life whether agency managers wish it or not. Few organisations can afford to remain static because of changes in the agency's environment. Shortfalls in projected revenues, for example, frequently spur public executives to rethink the resources that are allocated to various components of the mission. The election of a new public executive whose view of government radically differs from that of the previous administration may stimulate a spate of planning activities in agencies (Sylvia, 1994:129).

2.5.3 Public finance

Management consists of various principles and functions, of which financial management is one manifestation. These principles and functions form the basis of performance to meet objectives within the resources available. Financial management focuses on using limited public resources to ensure effective use of the public money and assets, to achieve value for money in meeting the objective of the government in delivering services to the public (Kuye, Thornhill, Fourie, Brynard, Crous, Mafunisa, Roux, van Dijk and van Rooyen, 2003:100).

Just as a person cannot initiate a business undertaking without money, a public institution also cannot initiate any work without money. However, all public institutions are dependent on the citizens for their income. For this reason, special legislative directives have to be followed in the procurement and expenditure of money in the public sector (Cloete, 1992:133).

Financial management issues in the public sector have become the focus of increasing attention in recent years. Cuts in the public expenditure have been the cause. These cuts have put pressure on public authorities to maintain services with limited budget allocations and to do so, they have to improve their financial analysis so that action can be taken to improve value for money (Henley, Liekerman, Holtham and Perrin, 1983:1).

The public sector is both extremely diverse and extremely large. Even ignoring the large sums expended on transfer payments require good accounting and financial control, the total expenditure of the public sector on employing people, goods and services in carrying out both trading and public services is large (Henley *et al.*, 1983:3).

In public sector organisations, there is rarely a bottom-line figure, such as profit, which can provide a single evaluative measure of performance. This is because many services are provided out of taxation, either centrally or locally and do not generate sales revenue, which can be the basis for calculating profit or loss. Examples include primary and secondary state education, defence, and the national health service (Coombs and Jenkins, 1994:30). The general government expenditure is the expenditure of national and local government excluding transfers between them such as the Revenue Support Grant to local governments' medium-term financial strategy (Coombs and Jenkins, 1994:4).

Gildenhuys (1997:50-51) identifies the following democratic values, which should serve as basic principles in public financial management:

- ❖ the first value which can be established is that public financial decision-making should always aim at the most reasonable and equitable way in which the financial resources can be allocated, as well as the most efficient and effective way in which financial resources can be applied to satisfy the collective needs of the public;
- ❖ the second value is the fact that the utilisation of public financial resources must satisfy collective public needs optimally;
- ❖ the third value is based on the tenets of participatory democracy, namely direct or indirect participation by the tax payers, consumers and users of public services in the financial decision-making process;

- ❖ the fourth value is the principle that no tax or other charges can be collected from taxpayers without their consent and this tax burden must be distributed in a reasonable and equitable way;
- ❖ the fifth value is the fact that only the collective body of elected political representatives has authority to introduce taxes, to collect them and to decide how and on what they shall be spent;
- ❖ the sixth value is the principle of responsibility and accountability of elected political representatives to the taxpayers for the collection and spending of taxes and other income;
- ❖ the seventh value is that of sensitivity and responsiveness requiring political representatives to be sensitive and respond to the collective needs of the community;
- ❖ the eighth value emanates from the requirement for satisfying collective needs, namely the executive authority's responsibility for efficient and effective programme execution;
- ❖ the ninth value and without doubt a very significant one derived from the tenets of democracy is social equity, is emphasising the concept of social equity in maintaining high ethical and moral standards;
- ❖ the tenth and one of the most cardinal values of democracy is that all activities regarding public financial management and administration must take place in public and not under cover in secrecy or so-called confidentiality.

Although these values appear to be generic, they do not acknowledge traditional authority systems. In traditional society a monetary value was not necessarily attached to labour or a community. Land e.g was not sold and was not owned by an individual. Thus it did not have monetary value. Land was a common asset and was merely allowed to a family to use as long as they remained subjects.

2.5.4 Organising

The statement that administration takes place as soon as two or more individuals co-operate in achieving a common objective means that organising has to take place. *Organising* consists of classifying and grouping functions as well as allocating the groups of functions to institutions and workers in an orderly pattern so that everything the workers do will be aimed at achieving the predetermined common objectives (Cloete, 1998:165).

In the public sector, political considerations always take precedence over other matters. Attention is always given first to the political organisation of a country since this provides a superstructure within which organisational arrangements for all functions can be involved in running the country namely the legislative, the executive (political and administrative) and the judicial functions. In the Republic of South Africa, the electorate is the source of political power and the views of the voters are voiced in Parliament, which is subject to the provisions of the Constitution, which is the highest and most decisive law in the country. The voters entrust their power to their elected representatives who serve in various legislative assemblies. The present political dispensation in the Republic of South Africa provides for the following the spheres of government (Constitution, 1996, section 141):

- ❖ the national sphere, with Parliament as legislative and President and Cabinet as executive;
- ❖ the provincial sphere, consisting of the nine provinces, each of which has its own provincial legislature, premier and executive council; and
- ❖ The local sphere consisting of the numerous municipal councils with their own executive types (the council is also the executive authority).

2.5.5 Procedure

After policy has been formulated, the organising and financing functions have been completed and personnel have been appointed, the work can commence. Two or more functionaries will normally co-operate to attain a stated policy objective. The

particular organisational arrangements will to some extent compel persons to unite their efforts in an orderly manner. However, the individuals may still hold differing views on how to perform a specific task. To ensure that everyone in a specific organisational unit co-operates in attaining the policy objective and does not waste time in the process, it is essential for specific work procedures to be laid down for each task. This will result in efficient work performance and work being done in the shortest time, using the minimum amount of labour at the lowest cost (Cloete, 1998:248).

2.5.6 Control and rendering account

A fundamental requirement of public administration in any state is that the population represents the highest authority and that everything that the political office-bearers and officials do, should be to the benefit of the citizens individually and collectively. The population itself can of course not exercise the legislative, executive and judicial functions to satisfy the needs of the public. For this reason, legislative, executive and judicial institutions were created and staffed by functionaries to satisfy community needs. The population also gave the functionaries authority to perform their respective functions. However, the people must exercise control to ensure that functionaries use their powers wisely and efficiently to further the wellbeing of the community (Cloete, 1998:245).

The exercise of control in the public sector can have one objective; namely to ensure that account is given in public for everything the authorities do or neglect to do, so that all citizens can observe exactly what is being done to further their individual interests. Control in the public sector therefore culminates in meetings of legislatures that are open to the public and form the apex of the citizenry. To ensure that the executive authorities answer for their deeds during sessions of the legislatures, it has been necessary to introduce means of detecting any wrongful action that they might have taken. Control in the public sector consists of two parts, as follows:

- ❖ internal control, which is exercised by the executive functionaries,
- ❖ external control giving account in the legislatures (Cloete, 1998:265).

A major challenge exists concerning accountability of traditional leaders. In the case of Parliament a provincial legislature or municipal council, the elected representatives are accountable to an electorate. Traditional leaders are not elected and can therefore not be required to account to an electorate. Their positions are hereditary and a leader cannot be dismissed in the ordinary sense of government for maladministration. Therefore accountability should be addressed in any proposed system in which traditional authorities are assigned specific responsibility.

2.6 CONCLUSION

The theoretical underpinnings of the study were presented in this chapter. This was done through a literature survey, which was aimed at developing a framework for the rest of the study. The chapter focused on several important aspects of public administration.

The history of public administration was discussed in detail stating that simple nomadic and tribal societies have their administrative ways and means, though usually of an informal nature. The chapter discussed the history and development of public administration because definitive types of public administration emerged in parallel with the development of the state, whose beginnings can be discerned in the small urban units as early as the sixth millennium B.C. Throughout history in many parts of the world, the state's development has been varied and its supporting administrative machinery increasingly complex. The historical antecedents within the European and American contexts were discussed in detail. The history of public administration in the South African context was briefly discussed.

The chapter discussed the foundations of public administration because public administration is a special field of activity characterised by identifiable foundations, which can serve as guidelines and value norms according to which the activities of those in public employ should to take place. The nature of public administration was also outlined because traditionally public administration is considered as the accomplishment of government goals.

The chapter covered the scope of public administration because the study of public administration is concerned with the administrative functions, structure and assumptions of government as well as the study of institutions of government, which are the essential bases on which this should be based. The functions of public administration were also discussed in detail in this chapter because they are the essential building blocks in the practice of any public institution and no institution can function efficiently or continue without all these guidelines.

Chapter 3 will mainly focus on the effects of the government environment on traditional leaders. Different government environments will be discussed in detail.

CHAPTER 3

THE EFFECTS OF THE GOVERNMENT ENVIRONMENT ON TRADITIONAL LEADERS

3.1 INTRODUCTION

The government environment consists of three different levels. These levels are called the macro-level or general level, the intermediate level and the micro-level. For the purpose of this chapter, some of the macro-environments will be discussed in detail because they have a direct impact on traditional leaders. The macro- or general environment consists of political, economic, social, cultural and technological components. It includes all influences outside the boundaries of the institution, representing all the factors external to the institution's micro- and intermediate environment influencing the functioning of these environments. In this chapter, the legal environment will be discussed because it includes factors such as the constitutional system, the nature of the legal system and legislation determining the form and control of government institutions.

A full overview of various laws and other policies which have a great influence on the traditional leaders will be provided in this chapter. In this section, the apartheid and the post-apartheid legislation and their impact on traditional leaders will be discussed in detail.

Secondly, the political component of the macro-environment will be outlined because it affects almost every facet of the public administration and traditional leaders, since these are influenced, directly or indirectly by factors such as the system of government, the Constitution, the Bill of Rights and the promulgation and implementation of laws. The political component consists of the regulations with which the authorities of a state regulate the structures and the processes within a state. These include the general political climate, the degree and nature of political power and the political party system (Du Toit and van der Waldt, 104:1999).

Thirdly, the social environment will also form a significant part of this chapter because it involves the nature, quantity and distribution of human resources. It relates to the class structure and mobility, social roles, the nature of social organisation and the development of social institutions. Due to the wide-ranging nature of the concept *social*, the cultural environment is included in the term *social environment*.

Traditional leaders play a significant role in the social environment. The social environment plays an important role in the government actions and administrative framework because any government activities potentially have an impact on people. For example, legislation to effect the apartheid policy and separate residential areas had a drastic influence on the social environment in South Africa. The heterogeneous South African population consisting of many subcultures and linguistic diversity have a direct impact on the social environment. The main aim of the government is to provide goods and services to the community so as to improve the general welfare of the society.

In this chapter, legal, political social as well as the economic environmental components will be discussed in detail. The main objective of the chapter is to establish to what extent does the impact of the government macro environment has on traditional leaders.

3.2 LEGAL ENVIRONMENT

According to Du Toit and Van der Waldt (1999:117), the legal environment includes the constitutional system, the legal system and the legislation determining the form and control of government institutions. In this section, the apartheid and the post-apartheid legislation will be discussed as far as it relates to traditional leaders and related institutions.

3.2.1 Legal environment during Unification

The arrangements with regard to local government were maintained with the establishment of the Union of South Africa on 31 May 1910 in terms of Section 85 of the South Africa Act, 1909. According to Cloete (1997:12) municipal affairs were

made the responsibility of the provincial authorities. For many years, the central government showed little interest in municipal affairs and contributed nothing to the development of local government and administrative systems for South African urban and rural areas. In 1912, the Local Government Ordinance, no. 17 of 1912 of the Transvaal as an example of previous municipal arrangements became effective and remained almost unchanged until the Local Government Ordinance, 17 of 1939 was passed. This system provided for a council with a mayor, deputy mayor, committees and professional officials (De Beer, 1995:26).

In 1922, the Stallard Commission was appointed by the central government to investigate local government issues affecting blacks and it established that blacks had to be involved in their own government. The Commission also pleaded for the creation of advisory committees to serve as a link between white local authorities and black local authorities. In the meantime, the central government was forced to create a liaison mechanism with regard to influx control (De Beer, 1995:28).

The Urban Areas Act, no. 21 of 1923, was promulgated and its most important purpose was to limit the number of Black people within an urban area to the labour requirements of that area (Reddy, 1999:53). This meant that only the Bantu (as previously defined) employed in an area, were entitled to live there. Other important provisions of the Urban Areas Act, no. 21 of 1923, were that local authorities should be responsible for the housing of the Bantu within their areas and that all revenues from townships should be spent on them. This entailed the setting up, by municipalities of a native revenue account. Black advisory boards in townships were established to bring the views and desires of residents to the attention of the municipal council (Cloete, 1989:25).

When the Transvaal became a province of the Union of South Africa various activities of the municipal establishment, regional councils and other similar local authorities became the responsibility of provincial councils (Blum, Ferguson, Humell, Krause, Lawrence, van Aswagan and van Rensburg, 1986:285).

3.2.2 The legislative impact on the powers and functions of traditional leaders during the National Party government

Traditional leaders, both chiefs and headman currently still have the powers and functions accorded to them under colonialism and apartheid as contained in various pre-1994 legislations. The Black Administration Act, no. 38 of 1927, the Black Administration Act, no. 68 of 1951 and the Regulations Prescribing the Duties, Powers, Privileges and Conditions of Service were established to govern the affairs of traditional leaders. Some of the roles of traditional leaders under the preceding legislation were as follows:

- ❖ to promote the interests of the tribe or community;
- ❖ to support and actively encourage the moral and social well being of the traditional leader' s people;
- ❖ to report any condition of unrest or dissatisfaction to the government;
- ❖ to inform his people about new laws, orders and instructions;
- ❖ to convene meetings of the people when requested by government and ensure attendance.

3.2.3 The establishment of town councils for municipalities

Section 6 of the Municipal Elections Ordinance, no. 4 of 1927 entailed the establishment of town councils for particular municipalities. Councils of municipalities lawfully established prior to the commencement of this ordinance and mentioned in the second schedule to this Ordinance, was be deemed to be town councils constituted under this ordinance and members thereof, were elected under the provisions of the Municipal Elections Ordinance, no. 4 of 1927 and any amendment thereof. Such councils were regarded as a body corporate capable in law of purchasing, holding and alienating land and generally of doing and performing such acts and functions as bodies corporate could by law do and perform, subject to the

provisions of this Ordinance and any other law. In the case of works which, at the commencement of this ordinance were already in the process of execution under any law existing before such commencement could continue.

Section 7(a) of the Local Government Ordinance, no. 17 of 1939 (Transvaal) dealt with the constitution of areas of existing municipalities as follows:

- ❖ The areas of jurisdiction of town councils constituted under the provisions of Section 6(2) were areas of municipalities as defined by law or proclamation at the commencement of this Ordinance, provided that the powers vested in the Administrator by Section 9 of this ordinance could be applied in the case of any municipality for which a town council was constituted under Section 6 of this ordinance.
- ❖ Any outside area held by a council for the purpose of the tramway, electrical light or waterworks, cemetery, sewerage or drainage works or any other municipal undertaking were under the control, jurisdiction and powers of the council but were not part of the municipality and to that extent were subject to the provisions of this ordinance.

Section 9 of the Local Government Ordinance, no. 17 of 1939 (Transvaal) determined the power of the Administrator in regard to municipalities as follows:

(1) Subject to the provisions of this ordinance, the Administrator was authorised exercise all or any of the following powers :

(1)(a) declare one or more towns, villages or areas, whether such towns, villages or areas are contiguous or not, to be a municipality under the jurisdiction of a town council and constituted for such a municipality, a town council to be elected in the manner provided by the Municipal Elections Ordinance, no. 4 of 1927(Transvaal). In terms of Section 9(a), which entailed the establishment of the city council, the administrator may by proclamation in the official Gazette, declare a town council to be a city council and the municipality of such town to be a city. It is obvious that during the period under review, traditional leaders were not identified specifically.

They were not assigned functions to perform. Traditional areas were not specifically established and could thus not attend to their followers' needs.

3.2.4 The legislative impact on the establishment of advisory black committees

In 1945, the Blacks (Urban Areas) Consolidation Act, no. 32 of 1945, provided for the creation of advisory black committees for every black residential area. These committees mostly comprised accepted leaders from the various communities. Liaison was established with the town manager or town superintendent, as this person normally acted as chairperson of the committees. Nevertheless, liaison between white and black authorities failed, especially because communication did not take place on an equal footing (De Beer, 1995:29).

3.3 THE IMPACT OF LEGAL ENVIRONMENT ON LOCAL GOVERNMENT DURING THE NATIONAL PARTY GOVERNMENT

3.3.1 The creation of racially based local authorities

From 1948, the National Party government created separate racially based local authorities for each of the four racial groups (as identified for policy purposes) in the country. White local authorities were the most favourably endowed in terms of resources, facilities, services and business and industrial areas. The other three subsystems, which were the black local authorities, coloured management committees and Indian local affairs committees, were all inferior and were not viable since only some of the facilities and services could be duplicated in these areas (Cloete, 1995:2).

It must be noted that the national party came into power on the manifesto of White supremacy in government. Thus no provision was made in the policies for the accommodation of Black (Coloured or Indian) citizens. Legislation passed since 1948 provided for racially based policies concerning labour, housing, health, education. No recognition was afforded to traditional systems in the first phase of the National Party's rule. It was only late in late 1970s when the so called Bantu systems were developed that traditional systems were acknowledged. However the tribal authorities

that were established were often politically motivated to enable Government to locate them to specific geographical areas and thus to separate them from the rest of society.

In 1948, the Continuation of Local Authorities' By-Laws and Regulations Ordinance, no. 19 of 1948, was enacted for some of the municipalities as follows:

Section 2 of this Ordinance entailed the regulations and by-laws of a local authority to be applicable to a newly established local authority. Whenever, under the provisions of any law applicable to a local authority, one class authority is constituted for any area in lieu of another class of local authority. A portion of a municipality is exercised from a separate local authority and when such new local authority is constituted, shall, in the absence of any provisions of the law, be deemed to continue to be in full force and effect until duly revoked or amended. In 1948, different systems of local government were created in accordance with the criteria of population groups (De Beer, 1995:29).

3.3.2 The division of ethnic groups

Traditional leadership institutions were administered in accordance with the now repealed Group Areas Act, no. 77 of 1957, which provided for the application of the policy of separate development to urban areas. This had to be done by creating group areas for occupation by different race groups (Cloete, 1992:194).

During the apartheid dispensation, local government consisted of local authorities for whites, Indians, coloureds and blacks. It should be borne in mind that the policy of separate development was also applicable to large numbers of the black population residing on farms owned by whites and in the urban areas outside the self governing territories and the then independent states(territories created by the National Party government give effect to the policy of separate development(apartheid) (Cloete, 1992:197).

3.3.3 Local government administration and elections

The Local Government (Administration and Election) Ordinance, no. 40 of 1960, (Transvaal) was enacted to amend the Municipal Elections Ordinance, no. 4 of 1927; the Local Government Ordinance, no. 17 of 1939; the Municipal Elections Amendment Ordinance, no. 22 of 1950; to repeal the Election of Mayors and Deputy Mayors in Designated Municipalities Ordinance, no. 27 of 1951; and to amend the Municipal Elections Postponement Ordinance, no. 42 of 1960.

This Ordinance of 1960 made provision for the establishment of a management committee for particular town or village councils and health committees. These committees were responsible for the administration of matters relating to such councils or health committees and for circumstances under which committees may be established for a municipal council and for such management committee. It further made provision in respect of a council in connection with the appointment of a town clerk as chief executive officer. They provided in particular cases for the appointment of a town secretary. Traditional leaders were prohibited to vote by the apartheid laws during the municipal elections.

The next section will provide a brief background of the legal environment from 1961 until 1983.

3.4 THE ROLE OF THE REPEALED NATIONAL PARTY GOVERNMENT LEGISLATION ON TRADITIONAL AUTHORITIES

The role of the repealed apartheid legislation in developing local government from 1961 to 1983 and how different races and traditional leaders were governed by the National Party's central government will be discussed in this section.

The establishment of the Republic of South Africa in 1961 did not bring about radical changes to the existing system of local government. The provisions of Section 85 of the South Africa Act, 1909 were retained in section 84 of the Republic of South Africa Constitution Act, no. 32 of 1961. This section authorised the provinces to

develop local government. It was during this period, that coloured and Indian local authorities were established (De Beer, 1995: 30).

3.4.1 Legal environment at national level

At national level, the same principle of segregation of population groups applied. The different races were governed by central government, which discriminated against the blacks, coloured and Indians. Black urban councils that were created in terms of the Black Urban Councils Act, no. 79 of 1961, eventually replaced the former advisory committees. It was an attempt to eliminate the lack of balance created by the system of advisory committees (De Beer, 1995: 29). The Black Urban Councils Act, no. 79 of 1961 made provision for the transfer of executive functions to councils but then only as the white urban local management deemed fit and with the approval of the responsible minister. The powers that were transferred were mostly of a mere advisory nature. A later amendment to the Act determined that the black urban council would remain subject to the white urban council in the performance of its functions. These problems led to the transfer of the administration of black affairs to 14 administration councils established in terms of the Administration of Black Affairs Act, no. 19 of 1971. It was hoped that blacks would in this manner play a role in their own government. Such administration council would be vested with important executive functions, the result being that it would govern its own people and would merely be responsible to central government (De Beer, 1995:29). This legislation did not provide for the acknowledgement of traditional authorities. The latter was dealt with by legislation passed by Parliament and not considered a provincial competence.

3.4.2 The establishment of consultative committee and management committee

The Local Government(Extension of powers) Ordinance , no. 22 of 1962 (Transvaal) was enacted by the Provincial Council of Transvaal in order to provide for the establishment of a consultative committee, management committee or a local authority for a group area or portion thereof or for a free settlement and to provide for

matters incidental thereto. In terms of Section 2 of this ordinance, the administrator may by notice in the Provincial Gazette:

- ❖ establish a consultative committee or a management committee within the area of jurisdiction of a local authority for one or more group areas or for one or more portions of a group area established for the white group or a portion of such a group area, and situated within the area of jurisdiction of that local authority;
- ❖ alter the area for which a consultative committee or a management committee has been established by decreasing it or by incorporating therein one or more group areas or one or more portions of a group area or group areas established for the same group and situated within the area of jurisdiction of the same local authority;
- ❖ increase or decrease the number of consultative committees or management committees; or disestablish a consultative committee or a management committee.

Section 2 (a) , of the Local Government (Extension of Powers) Ordinance, no. 22 of 1962(Transvaal) constituted the delegation of powers by a local authority to a management committee as follows :

- 1) A local authority may, subject to the provisions of subsection (2), delegate to a management committee, either generally or specifically, any power, function or duty, of whatever nature conferred on it by any ordinance, subject to such conditions and restrictions as it may deem expedient, and that management committee shall exercise such power and perform such function or duty within the area for which it has been established under the supervision and control of a local authority.
- 2) The power of a local authority to
 - a) make by-laws;

- b) levy or remit rates;
- c) make changes or charge fees and to reduce such charges or fees; or
- d) obtain borrowing powers and raise loans.
- e) It is obvious that provincial ordinances under the previous constitutional dispensation did not acknowledge traditional authorities as areas falling within the so called Bantustans. In the latter areas each government established its own legal rules regarding municipal affairs, but did not make particular provision for traditional leaders.

3.4.3 The 1983 Constitutional dispensation

In 1983, the government announced the principles and guidelines for a new constitutional dispensation at central, provincial and local level. It posed far-reaching consequences for local government. The most important of these were:

- ❖ the principle of the maximal devolution of powers and decentralisation of administration at local government level was accepted;
- ❖ joint services had to be rendered on a metropolitan and regional basis, for purposes of which bodies had to be created in which delegates would represent local authorities on some or other proportional basis designated by the authorities themselves (De Beer, 1995:34).

According to De Beer (1995:35), the Government's proposals were contained, among others, in the Republic of South Africa Constitution Act, no. 110 of 1983. Another important Act, which specifically related to local government reform, was the Promotion of Local Government Affairs Act, no. 91 of 1983. This Act laid the foundation for full participation by all population groups in local government and created a forum for consultation with all communities on local government issues.

3.5 THE ESTABLISHMENT OF THE NATIONAL PARTY 'S GOVERNMENT FOUR MUNICIPAL SYSTEMS

This section will outline how the four municipal systems were established and were administered by the previous regime's legislation. The role of the first local government democratic elections in 1995 will also be discussed because the elections resulted in power being vested in the municipal ward councillors.

The development of local government from 1983 was based on the Promotion of Local Government Affairs Act, no.91 of 1983. This Act laid the foundation for the full participation by all population groups in local government. It created a forum for consultation with all communities on local government issues. The government of the day accepted decentralisation as an important method through which decision-making powers could be entrusted to regional and local government even though local government was not inclusive of all populations (De Beer, 1995:40).

According to De Beer (1995:40), local government was subject to general law with regard to matters having to be dealt with at local level on a mutual basis and with the exception of the following:

- ❖ any matter entrusted to local authorities by or in terms of the general law;
- ❖ the execution of loan powers by a local authority other than in accordance with general policy determined by the State President acting according to the directives of Section 19(1) (b) of the Constitution.

There is no doubt that the skewed logic of apartheid is most clearly expressed in the political geography of local government. This is most distinctly illustrated by the racial divisions. In the early 1990s, local authorities presided over communities divided into racially distinct white, Black, Indian and coloured groups. Municipal boundaries demarcated areas of high-taxable development and concentrations of relatively wealthy white residents. The poorer non-white residents were forced to live in areas where the income was limited as most non-white areas lacked business and industrial areas. Houses were also rented in most cases and no property tax could thus

be levied. Revenue denied from services changes was limited and since 1980 a service levy boycott resulted in the decline of non white municipalities (Allan, Gotz and Joseph, 2001:6-7).

3.5.1 The constitutional and legislative impact on traditional leaders

The Republic of South Africa underwent fundamental constitutional transformation in terms of the interim Constitution of the Republic of South Act, no. 200 of 1993. It repealed the Constitution of the Republic of South Africa Constitution Act, no. 110 of 1983 and came into effect on 10 May 1994.

Section 4 (1) of the Constitution of the Republic of South Africa Act, no. 200 of 1993 (later influenced by the Constitution,1996) states that this Constitution shall be the supreme law of the Republic and any law or Act inconsistent with its provisions shall, unless otherwise provided expressly or necessary implicated in this Constitution be of no force and effect to the extent of the inconsistency. It also states that this Constitution shall bind all legislative, executive and judicial organs of state in all spheres of government. Section 174 (2) of Chapter 10 of the 1993 Constitution provides for local government to consist of may be metropolitan, urban and rural local governments with differentiated powers, functions and structures according to considerations of demography, economy, physical and environmental conditions and other factors which justify or necessitate such categories. Subsections 174 (3) and (4) of the 1993 Constitution provide that:

- 3) a municipality shall be autonomous and within the limits prescribed by or under law, shall be entitled to regulate its affairs;
- 4) Parliament or provincial legislature shall not encroach on the power, functions and structure of a municipality to such an extent as to compromise the fundamental status, purpose and character of a municipality.

3.5.2 Local government Transformation phases

The ineffectiveness and inefficiency of the system of local government found in South Africa led to the transformation of local government, which occurred in three phases from 1994 to 2000 and these phases will be discussed below. The Local Government Transition Act, no. 209 of 1993 makes provision for:

- ❖ the pre-interim and interim phases for the restructuring of local government;
- ❖ the establishment of provincial committees for local government;
- ❖ the establishment of local forums for negotiating the restructured form of local government in each area for the pre-interim period;
- ❖ provincial demarcation boards setting the boundaries of local authorities and delimiting the electoral wards within them (Reddy, 1996:59).

Transformation since 1994 aimed to make municipalities more accountable, financially sustainable and able to deliver critical services to all residents. Changes have included the rationalisation of municipalities from the previous 843 to 283 municipalities; new legislation on operational and financial management; and the re-assignment of powers and functions between municipalities outside metropolitan areas (Intergovernmental Fiscal Review, 2001:123). Since 1994, local government has gone through three stages of transformation as follows:

i. Pre-interim phase: Appointed councils

Starting with the pre-interim phase from 1994 and 1996, racially based local authorities in urban areas were abolished and replaced with non-racial transitional local councils (Intergovernmental Fiscal Review, 2001:123). The first phase led to the establishment of local government structures through combining the existing apartheid councils with oppositional formations, and a nominated form of local government was created. Thus, racially based local authorities in urban areas were

abolished and replaced with non-racial transitional councils. The regional services councils were replaced with Transitional Metropolitan Councils (Sutcliffe, 2001:7).

Part 4 of the Local Government Transition Act, no. 209 of 1993 regulated the local government negotiation process to be undertaken by every community to select, during the pre-interim one of the three specified transitional options to take over some or all of the functions of the apartheid local government bodies. Accordingly, Section 6 provided for the recognition and establishment of forums and Section 7 set out the matters to be negotiated (Cloete, 1995:9).

ii. The interim phase: Elected councils

The second transitional phase was the interim phase, which took place after the local government elections had been held. This phase was interim because it preceded the establishment of democratic municipalities in terms of the new Constitution (Intergovernmental Fiscal Review, 2001:123). The interim authorities were not completely democratic (for example, the Indian, coloured and white areas had the same number of ward councillors as formerly African areas even though their respective populations differed quite considerably) and they did not extend throughout South Africa (Sutcliffe, 2001:7). Part 5 of the Local Government Transitional Act no. 209 of 1993 sanctioned geographical demarcation and establishment of transitional local councils (TLCs) and Transitional Metropolitan Councils (TMCs) for purposes of elections and thus introduced the second (interim) phase of the transformation process (Cloete, 1995:21).

iii. Final phase

The final phase commenced with the implementation of the final constitutional model at local sphere, which had been drawn up by the Constitutional Assembly consisting of the National Assembly and the Senate (Cameron, 1999:85). The final transitional local government phase dealt with the 1993 Constitution (later replaced by the 1996 Constitution). Section 175 of the 1993 Constitution conferred wide statutory, regulative and executive powers and functions to elected local government to maintain and promote the well-being of all persons under its jurisdiction. It

specifically provided that a local government shall, to the extent determined in any law, make provision for access by all people residing within its area of jurisdiction to water, sanitation, transport, electricity, primary health services, education, housing and security to all people, in a safe and healthy environment, provided these services could be rendered in a sustainable manner and are financially and physically practical (Cloete, 1995:28).

3.5.3 The land restitution

Section 2 of the interim Constitution Act, no.200 of 1993 confers the right to enforce restitution of a right in land to a person or direct descendant of such a person or to a community contemplated in Section 12 (2) of the interim Constitution, if the claim is lodged within three years of the date fixed by the Minister of Land Affairs by notice in the Gazette. In terms of Section 3, a person or community as just described is entitled to claim a title inland if he, she or it was prevented from obtaining title as a result of a transaction between that registered owner and the claimant or his or her antecedents in terms of which the aforesaid registered owner held the land on behalf of the claimant or his, her or its antecedents.

Section 13 provides for mediation between competing claims or for instances in which the land in issue is not state-owned. Section 14 provides for certain claims to be referred to the land claims court, which is a court of law. The Land Claims Court has jurisdiction throughout the Republic of South Africa.

The Land Tenure Rights Act, no. 34 of 1996 was enacted and concerns principally tribal land and land in respect of which persons had rights but not ownership. Schedules 1 and 2 outline particular land rights, which are converted in terms of the Act. Section 2 states that any land tenure right mentioned in Schedule 1 and granted in respect of an erf in a formalised township or any erf or other piece of land in such a township for which a township register is opened or any piece of land surveyed under a law, shall at the commencement of the Act be converted into ownership which vests exclusively in the person according to the register of land rights in respect of which the tenure is registered as the holder of the right.

In terms of Section 3 (as amended), any land tenure right mentioned in Schedule 2 and which is granted in respect of any erf or other piece of surveyed land shall upon submission by the holder thereof of a deed of transfer in the prescribed form to a deeds registry be converted into ownership by the registrar of deeds in the name of that person. A proviso is that where the state is the owner of the land outside a formalised township, the deed need not be submitted unless the minister is satisfied after an investigation that the rights or interests of putative holders are being protected and where such land is lawfully occupied by or has been allocated to a tribe or community, a tribal or community for which a resolution has been passed. It must be noted that municipalities are established on the land previously owned by traditional leaders during the colonial era.

3.5.4 The constitutional development and its impact on traditional leaders in 1996

Sections 211 and 212 of the Republic of South Africa Constitution, 1996 provide for the recognition and role of traditional leaders as follows:

211 Recognition of traditional leaders

- 1) The institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution.
- 2) A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which include amendments to, or repeal of, that legislation or those customs.
- 3) The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law.

212 Role of traditional leaders

- 1) National legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities.
- 2) The role of traditional leaders is to deal with matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law.
 - a) National or provincial legislation may provide for the establishment of houses of traditional leaders; and
 - b) National legislation may establish a council of traditional leaders

Section 219 (1) (a) of the Constitution of South Africa Act, of 1996 classifies *traditional leaders* as persons holding public office and requires that an Act of Parliament must establish a framework for determining their salaries, allowances and benefits. The framework referred to is set out in Section 5 of the Remuneration of Public Office Bearers Act, no.20 of 1998. It was only after the promulgation of the Remuneration of Traditional Leaders Act, no. 20 of 1998 that all traditional leaders at the level of kings, chiefs and members of the national and provincial houses of traditional leaders received remuneration based on uniform scales determined by the President. It must be noted that the role of a traditional leader is recognised by the Constitution of South Africa as a function of public administration. Thus traditional leaders are on the government 's payroll system.

3.5.5 Framework for the restructuring of municipal service provision

The framework for the restructuring of municipal service provision was implemented since 1998 with the adoption of the Municipal Demarcation Act, 1998 and the Municipal Structures Act, 1998 for all municipalities including rural municipalities where traditional leaders are based this was required to restructure the apartheid local government system in order to provide services on a non-racial basis and in an equitable manner.

In terms of the Constitution 1996, municipalities are responsible for ensuring the delivery of services to all South Africans. In order to carry out this responsibility, municipalities will need to transform public sector service delivery through a process of restructuring. The broader objectives of the restructuring of local government are as follows:

- ❖ to reorganise the areas of operations to ensure that all areas are serviced, leading to the deployment of staff and the integration of the workforce;
- ❖ to develop an integrated approach to ensure effective, efficient and affordable service delivery, which includes the reorganisation of service delivery as part of the process;
- ❖ to recognise the reprioritisation of finances both at national government and municipal sphere over the medium term;
- ❖ to investigate and to give serious consideration to accessing other sources of funding for municipalities with the assistance of the national government;
- ❖ to involve communities in decision-making, and building greater accountability between communities and the municipality;
- ❖ to build the capacity of municipalities to deliver services.

The South African Local Government Association (SALGA) has a mandate to represent the interests of organised local government in the country's governmental system. According to Burger (2003:1) SALGA's business plan sets out a series of objectives, namely:

- ❖ promoting sound labour relations practices that can achieve high levels of performance and responsiveness to the needs of citizens;
- ❖ representing, promoting, protecting and giving voice to the interests of local government at national and provincial spheres, in intergovernmental

processes and in e.g policy-making; building the capacity of municipalities to contribute towards a developmental democratic governance system that can meet basic human needs.

3.5.6 Transformation of local government

The first section of the White Paper on Local Government 1998, provides a brief history of local government under apartheid, which points to the origins of many of the problems currently being faced by municipalities in South Africa. It highlights the history of community mobilisation and locates the current transition process in its broader historical context. This section of the White Paper provides an outline of the current local government system and discusses the specific strengths and weaknesses of different models of a transitional municipality created under the Local Government Transition Act, no. 209 of 1993 as it affects the establishment of new structures for a transformed system of local government.

The second section of the White Paper puts forward a vision of a developmental local government. It then focuses on metropolitan municipal institutions and puts forward three key motivations for the retention of metropolitan government systems in metropolitan areas.

On the basis of the White Paper on Local Government and the 1996 Constitution, the following policies governing local government were adopted in order to improve service delivery.

3.5.7 The impact of demarcation of municipal boundaries on traditional leaders

Jurisdictional areas of traditional authorities and municipal boundary issues are a reality. In terms of Section 155 (3) (b) of the Constitution 1996, an independent authority must demarcate municipal boundaries. This authority, namely the Municipal Demarcation Board, was established by the South African local government which resulted in the enactment of the Municipal Demarcation Act, no. 27 of 1998. Section 25 of the Act identifies factors that the Municipal Demarcation Board must take into

account in determining municipal boundaries. One of these factors is the area of traditional rural communities. It must therefore be accepted that in determining the current municipal boundaries, the existing areas of traditional authorities had to be taken into account.

The Local Government Municipal Demarcation Act, no. 27 of 1998, was promulgated to re-demarcate municipalities. The Municipal Demarcation Board was established to re-demarcate municipal boundaries. In terms of Section 24 of the abovementioned Act, it is stated that when the Demarcation Board determines a municipal boundary, its objective must be to establish an area that would enable the municipality to meet its constitutional obligations namely :

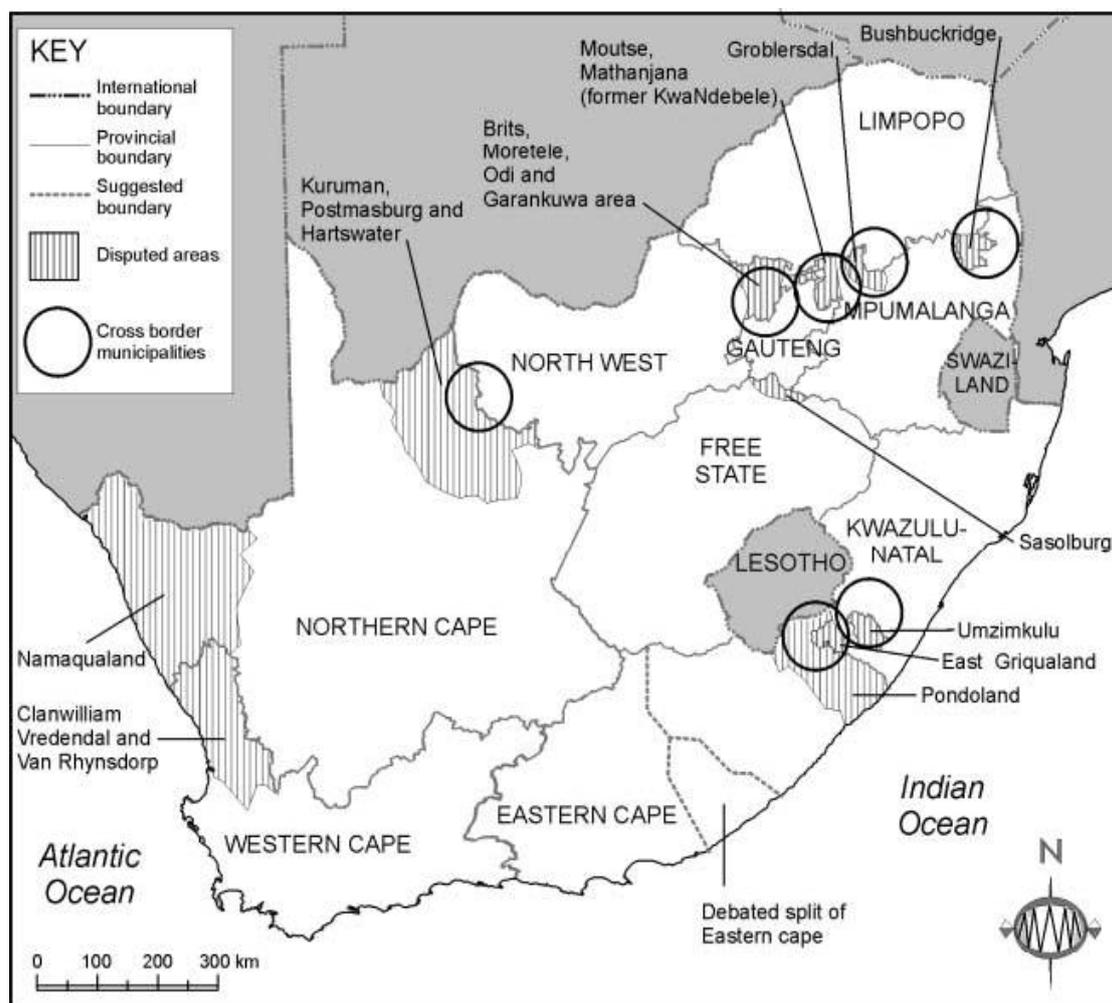
- ❖ provision of democratic and accountable government for the local communities;
- ❖ provision of services to the communities in an equitable and sustainable manner;
- ❖ promotion of a safe and healthy environment;
- ❖ enabling of effective local government;
- ❖ enabling integrated development ; and
- ❖ providing a tax base as inclusive as possible of users of municipal services in the municipality.

The Act provides for new boundaries for municipalities. Existing municipalities were re-demarcated and this also includes rural areas. Furthermore it implied that the contiguous areas in some cases extended across provincial boundaries. Thus the situation resulted in mass protest in the following areas:

- ❖ transferring Kuruman and Postmasburg into the Northern Cape from the North-West Province;

- ❖ incorporating Griqualand East into KwaZulu-Natal leaving the Eastern Cape's Umzimkulu as an enclave;
- ❖ reassigning parts of Moutse the former KwaNdebele and adjacent areas of Gauteng into Mpumalanga;
- ❖ redemarcating parts of the former Bophuthatswana homeland and adjacent areas of Gauteng into the North-West Province (Griggs, 1998:2).

FIGURE 3.1 Disputed areas after the 1993 delimitation of boundaries



Source: Ramutsindela (2007:50)

Disputes involving the incorporation of communities into new provinces were dominant in those provinces that included areas of the former Bantustans, namely

Eastern Cape, KwaZulu-Natal, Limpopo, Mpumalanga and North-West. Boundary disputes challenged the demarcation process that confirmed some of the spatial legacies of apartheid. The challenge was increased by the democratic government's failure to support the aspirations and demands of the border communities (Ramutsindela, 2007:49-50). These new areas created under the Demarcation Act, 1998 also included traditional authorities resulting in a complex political dilemma.

Section 3.6 of the White Paper on Traditional Leadership and Governance (notice no 2103 of 2002) states that as a result of the historical determination and adjustment of what are now provincial boundaries, traditional leaders are confronted with issues which are trans-provincial in nature. This has resulted in a situation where a senior traditional leader situated in one province has to perform a customary role in another province. Other factors compounding the cross provincial boundary relationships are the merger and division of communities, the appointment of traditional leaders across boundaries and lately the restitution of land to communities who lost their land in terms of racially discriminatory legislation. Land parcels that are to be restored are in some instances situated in different provinces.

3.5.8 The impact of the local government municipal structures on traditional leaders

The District local municipalities are established in accordance with Sections 12 (1) and 14 (2) of the Local Government Municipal Structures Act, no. 117 of 1998, effective from 1 December 2000.

Section 81 of the Municipal Structures Act, no.117 of 1998 clearly permits the participation in the affairs of a municipal council by traditional leaders to whom the splitting of traditional authority areas apply. It must be borne in mind that a number of traditional authority areas need not be contiguous.

The situation has resulted in the following:

- ❖ uncertainty as in which municipality a specific traditional leader should participate in terms of Section 81 of the Local Government Municipal Structures Act, no.117 of 1998;
- ❖ disparities in the delivery of services by different municipalities to a single traditional community, should such community fall within the jurisdiction of more than one municipality
- ❖ difficulty in the administration of an affected traditional community, should more than one municipality have jurisdiction in the area of such community

In terms of Section 3.7 of the White Paper on Traditional Leadership (Notice 2103 of 2002) traditional leaders may participate in municipal councils in terms of the Municipal Structures Act, no. 117 of 1998. The traditional leaders training programmes should be harmonised with those of municipal councillors. The primary objective of the capacity building programme is to enhance and empower traditional leaders and traditional institutions to enable them respond to challenges arising from the White Paper on Traditional Leadership and Governance and the Constitution.

3.5.9 System of municipal government

The main objective of the promulgation of the Local Government Municipal Systems Act, no. 32 of 2000 is to improve the internal systems and administration of a municipality. It focuses on integrated development planning (IDP) as a departure point for performance management and evaluation, resource allocation and improving the general living conditions of a community. At the same time, one of its objectives is to promote synergy between the local, provincial and national spheres of government and relationships. The Municipal Systems Act, no. 32 of 2000 aims to ensure that municipalities are able to give effect to the vision of developmental local government. It also provides guidelines for setting municipal tariffs with a view to the long-term sustainability of service delivery and meeting the needs of the poorest of the poor. Improved credit control and debt collection measures are envisaged to ensure that municipalities remain financially viable. As traditional communities form part of district municipalities, the Independent Development Plan(IDP) ought to

benefit them as well. However, the Act does not acknowledge traditional leaders specifically and thus does not promote traditional leadership.

3.5.10 The role of traditional councils

The government acknowledged the importance of traditional leaders in South Africa by enacting the Traditional Leadership and Governance Framework Act, no. 41 of 2003 in order to clarify the role traditional leaders should play. Secondly, the Communal Land Rights Act, no. 11 of 2004 was also promulgated with the initiatives to resolve land tenure problems in South Africa's rural areas. In terms of Section 19 of the Traditional Leadership and Governance Framework Act, no. 41 of 2003 a traditional leader performs the functions provided for in terms of customary law and customs of the traditional community concerned and also has to honour applicable legislation.

Section 20 of the Communal Land Rights Act, 2004 outlines the guiding principles for the allocation of roles and functions of traditional leaders as follows:

The national government or a provincial government, as the case may be, may through legislative or other measures, provide a role for traditional councils or traditional leaders in respect of:

- ❖ arts and culture; land administration; agriculture; health; welfare; the administration of justice; safety and security; the registration of births, deaths and customary marriage;
- ❖ economic development; environment; tourism; disaster management; the management of natural resources the dissemination of information relating to government policies and programs.

Section 20 (2) of the Act states that whenever an organ of state within the national government or a provincial government considers allocating a role for traditional councils or traditional leaders in terms of subsection (1) that organ of state must

- a) seek the concurrence of the minister, if it is an organ of state of that province; the member of the executive council responsible for traditional affairs in the province concerned, if it is an organ of that province;
- b) consult with the relevant structures of traditional leadership and the South African Local Government Association (SALGA);
- c) ensure that the allocation of a role or functions are consistent with the Constitution and applicable legislation;
- d) take the customary law and customs of the respective traditional communities into account;
- e) strive to ensure that the allocation of a role or function is accompanied by resources and that appropriate measures for accounting for such resources are put in place;
- f) ensure to the extent possible, that the allocation of roles or functions are implemented uniformly in areas where the institution of traditional leadership exists;
- g) promote the ideals of co-operative governance, integrated development planning, sustainable development and service delivery through the allocation of roles and functions.

Section 20 of the Act (3) states that where an organ of state has allocated a role or function to traditional councils or traditional leaders as envisaged by sub-section (1), the organ of state must monitor implementation of the function outlined in sub-section (4), namely that where a traditional council does not perform an allocated function envisaged in sub-section (3), any resources given to the traditional council to perform that function may be withdrawn.

3.6 POLITICAL ENVIRONMENT

3.6.1 The Unification

Between 1910 and 1996 (a period of 86 years) South Africa had five constitutions. The South Africa Act of 1909 was enacted by the British Parliament and resulted in the formation of the Union of South Africa 1910. The South Africa Act of 1909 introduced the Westminster system government, with the modification that it also introduced four provinces with legislatures. Only whites conducted the negotiations for the South Africa Act, 1909. People of colour obtained limited representation at the local and provincial levels, but not at national level of government. In 1912, the African National Congress (ANC) led by a traditional leader, Chief Albert Luthuli was formed. The Union of South Africa continued and local government was assigned delegated legislative authority. However, national legislation established advisory committees for black townships, which were under the administration of white municipal councils until 1971 (Craythorne, 1997:2).

3.6.2 Political Environment in South Africa during the National Party Government

The South African experience of democratic government has been very short and was preceded by a long history of white dominated politics. This history can be characterised broadly by five distinct phases: mass mobilisation from 1945 to 1960, the politics of exile from 1960 to 1990, mobilisation and rebellion and internal mass mobilisation from 1970 to 1990; the political transition from 1989 to 1994 and the ascent of the democratically elected government from 1994 onwards. These phases in the evolution of the democratic system correspond with a distinctive style of leadership and set of relationships within the ruling party (Atkinson, 1998:116).

South Africa experienced unprecedented political mobilisation from the mid-1980s onwards culminating in the election of 1994. This mobilisation was channelled through a range of alternative associations under the umbrella of the Mass Democratic Movement (MDM) aligned to the ANC. Insofar as the ANC took part in this mobilisation it was a symbol rather than an organisation and may have had

demoralisation effects on its allies. Since 1994, the ANC and its allies have shown signs of a decline in levels of activism, the consolidation of control by the party in public office over party on the ground and the party in administration. Part of this process involved the assimilation of the leaders of the MDM into government and in some cases their subsequent political marginalisation (Atkinson, 1998:115).

In 1948, when the National Party (NP) came into power, there was a strong movement in favour of establishing group areas for different racial groups and removing coloured and Indian people from common municipal voters' roll forcing them to limit their local government aspirations to consultative, management and local affairs committees (Craythorne, 1997:2). The year 1972 was significant in the former Cape of Good Hope and Natal in that it saw coloured and Indian people finally removed from the municipal common voters' roll and the so-called Bantu Boards established for black townships.

In the light of the above, unrest became inevitable. In 1960, the Sharpeville uprising occurred, followed 16 years later by the Soweto uprising, followed eight years later by the 1984 unrest, followed four years later by the unrest of 1988. Thus the intervals between periods of unrest were diminishing by a half each time this occurred (Craythorne, 1997:3). It is possible to trace the trigger in each case: at Sharpeville it was the inclusion of women in the pass laws; at Soweto it was compulsory use of Afrikaans as the medium of instruction in black schools; in 1984, it was the 1983 Constitution and the implementation of Black Local Authorities Act, no. 102 of 1983; and in 1988, the ANC in exile was clearly hoping for a South African 'Prague' spring, needing just another push to bring about the fall of the then government. Government decisions based were based on poor judgement which created conditions that the ANC inside and outside South Africa could have used to spark off events in the liberation struggle.

South Africa's second Constitution of the Republic of South Africa, Act. no. 32 of 1961 came about as a result of South Africa becoming a republic under Prime Minister Hendrik Verwoerd. The Republic of South Africa Act no.32 of 1961 was reasonably close to the South Africa Act of 1909, but was certainly no reform document. No great changes were needed because the Westminster model created a

sovereign Parliament that could and did pass some draconian laws as for Blacks, Coloureds and Indians were concerned no provision was made for traditional leaders and no recognition was afforded to indigenous systems (Craythorne, 1997:3).

After Mr. PW Botha became Prime Minister he announced in 1980 that there would be political and constitutional reform, which would replace the Westminster model with a form of power sharing based on the notion of joint decision-making. After a series of ponderous investigations, this led to the tricameral Parliament, with separate houses for whites, coloureds and Indians centred on the concept of own and general affairs; a form of black representation on provincial executive committees, regional services and black local authorities. The structure for this was the Constitution Act no, 110 of 1983, a law structured on centralisation that was so tight that it resembled a classical Marxist approach (Craythorne, 1997:3).

Since the promulgation of the 1983 Constitution, devolution of political power has increasingly been emphasised by the government as a policy priority. In keeping with this objective, the powers of black local government have been increased under the Black Local Authorities Act of 1982 and the Black Communities Development Act of 1984. Coloured and Indian management committees have been given the capacity to become autonomous and to undertake any local government function, in terms of the Promotion of Local Government Act of 1983 (Heymans and Totemeyer, 1988:30).

According to Craythorne (1997:3), if one puts it in parallel, there was on the one hand, a partial loosening but not abandonment of apartheid and, on the other hand, an ever-shortening cycle of violence which, if not stopped, would have led to a bloody civil war. It is at this point that the paradigm shift occurred, starting with secret talks by NP members with ANC members in exile; continuing with the 1989 referendum on power sharing and culminating in Mr FW de Klerk's epoch-making declaration of 2 February 1990 that the ANC and other liberation movements were unbanned, that Mr Nelson Mandela would be released and that negotiations for power-sharing were to be held. The Group Areas Act of 1957 was abolished along with some other apartheid measures. This led, in time, to the Congress for Democratic South Africa (CODESA) in 1992, which eventually broke down for a number of reasons. CODESA was followed by the multiparty negotiating body which worked through 1993 at Kempton

Park to produce South Africa's fourth Constitution, namely the interim Constitution titled the Constitution of the Republic of South Africa Act, no. 200 of 1993. The interim constitution for the first time in the history of South Africa, constitutionally entrenched the existence and status of local government.

The interim Constitution provided for the National Assembly and for the Senate, sitting jointly, to be the constitutional assembly for the negotiation of a new and final constitution according to a set of constitutional principles. The Constitutional Assembly worked from 1994 to 1996 and after a delay the constitutional text was finally certified by the Constitutional Court and became the Constitution of the Republic of South Africa, 1996 which was assented to by President Mandela and published on 18 December 1996. Despite the withdrawal of the NP, the concept of a government of national unity continued until 30 April 1999 or until the President was elected after the next elections for the National Assembly (Annexure B to Schedule 6 to the Constitution, 1996 (Craythorne, 1997:4).

It must be noted that during the National Party government the Bantustans were created and many legitimate traditional leaders were displaced and eliminated. The role of traditional leaders was outlined in the repealed legislation which governed the Bantustans system.

3.6.3 The reformed municipal elections

This section outlines the processes of the first democratic local government elections in South Africa.

The democratisation of South African local government was brought to a satisfactory conclusion with local government elections being held in eight provinces except KwaZulu-Natal because of the municipal demarcation boundary problems in November 1995. The run-up to the local government elections started on 27 January 1995 and a 90-day campaign resulted in 23 million potential voters being registered. The registration process, which started officially in January 1995, was a completely new concept to most voters as they had little or no experience of democratic local government. A local government task team was established to facilitate registration,

ensuring that the process was co-ordinated and standardised at national sphere. The objective was to ensure that the elections in November 1995 were free and fair and efficiently managed. Other functions included, *inter alia*, ensuring uniform election regulations, assisting where problems arose, ensuring adherence to time frames set, mobilising resources of whatever nature whenever necessary, and organising and overseeing voter education (Anon., 1995:7).

The task group introduced a communication plan to promote participation in the elections. The overall aim of the communication plan was to encourage all adult South Africans to participate in the elections by:

- ❖ emphasising the impact local government has on lives;
- ❖ explaining the composition and functions of the new municipalities
- ❖ explaining the electoral process from voter registration to polling day.

The target group consisted of metropolitan or urban voters, rural voters, community leaders and organisations, news media executives, women's organisations, school and tertiary institutions as well as youth organisations. The campaign was planned and executed in support of the overall government communication strategy, reflecting progress made in transforming the lives of the South Africans. The campaign, which was non-partisan, objective and credible, was allocated R42-million by the central government (Anon. 2000:2).

In terms of results, the local government elections reflected national trends set in the April 1994 elections but with less enthusiasm and lower polls (Streek, 1995:25). It was generally accepted that the resources, finance and organisational skills of the different political parties also influenced the results. In the April 1994 elections, all the political parties received substantial funding from the taxpayer through the Independent Electoral Commission. Consequently, this enabled them to launch massive advertising campaigns, hire staff and offices and , generally, maintain a high profile. The local government elections were, however, organised by the nine

provincial governments, none of which had the necessary resources to subsidise the costs of political campaigning (Streek, 1995:26).

Well-resourced political parties who were able to raise funds consequently had greater organisational strengths. This impacted on voter registration as well-organised parties ensured that more of their supporters were registered to vote than the opposition's supporters. The elections also gave South Africans an opportunity to call the parties to account. In addition, the elections provided the opportunity to call the parties to account. (Reddy, 1996:13). Given these developments, local government elections were indeed an important event in the country's political history (Reddy, 1996:14).

Since the first democratic local government elections of 1995 and 1996, rural communities have municipalities headed by democratically elected councillors, representative of their interests. On the district councils, black councillors are now generally in the majority even if they often inherited the same boundaries, structures and staff from the regional services councils or joint services boards. This change in composition is obviously not sufficient to transform the structures from ones which focused purely on the delivery of hard infrastructure to organisations more attuned to developmental and democratic approaches. The most visible differences concern the types of primary level of local government and also the relationship between the councils and the administrative structures (Atkinson, 1998:97).

Local government elections were held in seven provinces on 1 November 1995. The elections in KwaZulu-Natal and the Western Cape were held in May and June 1996 respectively. The reasons for the postponement of the elections in these provinces were demarcation or ward disputes, the inclusion of tribal areas led by traditional leaders and the absence of a model for rural local government. This sphere of government is now in place in all parts of the country and South Africans can once again congratulate themselves on their good sense and pragmatism in completing the structure of democracy (Reddy, 1999:203).

3.6.4 The 2000 local government elections

The 2000 local government elections ushered in a new system of local government in a five-year period. The 2000 local government elections marked the final stage in the democratic transformation of South Africa. After the first fully democratic national and provincial elections in 1994, transitional local government elections were held in 1995 and 1996. After that, policies and legislation were developed and the Municipal Demarcation Board set the municipal boundaries and municipal elections were held on 5 December 2000 to complete the democratic transformation of local government in South Africa (Anon. 2000:1). Institutions involved in the democratic transformation in South Africa included the Department of Provincial and Local Government, the Municipal Demarcation Board, the Department of Home Affairs and the Independent Electoral Commission(IEC), which was responsible for the registering of voters and conducting the municipal elections (Anon.2000:1). The elections, constituted a landmark in the democratic consolidation in South Africa.

3.7 CULTURAL ENVIRONMENT IN SOUTH AFRICA

South Africa is the only nation-state named after its geographic location; there was general agreement not to change the name after the establishment of a constitutional non-racial democracy in 1994. The country came into being in 1910 that united two British colonies and two independent republics into the union of South Africa (Van Wyk, 1998:1).

The population numbering approximately 40 million, consists of eight officially recognised groups as Blacks; white Afrikaners, descended from Dutch, French, and German settlers, who speak Afrikaans, a variety of Dutch; English speaking descendants of British colonists; a mixed race population that speaks Afrikaans or English and an immigrant Indian populations that speaks primarily Tamil and Urdu. A small remnant of Khoi and San aboriginal populations lives in the extreme northwest. Rural areas are inhabited primarily by Bantu speakers and coloured speakers of Afrikaans. The largest language group is Zulu. Black Africans make up about 77% of the population, whites about 11%, Coloureds about and Indians over 8% and other minorities less than 4% (Van Wyk, 1998:2).

South Africa has early human fossils at Sterkfontein and other sites. The first modern inhabitants were the San (Bushman) hunter-gathers, and the Khoi (Hottentots), who herded livestock. The San may have been present for thousands of years and left evidence of their presence in thousands of ancient cave paintings (rock art). Bantu speaking clans that were ancestors of the Nguni (today's Zulu, Swazi, and Tsonga peoples) and Sotho language groups (today's Batswana and Southern and Northern Basotho) migrated down from east Africa as early as fifteenth century (Van Wyk, 1998:3)

In the interior after nearly annihilating the San and Khoi, Bantu speaking peoples and European colonists opposed one another in a series of ethnic and racial wars that continued until the democratic transformation in 1994. Conflict among Bantu speaking chiefdoms was common and severe as that between Bantus and whites. In resisting colonial expansion, black African rulers founded sizable and powerful kingdoms and nations by incorporating neighbouring chieftaincies. These resulted in the emergence of the Zulu, Xhosa, Pedi, Venda, Sotho, Tsonga nations along with Afrikaners (Van Wyk, 1998:3)

According to Grant (2006:6) protection of cultural rights in the South African Constitution is clearly heavily influenced by international human rights. The Constitution of the Republic of South Africa, 1996 describes South Africa explicitly as one sovereign democratic state and establish a common South African citizenship which recognise and protects the diversity of languages and cultures represented within commonality. Sections 30 and 31 provide particularly for the protection of culture. Section 30 states that every person shall have the right to use the language and to participate in the cultural life of his or her choice.

The aim of protection and maintaining cultural diversity is given further impetus by Section 85 of the Constitution which mandates the creation of a commission for the promotion and protection of rights of cultural, religious and linguistics communities. The stated objects of the commission are the promotion and development of peace, friendship, humanity, tolerance and national unity among such communities (Grant, 2006:6).

Section 211 specifically requires the application of customary law to be consistent with the Constitution. Section 39 emphasises this first by obliging courts to promote the spirit, purport and objects of the Bill of Rights in interpreting legislation and developing common and customary law. The subjection of the right to culture and customary law to the Constitution and in particular to the Bill of Rights was bitterly contested during the constitutional negotiations which preceded agreement on the 1993 interim Constitution and again during the process of ratification of the 1996 Constitution.

The Congress of Traditional Leaders of South Africa (CONTRALESA) led the lobbying to exclude culture from of the Bill of Rights. The position was motivated in part at least by resistance to the imposition of what is seen by many as Western values as well as a desire to reassert the worth and importance of customary law and tradition. Decades of political and cultural dominion have left African peoples highly suspicious of the agenda of the proponents of modernisation. The culture protection lobby is concerned that without appropriate language in the Constitution specifying the rights of people to be themselves, the international human rights movement with its individualistic influences will swamp them on its march towards recreating the world in the image of the West (Grant, 2006:7-8).

In the first half of the apartheid period, there was a close relationship between race and class but the relationship weakened in the later apartheid years and has continued to weaken rapidly after the end of apartheid. The relationship is weakened not because of growing numbers of poor white people, but because of rising intra racial inequality within the majority black population. At the top end, the black middle class and elite have been growing rapidly. At the bottom end, unemployment confines many to chronic poverty in a society without significant subsistence or other means of sustaining an acceptable level of living. agriculture (Seekings, 2003:109).

In the pre-1940 period, public welfare was established for white and coloured people through a combination of immigrant working-class power and the social and economic solidarity present in the emergent Afrikaner nationalist politics. Unusually and probably because of the latter factor the welfare system entailed a hefty dose of social assistance alongside social insurance.

In the 1940s, this racially exclusive system was extended to blacks and Indians through various policies. After the election of the National Party to government in 1948 the state toyed with the idea of undoing the multi-racial public welfare system but politics proved different from the politics of expansion. For two decades, the apartheid state resorted to minimising redistribution through widened racial discrimination in benefit levels. From around 1970 the National party sought to appease blacks, coloureds and Indians on racial and slowly removed racial basis discrimination in the benefit levels. Parity was only obtained under the democratically elected government in 1993 (Seekings, 2003:110).

3.8 CONCLUSION

Chapter 3 dealt with the impact of the government environment on traditional leaders. The chapter outlined the macro-environment because it has a direct impact on traditional leaders. The macro or general environment consists of political, economic, social, cultural and technological components. It includes all influences of traditional leaders outside the boundaries of the institutions, areas of jurisdiction which are all the factors external to the institution's micro- and intermediate environment that influence its functioning. In this chapter the legal environment was discussed because it includes factors such as the constitutional system, the nature of the legal system and legislation determining the form and control of government institutions. Without a proper understanding of the correct use of the repealed legislation and the current legislation it would be difficult to follow the discussion presented.

A full overview of various laws and policies, which had a great influence on the traditional leaders, was provided in this chapter. In this section, the apartheid and the post-apartheid legislation and their impact on traditional leaders were discussed in detail. The political component of the macro-environment was outlined because it affects almost every facet of the public administration and traditional leaders, since these are influenced, directly or indirectly, by factors such as the system of government, the Constitution, the Bill of Rights, and the promulgation and implementation of laws.

The political component consists of the regulations with which the authorities of a state regulate the structures and the processes within a state. These include the general political climate, the degree and nature of concentration of political power and the existing party system. The three transitional phases of local government in South Africa, which are the pre-interim, interim and final phases, were also outlined. The 1995 and 2000 local government elections were discussed in detail because the municipal elections had both a negative and positive impact on the structures of traditional leaders' structures. Traditional leaders were positively impacted by equal service delivery by rural municipalities and were also negatively impacted by the demarcation of municipalities as well as the powers vested in the ward councillors.

The social environment formed a significant part of this chapter because it involves the nature, quantity and distribution of human resources. It relates to the class structure and mobility, social roles, the nature of social organisations and the development of social institutions. Due to the wide-ranging nature of the concept *social*, the cultural environment is included in the term *social environment*. The economic environment was discussed in detail, as well as the main aim of the government to provide goods and services to the community in order to improve the community's general welfare. In drawing up the national budget provision for the general interest of the community is made as well as setting priorities for the use of public funds.

The next Chapter consists of a discussion of the history and role of traditional leaders in the promotion of service delivery. The Royal Bafokeng Administration will be discussed in detail as a case study. Traditional leaders had the ability to render services in their territories and community. Traditional leaders' public services were in existence during the pre-colonial era and every tribal chief was an authority on all aspects of life in the community. Traditional leaders led military expeditions, initiated and performed a variety of ceremonies to promote the well being of the tribes, maintained peace and order and allocated tribal land. The chief in council delegated some of his powers and functions to the heads of smaller administrative units called *izinduna* (Zulu) *tindhuna* (Tsonga) or headmen, who were the extensions of the chief's authority.

CHAPTER 4

THE ROLE OF TRADITIONAL LEADERS IN MUNICIPAL SERVICE DELIVERY: A CASE STUDY OF THE ROYAL BAFOKENG ADMINISTRATION

4.1 INTRODUCTION

The history of traditional leaders will be discussed in detail in this chapter. Traditional leadership is an institution that has developed over many hundreds of years in Africa. It has served the people of Africa through wars, periods of slavery, famine, freedom struggles, economic and political restructuring and during colonial and apartheid periods. The institution of traditional leadership is rooted in Africa and in the hearts and minds of all ordinary Africans taking pride in its history, culture, origin and identity. Central to the institution of traditional leadership customs, traditions and cultural practices form the basis of the legal system which regulate the lives of the people. Every traditional community has defined territorial boundaries. Communal ownership of land is the cornerstone of the economic life of people.

Prior to the introduction of colonialism, social organisation in South Africa was characterised by a number of tribal regimes based on patriarchy and inscriptive norms. Each tribe, as is still the case, has a traditional leader as the central figure. The traditional leader was the highest authority in the territory and had various functions which were not exercised autonomously by an individual, but in collaboration with a tribal council that represented the people. The people saw the traditional leader not only as a link between people and the ancestors but also as a spiritual, cultural and judicial leader and the custodian of the values of the community. The Traditional leader was the co-ordinator of the various aspects of everyday life, the realisation of community dreams and aspirations and the creator of harmony between people and the natural, spiritual, social and economic environment.

Traditional leadership is one of the oldest institutions of government, both in Africa and the rest of the world. It predates colonialism and apartheid and it represents early

forms of societal organisation. The rest of the world has gone through eras of monarchical rule of one form or another. All absolute monarchies in the world have now given way to new forms of societal organisation, which in the main are democratic forms of government. South Africa has been similarly affected by the worldwide trend towards democracy. With the advent of colonialism, the institution of traditional leadership was subjected to repression and was used as an instrument in the implementation of such colonial policies as indirect rule. However, notwithstanding oppression by successive colonial and apartheid regimes, the institution of traditional leadership pioneered resistance and led numerous struggles against colonialism. The advent of democracy in South Africa is also due to that pioneering role which traditional leaders played.

In South Africa between 11 and 18 million people currently fall under the jurisdiction of approximately 800 traditional leaders. These leaders do not exercise their functions alone; a single traditional leader may be assisted by up to 10 or more subordinate leaders resulting in a total of some 10 000 traditional leaders. Any decision on traditional leaders and institutions could therefore affect nearly 40% of the South African population (De Villiers, 1997:40).

The indigenous people living in South Africa in the various parts of the country when the Europeans arrived were nomadic people who moved from place to place with their cattle. The settlements which were more or less comparable with white urban areas were the tribal settlements established by the Africans in the territories which later became known as Ciskei, Transkei, KwaZulu-Natal, Qwaqwa, Bophutatswana, Venda, Gazankulu, KwaNdebele, Lebowa and KaNgwane (Cloete, 1997:3).

The history of traditional leaders from 1847 to 1994 will be discussed in detail in this chapter. A historical background of the Royal Bafokeng traditional leadership system will be provided. The royal Bafokeng nation corporate entities and Mutual and Federal as well as Fraser Alexander transactions will be discussed in detail. Royal Bafokeng governance and the Communal Land Rights Bill of 2003 will be fully discussed in this chapter. The Impala Platinum mines and Royal Bafokeng nation royalties will also be discussed. Royal Bafokeng customary law structures and the building of roads by the Royal Bafokeng and Government building safer roads will be

addressed in this chapter. The municipal services rendered by traditional leaders will be outlined in detail to illustrate the role traditional leaders could play in a particular community. The chapter will also provide a comparative study of different traditional leadership systems e.g in Botswana, Swaziland, Lesotho, Namibia, KwaZulu-Natal. The main objective is to establish to what extent they differ from the Royal Bafokeng Administration in terms of municipal service delivery.

4.2 HISTORICAL BACKGROUND OF TRADITIONAL LEADERS

Traditional leaders ruled the tribe and they were considered by the tribe as both fathers and sons. The traditional leadership role was a bonding factor as it was responsible for attaining the common goal of a community. Traditional leaders ruled over the members of the tribes as kings in council and according to the principles of African democracy and accountability. With the advent of colonialism, the African traditional government was systematically weakened and the bond between traditional leaders and subjects gradually eroded. Colonialism deprived peoples not only of the land and property, but also of dignity and culture. The ancient African societal system, which was the basis of its humanity and mutual co-operation and protection, was destroyed (Anon., 2007:2)

According to Myburgh and Prinsloo (1995:6), the traditional leader (chief) is hereditary: *inkosi yinkosi ngokubelethwa* (the chief position is by birth). The general principle regarding succession to chieftainship is that the genealogically highest ranking among the male adults of the ruling family is the successor.

The colonial tendency to describe all African rulers as chiefs obscured the diversity of political structures that actually existed in southern Africa. Admittedly, in some cases, as with the Swazi, Sotho and Zulu, where particular rulers had gained primacy over the rivals, the colonial authorities called the principal rulers, kings. In other cases as with the Xhosa, where central control was weaker, the colonial authority called the senior ruler a paramount chief. Nevertheless, indiscriminate use of the term *chief* has made it difficult to establish a more precise terminology that remains true to the people's own conception of the status of rulers (Bennett, 1995:66).

The traditional style of African government diverged widely from the democratic mode associated with modern Western states. African leaders needed no special training; their pedigree qualified traditional leaders for office. Nor did leaders have any precisely defined powers over the subjects authority was diffuse and all-inclusive. What today might seem an alarming concentration of power in one person is, however, tempered by the fact that traditional leaders are neither autocratic dictators nor faceless bureaucrats. Traditional leaders are like fathers to the nations and are talked about in the idiom of kingship (Bennett, 1995:67).

The wise leader does not dictate to the subjects. As a common saying has it: *kgosi ke kgosi ka batho* [a chief is a chief through the people]. A ruler, keeps in touch with popular opinion through the councillors, the ward heads and elders, who are normally senior kinsmen and notable leaders in the community. No important decision is taken without prior consultation (Bennett, 1995:68).

The institution of traditional leaders has existed for some time in South Africa. It survived colonialism; it survived apartheid and has to survive the challenges of a new order in the post-apartheid society. The indigenous authority system in South Africa has been characterised by the presence of two distinct types of indigenous components; firstly, a political and administrative component and secondly, a socio-political component. The political and administrative components consist of a central decision-making body for the tribe. The structure is more or less the same for kings and chiefs in that both have an inner council. The chief is the most important figure in the central tribal government. The chief is the eldest son of the father's principal wife; holds a hereditary position and is therefore generally the most senior member of the most senior lineage and clan within the tribe. Although the chief is qualified by birth to succeed the father, there is a need for formal designation, training and inauguration as chief (Zungu, 1992:167).

The first man to settle on unoccupied land with followers is the chief and ultimately the primary ancestor of the group. Although the situation above was generally applied, it was not automatic. The chief's eldest son could be blocked from succession if found to be unfit or mentally incompetent to govern. Other considerations include the past conduct, mannerisms, the capacity to lead, valour and popularity. The chief

had to have insight and selfless commitment to the ideals of the community (Ayittey, 1991:43).

The inner council, which consist of the chief s confidential advisers, are trusted by the chief, and the tribe usually assisted the chief in governance. These positions are assigned to the elders with a proven record of wisdom and bravery. Membership is not limited, but was drawn mainly from the inner circle of the chief's relatives and personal friends. The membership also included the influential members of the community (Zungu, 1992:162).

In the pre-colonial era, every tribal chief was an authority on all aspects of life in the community. The chief has to lead military expeditions, initiate and perform a variety of ceremonies to promote the well-being of the tribe, maintain peace and order, as well as allocate tribal land. The chief in council delegates some of the powers and functions to the heads of smaller administrative units called *izinduna* (Zulu) *tindhuna* (Tsonga) or headmen who were the extension of the chief's authority. One of these was usually the chief *induna* working very close to the chief and is viewed as the chief's eyes and ears (Zungu, 1992:162).

There are also be messengers with the ability to link the chief with various functionaries. The messengers conveyed messages to the community regarding dates of meetings as well as dates of hearing litigants. Besides advising a chief, the members of the council would inform members of the tribe about decisions of the chief and the council and ensure that these decisions were carried out. The chief's function as a religious head is most important to the tribe. Through this function, the chief provides an important linkage with the ancestral spirits. The chief is viewed as the living representative, guarding the tribe. Good relations between the chief and the ancestors are essential for the tribe's very existence and, from time, to time rituals has to be performed to ensure that relations were in order (Zungu, 1992:163).

The concept of local government and leadership in Africa date back to the pre-colonial era when a traditional system of leadership was either hereditary or achieved through recognition of benevolence and loyalty to the clan. Leadership was also assumed through bravery, especially in territorial acquisitions as a result of tribal

warfare. In the west African sub-region, pre-colonial traditional forms of leadership that characterised either inheritance or achievement simply thrived and became more viable through the consensus of elders in the community and transcended through the clan. This type of tradition of community leadership was the origin of chieftaincy or kingship, which gradually engendered ruling houses upon which the community depended for protection, advice and promotion of sustained cultural values. In return, the community paid homage to their leaders by giving them esteemed reverence in varying forms and circumstances (Pelonomi, 1992:18).

Each traditional leader ruled as an independent *king* who enjoys unlimited and undefined powers over the tribe or territory. Although local leaders engender a cohesive form of traditional government with tribal councillors assisting the natural rulers in various forms of decision-making, there is no form of unified government across tribal lines or territories. Before the advent of colonial rule in Africa, however, traditional governments in various local jurisdictions appeared fragmented as tribal warfare was still prevalent. They therefore, could only exercise limited power within the domain of the leadership (Pelonomi, 1992:19).

To understand the varied legacies of colonialism in Africa the particular nature of colonialism experienced on the continent must be specified. The current ubiquitous usage of colonialism as a catch-all to describe the desperate experiences of many societies under imperial rule is useful; it needs specific details in particular instances for productive illumination (Schwarz and Ray, 2005:269)

In the indigenous constitutional system, the king or chief was the central figure of authority. The king wielded legislative, executive and judicial authority. As ruler of the tribe, the king had the power to allocate land, the land was theoretically the king's property, which was held by the king as trustee of the people. These responsibilities were justified for the privilege of sovereign immunity that the chief could do no wrong. The king was generally male and earned the position through succession, although there are recorded exceptions, such as the Modjadji Tribal Authority where the traditional leader is a female (d'Engelbronner-Kolff , Hinz and Sindano, 1995:120).

4.2.1 The role of traditional leaders in Natal

In 1847, the colonial administration in Natal viewed the tribe as a basic unit that was expected to exercise authority and act as agent of the colonial government. The different governments that came into power over the years had different aims and strategies to utilise traditional authorities as their tools. The colonialists' objective was to exercise control over the Zulus in Natal. Colonialists used tribal leaders to govern and in doing so, recognised customary law. In the Natal Ordinance, no. 3 of 1849 customary law was recognised in its entirety, except "insofar as it was not repugnant to the civilised world". The chiefs were to exercise the judicial functions, although the extent of the jurisdiction was not specified. Some check of the power was maintained through a general control exercised by magistrates (Roodt , 1993:18).

Section 5 (1) (a) of the Black Administration Act, no. 38 of 1927 stated that the head of the state in South Africa (governor-general at that stage) was empowered to create new tribes, divide existing tribes, and demarcate the area occupied by the members of the tribe. Section 2 (7) of the same Act stipulated that the head of the state in South Africa may recognise or appoint a person as a chief of a tribe and may make regulations concerning the duties, powers, privileges and conditions of service and possible dismissals of such chiefs. The same Act made provision for limited civil and criminal jurisdiction to be conferred upon the recognised chief. The Act tried to recreate the indigenous tribal system as if it was a new concept, rather than entrenching what already existed.

4.2.2 Traditional leaders legal framework

In 1927, the South African government appropriated to itself the power to create and divide tribes as necessary for good government for blacks. It could appoint any person it chose as chief or headman. The foundation was thereby laid for restructuring African political institutions to suit the policies of the future apartheid state (d'Engelbronne-Kolff *et al.*, 1995:15).

The chieftainship in South Africa was no longer a hereditary institution. A chief was a creature of statute. The Black Administration Act, no. 38 of 1927 empowered the

Prime Minister to recognise any existing descendant of a traditional chief and to appoint anyone to become a chief. The Prime Minister enacted regulations under the Act prescribing that all the people residing within the jurisdiction of a traditional leader must be loyal and respect the duties, privileges and conditions of service of chiefs and headmen. Having so ordained, the regulations further stipulated that the chief shall carry out orders vested in the native affairs commissioner or any other officer of the government or face summary dismissal (Tsotsi, 1992:62).

After Unification in 1910, the principal concern of the new government was to impose uniformity. The individual history and the special circumstances of each of the provinces had produced curiously diverse court structures and degrees of recognition of customary law. Underlying the desire for uniformity was another less overt need to promote tribalism and chieftain authority. Only in 1927, African courts were finally reorganised. The Black Administration Act, no. 38 of 1927 was a major component of a new policy for the African population. Throughout the country courts of chiefs and headmen were established on the basis of authority given by government warrant (Bennett, 1991:62).

Section 2 of the Black Administration Act, no. 38 of 1927 authorised the Governor-General to appoint a chief and Section 2 (8) authorised the Minister to appoint an acting chief, headman or acting headman. In terms of section 20, the Minister could confer limited criminal jurisdiction on a chief or headman. The Minister could empower this person with jurisdiction to adjudicate upon:

- a) all customary law crimes except those listed in the third schedule to the *Black Administration Act 38 of 1927* (Olivier, 1998:191).

According to section 12 (1) of *the Black Administration Act, no. 38 of 1927* the Minister could:

- b) authorise any black chief or headman recognised or appointed in terms of subsection (7) or (8) of section 2 to hear and determine civil claims arising out of black law and custom brought before him by a black resident within a chief 's jurisdiction;

- c) at the request of any chief upon whom the jurisdiction had been conferred in terms of paragraph (a), authorise a deputy of such chief to hear and determine civil claims arising out of Black law and custom brought him by blacks against blacks resident within such chief's area of jurisdiction:

The Act determined that a chief, headman or chief's deputy shall not under this section 12(1) or any other law have power to determine any question of nullity, divorce or separation arising out of a marriage. Only chiefs and the deputies appointed under this section could constitute official courts. It is unlikely that chiefs' courts consistently made the careful distinction between criminal and civil matters as were required to be done by the Act and by common law. If they acted *ultra vires* and imposed a penalty when not authorised to do so they would fall foul of their prescriptions of the common law regarding crime (Bennett, 1991:64).

The rights and powers of the chief were mentioned prominently in authoritative statements dating from the nineteenth and twentieth century. In the old customary law, the tribe was a community forming a political and social organisation under the government, control and leadership of a chief operating under the authority of the national or tribal customs. The chief exercised the functions of a king, chief justice and chief executive. In the council, the chief exercised the sovereign right of making laws, while in person acted as a chief (Kerr, 1976:25).

There are divergent statements in the sources concerning the powers of the chief regarding land in former customary law. On examination, this appears to refer to different occupation of land or to powers such as expropriation, which were always retained by a sovereign. There were statements which appear to have given the chief absolute powers over all land occupied by the tribe. Thus it was stated that the land occupied by a tribe was regarded theoretically as the property of the paramount chief in relation to the tribe as a trustee holding it for the people who occupy and use it in subordination to the chief, on communistic principles; the land was administered by the chief and the councillors for the people and the people must live wherever they were placed by the chief or the headman (Kerr, 1976:30).

4.2.3 The establishment of tribal authorities

In 1951, the government needed to integrate new local authorities into existing tribal structures to create the Bantustan system of government. Chiefs who were not amenable to state directives, no matter what traditional legitimacy they might have enjoyed, were removed from office or passed over in matters of succession. The outcome was a compliant oriented cadre of traditional rulers, that provided leadership for homelands as and when independence was sought from “white” South Africa (d’Engelbronner-Kolff *et al.*, 1995:15).

The Black Authorities Act, no. 68 of 1951 dealt with the indigenous tribal council and its responsibilities. This Act established tribal authorities and regional authorities where a tribal authority was established for a recognised tribe and a regional authority could be established for two or more tribal authorities. Section 3 of the Black Authorities Act, of 1951 dealt with the constitutions of these authorities, allowed for the recognition of an existing tribal authority if it was functioning according to the laws and customs of the tribe.

During the anti-apartheid strikes and boycotts as well as many other activities, traditional leaders played a crucial role, even when the apartheid regime negatively affected their status as leaders. For instance, Chief Albert Luthuli was one of the chiefs devoted to the commitment of the freedom of the people. He chose to lose the status as a chief at Groutville in 1952 rather than cease anti –apartheid activities within the African National Congress (Liebenberg and Spies, 1994:382). Furthermore, because Chief Luthuli later became the president of the African National Congress, the apartheid government reacted by banning him in terms of the Suppression of Communism Act in 1953 (Liebenberg and Spies, 1994:382). Thus instead of promoting traditional leadership, by honouring exceptional leaders, their authority was undermined by suppressing their leadership capabilities.

The Black Authorities Act, of 1951 established a system of hierarchical local government in rural areas based on traditional organisation but with statutory powers and functions. Whereas the functions of the lowest level (tribal authority) were limited to carry out general administrative tasks and advising government on the needs of the

community, the powers and functions of a regional authority were quite extensive. Two or more areas for which tribal authorities had been established constituted a black regional authority. Its powers and functions under the Black Authorities Act, of 1951 include the power to provide for the following services (Rugege, 2000:14):

- ❖ establishment, maintenance, management and operation of education institutions;
- ❖ the construction and maintenance of roads, bridges, drains, dams, tunnels and any work ensuring satisfactory water supplies or for preventing or combating soil erosion;
- ❖ suppression of diseases in stock by construction of dipping tanks;
- ❖ establishment, maintenance, management and operation of hospitals and clinics;
- ❖ improvement of farming and agriculture generally.

Regional authorities were awarded the power to make by-laws: including by-laws prescribing fees for services rendered by such authority or rates payable by a specified class of persons in respect of services made available by such authority. In terms of Section 3(30) of the Black Authorities Act, no. 68 of 1951, the chairman and the members of the regional authority had to be elected or selected in a manner prescribed by regulation from among the chiefs, headmen and councillors of the tribal authorities for the areas in respect of which such regional authority was established (Rugege, 2000:14). It could be argued that the Act in fact, reorganized the municipal status of traditional leaders. Although limited in extent, it could be viewed as an elementary form of local government in traditional areas.

Succession to the chief is hereditary according to the rule of the primogeniture in the agnatic line. Except among the Balobedu of the Northern Transvaal, women are thus precluded from office. At most, women are permitted to act as regents when the male heir is a minor. The main duty of the chief is to cherish the people and to promote

their interests. The chief must govern well and fairly. More specifically, regular attendance at meetings of councils and consultation with his councils and relatives are expected (Bennett, 991:105). From this expectation it could be deduced that tribal chiefs are required to honour the basic tenets of democracy i.e. consulting members of the community albeit relatives. Democratic rule from a western perspective is not followed as no election of chiefs are conducted.

The formal powers of the chief are considerable. As head of the tribe, the chief is the symbol of a tribal unity. The chief is the ruler, maker and guardian of the law and leads in war and external relations. As a religious leader, the chief links the people with the ancestors. He allocates land and regulates agricultural, pastoral, hunting, trading and other economic activities (Bennett, 1991:105).

The Black Authorities Act, of 1951 provided that the Governor-General could, with due regard to African law and custom and after consultation with every tribe and community concerned, establish in respect of any tribe or community or in respect of two or more than one area in which a tribal authority has been established, a Bantu regional authority. The Act provided for the gradual delegation to these authorities of specified executive and administrative powers in the area of jurisdiction (Tsotsi, 1992:83). Thus, to some extent the roles of traditional leaders were acknowledged.

At the head of a tribal authority is a chief or headman of a tribe assisted by tribal councillors. Except in the Transkei, the chief or headman in accordance with local law and custom nominates the majority of councillors. The native commissioner appointed the rest of the councillors. The duties of these authorities were to assist and guide the chief in allocating the land, prevention of animal diseases, punishment of certain offences and other matters (Tsotsi, 1992:83). The extensive statutory powers, duties and functions of traditional leaders were outlined in the Regulations Prescribing the Duties, Powers, Privileges and Conditions of Service of Chiefs and Headmen, no. 110 of 1957, as follows:

- ❖ promote the interests of the tribe or community, support and actively encourage initiatives and measures for the material, moral and social well-being of the people;

- ❖ maintain law and order for the tribe or community;
- ❖ report any condition of unrest or dissatisfaction or any other matter of serious importance or concern to the government;
- ❖ carry out all such lawful orders as may from time to time be given by officers of the government;
- ❖ ensure the enforcement within the area of all laws and all orders, instruction or requirements of the government relating to the administration and control of the people in the area;
- ❖ inform the people of new laws, orders, instructions;
- ❖ report to the relevant government authorities outbreaks of disease among people or stock, commission of crime, illegal possession of firearms, intoxicating liquor, activities of persons who disturb and obstruct peace, order and good government by holding unauthorised meetings, distribution of publications and pamphlets;
- ❖ convene meetings of the people when requested by government and ensure attendance;
- ❖ hear and determine civil cases and try to punish criminal cases if conferred with jurisdiction;
- ❖ exercise powers of arrest and custody of offenders conferred on a peace officer;
- ❖ hold powers to search without a warrant any person or homestead if there are reasonable grounds for suspecting that arms and ammunition or stolen stock or produce are hidden in a homestead or other place, seize and carry anything seized to the nearest police post; and

- ❖ detain and impound stock brought into the area under unlawful or suspicious circumstances.

The chief's other duties included the enforcement of all government laws and orders and reporting:

- ❖ the outbreak of disease;
- ❖ the commission of crime;
- ❖ the presence of strangers in his area
- ❖ the activities of persons who destruct the peace, order and good government, by holding of unauthorised meetings, the distribution of publication and pamphlets or in any other manner

The office of the chief under this policy combine the functions of health officer, magistrate, police investigator, social security police and political leader (Tsotsi, 1992:62). From the above exposition it could be deduced that in particular areas, functions and powers were assigned to traditional authorities. These were, however limited and made limited contribution to enhancing the status of such leaders.

4.2.4 Traditional leaders before transformation

The independence of some of the Bantustans between 1976 and 1981 did not initially alter power relations in rural areas. If anything, the power of traditional authorities, from sub-headman to paramount chief was strengthened. By the 1980s and 1990s, mass mobilisation had spread to the countryside. During this period, the Bantu authority system came under renewed attacks (Ntsebeza, 1999:86).

There was a call for the resignation of headmen. In large areas of the Ciskei, the tribal authority system collapsed and the civic associations took over. Tribal authorities in most parts of the Transkei region were also affected. In KwaZulu-Natal an intense

bloody war took place mainly between the supporters of the Inkatha Freedom Party and the United Democratic Front and later the ANC when the latter was unbanned. A second feature of the early 1990s was the time when negotiations for a new South Africa began in earnest. Initially excluded from talks, traditional authorities were subsequently invited. There were two reasons for this. Firstly, the ANC did not want to harm the relations with the Congress of Traditional Leaders of South Africa (CONTRALESA) before the envisaged elections. Secondly, both the ANC and the National Party wanted to ensure the participation of the Inkatha Freedom Party (IFP) in the negotiation process. Finally, this period was characterised by the abolition of the Bantustans with the acceptance of the new Interim Constitution Act, no. 200 of 1993 (Ntsebeza, 1999:86).

4.2.5 The role of traditional leaders during first phase of democratisation

During the 1990s, South Africa experienced a two-phased integration of traditional political institutions. Following a process of protracted consultation and negotiation, the interim Constitution of 1993 defined an initial institutional framework for the integration of traditional leadership at national, provincial and local spheres. The Constitution recognised traditional leadership and customary law in general, defining the institutionalisation of a national council of traditional leaders and provincial houses of traditional leaders and finally recognising traditional leaders as *ex-officio* members of democratically elected local government structures (Dusing, 2002:294).

The detailed provisions in the interim Constitution of 1993 have been replaced in the final Constitution of 1996, by brief and general condition regulations, providing a basis for any model of integration of traditional leadership still to be established. Despite the recognition of the institution in the final setting, no provision has been made for their effective functioning (Dusing, 2002:294).

The conflicts and inconsistencies that beset traditional rulers under colonialism and apartheid were not solved in the Constitution of the Republic of South Africa Act, no. 200 of 1993. Existing leaders traded their political support for confirmation of their present position by the interim Constitution. Section 18 (1) provides that: A traditional authority which observes a system of indigenous law and is recognised by law

immediately before the commencement of this Constitution, shall continue to exercise and perform the powers and functions vested in it in accordance with the applicable laws and customs, subject to any amendment or repeal of such laws and customs by a competent authority.

The interim Constitution than preserves whatever powers leaders now exercise in their respective areas. It gives traditional leaders new positions in both provincial and national legislatures. In provinces in which traditional authorities exist the relevant legislature is obliged to establish a house of traditional leaders. In all matters concerning traditional authorities and customary law, these bodies are entitled to advise and make proposals to the provincial legislature or national Parliament. Traditional leaders may acquire seats in the provincial houses of traditional leaders in North West, Mpumalanga, Limpopo, Eastern Cape and the Kwa-Zulu Natal provinces and the national council of traditional leaders through nomination or election by their peers (Bennet, 1995:72).

In 1994, the Congress of Traditional Leaders of South Africa held a workshop. The following resolutions were adopted:

- ❖ Traditional leaders have the right to nominate candidates for election to public office, provided that once elected a leader must vacate the position of a traditional leader.
- ❖ the Constitution must acknowledge and protect the status of traditional authorities as fully-fledged primary local government structures in rural areas. This means that all functions and powers guaranteed to local government should also be accorded to rural local government. The structures of rural local government should be such that:
 - ❖ traditional leaders within the area of jurisdiction are regarded as rural local government areas;
 - ❖ elections are held in such areas and;

- ❖ traditional leaders of the area are automatically members of the council.

District councils established to combine rural and urban local authorities on sub-provincial basis. These councils could render particular services on behalf of or in partnership with all municipalities, whether urban or rural. Traditional authorities could also request local and provincial governments to render services. The senior traditional leader of the rural municipality should enjoy participation in the district councils in addition to the indirectly elected representatives from the various urban and rural municipalities. Traditional authorities should in their capacity as rural municipalities, render services to all individuals residing in their areas of jurisdiction irrespective of their gender, community, affiliation, race and language (Keulder, 2000:10-14).

Traditional leaders and authorities have a significant role to play in South Africa. Failure to understand and accommodate traditional culture and practices could precipitate a major crisis and impede the ongoing constitutional development process. While it is widely accepted that traditional leaders and the traditional councils render an important service, a distinctive characteristic of the constitutional debate is the use of political and constitutional concepts that disregard crucial elements of the African reality (De Villiers, 1997:40).

It has already been explained that some Africans still live in tribal villages in the traditional territories. These tribal villages are referred to as informal urbanisation. An advantage of tribal villages is that the people construct houses with the result that they keep their self-respect and independence. The people also meet their own needs according to their expectations (Cloete, 1997:9).

Undoubtedly, there is inadequate literature on indigenous administration. Lungu (in Ismael *et al.*, 1997:118) for example, observes that existing descriptions of indigenous administration come mainly from anthropologists and historians and little from administrative theorists. The tribe, the basic political unit of the indigenous communities, is replete with instances of local government.

A second feature of note to local government is the decentralisation of monarchical systems, especially in religious ritual kingdoms. The tribal chief (also known as paramount chief or king) is served by several territorial chiefs who act as vassals. Ranking below territorial chiefs are headmen and superintended village administrators. It is worth noting that in some instances headmen continue to be elected by the community, while in others their ascendances to power are hereditary. The subdivision of tribes into territorial chiefdoms and villages inevitably lead to a geographic autonomy for rulers at those levels (Ismael *et al.*, 1997:119).

The official policy towards the courts of chiefs and headmen in South Africa has changed considerably over the years. In the early nineteenth century, when British rule was being extended into the eastern region of the Cape Colony, white magistrates were instructed not to apply customary law and to replace the chiefs. This policy was defended as part of the government's civilising mission in Africa. It is quite obvious, however, that the policy was part of a wider programme to undermine indigenous political authority (Bennett, 1991:61).

4.3 BACKGROUND OF THE ROYAL BAFOKENG ADMINISTRATION

In terms of the Notice 2520 (Government Gazette, no. 25492 2003:1), the Communal Land Rights Bill of 2003 was published. The manner in which the Bill affects the Bafokeng and other similarly placed communities are outlined in detail. The Bafokeng has an ancient genealogy traceable to the 1100s. Part of the general southward movement of the Batswana groups of people, the Bafokeng settled in an area which included the whole of the present municipal area of Rustenburg, Kroondal and Marikana, well before 1700. The approach adopted towards land in Bafokeng law and custom is one of communal tenure, whereby ownership of the land vests in the community and not in any individual. In 1840, the first white settlers arrived in the Rustenburg area and began to displace the Bafokeng from the land on which they had lived for many years.

The Royal Bafokeng nation is organised in five regions as follows:

- ❖ the capital region around Phokeng;

- ❖ the Northern Region around Rasimone and Chaneng

- ❖ the central region that includes Kanana and surrounding villages

The north-east region includes Maile–Kopman, Tlaseng, Tantanana and Thekwan and Photshaneng are located in the south east region. Each region has its own administrative and recreational complex. This is how the Royal Bafokeng intends to bring services closer to the people who require them (Molotlegi, 2007:3). Thus, it is possible to really bring resources to the community.

Bafokeng (People of the Dew) numbers about 300 000 people. About 160 000 live in an area some 150 km north-west of Johannesburg in South Africa, with the balance scattered primarily throughout South Africa. The Royal Bafokeng nation has retained the unique cultural identity and traditional leadership structures and is led by a hereditary kgosi (king), currently Kgosi Leruo Molotlegi. The Bafokeng are descendants of the Sotho-Tswana people that just over a thousand years ago travelled southwards from central Africa over a period of 200 years. A substantial portion of these migrants settled in the area now incorporated into the countries of Botswana and Zimbabwe. The Bafokeng, however, continued travelling south before finally settling in the twelfth century in an area known as the Rustenburg valley where the community remained relatively stable. The mining of diamonds in South Africa started in the 1860s. Thousands of fortune seekers from around the world flocked to Cape Town, the capital of the British-governed Cape Colony, before undertaking the 1 500 km trek north of the arid Western and Northern Cape to the mining town of Kimberley (Molotlegi 2007a:1).

At the same time Afrikaner farmers (Boers) seeking to escape British rule started to settle in the Rustenburg valley. The farmers ignored the traditional rights of ownership enjoyed by the Bafokeng and started to survey and register farms. Kgosi Mokgatle, great-, great-, great-, great-grandfather of the current king, realised that ownership of the traditional Bafokeng land was likely to be forfeited. In a remarkable act of foresight and collective sacrifice, he ordered units of young men of the Royal Bafokeng nation to walk to Kimberley to work and earn money that was deposited in a central community fund. As funds were generated, the King sought the help of

Lutheran missionaries to act as front for the Bafokeng and buy up farms in the area. Some 900 hectares, or two-thirds of the land currently owned by the Bafokeng, was acquired in this way over a 20 year period.

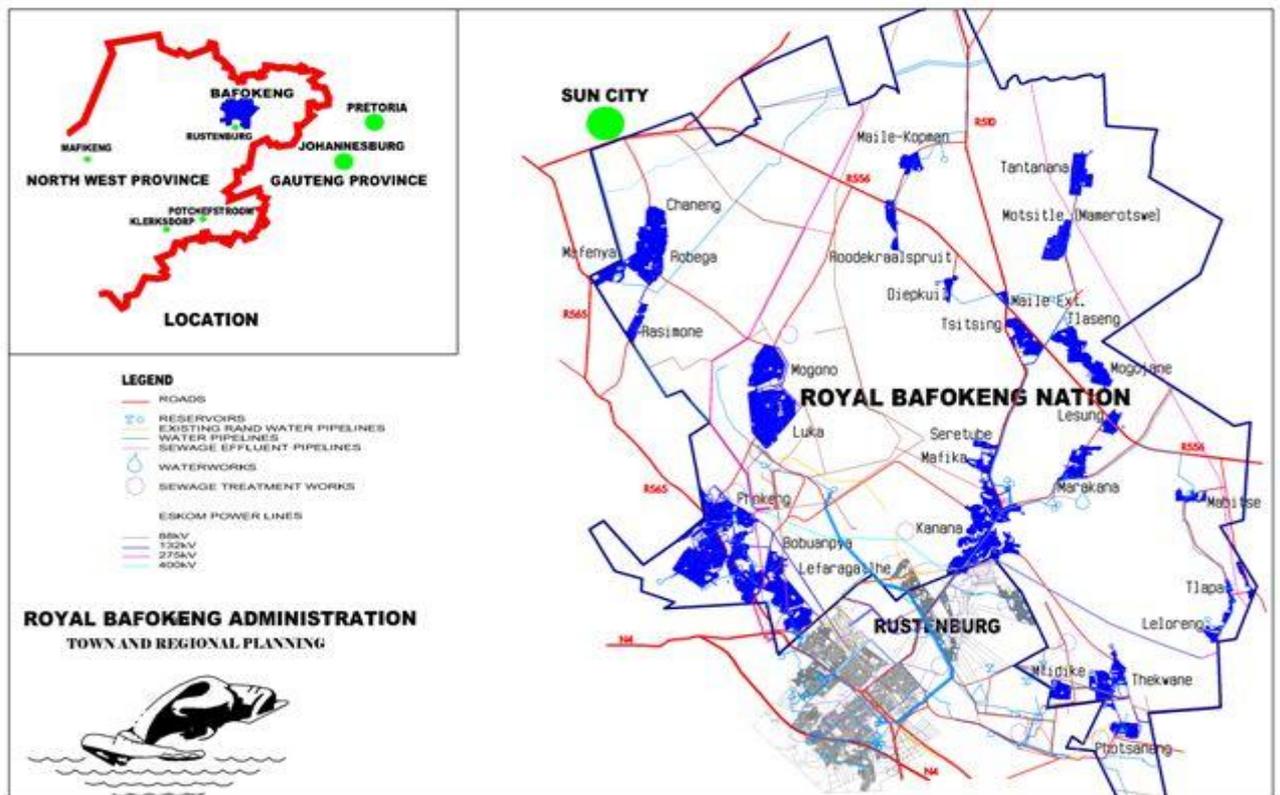
In the 1920s, geologist Hans Merensky discovered in the Rustenburg valley the surface outcrop of the world's greatest ore body, known as the Bushveld igneous complex. In particular, substantial reserves of platinum group metals (PGMS) such as platinum, ferrochrome, rhodium and palladium were discovered on land owned by the Royal Bafokeng Nation(RBN). Over the next 70 years, various attempts were made by the governments of the day, aided and assisted by the major mining companies, to dispossess the Royal Bafokeng nation of their land rights. All efforts were ultimately unsuccessful and the mining companies thereafter agreed to pay royalties to the Royal Bafokeng nation in exchange for the right to mine on RBN land. For many years, the Royal Bafokeng nation leaders were in conflict with the former regime's national and regional governments. The authorities reacted by neglecting the development of the region. The Royal Bafokeng nation was therefore compelled to spend practically all of their royalty income received on infrastructure. During the past two decades, more than R2 billion of communal wealth has been invested in regional infrastructure such as roads and bridges, water reticulation and reservoirs, electricity supply extensions, schools, clinics, civic buildings and sports facilities (Molotlegi, 2007a:1).

FIGURE 4.1 The Royal Bafokeng Administration offices



Source: Anon .(2007b:2)

FIGURE 4.2 Royal Bafokeng nation map



Source: Anon.(2007b:5)

4.4 ROYAL BAFOKENG CONSOLIDATES BUSINESS INTERESTS WITHIN ROYAL BAFOKENG HOLDINGS

On 9 March 2006, the Royal Bafokeng nation announced that its wholly owned commercial entities are being merged. Royal Bafokeng Resources (RBR) and Royal Bafokeng Finance (RBF) combined to form one holding company, Royal Bafokeng Holdings (RBH). RBH investments include significant interests in Implats, the BRPM joint venture with Angloplats, Merafe Resources, Astrapak, SA Eagle, Fraser Alexander and Senwes (Carroll, 2006:1).

Royal Bafokeng Resources was established in 2002 to manage the community's mining interests. In order to diversify the commercial portfolio, Royal Bafokeng Finance was formed in 2004 to develop the non-mining assets. While it was initially important for the two entities to focus and establish momentum in executing their

respective mandates that phase of development has now been completed (Carroll, 2006:1).

Royal Bafokeng Holdings is responsible for the management and development of Royal Bafokeng Nation's commercial portfolio across all asset classes. All current employees of RBR and RBF are retained within the new RBH structure. According to Carroll (2001:1), the combination of the two entities into a single structure should improve the efficiency of capital allocation and enable the business to harness more effectively the skills and experience within Royal Bafokeng Resources. Royal Bafokeng Holdings. The creation of Royal Bafokeng Holdings is an important milestone in the Royal Bafokeng nation's Vision 2020, a multi-decade, people-centric development plan. RBH has no individual shareholders and its primary purpose is to generate income for the developmental needs of the current generation as well as to protect and grow the asset base for future generations. RBH's investment objectives are therefore closer to those of an inter-generational trust or endowment fund than a normal commercial company (Carroll, 2007:1).

4.4.1 Royal Bafokeng Finance buys Fraser Alexander

Royal Bafokeng Finance (RBF), an investment arm of the Royal Bafokeng nation has acquired the entire shareholding in Fraser Alexander Holdings, one of South Africa's oldest service groups to the mining and industrial sectors. An agreement was reached to purchase 100% of the equity in Fraser Alexander Holdings by Royal Bafokeng Finance. The transaction was subject to the Competition Commission's approval and other conditions applicable. Fraser Alexander Holdings, in turn, is the 100% owner of Fraser Alexander Bulk Mech, Fraser Alexander Construction and Fraser Alexander Tailings. In addition, they own subsidiary operations in Botswana, Namibia, Zimbabwe and Swaziland. In 2006 Royal Bafokeng Finance acquired a black economic empowerment shareholding in Fraser Alexander thus allowing them to expand their activities (Mail & Guardian 6 October, 2005:1).

Royal Bafokeng Finance(RBF) acquired 100% of an established and very successful business, which serves the mining industry in particular. Royal Bafokeng Finance's

roots are in the mining industry and it was considered relevant for Royal Bafokeng Finance to own Fraser Alexander Holdings. Through Fraser Alexander Holdings' broad geographic spread, communities adjacent to mining operations can be assisted with developmental programmes (Mail & Guardian 6 October, 2005:1).

The customers and the staff were excited about the transaction. Fraser Alexander Holdings started looking for a black empowerment shareholding. Ultimately Fraser Alexander has become a fully black-owned business. Not only will it strengthen the company's existing business with its major customers, but it will also open new avenues for the company particularly in the development of public enterprises. The negotiations with RBF were conducted in an extremely positive spirit. The transaction was effective from the date when all conditions were met. The parties involved declined to disclose the acquisition price (Mail & Guardian 6 October, 2005:2).

4.4.2 Royal Bafokeng: Expanding business opportunities

Old Mutual, South Africa's largest life assurance company, sold a controlling stake in its 77%-owned subsidiary Mutual and Federal (M&F) to a black economic empowerment (BEE) group in a deal worth R8-billion. Industry sources indicate that the BEE buyer of Mutual and Federal, South Africa's second-largest short-term insurer, was the Royal Bafokeng Holdings (RBH), whose chairman is Kgosi Leruo Molotlegi, the king of the Royal Bafokeng nation, as noted earlier.

Royal Bafokeng Holdings, which manages and develops the commercial assets of the Bafokeng, has long wanted to increase its financial services interests. The move could suggest that Old Mutual chief executive Jim Sutcliffe bowed to pressure from foreign shareholders, who demanded that if Old Mutual relinquishes its SA operations altogether (Stovin-Bradford, 2007:1). Old Mutual has been trying to achieve closer co-operation between operations under the Old Mutual SA (OMSA) umbrella including Nedbank and Mutual and Federal. The transaction seems to have brought Old Mutual South Africa's Project Phinda to an end, which was an attempt to get the three companies to collaborate. Project Phinda emerged from a 2005 tripartite meeting which was held at the Phinda game reserve in KwaZulu-Natal (Stovin-

Bradford,2007:1). Project Phinda has brought about large savings and produced revenue gains for the Old Mutual group. Cash-generative Mutual and Federal has long been regarded as a key dividend source for London-listed Old Mutual. However, Stovin-Bradford (2001:1) states that Sutcliffe was prepared to counter an offer, first for M&F, and possibly even for Nedbank.

Long-term investors in Old Mutual knew that its stakes in Nedbank and M&F were incidents of history and that there were never any original strategic plan for the three to work together according to Stovin-Bradford (2007:2). Even at Phinda there was acknowledgement that the senior management of Old Mutual, Nedbank and M & F had not really spoken to each other previously. This left three possibilities: selling M & F to an international trade buyer, a private equity group or a BEE buyer. No obvious international buyer has come forward. The US sub-prime mortgage-induced credit crisis has slowed the pace of private equity deals. Mutual and Federal, with a market capitalisation of R7,8-billion, falls just above the sort of deal size a local private equity firm might be able to accommodate (Stoven-Bradford, 2007:1-4).

It is argued that Mutual and Federal's existing BEE partners, including Wiphold and Sphere, which together own 11% of Mutual and Federal, do not have the financial means for such a deal. There are really only three BEE groups able to raise such amounts. One is Tokyo Sexwale's Mvelaphanda, which has just acquired a 30% interest in Sunday Times owned by Jonnic Communications. Another one is Patrice Motsepe's ARM group but it has stakes in Sanlam, which leads to conflict of interest. Therefore, the buyer is likely to be Royal Bafokeng Holdings, which already has a 10% stake in South Africa's fourth-largest short-term insurer, Zurich Insurance Company which, until recently, was known as South African Eagle (Stovin-Bradford, 2007:2).

4.4.3 Impala Platinum (Implats) and Royal Bafokeng deal approved

The parties entered into an agreement in 2006 in terms of which the 300 000 strong Bafokeng nation would convert Implats shares into the royalty payments due to it for the next 31 years. The Royal Bafokeng nation owns the land on which Implats mines

its platinum in the Rustenburg valley. Until recently, the RBH was rewarded with royalties for the right to mine the land, transforming the Bafokeng into Africa's wealthiest tribe. The transaction transformed the Bafokeng into Implats's largest shareholder with over R75 million (13,4%) of the company's shares (Mantshantsha, 2007:1).

Implats and the RBN agreed on the deal in September 2006, then valued at R12,5 billion (R170/Implats share) and the shares were transferred to Royal Bafokeng Holdings (RBH) in March 2007. The RBH holds all the Royal Bafokeng nation's investments. Implats's shares totalling over R20 billion. In March 2007, the RBH investment portfolio was estimated at over R25 billion, with Implats making up more than half at R17bn (Mantshantsha, 2007:1).

4.5 ROYAL BAFOKENG MODEL OF GOVERNANCE

In an age when hereditary rule is often regarded as being an anachronism, the Bafokeng believe that this form of traditional government and adaptations made over the years, neatly balance recognition of tribal custom and expression of the popular will. The Bafokeng king, Kgosi Leruo Molotlegi, explained in a speech at Brown University in the United States that the Bafokeng traditional form of government espouses certain principles of democracy. These include mechanisms to ensure that the king is carrying out the will of the people. Political representation is present at multiple levels of local government, and even a system for electing village representatives to the king's consultative council is in operation. There are examples in the historical record of Bafokeng kings being fined for not carrying out the will of the people. Perhaps the most significant adaptation the Bafokeng have made to their form of government followed South Africa's transition from apartheid to democracy in the early 1990s (Molotlegi, 2007:5)

The Bafokeng moved with the times and introduced a system of electing particular community representatives. This in turn, saw a departure from a patriarchal form of governance with a number of women being elected to the Royal Bafokeng nation's executive council. Kgosi Leruo Molotlegi noted that the Bafokeng are rooted in, but not bound by tradition. The institution, status and role of traditional leadership is

protected by the South African Constitution, 1996. The king considers the traditional system as a way of organising community life that is founded on basic human principles such as respect, sense of community, and sense of commitment to one's neighbours as well as oneself. It is upon these principles that the Bafokeng system has developed and changed to meet the needs of the times. The 29 villages that make up the Bafokeng community are divided into 72 traditional wards, each of which is regulated by a hereditary headman and headmen's wives. The headman is assisted in carrying out duties by a minimum of four ward men (Molotlegi, 2007:5). This system allows wards to have representation in decision making and thus some form of democratic government is practised.

Duties of the headman are many and varied and he must keep the king's office informed of births, marriages and deaths, and of pressing issues or specific problems in the community. The headman must resolve disputes ranging from the use of resources to family matters. If the headmen are unable to resolve disputes, such as those within a marriage they refer the aggrieved party to the Royal Bafokeng tribal court, which sits in the civic centre in Phokeng. If an aggrieved party is unable to secure justice through these channels, the aggrieved party can then seek redress through the formal magistrates' court in neighbouring Rustenburg. The headman must also ensure development of the community. For example, the identification of talented young people as candidates for Royal Bafokeng nation bursaries to support tertiary education (Molotlegi, 2007:6).

On another level, the headmen must supply character references for young people seeking work. The Royal Bafokeng nation as a whole is represented by the executive council consisting of 39 members, 29 of whom are elected by villagers, and 10 of whom are appointed by the king. The executive council has the status and functions similar to those of a municipality as defined in South African legislation applicable to municipalities, with committees responsible for portfolios such as youth, community development, health and education. Whenever important decisions affecting the entire community need to be made, the *kgosi* convenes the supreme council of the Royal Bafokeng nation. This consists of the executive council, headmen and traditional

councillors. The highest-ranking decision-making body in the nation is called the supreme council (Molotlegi, 2007:6).

The *kgotha kgothe* is a general meeting, held twice a year by the Bafokeng nation, whenever there is an important matter to be debated. The King's mandate comes from consulting with the supreme council during the general meetings. The king's proposals can be overturned and his input and views on matter can be amended by the general meeting. Decisions made by the councils are implemented by the Royal Bafokeng Administration (RBA), which is effectively the nation's civil service. It employs a staff of some 400 people. RBA is funded by the Royal Bafokeng nation out of revenue derived from royalties and dividends received from mines operating on the nation's land. An estimated R2 billion of this money has been invested in infrastructure and services for the community since 1996 (Molotlegi, 2007:6).

As a traditionally governed entity, the Royal Bafokeng system of governance embraces a range of mechanisms for ensuring that people's concerns, opinions, and ideas are integrated into policy-making, and that there are sufficient checks and balances in place so that no branch of the traditional system can act on its own. With the introduction of elected village councillors, there are also more women in positions of authority than before. Although the Royal Bafokeng Administration relies on indigenous law and traditional forms of conflict resolution to mediate most conflicts at local traditional authority level, it is also subject to the laws and legal procedures of the Republic of South Africa (Molotlegi, 2007:6).

The democracy continues to adapt as in the recent innovation of Dumela Phokeng. Drawing inspiration from the word *dumela*, meaning greetings, this interactive initiative sees King Leruo Molotlegi and the key representatives visiting each of the nation's 29 villages. These weekly meetings at the beginning of the year enable the king to keep in touch with the community and afford villagers an opportunity to share ideas (Molotlegi, 2007:6).

4.6 ROYAL BAFOKENG CUSTOMARY LAW STRUCTURES

The Bafokeng traditional (customary) system of government consists of the King, tribal council (also called the council of noblemen), the headmen or council of headmen and the (*pitso*) or tribal assembly. In the case of legislation and other important matters which affect the whole indigenous community, Bafokeng procedure requires that the king consult and inform the indigenous community at a tribal assembly. Matters of such importance to the indigenous community as a whole as requiring the meeting of tribal assembly include legislation as well as the disposition of tribal land or mineral rights (Government Gazette no. 25492 of 3 October 2003:9).

In matters, such as the building of roads, schools and matters regarding mines, the council of headmen meets with and advises the king. In the case of the Bafokeng 72 headmen are recognised in terms of Bafokeng custom. Further, the custom of the Bafokeng is that each headman is entitled to be accompanied by one or two ward men chosen by that headman to assist him and to accompany him to meetings of the Council of headmen. The full complement of councillors at a meeting of the headmen and ward men therefore potentially totals some 216 persons. Historically the practice is that a smaller council (referred to for convenience as the *tribal council*) administers the day-to-day affairs of the Bafokeng. This tribal council consists of a much smaller number of persons (approximately 16 persons) nominated by the constituencies of the headmen and appointed by the king. This tribal council operates as a policy and decision-making body in relation to day to day operations of the Bafokeng. Important decisions or those involving large amounts of money are required to be taken by the headmen, ward men and councillors of the Tribal Council sitting together (Government Gazette no. 25492 of 3, October 2003:9).

The system of traditional authority observed under indigenous law recognised by the Bafokeng immediately prior to the commencement of the 1993 Constitution was preserved by that Constitution. Similarly, the powers and recognition of traditional leaders according to customary law were recognised by the Constitution, 1996.

The Bophuthatswana Traditional Authorities Act, no. 23 of 1978 created a tribal authority for each indigenous tribe. The tribal authority, where there is an existing

tribal government functioning in accordance with the law and customs observed by that tribe, is the tribal government. The chief is an *ex officio* member and chairman of the tribal authority. The tribal authority consists of those members of the tribe recognised as councillors in accordance with the law and customs of the tribe and who, with the chief, constitute tribal government; and such additional members of the tribe as may be appointed to the tribal authority by the chief with the approval of such officiating councillors.

Section 4 of the Bophuthatswana Traditional Authorities Act, of 1978, describes the statutory duties of a tribal authority which are generally to administer the affairs of the tribe and to assist, support and guide its chief in the exercise or performance of the powers conferred upon him by the Act or under any law (Government Gazette, no. 25492 of 3 October, 2003:9).

The tribal authority has the duty to establish a proper administration and appoint personnel to manage that administration. Legal proceedings against a tribal authority may be instituted by or against the chairman of that authority (i.e. the chief) in the official capacity.

In contemporary Bafokeng Administration one further administrative body, must be taken into account, namely the executive authority or council. Following the democratic elections in 1996 a Constitution of the executive authority or council of the Royal Bafokeng nation was signed (the Bafokeng Council Constitution). The king of the Bafokeng as well as the chief negotiators of a number of interested stakeholders of the Bafokeng assumed authority. This constitution recognises and upholds the indigenous law of the Bafokeng, the authority of the king and the seniority of the Council of Headmen as the legislative authority of the Bafokeng nation. (Government Gazette, no. 25492 of 3 October 2003:10).

This Bafokeng Council Constitution does not purport to be the constitution of the Bafokeng Royal nation itself, but is a constitution only of the body styled the executive authority or Council of the Bafokeng. This executive authority or council was established to replace the traditional tribal council as the body, which administered the day-to-day affairs of the Bafokeng, and to ensure that it is a

democratic body rather than one where the members are simply appointed by the King, as was the case historically with the tribal council. It is important to note that this council must include women.

Like the tribal council before it, the executive authority or council has both policy and decision-making powers in relation to the day-to-day operations of the Bafokeng. The finances and property of the community and all matters provided for in the Bophuthatswana Traditional Authorities Act of 1978, are entrusted to the executive authority or council (Government Gazette, no. 25492 of 3 October 2003:10).

4.7 THE ROYAL BAFOKENG NATION CORPORATE GOVERNANCE DEPARTMENT

The Royal Bafokeng nation has formalised by-laws that articulate the powers and mandate of each office and they have ensured that people's expectations of the leaders match that leader's specific mandate and that such transparency will lead the way to better administration. Examples of such measures include the formalisation of each ward's executive and sub-committees as well as the process of transferring someone from one ward to another. The process was started in June 2006 and was completed in June 2007. The second phase was completed in June 2008. With a clear sense of what the leader's responsibilities are, the Royal Bafokeng nation will be in a better position to expand the range of services that are administered at the level of services comparable to municipal services (Molotlegi, 2007:3).

The Royal Bafokeng Administration's Corporate Governance Department comprises the following functional areas: Royal Bafokeng Nation Group Legal Services, Traditional Governance Structures, Land Affairs and Government Relations. The functional areas are briefly outlined as follows:

- i Group Legal Services
 - ❖ Inter Company Loan Agreements

After careful consideration of the legislative impacts as well as structuring the affairs of the Royal Bafokeng Nation as a group, a decision to convert inter company loans to

equity has been taken. For the period under review, Group Treasury, Corporate Governance and the Royal Bafokeng Holding Executive Management have taken stock of all the loans which must be converted. Conversion shall take place after the remaining Royal Bafokeng Nation Development Trust trustees have been appointed (Royal Bafokeng Nation Kgotha Kgothe,2008:5).

❖ 2010 Fifa World Cup

The South African Local Organising Committee has on behalf of the Federation of International Football Association(FIFA), tabled addendums to the Royal Bafokeng Administration stadium authority Agreement for consideration and approval. For the period of under review the Confederation Cup Addendum Agreements have been concluded. Undertakings relating to the regulation of billboards and signage have also been reviewed and concluded with FIFA in respect of both the Stadium Precinct and Phokeng. It must be noted that the Royal Bafokeng Administration as a traditional authority contributed extensively towards the 2010 FIFA World Cup by availing the abovementioned stadiums for the tournament.

❖ Lebone II College and the Royal Bafokeng Institute

Following the registration of Royal Bafokeng Institution as a Section 21 Company, policies which will regulate internal business processes have been tabled in the Royal Bafokeng Institute's Executive Management for consideration before they can be approved. A draft Entity Compact Agreement which will regulate the relationship between the Royal Bafokeng Nation and the Royal Bafokeng Institute has been tabled for the Royal Bafokeng Institute for inputs and consideration before it can be signed. The registration of the Lebone II College of the Royal Bafokeng as a Section 21 Company has been conclude. The Corporate Governance Department formulated policies jointly with the RBI and Lebone II College Management to improve internal control and streamline processes within Lebone II(Royal Bafokeng Nation Kgotha Kgothe,2008:5).

❖ Royal Bafokeng Development Trust

At the beginning of 2008, the Office of the King held a briefing session with the elected trustees on institutional arrangements brought about by the Royal Bafokeng

Development Trust. There was also a detailed briefing relating to the Royal Bafokeng Nation Treasury processes and how an interface with the trust will be achieved.

❖ Legislative impact

For the period under review, legislation with an impact on the RBN have been considered and amendments proposed for inclusion in legislation have also been published for comments. New legislation published, relate to Traditional Courts Bill and Customary Succession Bill. With regard to Traditional Courts both written and oral submissions were made to the Justice Portfolio Committee. This Bill was put on hold by Parliament after oral presentations were made. Inputs on the Customary Succession Bill were submitted in writing only (Royal Bafokeng Nation Kgotha Kgothe,2008:5).

Under traditional leadership institutions, the Traditional Leadership and Governance Framework Amending Bill *and* National House of Traditional Leaders Amend Bill were published. Written submissions regarding these were also submitted to Parliament.

Communal Land Rights Act Regulations have been published by National Government. Written submissions were made to the Department of Agriculture and Land Affairs. No oral submissions have been invited. The Department of Agriculture and Land Affairs issued the Land Use Management Bill which was also reviewed by the Department at the time of reporting (Royal Bafokeng Nation Kgotha Kgothe,2008:5).

4.7.1 Leadership development

The Royal Bafokeng nation has established the Bafokeng Education Institute. A component of the Institute is devoted to developing leadership training programmes for all the Royal Bafokeng nation's leaders including the king. The stated goal is to ensure that each headman either has a degree or diploma in by 2020. In this way the Royal Bafokeng nation will achieve a world-class leadership that will serve as an example across South Africa and globally (Molotlegi, 2007:3).

4.7.2 Challenges facing local headmen

The King is fully committed to address all matters related to headmen. The outstanding succession disputes will be resolved by empowering a commission of inquiry to investigate and establish the facts of each case. Secondly, those headmen who are no longer able to meet the demands of their office and allow the rightful heir to take their place will be retired so that the rightful heir can take his place. The headmen were organised in the regional committees according to Master Plan's regional map 1 in June 2007. Headmen are expected to be the role models to the Royal Bafokeng nation as well as the bearers of the nation's tradition. The conduct of the headmen must be irreproachable, fair and worthy of emulation (Molotlegi, 2007:3).

4.7.3 Demarcation of traditional wards (*makgotla*)

In order to effectively run and govern each ward, there is a need for leaders to physically demarcate each ward clearly. The smallest administrative unit is not based on loose affiliation or kingship; it is a geographical area that falls under the jurisdiction of a particular *kgosana*. According to Molotlegi (2007:4), demarcating each and every ward will be challenging. However, clear demarcation will help to clarify people's allegiance and community responsibilities (Molotlegi, 2007:4). This will also facilitate service rendering as community members will be able to establish the area of jurisdiction of a service provider.

4.7.4 Bafokeng traditional councillors

The current council ended its five-year term in March 2007. Instead of scheduling new elections to elect another council, the system was change to bring it into line with the Traditional Leadership Act of 2004. There was a three-month transition period was determined during which the former council had to finalise its affairs until the new council could become operational. A smaller council currently consists of some elected members and some appointed members. It consists of elected and one appointed members who represent a region. This council is working closely with the Rustenburg local municipal councillors to achieve the development goals of each of

the five Bafokeng regions. The rationale behind the change is to ensure closer alignment between the Rustenburg councillors and the Royal Bafokeng councillors and to reduce the overall numbers so that the traditional council remains representative and more effective (Molotlegi, 2007:4).

For the period under review, traditional councillors were inducted on all aspects of the RBN governance system and business processes. Departments and entities such as the Office of the King, RBA, RBH and RBI assisted traditional councillors with their plans and processes to achieve an understanding of the goals of the RBN. A training and development programme for traditional councillors has also been approved. Traditional councillors were trained in meeting procedure and taking minutes (Royal Bafokeng Nation Kgotha Kgothe, 2008:8).

The traditional council resolved to develop a five year plan covering investments, human capacity building, infrastructure, economic development and health. The traditional council has also reviewed the former Executive Council's mandate and scope in order to achieve the smooth running and co-ordinated inter-linkages with other structures of the RBN such as traditional wards and the municipality's ward structures (Royal Bafokeng Nation Kgotha Kgothe, 2008:8).

Considering the practices followed by the traditional councillors, the usual Western type of decision making is not followed. Thus in evaluating the western governing style, provision has to be made for traditional systems as well to accommodate the principles of such systems.

The traditional council deals with an extensive review of the level and quality of infrastructure projects which are undertaken by a number of the RBA 's local service providers after the King had intervened to put a moratorium on pending projects. The traditional council recommended that the moratorium be lifted on condition that contractors with a proven track record and the Construction Industry Development Board accreditation and grading be considered when awarding tenders for the remainder of projects in the 2008 financial year (Royal Bafokeng Nation Kgotha Kgothe, 2008:8).

4.8 COMUNAL LAND RIGHTS

With the arrival of the Boer settlers in the Transvaal, a rudimentary system of land registration was introduced. It became more sophisticated over time. Initially, the grants of such farms were performed informally by the landdrost who issued certificates of registration for land. By the mid nineteenth century, all the land forming the Greater Rustenburg region has been granted and registered in favour of Boer farmers. In law, the registered owner of land had absolute rights of ownership and possession. Accordingly, while the Bafokeng continued to occupy portions of the ancestral land, no rights of ownership existed. Thus, for example, the principal village which was within the present municipal area of Rustenburg was vacated and moved to the village of Kanana situated on what is today the farm Reinkoyalskraal. In April 1844, the first Boer Constitution, being the Thirty-Three Articles drawn up at Potchefstroom, determined that no equality between blacks and whites with regard to the land rights exists (Government Gazette no. 25492 of 3, October 2003:2).

Blacks were not allowed to settle near village lands, to the detriment of the inhabitants, except with the consent of the full Volksraad. The Volksraad of the South African Republic (*Zuid-Afrikaansche Republiek*) more specifically the Transvaal Republic) resolved in November 1853 that commandants-general could grant farm land to blacks provided that such land be occupied by the blacks and the descendants conditionally as long as there is compliance with the law. In case of disobedience, such tenure may be declared lapsed, and, if so, it remains a loan farm, and the conditions or rent may be determined by the natives' good behaviour and obedience. In June 1855, the Volksraad passed a resolution which provided that no one who was not a recognised burgher should have any right to possess immovable property in freehold. All coloured persons were excluded. Burgher rights were never granted to the natives (in accordance with the *Grondwet*). The *Grondwet*, which was the Constitution of the Transvaal Republic, was adopted at Rustenburg in 1858 and provided that no equalisation of coloured persons in the state would be permitted (Government Gazette no. 25492 of 3, October 2003:1-2). Thus it could be argued that inequality regarding land rights could be traced back to the mid nineteenth century. This ultimately had a negative effect on the permanent settlement of Blacks.

This in turn had an effect on the development of orderly urbanised settlements and consequently on traditional leaders to gain experience in governing.

The issue of whether blacks could purchase land arose when the commandant of the Rustenburg district enquired of the Volksraad whether blacks in the district could purchase land from a burgher. The executive council proposed to the Volksraad that in such cases transfer should be made out in the name of the government, the use of the farm being available to the blacks and his/her heirs as long as the conduct is in accordance with the law. The Volksraad proposed that according to law no land should be sold to blacks, but this was rejected. The Volksraad referred the matter back to the executive council for a report as to the best way in which to provide the blacks with locations and what would be in accordance with the law (Government Gazette no. 25492 of 3, October 2003:2).

The government retained a pre-emptive right to land where black purchasers wished to dispose of land. The 1871 resolution of the Volksraad was not acted upon and did not become law. The Volksraad decided that no transfer of land to blacks will be allowed. A petition in 1872, requested that land not be sold to blacks and that blacks not be entitled to obtain freehold ownership. In 1873 the question of land ownership by blacks was again raised in the Volksraad, which referred the issue to the government. Government submitted its report to the Volksraad in 1874 and placed before it a proposed law on the transfer of land to blacks. The proposed law provided for the transfer of land (property) to any coloured person who can produce a certificate from the field-cornet of the ward in which he resided or was resident, or from the landdrost of the division in which the person resides, that such person was well known to the landdrost as an honest, quiet, industrious and peace-loving person, faithful to the Republic.

The report and the bill were both rejected by the Volksraad. The resolution, which rejected the proposed law, stated that it was in conflict with the *Grondwet* (Constitution). The Volksraad resolution of 1855 continued to apply, whereby blacks were excluded from holding property in freehold (Government Gazette no. 25492 of 3 October 2003:2).

In January 1875, King Mokgatle of the Bafokeng, assisted by J.A. Butner, enquired of government whether a farm that the Bafokeng had purchased could be transferred into the Bafokeng's name should that not be possible a proposal was to be made for the farm to be transferred the name of the government in trust on behalf of the Bafokeng nation. The response from the executive council was to refer Butner to a Volksraad resolution of the previous year in which the government refused to approve the transfer of land into the name of either an indigenous community or the government in trust for such community. Up to the time of the British occupation in 1877, the grant of land for black occupation was done in accordance with the abovementioned conditions.

On 12 April 1877, Britain annexed the Transvaal. The annexation proclamation guaranteed equal justice to the persons and property of both white and coloured, but without granting equal civil rights, such as the right of voting, entitlement to other civil privileges incompatible with the natives uncivilized condition. The proclamation guaranteed that all private *bona fide* rights to property, guaranteed by the existing laws of the Transvaal Republic would be respected. The British administration changed the position by initiating the principle of vesting land title for blacks in a responsible representative of the government as official trustee. The Lagden Commission Report was later to record this change in policy towards the purchase of land by blacks, during the British occupation.

In 1877, when the British occupation took place a modification of the principle of the South African Republic refused to recognise the right of blacks to purchase land. It was considered inadvisable to make a change by which blacks should have the right to purchase land and to have it registered. The policy, adopted by Sir Theophilus Shepstone was to make the secretary for native affairs *ex officio* trustee for the blacks. Thus the secretary secured rights. The office was a permanent one, risks concerning expense in the event of the death of a trustee were obviated. The Lagden Commission Report also records that until the time of annexation of the Transvaal, the government of the former South African Republic was, up to this point reluctant to allow blacks to acquire land by purchase. In these circumstances, the natives resorted to the missionaries to buy land on behalf of the Royal Bafokeng nation, which were

registered in the name of the missionary. The purchase price was collected by each black chief of the relevant tribe, principally in cattle, and the missionary arranged the transaction (Government Gazette no 25492 of 3, October 2003). As early as 1869 the Bafokeng nation had purchased and paid the purchase price of £9 for a portion of land, which was registered in the name of a missionary. In 1871 the Bafokeng purchased and paid the purchase price of £150 for a further portion of land. Further similar purchases followed in 1874, 1876 and 1879 with all these farms being registered for the Bafokeng in the names of missionaries with the Hermansburg Mission Society. The British government did not approve of land purchased by indigenous communities being held by missionaries. The government accordingly instructed that until further legislation on the subject, all land purchased by or for natives are to be held in trust by the secretary for native affairs for such natives (Government Gazette no. 25492 of 3, October 2003).

Prior to July 1879, King Mokgatle of the Bafokeng obtained an interview with Sir Theophilus Shepstone regarding land ownership by blacks. It was indicated to King Mokgatle that according to the law blacks ,could not obtain ownership in land and that until such time as the law was amended, no change in this respect could be achieved. Accordingly, the government enquired from King Mokgatle as to what arrangements had been made in respect of the land, which had already been purchased by the Bafokeng. Mokgatle informed the government that the land was transferred into the name of a missionary viz. the Reverend Penzhorn. The problem was that the Reverend Penzhorn no longer wished to shoulder this responsibility as it was anticipated that the Bafokeng would have problems in relation to the properties when Reverend Penzhorn died. The government agreed with this and indicated that it would be better if the land could be transferred into the name of one or other government official in trust for the Bafokeng because the office of such official would continue to exist even if the holder of that office died (Government Gazette, no. 25492 of 3, October 2003:3).

In December 1879, the Reverend Penzhorn wrote to the colonial secretary, M. Osborne, requesting that the Bafokeng be given evidence of the fact that the government would transfer the land into the name of a trustee on behalf of the nation.

The Reverend Penzhorn indicated that the Bafokeng intended to purchase a further farm and that the seller was prepared to sell it provided it could be transferred into the name of King Mokgatle or the government in trust. It was confirmed that the suggestion that the land should be transferred to the government in trust is consistent with the law. There had been one or two similar applications and the land has been transferred to the secretary for native affairs in trust for the native purchaser. It was suggested that a similar course be adopted in the Bafokeng case.

It was stated that the Queen had approved the handing over of the country back to the former Boer rulers and the natives would be allowed to buy or acquire land. The transfer of the land would be registered in trust in the names of three gentlemen who would constitute a Native Location Commission. The Commission would mark out black locations, which the great native tribes could peacefully occupy. In marking out these locations, existing rights would be guarded. The Transvaal Government on the one hand, and the blacks on the other, had to respect the boundaries so defined Article 13 of the Pretoria Convention. It was thus recorded that the blacks would be allowed to acquire land, but the grant or transfer of such land would in every case be made to and registered in the name of the Native Location Commission and held in trust for such blacks.

According to the Lagden Commission Report the Volksraad resolution of August 1884 approved the principle that blacks could not hold land in their name and that the principle was acted upon by the registrar of deeds under the government of the second British occupation. In 1882 and 1883, the farms Zanddrift and Beerfontein, which had been purchased by the Bafokeng, were registered in the Deeds Register in Pretoria and transferred in full and free ownership for the Native Location Commission in trust for the Bafokeng nation. (The commission included among its members Paul Kruger, Vice-President of the Transvaal Republic, and George Hudson, the British Resident Commissioner).

In 1887, the farm Beerkraal, purchased by the Bafokeng, was transferred to the superintendent of natives in trust for the Bafokeng. In 1890, the farm Doornspruit was similarly transferred. The transfer of the farms to the Superintendent of Natives illustrated the prevailing policy of the government of the Transvaal Republic with

regard to registration of land acquired by blacks. Prior to August 1898, King Mokgatle of the Bafokeng requested the government to have all Bafokeng farms, which were at the time registered in the names of missionaries transferred to the Superintendent of natives in trust for them. However, the relevant documents were mislaid in the office of the native commissioner of Rustenburg. In October 1899, Britain declared war on the Transvaal Republic, formally annexed the territory and renamed it the Transvaal Colony. War continued until peace talks were concluded with the treaty of Vereeniging in May 1902. In consequence of the British victory a British official, the commissioner of native affairs, formally succeeded the Superintendent of Natives (Government Gazette, no. 25492 of 3, October 2003:5).

Under the second British occupation, Sir G.Y. Lagden was appointed as commissioner of native affairs. In 1903, a portion of the farm Kookfontein that had been purchased by the Bafokeng was transferred to the Commissioner of Native Affairs in trust for the Bafokeng. In July 1904, the Lagden Commission issued its *Report Relative to the Acquisition and Tenure of Land by Natives in the Transvaal* which stated of the class of land held by the Bafokeng. These properties were almost entirely acquired under the previous Government. Being property purchased by communal subscription, it was not practicable to exercise the same control as over government locations.

The title to such property was to be vested in the commissioner of black affairs in trust for the owners, who could not, therefore, encumber or dispose of the interests without the consent of the government. In 1904, the farm Vaalkop which had been purchased by the Bafokeng, was similarly transferred to the commissioner of native affairs, the successors in office, in trust for the Bafokeng. In April 1905, judgment was handed down by the supreme court of the Colony of the Transvaal in the case of Tsewu versus. Registrar of Deeds. On the basis that all the inhabitants of the country enjoy equal civil rights under the law, the court held that blacks of South Africa were entitled to claim transfer in the deeds office of any land of which he was the owner. The court unanimously upheld the right of a black to obtain registration of transfer.

The court held that there was no law which justified the position adopted by the registrar in refusing to register land in the name of the black plaintiff. Chief Justice

Innes stated that no doubt the practice has prevailed for years in this country of not allowing transfer of land to be made directly to any native, but insisting upon transfer being taken in trust by an official appointed by the State. The judge stated that the existence of that custom cannot, in judgment, justify the attitude of the respondent. It was for the legislature to deal with the matter if it is thought right to make special provisions regarding the natives (Government Gazette, no. 25492 of 3, October 2003:6).

In the Tsewu, case the court referred to the Volksraad resolution of 1855 and decided that, had this not been repealed, blacks would have been directly prohibited from holding property in the Transvaal. In September 1906 the farm Klipgat purchased by the Bafokeng was transferred to the commissioner of native affairs for the Transvaal in trust for the Bafokeng. Soon thereafter, the Bafokeng purchased two further farms, Turffontein and a portion of Beerfontein, from the Hermansburg Missionary Society for a purchase price of £680(R1360). On 11 July 1910, a resolution was passed by the Bafokeng that the transfer of those farms be passed from the missionaries to the minister of native affairs in trust for the Bafokeng (Government Gazette, no. 25492 of 3, October 2003:6).

The Transvaal was granted responsible government in the Colony of the Transvaal in 1907. The change resulted in the appointment of Johann Rissik as the Minister of Native Affairs in the Transvaal. He succeeded the commissioner for native affairs. In accordance with the recommendation regarding land owned by blacks contained in the Lagden Report, the Transvaal Government commenced the transfer of land nominally held by missionaries as representatives of indigenous communities into the name of the minister of native affairs for the Transvaal. Accordingly in June 1907, six farms which had previously been purchased by the Bafokeng and nominally held by missionaries, were transferred free of transfer duty to Rissik in the capacity of Minister of Native Affairs in Transvaal, in trust for the Bafokeng. In November 1909 the farm Reinkoyaalskraal was purchased by the Bafokeng and similarly transferred to the minister of native affairs in trust.

The Bafokeng continued to purchase land after 1913 but the effect of the Native Land Act of 1913 made it very difficult to acquire further tracts of ancestral land. Three

further portions of the farm Kookfontein that fell within the scheduled area were however transferred to the Minister of Native Affairs in trust. The Bafokeng resolution which authorised this transfer, further resolved that a £2-pound(R4.00) levy be imposed on each adult male member of the Bafokeng in order to raise the funds for the purchase price. The farm Doornspruit Annex was purchased from the government by the Bafokeng for the sum of £175(R350) in August 1935.

This farm was transferred by way of a crown grant to the Minister of Native Affairs in trust for the Bafokeng. As this was a sale of government land, the transfer was made not only with the approval of the Minister of Native Affairs, but also required the approval of Parliament. It was apparent from the resolution approved by Parliament on 21 May 1934, and from the relevant executive council minute, that the government and Parliament regarded the sale of Doornspruit Annex as a transaction whereby freehold ownership in this land would pass from the state to the Bafokeng. In September 1935, the farm Toulon was exchanged for a portion of the state- owned farm Tweedepoort and registered in the name of the Minister of Native Affairs in trust for the Bafokeng. Again both the minister of native affairs and Parliament approved the transfer (Government Gazette, no. 25492 of 3, October 2003:7).

The Native Trust and Land Act, of 1936 provided that where a black man was the owner of the mineral rights, no person could prospect for minerals without the written permission of the Minister of Native Affairs. This legislation discriminated directly against blacks and the Bafokeng nation. It is quite apparent from the records surrounding the lease of mineral rights over various of the Bafokeng farms, that the government officials in the native commissioner's office, the secretary for native Affairs, the Minister of Native Affairs and the Bafokeng all regarded the Bafokeng as the owner of the land and as such entitled to deal with mineral rights on such properties as the owner thereof. For example, on 14 September 1953, the secretary for mines in a letter to the secretary for native affairs regarding a proposed prospecting contract between the Bafokeng and a mining company in respect of six portions of Bafokeng land stated that it would appear that the ownership of both the surface and mineral rights in respect of the land in question was vested in the Bafokeng Tribe and

the land therefore ranked as private land for the purposes of the mineral laws (Government Gazette, no. 25492 of 3 October 2003:7).

In dealing with the land related issues, the Bafokeng have always exercised rights consistent with ownership. The government functionaries holding the land in trust for the Bafokeng had never purported to exercise rights inconsistent with the Bafokeng's rights of ownership. The single notable exception to this was President Lucas Mangope of the former Bophuthatswana when concluding a mining contract in 1990 on behalf of the Bafokeng against the will of the Bafokeng. The Bafokeng is an indigenous community governed by the system of indigenous law. In Bafokeng indigenous law a decision to dispose of communal land can only be taken at a general meeting (*pitso*) of the Bafokeng. This principle of indigenous law has been recognised by the South African courts. The precise role of the government functionaries who held the Bafokeng land as trustees was never spelt out. In practice, through the course of more than a century, the government functionaries who were trustees never interfered in the Bafokeng's right to deal with the land or mineral rights. (Government Gazette, no. 25492 of 3 October 2003:7).

4.9 IMPALA PLATINUM MINES

The early period under South African mining law, Impala Platinum mines approached the Bafokeng in 1966 to obtain a prospecting agreement, which gave the company the right to explore its reserves to determine their viability. Under this agreement, a provision was made to grant Impala Platinum mines the right to exercise an option to obtain a mining permit to mine the mineral reserves. This was deemed acceptable because of the enormous costs incurred in prospecting. The prospecting agreement also set out the royalties the owner of the mineral rights should receive, and the period for which those rights would be granted, should the company take up its option to mine. After completion of the prospecting, Impala Platinum mines approached the Mining Leases Board for a mining permit, the granting of which had to be accompanied by proof of the viability of the reserves. The company's financial capacity to undertake mining in the Bafokeng reserves was then formalised in a mining lease (Manson and Mbenga, 2003:27-28).

According to Manson and Mbenga (2003:27-28), the owner of the mineral rights did not have to be approached in order to obtain the mining lease, and the mining company was given power of attorney for those rights on their behalf. The odds, therefore, were stacked against the owners of the mineral rights even in law. The Bafokeng approved of these arrangements, but only after a general meeting of the community had passed a resolution expressly authorising the Minister to enter into agreements on behalf of the nation (Manson and Mbenga, 2003: 27-28).

In 1977, the mining leases in respect of what was termed the First and Second Bafokeng Areas were registered. For the sake of convenience, these agreements were referred to as the 1977 agreements, although they came into effect at an earlier period. The royalty payable to the Bafokeng, in terms of the ‘agreements’, was 13% of the Impala Platinum mines taxable profits. Impala Platinum mines acquired the right to mine for a period of 35 years, from the time that the mining permit was granted, i.e until the right was terminated in 2003. This right enabled Impala Platinum mines to mine two reefs, the Merensky and UG2 (reef). In the mid-1980s, Impala Platinum mines became aware of the need to obtain access to the third Bafokeng area, known also as the Deeps, because the UG2 reef was becoming less profitable to mine and ‘the Deeps’ held the promise of better reserves. At this point, some attention needed to be given to the issue of royalties. Historically, the relationship between a mining company and the owners of mineral rights in South Africans had been an unequal one (Manson and Mbenga, 2003:28).

The owners, usually farmers or black communities, were not able to match the high powered mining experts that the big companies employ, and were not knowledgeable enough to analyse or evaluate the information, which relates to mining operations or mineral exploration. The land owners had to accept the explanation of the mining representatives. This resulted in the relevant communities being misled in some instances. The result is that communities did not in all cases receive the full benefits of the mining due to them Manson and Mbenga(2003:28).

In the case of base metals, where there was a more plentiful world supply, the chances of a disproportionate deal between owner and mineral exploiter was less than in the case with rare metals because supply and demand ensured the emergence of a general

pattern of royalties. In the case of platinum, however, the Bushveld complex, the site of the Bafokeng platinum reserves, contained the only identified significant reserves of the metal in the world. Approximately 90% of the market is in the hands of South African mining houses, 60 % under Anglo-American and 30 % in the hands of Impala Platinum. The struggle to control and mine these reserves, therefore, takes on a more pronounced emphasis in which powerful mining interests will invest significantly more resources in order to obtain the best terms possible. On examination, both the pattern and amount of royalties paid to the Bafokeng reveal an interesting picture. Firstly, there is no clear rate or means of determining the royalty sum. Thus, the first royalty provided for 4% of taxable income. This increased over the years to 5%, then 7%, 10%, paid by the Impala Platinum mines in royalty (Manson and Mbenga, 2003:28).

The basis of determining royalty is, therefore, purely arbitrary, and usually provides for improvement on a previous rate. Secondly, in arriving at taxable income, mining companies are entitled not only to deduct their capital expenditure but also their future capital expenditure. The argument is that the high capital cost of establishing a mine require a form of tax relief to allow for a reasonable cash flow release. The effect of this deduction is that, in certain years, a mining company can make a substantial profit, but because there is provision for future capital expenditure, there is no taxable income (Manson and Mbenga, 2003:29). Thus the Bafokeng has no guarantee regarding their revenue from this source. It also implies that it is difficult for the Royal Bafokeng Administration to budget as the revenue is uncertain.

Having made a profit, the company will have a distributable income, which is distributed as a dividend to its shareholders. However, the owner of the mineral rights, because royalty is based on taxable income, might very well receive no or very little payment in royalties. Thus, not only is the mineral owner disadvantaged, the mining company actually controls the division of any excess revenue. The returns on capital investment from 1971 show that, up to 1978, the annual dividend paid to Impala's founding shareholders varied from 30 % to 50 % on the capital provided. From 1980, shareholders received the following approximate returns on capital investment:

TABLE 4.1 Impala shareholder’s percentage return on investment; 1980-1995

1980	1981	1982	1983	1984	1985	1986	1987
88%	97%	66%	75%	119%	117%	119%	141%
1988	1989	1990	1991	1992	1993	1994	1995
159%	221%	230%	258%	235%	167%	101%	167%

Manson and Mbenga (2003:29)

A statement by the Bafokeng community in the Sunday Times (27 April 1997), concluded that “it would be fair to say that Impala has been the cash cow of the Gencor Group, providing the Group with a significant portion of the capital that has enabled it to become one of the leading mining houses in South Africa”. The Bafokeng, however, did not receive their first royalty until 1978. The Bafokeng community, the owner of the ore reserves, is referred to for the first time in Impala’s annual report published in 1988, 20 years after Impala Platinum mines commenced mining operations. In that report, the amount paid in royalties during the financial year was set out separately for the first time. Indeed, had the Bafokeng not been embroiled by then in a legal dispute with Impala, probably no reference would have been made at all in the report. The Bafokeng were paid interest-free advances on royalties to be paid in the future, being equivalent to 10 % of the dividends declared. To conclude, the Bafokeng by the mid-1980s had received royalties for only seven years, which in any event were relatively low. Furthermore, Impala Platinum did not acknowledge that there was an inherent problem in the manner in which royalties were calculated . It could thus be stated that the Bafokeng was not treated in an equitable manner and thus does not derive the financial benefits due to lack of clarity in the calculation of royalties.

According to Manson and Mbenga (2003:30), in 1985, for reasons already mentioned, Impala approached the Bafokeng to obtain an expansion of mining operations to include the third Bafokeng area, or the Deeps. This provided the leader at the time, King Edward Lebone Molotlegi, the opportunity to put forward a number of queries and complaints regarding the issue of royalties, describing the payments made to the Bafokeng as a pittance and raising the issue of trusteeship over Bafokeng land.

The managing director of Impala Platinum mines, D.A. Ireland, wrote back attempting to clear up possible misunderstandings, and argued that the royalty presented by the South African Development Trust Corporation was in respect of base mineral mining in South Africa, where the going rate is 10% of the net profit. However, platinum cannot be viewed as a base mineral. Ireland, however, did agree to raise the royalty from 13% to 18% of taxable income.

The particular series of events resulted in the Bafokeng, on one hand, and the former Bophuthatswana regime and Impala on the other, becoming involved in a prolonged course of conflict with high costs to both. Impala initiated an approach to the former Bophuthatswana government, essentially to establish if there was any means of forestalling the Bafokeng's demand for access to information and to enquire if the "homeland" government could in any way assist in obtaining a mining lease for the Deeps. Representatives of Impala and Gencor met the Bophuthatswana Minister of Economics, Energy Affairs and Mining, E. Keikelame, and then Prime Minister Lucas Mangope, in October and November 1987. Finally, it was agreed that Impala would write to Keikelame stating the objection against furnishing the information, and would then invite Ministerial intervention (Manson and Mbenga, 2003:30).

The Minister duly responded on 9 December 1987, instructing Impala not to divulge any information unless instructed to do so by the trustee of the tribe. This decision was made between the Bafokeng Tribe (applicant/plaintiff) and Impala Ltd, and Bophuthatswana ministers of the Energy Affairs, Land Affairs and the President of the Republic of South Africa.

Nevertheless, it led to a series of further meetings between senior officials of Mangope's government and Impala so that a common defence could be prepared to the Bafokeng application. To sum up, the significance of this development was, first, to have Impala and the Bophuthatswana government enter into an alliance that would emphasize the differences between the former Bophuthatswana government and the Bafokeng. Secondly it introduced a marked political dimension to the conflict, inserting into the legal dispute the notion of trusteeship as a crucial argument. It also offered certain Bophuthatswana officials the opportunity to extend the venal interests. The salary of the Bophuthatswana Minister of Finance, Leslie Young, was augmented

by Gencor. Later, the lawyers acting for the Bafokeng were able to allege that payments had been made to other officials as well. Inevitably, when the matter came to the Bophuthatswana supreme court, it was ruled by Judge Smith that the Bafokeng could not terminate a contract between them and Impala. Considering that the land over which the mining leases were granted included not only the Bafokeng's first and second areas, but also land owned by the South African Development Trust (SADT) or state land, and in order to terminate the agreement it would have required the consent of the owner of the SADT land, because it was an indivisible contract. Secondly, a breach of this nature, over refusal to disclose information, did not warrant termination (Manson and Mbenga, 2003:31).

4.10 INFRASTRUCTURE DEVELOPMENT BY THE ROYAL BAFOKENG AND THE NORTH WEST PROVINCIAL GOVERNMENT

Income generated by Royal Bafokeng Nation's commercial interests has been invested in developing the infrastructure and people of the Rustenburg valley. In excess of R2 billion of the Royal Bafokeng nation's funds have been spent on roads, utilities, schools, clinics and other public amenities over the past decade. The majority of the users of these amenities are non-Bafokeng residents and visitors to North-West Province (Carroll, 2007:1).

The road between Phokeng and Boshhoek was rehabilitated and upgraded towards the end of 2007. The road is known for accidents which have claimed many lives. This emerged at signing of an agreement between the North-West provincial government and the Royal Bafokeng Nation in Phokeng. Apart from the accidents which happened on the road regularly, the upgrading and rehabilitation project, which started around June 2007, a year after the completion of the tender process, was also prompted by the forthcoming Soccer World Cup to be staged in this country in 2010 (Molotlegi, 2007:1).

The R110 million project was financed jointly by the Royal Bafokeng Administration and the North-West provincial government and was done in four phases. Phase one of the project was the construction of a 9,1km dual carriageway road from Phokeng to

Boshoek and the erection of street lights along the road. The 9,1km carriageway was followed by the construction of a 4,1 km two-lane carriageway. Phase three was the construction of a 10.8 km carriageway road from Boshoek to Ledig, while phase four was the construction of a 5,2 kilometres road from Ledig to Sun City (Molotlegi ,2007:1).

A member of the executive council in the North-West legislature described the agreement between his department and the Royal Bafokeng Nation as an indication of the success between governments that worked with its people, especially traditional leaders, in major projects. It was further stated that they would be meeting each other halfway in this project, adding that the road would also help in facilitating the movement of platinum. King Leruo Molotlegi described the agreement as a continuation of a partnership which dates back to 1997 between the government and the Bafokeng. The King stated that it was, with the 2010 Soccer World Cup soccer tournament in mind, agreed to partner with the government. Royal Bafokeng stadium is one of the venues that will be used to host some of the 2010 Soccer World Cup Games and as such the Boshoek road would be used by some of the teams and soccer supporters that will be staying at Sun City hotel during the tournament (Molotlegi, 2007:2).

4.11 THE ROYAL BAFOKENG ADMINISTRATION MODEL

Before discussing other traditional authorities, attention should be focused on the peculiar situation of the Royal Bafokeng Nation. It is the only traditional grouping in South Africa with access to extensive minerals. This puts them in a unique position as the nation could fund most of the municipal functions within their area of jurisdiction. They are, therefore not dependant on a municipality as a sphere of government for the financing of services provided. However, the Modjadji, Zulu and the Botswana traditional authorities lack direct sources of revenue and are dependant on the government's budgetary allocation. This situation results in unequal development due to unequal access to funding.

4.12 KWA ZULU-NATAL PROVINCE TRADITIONAL LEADERSHIP SYSTEM

4.12.1 KwaZulu- Natal traditional leadership system

The province of KwaZulu-Natal has been the scene of many conflicts since the 1830s between the Zulus and the Voortrekkers; the British Empire and Boer settlers (resulting in the Anglo-Boer War); the Zulus and the British Empire (resulting in a number of Anglo-Zulu wars); as well as between factions of the ANC and the IFP. The homeland of KwaZulu was granted self-government under the apartheid government on 1 December 1977. The capital of the then KwaZulu was Ulundi and the chief minister of the KwaZulu government was Chief Mangosuthu Buthelezi, leader of the Inkatha Freedom Party (IFP) (Olivier, 2005:90).

Although KwaZulu-Natal was relatively large it was segmented into 10 major blocks and a number of smaller blocks, and spread throughout a large portion of the province of KwaZulu-Natal. In 1994, KwaZulu-Natal became a province of the newly established Republic of South Africa under one sovereign state concept (Section 1 of the 1996 Constitution). The former KwaZulu merged with the former province of Natal to become KwaZulu- Natal (Olivier, 2005:90).

In 2006 the KwaZulu- Natal Traditional leadership institution was transformed by the KwaZulu- Natal Traditional Leadership and Governance Act, 2005. The transformation of the institution of traditional leadership in KwaZulu-Natal resulted in 280 traditional leaders (amakhosi) being sworn in and the establishment of district houses of traditional leaders. The transformation aligns the institution with democratically elected councillors by electing 11 new houses of traditional leaders. It must be noted that traditional leaders in KwaZulu-Natal Province are now required to be sworn in and to pledge allegiance to the Constitution and legislation governing traditional leaders (Khumalo, 2006:1).

The KwaZulu-Natal Traditional Leadership and Governance Act, 2005, which was enacted in December 2005 aligns the duties of the traditional institutions with that of the democratically elected institutions of local government. The government wants to

ensure that there is partnership between traditional leaders and democratically elected councillors. The partnership brings development in rural areas. The process established 11 new houses of traditional leaders in all the district municipalities in KwaZulu-Natal including the Durban (Ethekwini) Metropolitan Council. The formation of these houses enables amakhosi to participate meaningfully at local sphere in the process to develop communities. Members of the new houses are sworn in by taking oath of office in a similar manner as members of Parliament (Khumalo,2006:1).

The new houses will operate like Parliament on a five year term after which there has to be elections for office bearers and the houses must be reconstituted. After the establishment and swearing in of members of the local house of traditional leaders, representatives must be elected per district to the provincial house of traditional leaders. Representation to the provincial house is based on proportional representation. The objectives of the changes are an attempt by government to harmonise relations between traditional leaders and municipalities which in certain instances, have slowed and even curtailed development. The new houses elevate the status of traditional leaders as these houses exist at the level of district municipalities and allow them to participate on matters of rural development (Khumalo,2006:1).

4.12.2 Succession to office of monarch

The national Constitution recognises the institution of the monarchy of KwaZulu-Natal as hereditary in succession, which is determined by customary law applicable to the institution of the monarchy of AmaZulu or provincial legislation.

A vacancy in the office of the monarch caused by death or abdication must be filled as soon as practicable according to customary law and provincial legislation. In terms of provincial legislation, the royal family must inform the Premier of the Province of the person identified as successor to the monarch's office by applicable customary law. The Premier must then, in the official Gazette of the province, publish a notice declaring the successor so identified for general notification (Olivier, 2005:91).

4.12.3 Role, responsibilities, powers and functions of the Monarch

The Monarch has various responsibilities and functions, including to uphold the national Constitution, and the laws of KwaZulu-Natal and to recognise the unique and diverse culture and heritage of KwaZulu's people.

The Monarch must strive to represent a symbol of unity to the people of KwaZulu-Natal and promote peace, stability and nation building. Further powers, responsibilities and functions may be conferred upon or assigned to the monarch by the Constitution, customary law and national legislation. These include responsibilities and functions generally and specifically conferred upon or assigned to a king or queen by regulation made in terms of applicable national framework legislation as pertains to traditional leadership and governance, as well as provincial legislation (Olivier, 2005:93).

The Monarch has a traditional or ceremonial role, responsibilities or functions conferred upon or assigned to him by regulation in terms of national framework legislation. In addition he may open or address sessions of the provincial legislature, subject to rules and orders of the provincial legislature. Also subject to a resolution of the provincial house of traditional leaders the monarch may open or address sessions of the provincial house of traditional leaders.

Subject to a resolution of and conditions imposed by the executive council, the Monarch may confer honours and distinctions, meet foreign dignitaries or represent KwaZulu-Natal culturally and socially both within South Africa (Olivier, 2005:93). It must be noted that the role, responsibilities, powers and functions of the traditional leaders in the KwaZulu- Natal exceed those of other traditional leaders in other provinces. For example in the Royal Bafokeng Administration the King is mostly responsible for the affairs of Bafokeng nation.

4.12.4 Revenue sources of the KwaZulu-Natal Monarchy

In 2007 the KwaZulu-Natal Provincial legislature passed the Royal Household Trust Act, no. 2 of 2007 and together with this Act, the KwaZulu-Natal Traditional

Leadership and Governance Act, no. 5 of 2005 the Premier and the members of the Provincial Executive Council have given full recognition to the role of traditional leadership in KwaZulu-Natal province. The KwaZulu-Natal legislature have subsequently established the Royal Household Trust Provincial Act, no. 2 of 2007.

4.12.4.1 KwaZulu-Natal Royal Household Trust Act, no. 2 of 2007

The KwaZulu-Natal Royal Household Trust Act, no. 2 of 2007 marks a milestone in the history of KwaZulu-Natal and the Royal Household. Through this legislation the KwaZulu-Natal Provincial Government has made it possible for the Royal Household to reach its full potential. The effect of this legislation is that the KwaZulu-Natal provincial government is the only legislature that has enacted legislation benefiting in particular the King and his Royal Household. There is no provision made for other traditional leaders in other provinces.

The Act establishes a statutory trust to be administered for the benefit of the monarch and other members of the Royal Household. Section 3 of the Act makes it abundantly clear that the Trust must benefit the king and the Royal Household, including their

- a) material welfare;
- b) educational needs;
- c) aspirations;
- d) social well-being, befitting their status.

The Trust is a juristic person and a provincial public entity subject to the Public Finance Management Act, no. 1 of 1999. The Trust is governed by a board of trustees. Its financial statements must be audited by the Auditor-General and fulfil all the requirements of the Public Finance Management Act, no. 1 of 1999 (PFMA). The Trust is to be funded, amongst others, by monies appropriated by the Provincial Legislature, donations or contributions from any lawful source. The board of trustees of the Trust and the king and the royal household, now have at their disposal the legal framework

and the legal mechanism to ensure that the Zulu monarchy and the royal household reach their fullest potential. The provincial government encourages all role-players and stakeholders to make the fullest use of the KwaZulu-Natal royal household trust, which has great potential benefits to be unlocked for the King and the Royal Household. Policy guidelines and regulations, which were to be developed and finalised at the end of August 2008, would enable the chairperson to effectively balance the requirements of the PFMA and the special needs of the monarchy. Further to this and with the aim of enhancing the capacity of the royal household, the provincial government appoints key personnel including a chief financial officer and other administrative officials to attend to issues such as administration and protocol. The officials report directly to the director-general of the Provincial Government.

4.12.4.2 KwaZulu-Natal Provincial Government Budget Review

For the 2008/2009 financial year the Department of the Royal Household has been allocated an overall budget of R39,356-million. It should be noted that the government of the province is responsible for the maintenance and upkeep of all the royal palaces. A technical report is compiled to determine the state of the palaces and the funding requirements. Staff rationalisation is undertaken in consultation with the relevant stakeholders. The provincial government has restored the dignity to the royal house and the institution of traditional leadership in KwaZulu-Natal. The budget consists of the following programmes:

- ❖ Programme 1: Administration-Support Services to the King (R22,001million). This programme will continue to provide the required support to the king and members of the royal family.
- ❖ Programme 2: Planning and development (R14, 725-million). This programme caters for the running of royal palaces.
- ❖ Programme 3: The king's farms (R 2, 630-million). The King's farms play a pivotal role and also contribute towards the socio-economic development of the province.

The KwaZulu-Natal provincial government's initiative to enacting the KwaZulu-Natal Royal Household Trust Act, no. 2 of 2007 confirms that there is a need for other provincial governments to enact similar legislation. From these programmes it can be deduced that the largest portion of the provincial budget for the Royal House is allocated to administration. No direct allocation is made for service delivery to the zulu nation as is the case with the Royal Bafokeng.

4.13 THE ROLE OF TRADITIONAL LEADERS IN SELECTED OTHER SADC MEMBER STATES

In this section, a discussion of the role of traditional leaders in Swaziland, Botswana, Namibia and Lesotho will be provided.

4.13.1 Swaziland traditional leadership system

Due to continued conflict with the Zulu nation, the Swazi nation moved northward in the early 1800s to what is currently known as Swaziland. The Swazi people had several leaders of whom the most important was King Mswati II. The Swazi was not satisfied with the small piece of land they occupied at the time. Under the leadership of King Mswati II, the Swazi expanded to the northwest in the 1840s and stabilised the southern frontier with the Zulus. Discussions aiming at a new constitution started in 1966. The constitutional committee agreed on a constitutional monarchy for Swaziland, with self-government to follow parliamentary elections in 1967. Swaziland became an independent state on 6 September 1968 (Hugh, 2004:87-89).

Independence did not mean co-operation between the different parties in Swaziland. The conflict after independence between the different parties led to the repeal of the Constitution and the dissolution of Parliament by King Sobhuza on 12 April 1973. All powers of government vested in the traditional leadership council. All political parties and trade unions were banned. The king justified the actions by arguing that it was necessary because the unions and political parties practise systems that were incompatible with Swazi tradition. In 1979 when the new Parliament was convened, the king exercised his powers in the manner in which representatives were elected and

appointed. The king appointed some of the members and the others were elected (Hugh, 2004:89).

Queen Regent Dzeliwe became the head of state after the death of King Sobhuza in August 1982. The disputes amongst the Swazis continued, which led to the replacement of the Prime Minister by Queen Dzeliwe. Then the internal disputes led to the replacement of Queen Dzeliwe by Queen Regent Ntombi. The queen named her son Prince Makhosetive heir to the throne. Queen Ntombi exercised her influence through the leading figures of the *Liqoqo* (Parliament). Prince Makhosetive returned from England to ascend the throne. Prince Mkhosetive was enthroned as Mswati III in April 1986. Mswati abolished the *Liqoqo* and a new Parliament was elected in November 1987. The king appointed Obed Dlamini, a former trade unionist, as Prime Minister in 1989. Internal disputes continued in Swaziland. The People's United Democratic Movement, an underground political party, criticised the king and the government and called for democratic reforms in Swaziland. This led to political reforms approved by the king and the preparations for national elections in 1993. King Mswati III is still the head of state with Obed Dlamini as the head of Government. The king must approve legislation passed by Parliament before it can become law. This is an indication that all power is still vested in the monarchy. The current situation makes the political reform started by king Mswati and Obed Dlamini questionable according to (Hugh,2004:90).

The King tends to interfere in the independence of the judiciary. This led to a situation where Swaziland functioned without a court of appeals. The government's refusal to abide by the court's decision in two important rulings led to the judge's resignation. The chief justice resigned from office and two other justices of the high court were removed from office. A draft constitution for Swaziland was released for comment in May 2003. This meant that Swaziland operated and still operates without a constitution. In terms of the draft constitution, the constitution will be the supreme law of the country and the king will remain head of state. chapter XV of the draft constitution recognises traditional leadership (Hugh,2004:91). It must be noted that in Swaziland the traditional leader is the head of the state and there is no provision for democratically elected structures.

The President of the Swaziland National Association of Teachers commented on the monarchy by saying that the association would like to consider the king as a cultural symbol within a democratic political system like the crowned heads of Europe. Prince Mfanisibili Dlamini responded by saying that the word *symbol* means nothing more than a powerless figurehead. The prince postulated that 80 % of the Swazi people live like their ancestors lived, within chieftaincies headed by chiefs appointed by the king (Hugh, 2004:91). Thus it could be stated that traditional leaders still rule the country.

4.13.2 Lesotho traditional leadership system

Lesotho gained independence from the United Kingdom on 4 October 1966. The Lesotho government is a parliamentary constitutional monarchy. Constitutional Government was restored in 1993 after 23 years of military rule. In 1998, violent protests and a military mutiny following a contentious election, prompted a brief but bloody South African intervention. Constitutional reforms have since restored political stability. Peaceful parliamentary elections were held in 2002. The Prime Minister is the head of government and has executive authority. Unlike in Swaziland, the king in Lesotho serves a ceremonial function. The king no longer possesses any executive authority and is prohibited from actively participating in political initiatives. Under traditional law, the college of chiefs has the power to determine who is next in line of succession, and who shall serve as regent in the event that the successor is not of a mature age. Traditional leaders are well represented in legislative structures. The bicameral Parliament consists of the senate, 33 members being principal chiefs and the other 11 appointed by the ruling party. The Constitution provides for an independent judicial system. The judicial system is based on English Common Law and Roman-Dutch law. The monarch appoints the chief justice. The judicial system provides for traditional courts that exist predominantly in rural areas. The Basotho courts have no option but to apply customary law because 99,7% of the population are Basothos (Hugh, 2004:93-94). It could be argued that in Lesotho a confined system exists. On the one hand traditional systems are accommodated through customary law. On the other hand a Western styled Parliament has been established.

4.13.3 The Namibian traditional leadership system

Namibia gained full independence from South Africa on 21 March 1990 after 70 years of South Africa administering South West Africa under the terms of Article 22 of the Covenant of the League of Nations and a mandate agreement by the League Council on 17 December 1920. Namibians are of diverse ethnic origins, with the Ovambo, Kavango, Herero, mixed race, whites and Tswana the principal groups. Namibia consists of 87% black population, 6% white and 7% is mixed race. Fifty per cent (50%) of the population belongs to the Ovambo ethnic group (Hugh, 2004:95).

SWAPO assumed power at independence in 1990 with Sam Nujoma as President and head of state. Namibia is a republic with the President as head of the state and government. The Constitution with a bill of rights is the supreme law of the country. The Namibian Constitution recognises the right to culture. Every person shall be entitled to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion subject to the terms of the Constitution and further subject to the condition that the rights be protected. This applies as long as it does not impinge upon the rights of others or the national interest. The recognition given to culture implies the recognition of customary law because it is pointless to recognise culture without a legal system that must take note of customary law and apply it where necessary. The concern is that the Constitution does not mention traditional courts. The Namibian Constitution has a similar provision as the South African Constitution, regarding traditional leadership. Chapter 12 Section 5, the Namibian Constitution states that there is a council of traditional leaders. It is established in terms of an act of Parliament to advise the President on the control and utilisation of communal land and on all such other matters as may be referred to it by the President for advice.

It is necessary to recognise the right to culture in Namibia because of the role of traditional leaders substantially diminished after independence. As with the case of many other African countries, the colonialists used traditional leaders to their own advantage. According to Hugh (2004:96-97), the colonialists used traditional leaders to implement their policies and enforce colonial laws. As a result of their collaboration with the colonialists, traditional leaders did not gain favour with the liberation movements such as the South West Africa People Organisation (SWAPO).

As already stated above, because of the absence of referral to traditional courts, traditional leaders are stripped of most of their powers. For example, traditional leaders lost their jurisdiction over criminal matters. They can only try civil cases based on customary law. Traditional leaders also lost their powers of detention and the tribal police was disbanded. The Namibian Traditional Authorities Act, no. 25 of 2000 does not enhance the role of traditional leaders. The Act restricts traditional leaders to cultural or traditional matters and assist government in maintaining peace and order. Unlike South Africa, the Act does not give traditional leaders any role in development and service delivery. (Hugh, 2004:97).

In terms of Section 3(2) of the Namibian Traditional Act, no. 25 of 2000 traditional leaders are required to assist the police and other law enforcement agencies in the prevention and investigation of crime and the apprehension of offenders. Traditional leaders in Namibia are allowed only to assist government in the implementation of policies and governmental programme. Traditional leaders are not allowed to be in charge of these policies and programme. As in South Africa, there is tension between traditional leaders and the elected municipal councillors. The elected members, for instance, do not approve of the levying of fees for the use of communal land by traditional leaders. Part of the cause for the tension is that power has been taken from traditional leaders and vested in the elected members of municipalities (Hugh, 2004:97).

According to Keulder (1998:61-62), co-operation between traditional leaders and elected representatives in matters of development only exists in urban areas. In terms of Section 156 of the Namibia Traditional Leadership Act, no. 25 of 2000 unlike in South Africa, traditional leaders in Namibia have no right to hold elected political positions while holding the position of chief or head of a traditional community. However, nothing prohibits traditional leaders from being elected to municipal councils and participating in decisions on development and other issues.

4.13.4 The Botswana traditional leadership system

A major problem encountered by the creators of many of the new states in Africa has been that of defining a satisfactory position of traditional tribal authorities in a more

integrated and democratic political system. In Botswana, a solution has been sought at the level of local government, where much of the chief's power has been transferred to elected district councils, as well as at the national level where a house of chiefs has been created to advise government and Parliament. This body merits examination as a constructive effort to synthesise indigenous and imported institutions and to accommodate the interests and demands of the hereditary rulers and the more conservative subjects, which remain deeply rooted in the tribal structure, in a manner acceptable to new elite and the supporters eager to be modernised. (Proctor, 1968:59).

Before the establishment of the Protectorate (colony) over Bechuanaland by Britain in 1885, no unified government existed in the territory. Botswana was inhabited principally by the Batswana people, who were divided into eight tribes, namely Bakgatla, Bakwena, Balete, Bamagwato, Bangwaketse, Barolong, Batawana and Batlokwa. Each of these tribes was ruled by a powerful hereditary chief and was politically distinct from the others. There was neither a paramount chief nor any supra-tribal authority and no national consciousness transcended tribal loyalties. The British governed Bechuanaland initially through a form of parallel rule and later through indirect rule allowing a great deal of autonomy to the eight separate tribal administrations. The district commissioner served as the only formal link between the chief and the central administration although the resident commissioner occasionally consulted the chiefs directly on matters affecting tribal interests (Proctor, 1968:59).

The administrative system of the Botswana traditional leadership system is founded on the principle of delegating responsibility. At the head of the whole tribe is the chief (*kgosi; morena*). The chief is assisted in the execution of his duties by various forms of council. Local divisions within the tribe, such as sections, districts, villages and wards are divisional councils. Each local authority is responsible in the first place to the head of the next larger social group to which his people belong (Schapera, 1994:53).

The abovementioned local divisions are directly, or through some similarly, senior local authority responsible to the chief. There is a fair range of differences between one tribe and another with regard to certain forms of local administration. However the central government in the form of the chief and the councils appear to be

essentially the same throughout, although variations occur in matters of detail. There is also such institutions as the age regiments and the tribal assemblies through which the tribe as a whole is on occasion marshalled directly before the chief. In effect, therefore, the government of the tribe is ultimately concentrated in the hands of the chief, but existing social and territorial organisation are used to perform delegated functions of more local concern. (Schapera,1994:53).

The chief's life is not merely one of immense privilege. The chief has many duties to perform for the tribe, duties which, if faithfully carried out, may impose an immense pressure on his time. The chief's duties are to watch over the interests of the people and be kept informed of tribal affairs generally, to protect and look after the welfare of the tribe as trustee, to treat the people well and justly, to see that no harm or misfortune befalls the tribe and to listen to the subjects regardless of the rank. The wealth accumulated by the Chief must benefit the whole tribe and he is responsible for the maintenance of law and order (Schapera, 1994:68).

In terms of Section 15 of Chapter 41 of the Chieftainship Act, no. 14 of 2005 the current functions of the traditional leader in Botswana are as follows:

- ❖ to exercise his powers under this Act to promote the welfare of the members of the tribe;
- ❖ to carry out any instructions given to him by the Minister;
- ❖ to ensure that the tribe is informed of any development projects in the area which affect the tribe; and
- ❖ to convene traditional council meetings to obtain advice as to the exercise of his functions under this Act.

4.14 COMPARATIVE ANALYSIS: THE GOVERNMENT OF SOUTH AFRICA AND THE TRADITIONAL SYSTEM OF SWAZILAND

Government is vested in the monarchy in Swaziland. In South Africa, government is vested in a democratically elected government with the President as the head of state. In South Africa, the Constitution, containing the Bill of Rights, is the supreme law of the country(Section 2). Every law is subject to the Constitution and can be challenged to determine whether it is constitutionally acceptable. In Swaziland, it is not possible to test the constitutionality of any law at the moment. The king approves all the laws and signs it into power. Tradition is deeply rooted in the people because the majority of the population are Swazis with a small percentage of Zulus. Swaziland's culture is intertwined with its political system. In addition, the monarch's power is believed to be rooted in the ancestors. The Swazi traditional life is about collective beliefs shared by all, who agree to abide by the king's wisdom and do not dare question the king's authority (Bennet,1985:4)

The effect of this is that the future of customary law seems acceptable in Swaziland. In South Africa, it will probably be a continuous struggle to retain constitutional recognition of customary law, as was indicated by the groups that opposed the initial recognition of the interim Constitution. The same can be said with regard to traditional leadership. As long as government is vested in the monarch in Swaziland; traditional leadership will remain part of governmental institutions. The continued recognition of traditional leaders in Swaziland will depend on the effectiveness of these leaders. The chiefs in Swaziland are responsible, through traditional powers vested in them by the king, for raising local resources and co-ordinating delivery of basic services. In South Africa, that is the responsibility of local government. Traditional leaders participate through these legislative structures in South Africa (Bennet,1985:4) .

4.15 COMPARATIVE ANALYSIS: THE GOVERNMENT OF SOUTH AFRICA AND LESOTHO

The kingdom of Lesotho recognises customary law as part of the system of law. The Lesotho customary law has been recorded in several texts of which the earliest

probably is a Cape commission on laws and customs of the Basotho of 1873. South Africa is a republic and Lesotho a parliamentary constitutional monarchy. The traditional way of life is deeply rooted in the population of Lesotho because of the high percentage of indigenous people practising traditions and customs. Customary law in Lesotho enjoys a similar status as it does in Swaziland (Bennet, 1985:5).

The President in South Africa, as the head of state, has executive authority vested by the 1996 Constitution of the Republic of South Africa. The King in Lesotho, in conjunction with the chiefs, is the guardian of tradition. In South Africa it is the opposite. In South Africa, the kings and chiefs, are integrated into the formal system of government. They the guardians of tradition concerning the relevant tribe. Due to the difference in government between South Africa and Lesotho, the future of customary law in Lesotho is more secured. In Lesotho, the traditional leaders play a more meaningful role in the upliftment of the people than in South Africa. In the latter country traditional leaders are only involved in matters concerning tribal customs of specific areas. Because of the history of South Africa, the relationship between the head of state and traditional leadership is limited as traditional authorities don't cover the total geographic area. Although Lesotho has a parliamentary government, it can be said that the traditional leadership could survive political changes as long as the country recognises the monarchy as the titular head of state according to Bennet (1985:5).

4.16 CONCLUSION

The history of traditional leaders was discussed in detail from 1847 to 1994. The historical background of the Royal Bafokeng traditional leadership system was provided in this chapter. The Royal Bafokeng nation, corporate entities and the Mutual and Federal as well as Fraser Alexander transactions were discussed. The chapter covered the Royal Bafokeng customary law structures and the building of safer roads by the Royal Bafokeng and Government.

The main objective the comparison was to establish to what extent they differ from the Royal Bafokeng Administration. The next chapter will provide the local

government case studies with specific reference to the Botswana tribal authorities, the Royal Bafokeng Administration and the Modjiadji Tribal Authority.

CHAPTER 5

LOCAL GOVERNMENT SERVICES : SELECTED CASE STUDIES

5.1 INTRODUCTION

Local government case studies with specific reference to various tribal authorities will be provided in this chapter. Qualitative methodology has been used to investigate the role of traditional leaders in the promotion of municipal service delivery. The qualitative study was conducted by means of interviews with traditional leaders and the headmen selected randomly from Botswana North West and Limpopo provinces in the Republic of South Africa. Interviews were based on the role of traditional leaders in the promotion of municipal service delivery. Interviews were conducted in Botswana because the traditional leadership system in Botswana is more advanced in the promotion of service delivery compared with the South African traditional leadership system. Secondly, the Botswana traditional leaders are already integrated into government structures and operate under the ministry of local government.

5.2 SERVICE DELIVERY BY TRIBAL AUTHORITIES

The population sampling was selected from the Botswana tribal authorities, namely Balete, Kweneng and Tlokweng tribal authorities, the Royal Bafokeng Administration as well as the Modjadji tribal authority. The content of this study is based on personal interviews with various traditional leaders. Transcriptions of the interviews are in safe custody.

5.2.1 The Royal Bafokeng Administration

The Royal Bafokeng Administration is situated in the North-West Province and it forms part of the Greater Rustenburg municipal council. It was selected because it has relatively large resources to render municipal services and it is one of the prominent traditional leadership institutions in Africa. It is far advanced in the promotion of municipal services for the Royal Bafokeng nation. It is situated in an industrialised

area and it has a corporate approach to municipal service delivery. The Royal Bafokeng Administration was also selected because it is a tribal authority that has divisions such as Royal Bafokeng Holdings and the Royal Bafokeng Institute and Royal Bafokeng Investment. The municipal services are not funded by the South African government and the tribal authority funds the municipal services from its own resources. Interviews were conducted in Phokeng at the Royal Bafokeng Administration with two representatives from the king's office. The senior headman and the deputy Senior Headman at Legato, which is the king's Palace, were interviewed because it is the headmen's responsibility to lead the Royal Bafokeng nation.

In Phokeng six headmen representing Mosethla, Mogopa-a-dira, Metlapeng and Kgosing traditional wards were interviewed. Open-ended questions were posed in a relatively informal format on the basis of a pre-circulated interview schedule. The participants were encouraged to answer the questions as honestly and as broadly as possible. Where necessary, issues that needed clarity were followed up so that the discussion would be conducted as effectively as possible. The interviews were recorded. The selection of the three areas of research give a clear understanding of the resources needed to empower traditional leaders to promote municipal service delivery. The abovementioned areas provide a clear distinction of a well resourced and a poorly resourced traditional leadership system funded by government.

5.2.2 The Modjadji Tribal Authority

Modjadji Tribal Authority is situated in Limpopo Province within the Greater Letaba municipal council, Greater Tzaneen municipal council and Giyani municipal council. It was selected because it is a well established traditional authority limited resources and capital to promote municipal services. The municipal council is vested with the powers which overlap some functions entrusted to traditional leaders. The Modjadji Tribal Authority is not yet advanced concerning service delivery like the Royal Bafokeng Administration. It is a rural tribal authority with limited infrastructure. Interviews were conducted with the late Queen Modjadji's brother acting as the

current senior traditional leader of the Modjadji tribal authority and seven members of the Modjadji traditional council.

5.2.3 Botswana tribal authorities

In Botswana, interviews were conducted in Molepolole with the paramount chief of the Bakwena tribal authority; one headman in Mogoditsane village and two traditional councillors were interviewed. The paramount chief of Batlokwa in Tlokweng was also interviewed. Interviews were also conducted in Gabane with the Belete paramount chief and the deputy paramount chief. Botswana tribal authorities were selected because the traditional leader system comprises of the Chief acting as the centre of social service delivery. Traditional leaders are awarded clear powers in the Botswana traditional judicial system. Botswana was a British colony during the colonial era and the British judicial system has been incorporated into the Botswana traditional leadership government structures.

The Ministry of Local Government is responsible for the management and administration of traditional leaders. The Botswana central level of government is responsible for the funding of municipal service delivery rendered by the tribal authorities. For example, the government provides traditional leaders with administrative staff, tribal police and the required vehicles.

5.3 THE ROLE OF TRADITIONAL LEADERS IN ADMINISTRATION AND MANAGEMENT

5.3.1 The Royal Bafokeng Administration

The Royal Bafokeng nation consists of people 300 000 in 29 villages and 72 headmen. The promulgation of the Traditional Leadership Framework Act, no. 41 of 2003 resulted in the Royal Bafokeng Administration downsizing the number of traditional councillors from 15 to 11 councillors. The king appoints six councillors and five Councillors are elected by the nation. The Royal Bafokeng Administration spans of five regions. Phokeng is the capital region. The regions are the northern,

northeast, southeast and central region. In each region, there is a traditional elected councillor. The administration and management of the municipal services are currently centralised at the Royal Bafokeng Administration headquarters in Phokeng. The leaders are decentralising the services which have been assigned to them in the South African system of government. This implies that services assigned to the municipal sphere and falling within the area of jurisdiction of the Royal Bafokeng Nation could be further decentralised to bring the responsibility for services still nearer to the community directly affected by it. The services are delivered at the doorstep of the members of the community. The greater Phokeng region' consists of Mogopa-a –a dira and Metlapeng. Mogopa Ward consists of 350 people and every second week the headman gives feedback from Royal Bafokeng Administration offices to the ward members. The role of the headman is to improve development and to represent the king in serving the nation. Metlapeng ward consists of 387 people. The responsibility of the headman is to ensure that there is representation on behalf of the king to the nation.

5.3.1.1 Supreme council

There is a general meeting called *Kgotha Kgothe* which is held twice a year in February and September. The supreme council ratifies budgets. The Royal Bafokeng Administration is self sufficient, well resourced and it has an investment of R30-billion. There is no budgetary allocation from the national government. The Royal Bafokeng Administration promotes and renders municipal services from money allocated by the supreme council.

5.3.1.2 The Royal Bafokeng administrative and management process

Royal Bafokeng Administration buildings comprise traditional government structures, municipal services, the Department of Education and Development, Social Services, the king's office, office of the king's mother, tribal court and the auditorium for general meetings (*Kgotha kgothe*).

Municipal services are managed and administered by the Royal Bafokeng Administration offices. The administration of municipal services is centralised. Services such as electricity, water and sanitation, waste management, safety and security, education and health do not require any intervention of the headman. The management and administrative systems are centralised at the Royal Bafokeng Administration headquarters in Phokeng. The headmen assist the nation with the drafting of consenting letters for the connection of electricity and the allocation of land. Headmen issue and certify birth and death certificates as well as authorise the incorporation of a new resident into the Bafokeng community. It is the headman's responsibility to draft a consenting letter for an outsider interested in becoming a resident. The Royal Bafokeng Administration has a bursary scheme and for the Bafokeng to access such bursary it is required to get a letter of approval from the headman. The letter will confirm and verify that the applicant is a Mofokeng residing within the Bafokeng community. Boundary conflicts, stock theft and security-related issues are handled by the headman who will refer the matters to the tribal court if the matter cannot be resolved at village level. The court consists of a traditional council of headmen responsible for the heads of villages.

The headman's responsibility is to lead traditional wards (*kgotla*). The process of promoting matters arising from the previous meetings with the nation to the next council meeting is the responsibility of the headman. At macro level headmen and traditional councillors sit on the supreme council and are entrusted with the powers to ratify the budgets of the Royal Bafokeng Administration. The headmen oversee the planning and the budgeting of various departments at the level of the Supreme Council. The headmen play a legislative role in the Supreme Council of the Royal Bafokeng Administration. At the general meeting the headmen give the traditional ward members feedback on how money has been spent, achievements and future plans for the nation. The Royal Bafokeng Administration decentralises some of the administrative functions by building administrative centres in different regions so that services can be within closer proximity of the Royal Bafokeng nation. People will be developed from ward level and traditional councillors deal with issues at village level.

5.3.1.3 The Royal Bafokeng Administration and the Greater Rustenburg municipal council

In 2003, a Memorandum of understanding (MOU) was signed between the Royal Bafokeng Administration and the Greater Rustenburg municipal council, Bojanala and Moses Kotane municipal councils. The main objective of the memorandum of understanding was to establish a joint infrastructure development initiative and to forge a synergistic partnership between the Royal Bafokeng and the Greater Rustenburg municipal council. Both parties had to establish to what extent each will be responsible for the infrastructure development and municipal service delivery. The two entities have to co-operate in education and health-related issues. The memorandum of understanding between the Royal Bafokeng Administration and the Greater Rustenburg municipal council has not met expectations. In as far as education and health are concerned, the Royal Bafokeng Administration works closely with the members of the executive council (MECs) of the North-West provincial legislature.

The Greater Rustenburg municipal council does not render municipal services to the Royal Bafokeng nation. A budget is compiled for the whole region including the Royal Bafokeng nation, but the municipality does not contribute to the Bafokeng who are also taxpayers within the Greater Rustenburg municipal council. The Royal Bafokeng Administration buys water from Rand Water Board and Magalies Water for the nation. The municipal councillors and the Royal Bafokeng councillors reside in Phokeng and there are regular interactions between the councillors. The Royal Bafokeng Administration builds roads, clinics, stadiums and schools. The Royal Bafokeng Administration incurred an expenditure of R140-million for the construction of the stadium that will be hosting some of the 2010 Soccer World Cup tournament and the government made a contribution of R40-million toward the project. There is a joint venture road project between Sun City and Phokeng. The national government contributed R53-million and the Royal Bafokeng Administration made a contribution of R53-million towards the project. The supply of water, electricity, refuse and sanitation is the responsibility of the Royal Bafokeng Administration.

5.3.2 Botswana traditional leader administration and management

Botswana has two levels of government, which are the national and local government. Traditional leaders are under the Ministry of Local Government. There is a specific department responsible for the traditional leaders called Tribal Administration. The director operates under the supervision of the permanent secretary (Director-General). Traditional leaders from different communities in Botswana hold meetings with the tribal administration department once a year in December. Budgets of estimates of expenditure and salaries are discussed because traditional leaders are on the government's payroll.

Traditional leaders are *ex officio* members of development organs. The tribal authorities have established a development committee which acts in conjunction with the traditional council to identify the needs of the community such as schools and clinics. The number of employees required at schools and clinics are determined by the size of the population within the jurisdiction of the tribal authority. Social development and the welfare of the nation are the responsibility of the central government and the chief.

In Botswana, although traditional leaders are at the bottom of the judicial system, they are entrusted with the powers to hear and try cases. Customary marriages are conducted by traditional leaders. A committee that advises government on issues related to traditional leaders has established a house of chiefs which represents all the traditional leaders in Parliament.

Traditional leaders are vested with the powers to hear and try cases and impose sentences for a maximum period of three years. Primary health and education, water and sanitation and electricity are rendered by the central government. However, a traditional leader's responsibility is more evident at the tribal court when performing judicial functions. The arbitration of civil and criminal cases takes place at the tribal court. The tribal courts do not fall under the administration of the Botswana judicial system, but under the ministry of local government. Traditional leaders are responsible for cleanliness of the environment. All households have access to water.

Traditional leaders are responsible for the administration and management of different services such as the provision of application forms for national identity documents, movement of livestock or sale of livestock at the tribal authority. Ownership of livestock and land is approved by the traditional leader. Death certificates, birth certificates and passports are applied for at the tribal authority and the traditional leader will verify and approve the applications. The Bank account application must be accompanied by the form with the traditional leader's signature as well as the tribal authority's stamp before it can be approved by a commercial bank. The form from the chief serves as a proof that the applicant is known as a citizen of Botswana and is residing in a particular village.

The traditional leader and the traditional council work with the central government in other services such as inheritance. For, example, if there is a land or plot that a family intends to transfer to a nominated beneficiary, the central government will refer the applicant to the traditional leader to be given a letter stating that the land is being transferred from one individual to another. In Botswana, the tribal authority consists of a tribal police force and it assists the appointed officials with clerical duties such as certifying documents or copies. The traditional leader is responsible for informing the tribe of any government project that will take place within the jurisdiction of a tribal authority, for example, the construction of schools, clinics and community centres. These happen with the assistance of the central government. A tribal authority is responsible for judicial function and it is also used as a place of consultation with the traditional leader.

The tribe assembles at the tribal authority when there is a meeting with the chief. Government officials obtain permission from the chief to address the nation. The chief will inform the nation about the date and the issues to be presented by the Minister of the particular government department. The people will be given the opportunity to ask questions during the meeting.

5.3.3 The Modjadji Tribal Authority administration and management

Modjadji Tribal Authority is situated in Limpopo in Bolobedu district. It consists of the royal council and the traditional council. According to the Modjadji Tribal

Authority's traditions and customs, a female is enthroned to be a traditional leader. The Modjadji queens, according to traditional beliefs had the ability to make rain for the Balobedu nation. The royal council consists of the queen and the elders of the Modjadji head kraal. The traditional council consists of seven members closely related to the previous queens and the responsibility of the council is to liaise with the headmen and to hear and try cases at the tribal court.

5.3.3.1 Modjadji Tribal Authority and the Greater Letaba Municipal Council

Traditional leaders are allowed to attend and participate in the municipal council meetings according to Section 80 of the Local Government Structures Act, 1998; however, they are not allowed to give advice or comment during meetings. According to the Modjadji Tribal Authority interviewees, the Limpopo provincial government allocates money to the municipality for the funding of the activities of the tribal authority but no funds are allocated to the tribal authority. The municipal council does not inform the traditional leader about the allocated budget from the provincial government. Representatives from the Modjadji traditional council are not allowed to participate in decision-making during the municipal committee meetings.

The municipality is lenient in dealing with the perpetrators who violate the queen's orders, for example by building liquor stores without the tribal authority's authorisation. Whenever the tribal authority takes action against the perpetrators, the government will interfere with the tribal authority's initiatives to deal with those who are insubordinate to the traditional leader. The government approves the application of liquor licences and the queen may disapprove the application due to tribal values because alcohol destroys the community. In the past, the queen had powers to close down liquor stores to maintain law and order. During the previous dispensation, the Modjadji Tribal Authority had its tribal police to ensure law enforcement pertaining to illegal trading of liquor. The queen's powers are now reduced and taken over by the elected municipal councillors.

5.3.3.2 Modjadji Tribal Authority strategy pertaining to municipal service delivery

The Modjadji Tribal Authority's long-term strategy is to ensure that each household has water and electricity within five years. The tribal authority intends to build proper roads, schools, clinics and multipurpose centres for the nation. There is a need for the provincial government to allocate funds directly to the tribal authority so that it can promote and render municipal services direct to the nation. The powers of the municipal elected councillors are similar to the powers of the traditional leaders in matters pertaining to municipal service delivery. Therefore, it is a challenge for the traditional leader to implement the municipal service strategy with its limited financial resources.

5.4 MUNICIPAL SERVICES

Section 152 of the Constitution of the Republic of South Africa states that one of the objects of local government is the provision of services to communities in a sustainable manner. The purpose of discussing this section in the thesis is to describe service provision in broad terms in relation to the internal organisation of traditional leaders and their communities.

5.4.1 Water services

The Department of Water Affairs and Forestry's water and sanitation supply programme is aimed at the implementation of the internal bulk and connector water and sanitation projects. The Department assists densely populated and dispersed rural areas with water reservoirs.

5.4.1.1 Royal Bafokeng

Royal Bafokeng Administration consists of the following administrative structures: town planning, welfare services, security, and professional support services including human resources, finance and procurement departments. The Royal Bafokeng Administration employs 400 people. It is the largest employer in the area. It is

different from the Greater Rustenburg municipality, because it purchases water in bulk from Rand Water Board and Magaliesburg Water. Water is subsidised by the Royal Bafokeng Administration by 60% to the entire Royal Bafokeng nation.

The Royal Bafokeng Administration has installed meter readers for all the households. The informal settlements are impacting negatively on the allocation of water to the Royal Bafokeng nation. The informal settlements situated within the Royal Bafokeng Administration's jurisdiction also benefit from the water allocation for the Royal Bafokeng nation. The Chaneng and Luka villages are the two key mining communities within the Royal Bafokeng jurisdiction. The Royal Bafokeng Administration police department issues people occupying land illegally with notifications to evacuate the informal settlements.

5.4.1.2 Modjadji Tribal Authority

The municipal councillors play a notable role in terms of elevating the traditional leader's needs and requests to the municipal council committee for the allocation of funds for service delivery to the nation. The municipal council provides water for the Modjadji nation in the form of boreholes and through the installation of water pipes from the nearest dams and water reservoirs.

5.4.1.3 Botswana Tribal Authorities

In Botswana, the national government is responsible for the provision of water services. The municipal councils such as Kweneng District Council, Kgalagadi district council and Gaborone city council are responsible for the administration of water services.

5.4.2 Health services

The modern trend is towards polyclinics in which more than one health service can be provided. The location of clinics must be carefully planned in relation to the nature of the population to be served and the services they need. For example, in an area where families with young children predominate, the emphasis should fall on pre- and post-

natal care and on dealing with the prevention of disease in children, while in an area where middle-aged people predominate the emphasis should fall on geriatric medical problems. It is inexplicable in times of financial restraint that day hospitals and municipal clinics still exist side by side in the same area. An interviewee stated that it is important for the traditional leaders to apply the municipal council approach in the provision of health services

5.4.2.1 The Royal Bafokeng Administration

There is a health centre in Phokeng and North-West province legislature provides medication and staff. The North West Provincial government provides the health centre with personnel and medication. The services rendered by the health centre are adequate.

5.4.2.2 Modjadji Tribal Authority

In the Modjadji district, the Limpopo government's health department has built clinics and one hospital. The national government plays a significant role in the provision of health services.

5.4.2.3 Botswana tribal authorities

The Botswana government has built clinics in all the villages and the number of the medical staff required is determined by the number of the population within a tribal authority's area of jurisdiction. The medical staff and the health services rendered by the clinics are adequate for the communities situated within the jurisdiction of tribal authorities.

5.4.3 Emergency services

The emergency service consists of fire and ambulance services. In deciding on the location of fire stations it is necessary for traditional leaders in South Africa to consider the SABS Code of Practice for Community Protection Against Fire: 090-1972 which requires the municipal area to be divided into low-, medium- or high-risk

areas. The code of practice lays down response times to fires in areas according to the degree of risk. It must be noted that emergency management services rendered in South Africa within the tribal authority's area of jurisdiction are compliant with the SABS Code of Practice for Community Protection against Fire.

5.4.3.1 The Royal Bafokeng Administration

There are two ambulances to service the Royal Bafokeng community. The emergency management personnel get specialised training from the Rustenburg municipal council. The Royal Bafokeng Administration emergency management services render emergency services.

5.4.3.2 Modjadji Tribal Authority

The emergency services are rendered by the municipal council. There is no provision made for the Modjadji Tribal Authority to render emergency services.

5.4.3.3 Botswana tribal authorities

The central government is the emergency service provider. The ambulances and the fire engines are allocated to municipal councils responsible for the delivery of services to different tribal authorities.

5.4.4 Infrastructure development

Infrastructure development entails engineering services, which embrace civil, structural and mechanical services. Engineers build and maintain roads, storm water systems, waste water (sewerage) systems, solid waste (refuse) collection and disposal systems, water purification storage systems and electricity systems, both step-down and distribution systems.

5.4.4.1 The Royal Bafokeng Administration

The Royal Bafokeng Administration is able to develop infrastructure such as roads, clinics, schools and the provision of electricity. The service operates independent of the Rustenburg municipality. The municipality does not provide services on behalf of the Royal Bafokeng nation because the Royal Bafokeng Administration is considered to be self-sufficient. The Royal Bafokeng Administration has built an administrative centre in Phokeng. The Royal Bafokeng Sports Palace is the third biggest Stadium in Kanana. There is a health centre situated in Phokeng and the medication and personnel are provided by the South African Department of Health. According to the Royal Bafokeng master plan, there will be demarcated areas for hospitals and recreation parks. The Royal Bafokeng Administration plans to build an independent world-class school worth R500-million.

Eskom is the energy supplier to the Royal Bafokeng nation. There is an agreement between Eskom and the Royal Bafokeng Administration concerning the connection of electricity for the Royal Bafokeng nation. For example the headman will draft the approval letter for the resident to connect electricity in a particular village. The letter by the headman serves as proof that the resident has acquired the permission to have electricity. Eskom cannot connect electricity without the consent of the headman. It is the resident's responsibility to pay the electricity account. The Royal Bafokeng Administration only provides the electricity infrastructure. It is the responsibility of the resident to pay a once-off connection fee to Eskom for electricity connection.

5.4.4.2 Modjadji Tribal Authority

In terms of the construction of water reservoirs, electricity, construction of roads, schools and clinics, the district municipality approaches the Modjadji Tribal Authority and proposes infrastructure development. The tribal authority cannot initiate infrastructure development due to lack of funds. The tribal authority assists the national government with water and sand whenever there is a construction project e.g. roads, clinics and schools for the Modjadji nation. It is the government's initiative to develop infrastructure within the Modjadji Tribal Authority's area of jurisdiction.

5.4.4.3 Botswana tribal authorities

The infrastructure development in Botswana is done by the central government. It is a process driven by the Department of Public Works. In Botswana, the Ministry of Local Government is responsible for infrastructure development in the tribal authority 's area of jurisdiction.

5.4.5 Land allocation

Land, particularly in rural areas, is a major issue in South Africa. Development is a constitutional duty. It is therefore a requirement to undertake land use planning. The applicable legislation for land use planning is in the Physical Planning Act, no. 125 of 1991 and the Development Facilitation Act, no. 67 of 1995. Although municipalities are not directly involved, the planning of land allocation services take account of the Restitution of Land Rights Act, no. 22 of 1994.

5.4.5.1 The Royal Bafokeng Administration

The Royal Bafokeng Administration has a traditional ward council headed by the headman reporting directly to the senior headman. Land demarcated for the Royal Bafokeng consists of 29 villages. Every village has occupied and unoccupied demarcated stands. People are not allocated stands which are not set up for water and electricity. All the designated stands are 100% electrified. Land is only allocated to married couples. The process starts at ward or village level with the headman. The application will be forwarded to the Royal Bafokeng department of town planning to allocate stands if they qualify.

5.4.5.2 Modjadji Tribal Authority

Tribal land is allocated to the members of the community for residential and agricultural purposes without cost to the recipient. However, there is an annual levy of R25,00 per household payable to the Modjadji Tribal Authority.

5.4.5.3 Botswana tribal authorities

In terms of the Botswana Tribal land Act, 1970 the chief approves the land application before it can be processed and administered by the land board. The general characteristics of land in respect of the three tribal authorities in Botswana are that the land application process starts at the tribal authority and forwarded to the Botswana land board for registration. In Botswana a traditional leader is responsible for land allocation and the Botswana Land Board is responsible for the registration and administration of land allocation.

5.4.6 Training

South Africa needs trained municipal employees if it is to meet the unfulfilled needs of its population. The demand for services increase and unless municipal employees are properly and adequately trained, service standards will decline and in extreme cases, some services may cease altogether. The aims of the Skills Development Act, 1998 together with Sector Education and Training Authorities (SETAs) are to provide the institutional framework to devise and implement national sector and workplace strategies within the National Qualifications Framework contemplated in the South African Qualification Authority Act, 1995 to provide for learnerships that result in recognised occupational qualifications.

It is important for traditional leaders to undergo development training because it can be used to improve skills or to develop new ones. For example, with current notions of industrial relations it may be beneficial for traditional leaders to attend courses on leadership, the handling of grievances or misconduct, staff motivation and productivity. Traditional leaders can be trained to express themselves in reports and letters, the legal implications of procedures and how to deal with the public. It must be noted that South African traditional areas are situated in district municipalities. In Botswana the administrative, health and police personnel are trained by the central government.

5.4.6.1 The Royal Bafokeng Administration

No formal training is provided for the king and headmen by the Royal Bafokeng Administration. However, traditional leadership training is offered by the Royal house of elders to both the king and the headmen. The training is about the Bafokeng traditions, customs and tribal laws to enable them to try and hear cases according to the Bafokeng tribal laws. The King obtained a Bachelor of Science degree in Architecture at the University of Natal. The king encourages the headmen and headwomen to study in different fields.

No formal training or workshop is provided for the headmen. Traditional leaders are trained to embrace customs and Bafokeng traditions from childhood by the parents. The king has realised that there is a need for training. The Bafokeng traditions and customs have been documented. The old traditional system has been refined and documented in a form of traditional by-laws. The headmen apply the traditional by-laws when performing their duties. The input of the headmen plays a notable role in the enactment of the Bafokeng traditional by-laws.

The Royal Bafokeng Institute started with a traditional leadership development programme. The duration of the leadership development programme is two years. The main objective is to establish a pool of leaders conscious about what is happening in the communities. The leadership development programme will be a pilot programme in the Kanana, Phokeng, Luka and Chaneng villages. The focus will be on both males and females in the abovementioned areas. The Royal Bafokeng Administration anticipates creating an environment for further skills development for headmen and headwomen. The Royal Bafokeng Administration's main objectives are to ensure that within five to 10 years all the headmen would have obtained a university degree in Project Management, Administration, Business Management and Financial Management. The Royal Bafokeng Administration has built 80 schools and all the teachers are on the national Department of Education's payroll. In 2007, there were 300 bursary applicants. Interviews were conducted and bursaries were granted to the Bafokeng's children to study at various institutions in South Africa.

5.4.6.2 Modjadji Tribal Authority

Modjadji Tribal Authority does provide for formal training for the queen and the headmen. Traditional leaders are only trained in the Modjadji traditions and customs. The Modjadji Tribal Authority has established a bursary fund to assist children from impoverished family backgrounds with excellent matric results to enrol at tertiary institutions in different fields. The main objective is to empower the children in order to add value to the Modjadji district. The nation fully supports the tribal authority's bursary fund initiative.

5.4.6.3 Botswana Tribal Authorities

In Botswana, no formal tribal training institution exists. Traditional leaders' children benefit from Botswana's education system because the tuition fees are paid by the Botswana central government. Findings from the interviews conducted with the traditional leaders at the three tribal authorities in February 2008 indicate that an educational programme should be designed for traditional leaders. This could entail semi-legal training and management skills to prepare the future traditional leaders for their duties.

5.4.7 Communication

A municipality is a public body which exists to serve the public and therefore needs to communicate with the public it is designed to serve. Communication is a two-way process. In fact, the underlying meaning of communication is the imparting of information, ideas or feelings. Clearly, a council which operates secretly is not a successful communicator. Communication with the public is in fact a part of the process of public consultation. The formal methods of communication are important as they are part of the democratic process of public consultation.

5.4.7.1 The Royal Bafokeng Administration

The headmen are the king's communication channels to the community. The king conveys the notifications of meetings through the headmen. The Royal Bafokeng Administration uses billboards, newspapers and radio stations. The nation is normally informed about the emergency meetings through the radio stations. The meetings with the nation are held every second weekend of the month. Information is disseminated by the headmen to the Bafokeng nation in various villages. The king visits all the schools and villages to address the nation regularly. The king conducts meetings with the headmen. The information is reported to each village. The nation gets the information through community publications. The Royal Bafokeng Administration uses the Motswedi and Mafisa radio stations to communicate with the nation.

5.4.7.2 Modjadji Tribal Authority

The queen resides at the Modjadji Head kraal with all the family members. The headmen hold meetings with the queen or the queen's representatives every three months and the information is disseminated to the nation at various villages. The Modjadji Tribal Authority's communication channel is the headmen. The radio station is not used regularly because it does not broadcast the messages from the tribal authority at the requested time. The result is that the message does not reach the nation at the time by the traditional leader.

5.4.7.3 Botswana tribal authorities

Communication takes place at the tribal court with the paramount chief and the headmen who disseminate information to various villages. It is the responsibility of the traditional leaders to disseminate information from the central government to the villages and from the villages to the central government. People are notified by the traditional leader about the meetings whenever ministers from the central government wishes to address the people. There is no formal communication with the tribal authority.

5.4.8 Customer service

Customer service within the context of municipal services entails accountability, loyalty, feedback, responsibility, accessibility and the provision of municipal services efficiently and effectively. According to oral evidence customer satisfaction is acceptable within the Botswana tribal authorities.

5.4.8.1 The Royal Bafokeng Administration

According to the interviewees, the nation is satisfied with services rendered under the supervision of the headmen. In certain situations the headmen will use privately owned vehicles to transport people affected by different issues. The Royal Bafokeng Administration offices are designed to accommodate physically disabled people.

The headman and the tribal councillor attend the traditional council meetings to present the needs of the nation. Traditional councillors are responsible for the gathering of information and identification of key problem areas. The information and the needs of the nation are then submitted to the Royal Bafokeng Administration 's offices in Phokeng. The headman is responsible for the issuing of a death certificate and recommendation letters that confirm that deceased people were members of the Bafokeng nation. The headman will forward the documents to the Royal Bafokeng Administration headquarters for filing and record-keeping purposes. Disabled and elderly people on wheelchairs get assistance from the headman whenever the need arises. The needs of the nation are reported to the council by the headman.

5.4.8.1.1 Access to offices

The Royal Bafokeng nation is allowed access to the administration offices at any time during office hours especially if they prefer not to be assisted by the headman at the village. The Bafokeng nation access most of the services through the headmen at the villages. The nation is satisfied with services rendered by the headmen according to the interviews.

5.4.8.2 Modjadji Tribal Authority customer service strategy

5.4.8.2.1 Access to offices

The people are allowed access to the tribal authority's offices without appointment. Thus, the tribal council is available to assist people with different needs.

5.4.8.2.2 Availability of officials to assist the elderly, disabled, illiterate people

The headmen should assist the elderly, disabled and illiterate at village level. The family members normally assist the disabled, elderly and the illiterate or visit the headman on behalf of the affected members of the family.

5.4.8.2.3 Follow-up of complaints

It is the headman's responsibility to follow up cases on behalf of the tribal authority.

5.4.8.3 Botswana tribal authorities

According to the paramount chief of Kweneng tribal authority there are inadequate officials to render services . It has a negative impact on customer service. There is inadequate office space to satisfy customers, as stated by the paramount chief in an interview on 20th February 2008. The community is satisfied with the services rendered by the Balete, Kweneng and Tlokweng tribal authorities. The traditional leader's offices are accessible and there is no need to setup an appointment. The central government expect traditional leaders to work normal office.

5.4.9 JUDICIAL SYSTEM

The judiciary is the third branch of the state and Section 166 of the Constitution, 1996, provides for the following courts in South Africa:

- ❖ the Constitutional Court, which is the highest court on all constitutional matters;

- ❖ the Supreme Court of Appeal;
- ❖ the High Court;
- ❖ magistrates' courts; and
- ❖ other courts, e.g. labour court, the electoral court, the land claims court and tribal courts for customary law.

5.4.9.1 The Royal Bafokeng Administration

5.4.9.1.1 Tribal court

A tribal court is situated within the Royal Bafokeng Administration headquarters in Phokeng. Tribal cases are heard and tried daily. Tribal cases start at village level. Intervention is made at village level to resolve problems and if the headman is unable to resolve the issues at the village level, the matter will be referred to the tribal court. The headman or the complainant can also refer the matter to the tribal court. Should the tribal court fail to resolve the matter, it will then be transferred to the king to give a verdict.

The nation is encouraged to take disputes to the headman and if there is no solution, the headman will refer the matter to the tribal court. The tribal court consists of four assessors and a chair person. Cases are heard and tried and the tribal court is responsible for the passing of judgment and prosecution.

The chairperson of the tribal court is vested with powers to make final decisions pertaining to all court proceedings. There is participative decision-making by all five members of the tribal court. The court proceedings are derived from the repealed Bophuthatswana tribal laws. The fine can not exceed R200, two cows or 10 goats or sheep. If the crime is of a serious nature it will be forwarded to the Magistrates' court in Rustenburg to be heard and tried according to the Western judicial system. The members of the community are allowed to apply for appeal to have the cases tried by

the magistrate at the magistrate's court. The perpetrator will be summoned to the tribal council for the case to be heard and tried.

5.4.9.1.2 The Royal Bafokeng tribal police

The Royal Bafokeng Administration has a tribal police force consisting of 85 police officials. There are two helicopters and a fleet of patrol cars. The South African Police Services are dependent on the Royal Bafokeng reaction police force for law enforcement in the Royal Bafokeng area. There is a police training academy accredited by the South African Police Services. Police officers are trained by the Royal Bafokeng Administration.

The reaction force provides visible policing and attends to calls from the community on a sector basis. The force co-operates with the South African Police services (SAPS) regarding the general community. A narcotics capacity including the expansion of the dog unit are to be integrated into the regular policing and tracking sections and air wing force. An expansion of the reaction force to combat the high level of crime in the communities is planned for 2009. An experienced prosecutor plus a Rapid Reaction Team designed to combine both prosecution experience as well as quick reaction to crime scenes or to assist other sections are to be appointed to enhance the crime combating capacity as well as to improve success with prosecutions.

5.4.9.2 Modjadji Tribal Authority

The tribal court proceedings start at village level with the headman. The tribal authority hears and tries cases which could be resolved by the headmen at village level. If the tribal court cannot resolve the matter it will be referred to the magistrates' court to be tried in the Western judicial system.

5.4.9.3 Botswana Tribal Authorities

Botswana has developed its system to allow traditional leaders to litigate. The traditional kgotla system is fortunately clear even though it is informal. Traditional leaders have been properly trained in Setswana traditions, customs and traditional laws. The government is in the process of introducing a new level of judicial system that will entail law of criminal procedure and evidence.

There is no formal training for the king and the headmen to try both civil and criminal cases. There is actually no formal training for traditional leaders in Botswana. However the central government provides all tribal authorities with trained administrative personnel and trained police officials who are permanently based at the tribal authority. There is a need for training and development of traditional leaders.

The traditional leader system allows the king to be the centre of social delivery services. Traditional leaders are strong in the Botswana traditional judicial system. In Botswana, the British judicial system has incorporated kingship in the Botswana government structures. Although traditional leaders are at the bottom of the judicial system, they are entrusted with the powers to hear and try cases. Customary marriages are conducted by traditional leaders. The Botswana government has established a house of chiefs, which represents all the traditional leaders in Parliament.

The central government has allocated administrative staff and tribal police to help traditional leaders with the maintenance of law and order. Traditional leaders are vested with the powers to hear and try cases and impose sentences for a maximum period of three years. Civil cases are followed up and if the perpetrator fails to appear in court at the tribal court, the tribal police will be assigned to arrest the perpetrator. Authority is vested in traditional leaders to follow up cases. When a crime is committed, it is tried in that particular tribal authority's area of jurisdiction and if it is committed in another village, the respective traditional leader will hear and try the case.

5.4.10 Revenue sources

Finance is the oil that keeps the engine of government going. Without finance there cannot be any provision of services. Municipalities have a relatively narrow tax base consisting of tax on the ownership of property and the levying of fees and charges to pay the services. An urban area where there is a clear development has access to income from these sources but rural areas have a limited tax base. Rural areas as a general rule are characterised by poverty and under-development. Section 214, the Constitution of the Republic of South Africa, 1996 provides for the equitable sharing of revenue raised nationally, but it is unlikely that such a share is going to be adequate to solve the financial problems of municipalities, particularly in rural areas where traditional leaders are supposed to be provide services.

5.4.10.1 Royal Bafokeng Administration

There is a budget allocation of R700-million a year to cater for municipal services rendered to the Royal Bafokeng nation. The Royal Bafokeng Administration has shares in some of the platinum mines. It has recently purchased the Mutual and Federal insurance company. The afore mentioned businesses are the main sources of revenue that assist the Royal Bafokeng Administration to render municipal services to the nation. Platinum mines are situated within the Royal Bafokeng area. The Royal Bafokeng Administration earns mining royalties from the mining companies operating on Bafokeng land. The Royal Bafokeng Administration only collects levies for the payment of water consumed by each household.

5.4.10.2 Modjadji Tribal Authority

Before embarking on the Modjadji tribal authority attention should be devoted to the fact that in contrast to the Bafokeng, the Modjadji Tribal Authority is fully dependant on a budgetary allocation by the state. The services they could undertake will therefore be dependant on allocation by the state. Services could therefore not be compared to those of the Royal Bafokeng Administration.

The tribal authority generates income from the Modjadji Nature Reserve by sales generated from indigenous cycad plants. All the households are expected to pay a levy of R25 a year. The Modjadji area has enough sand and whenever there is a construction project, the tribal authority will sell the sand to the construction company. The tribal authority is able to generate money by charging a levy to private companies doing construction projects awarded by the provincial government through the government's tender process. Private companies operating in the Modjadji district are expected to return some benefits to the communities from the profits they generate. The Modjadji Tribal Authority's finances are managed by the magistrate office. It has access to the money whenever a need arises. The late queen's representative and the headmen are on the government's payroll in terms of the Traditional Leadership Remuneration Act, 1998.

5.4.10.3 Botswana Tribal Authorities

Services are funded by the central government. At local level, a council of traditional leaders has been established. A total of 60% of the budget is allocated by the central government. Traditional leaders do not have other resources such as mines and they are not allowed by law to be self-resourced because all national resources belong to the State. The Botswana government centralised the resources from the traditional leaders to ensure equality among the various sections of the nation because some territories are better resourced than others. The wealth of Botswana now belongs to all the people. It is the government's responsibility to pay each traditional leader. In an equitable manner.

5.4.11 Human resources

All organisational structures require human resources to operate. While human resource development is a vital activity, it is with all due respect to those concerned merely a part of the wider concept of the administration of the personnel function. Personnel administration is the key activity and if done effectively and efficiently, contributes significantly to the existence of an effective organisation. Human resources could be considered as the energy that drives an organisational structure to

achieve a common goal. Thus all traditional authorities require competent human resources to perform their assigned function.

5.4.11.1 The Royal Bafokeng Administration

The promulgation of the Traditional Leadership Framework Act, 2003 resulted in Royal Bafokeng Administration downsizing the number of traditional councillors from 15 to 11 councillors. The Royal Bafokeng area consists of five regions and Phokeng is the capital region. The leaders of the Bafokeng are in the process of decentralising the services. The services will be delivered directly to the doorstep of the members of the community. The Royal Bafokeng Administration employs 400 employees. Outsourced Consultants are currently employed instead of using the Royal Bafokeng personnel to perform certain functions. According to the interviewees the Royal Bafokeng Administration should implement two models whereby there is in-house expertise, a small team of strategic management and outsourced specialists.

The King's office consists of educated personnel in various fields such as engineering, finance and business administration. Duties are executed through the delegation of responsibilities by the king. The Royal Bafokeng Administration has a research department which, implements global best practices. The research department visited Asia, South America and Europe to learn and benchmark against the international best practices. The Royal Bafokeng Administration has shifted from being a traditional leadership institution, embracing the Bafokeng customs, traditions and value system to operating as a corporate entity. The Royal Bafokeng Administration is future-oriented and has expanded its horizons and aligned its traditional approach with a corporate structured organisational approach.

5.4.11.2 Modjadji Tribal Authority

According to the Modjadji Tribal Authority's traditions and customs, a female is enthroned to be a traditional leader. The Modjadji queens had the ability to make rain for the Modjadji nation. There is traditional council consisting of seven members who are closely related to the previous queens and the responsibility of the council is to

liaise with the headmen and to hear and try cases at the tribal court. The tribal authority consists of 128 headmen based in 128 villages and four administrative staff based at the tribal authority offices. According to the Modjadji traditional council, the office personnel are insufficient. There will be a need for additional office space if additional personnel are be appointed.

5.4.11.3 Botswana tribal authorities

5.4.11.3.1 Balete Tribal Authority

The Balete Tribal Authority consists of 20 headmen, but only 11 are recognised by the Ministry of Local Government and they are on the government's payroll. The other nine headmen can perform similar duties as the recognised ones. However, they are not on the government's payroll due to the central government's budget constraints.

A headman's term of office is based on hereditary succession. The tribal authority consists of wards. The ward members are responsible for the selection and appointment of a headman. If the headman has acceptable good morals, conduct, good ethics, is able to read and write, the ward members will appoint him to arbitrate cases. Traditional leaders are not allowed to participate in the process of the formulation of legislation. Parliament is responsible for the enactment of legislation.

There is a house of chiefs in Botswana, which acts as an advisory body to Parliament about matters pertaining to traditional leaders. Staff is inadequate, according to the Balete paramount chief (interview on 20 February 2008, at the Balete Tribal Authority). The central government is in the process of upgrading the tribal courts. These could result in additional personnel being appointed. The current staff are able to resolve criminal cases, directly. If the traditional leaders are not assigned judicial powers to hear, try and arbitrate cases it will be difficult for the central government's judicial system to function effectively and speedily.

5.4.11.3.2 Kweneng Tribal Authority

The central office in Molepolole consists of five officials. According to the paramount chief of Kweneng tribal authority additional staff must be appointed to improve the current service delivery. The tribal authority consists of the chief, deputy chief, chief representatives, headmen of courts and the head of arbitration. Traditional leaders are not allowed to participate in the deliberations on the formulation of the legislation at the central sphere of government.

5.4.11.3.3 Tlokwenng Tribal Authority

The tribal authority consists of the paramount chief, deputy chief and the senior Chief. At some of the tribal courts a chief representative, the headman of record reporting to the Senior Chief Representative is available. The deputy chief reports to the paramount chief.

The chief has vested the headmen with powers to lead communities in various villages. Tlokwenng Tribal Authority comprising headmen of arbitration who arbitrate cases at tribal court wards. The appointment of the headmen is hereditary. Tlokwenng Tribal Authority has 16 headmen and meetings are held every Monday with the paramount chief. The headmen operate as advisors in different villages.

5.5 RESEARCH FINDINGS

There are a number of challenges that affect the ability of traditional leaders to promote municipal service delivery. The overall concerns that were raised by almost all traditional leaders were as follows: lack of training, staff inadequacy; inability to render customer service, communication, the impact of legislation on traditional leaders, land allocation, insufficient funding of traditional leaders by the government, reduced powers of traditional leaders to participate within government structures, infrastructure development initiatives and the lack of traditional leaders' developmental initiatives. Table 5.1 below depicts the overall results from the Royal Bafokeng Administration, Botswana Traditional leaders and the Modjadji Tribal Authority. The breakdown of the results are discussed in the following subsections.

TABLE 5.1 Research findings: The Royal Bafokeng Administration, Modjadji Tribal Authority and Botswana tribal authorities

KEY PROBLEM AREAS	Royal Bafokeng Administration	Modjadji Tribal Authority	Botswana Tribal Authorities
Municipal services currently rendered to communities			
Water	Supplied by the traditional leader, not the municipality	Supplied by the municipality	Supplied by the central government
Electricity	Infrastructure supplied by traditional leader but energy supplied by Eskom	Supplied by the provincial government	Supplied by the central government
Refuse removal	Traditional leaders	Provided by municipality	Provided by the central government
Sewerage services	Supplied by the traditional leader	Supplied by municipality	Supplied by the central government
Social development services	Provided by the traditional leader	Provided by the provincial government	Provided by the central government
Financial and human resource availability			
Source(s) of revenue	Platinum mines	They collect levies from households and companies doing business in the Modjadji area. There is no funding from the government	The central government is funding traditional leaders
Number of appointed officials	72 Headmen and 400 employees	There are 128 headmen and four administrative staff members	The three tribal offices have 15 officials. Each tribal authority has tribal police and administrative staff



KEY PROBLEM AREAS	dji Tribal		Botswana Tribal
	Administration	Authority	Authorities
Financial and human resource services allocated to the tribal authorities			
Required number of officials to provide adequate services	There is sufficient personnel	There is a need for additional office space and 10 officials to manage the tribal authority	Kweneng Tribal Authority needs 25 officials. Balete and Tlokweng tribal offices need additional ten officials each on the four regions. Balete needs five
Formal training provided to traditional leaders	Inadequate	There are 10 vacancies	There are 20 vacancies at Kweneng and five vacancies at Balete Tribal Authority
Challenges (financial/human resources)	There are no financial and human resources challenges	There is no budget allocation from the government	There are no financial challenges and traditional leaders are funded by the central government
What needs to be done to improve service delivery in areas within the jurisdiction of a traditional leader in terms of the following?			
Infrastructure	The traditional leaders have the capacity to build roads, schools, clinics and the electricity infrastructure. There is adequate infrastructure	The government is responsible for the infrastructure initiatives. Infrastructure is inadequate	The government is responsible for the infrastructure development initiatives
Facilities	The Royal Bafokeng civic centre has all the facilities needed to render municipal services	There is only one office to service 700 000 population. Insufficient facilities	Each tribal authority has a tribal court and tribal offices. Facilities are sufficient.
Power and functions derived from legislation	Powers to hear and try cases	There is no power vested to traditional leaders	Powers to hear, try and arbitrate cases



KEY PROBLEM AREAS			
Managerial systems in place to render municipal services			
Administrative guidelines	Administrative guidelines are centralised at the Royal Bafokeng civic centre	There are no administrative guidelines	The central government provides traditional leaders with administrative staff and police officials
Management processes	There are various departments at the Royal Bafokeng Administration offices	There is no formal management at the Modjadji Tribal Authority	The administrative staff assist traditional leaders with tribal management
How did the new legislation pertaining traditional leaders impact on municipal service delivery in terms of the followings?			
Authority	The number of traditional leaders were reduced	They are not allowed to participate in decision-making	Not applicable to Botswana
Finance	Royal Bafokeng was not financially impacted by the new legislation	Traditional leaders are on the government's payroll	Not applicable to Botswana
What effect did the restructuring of local government have on municipal service delivery in your communities			
Categorisation of municipalities	It is part of the Greater Rustenburg municipality which is a Category A municipality	It is a category B municipality	District councils and one city council
Division of functions and powers between category A and B municipalities	Traditional councillors liaise with municipal councillors regularly	Municipal councillors has more powers than a traditional leader	Not Applicable to Botswana



KEY PROBLEM AREAS			
What effect did the restructuring of local government have on municipal service delivery in your communities			
Establishment of management areas	No areas were established	It falls under a municipality established as a category B municipality	The Botswana ministry of local government established the management areas
Financing of municipalities	They are financed by the North-West Provincial government	Municipal levies and taxes. Grant through division of revenue that is passed annually	Central government finance the municipalities
Additional funds generated to promote municipal service delivery?			
Tax	There are no levies, taxes and service charge charged by the Royal Bafokeng Administration	On household and business	The central government collects tax from the tax payers. Traditional leaders do not charge levies and taxes
Service charges	There are no service charges	There are no services charges	There is no service charges in Botswana
Levies	Water levy	R25 levy per household	No levies
What is your customer service strategy regarding the following?			
Access to offices	Civic centre is accessible every day during the week	There are no restrictions; people are allowed to access the offices and the headmen any time during the day.	There are no restrictions; people are allowed to access the offices and the headmen any time during the day
Office hours	8:00 to 17:00	7:30 to 16:30	8:00 to 16:00
Availability of officials to assist the elderly, disabled, illiterate and others	Wheel chairs can access the building. Headmen assist with their vehicles	Headmen render assistance at village level	The tribal police play a notable role in assisting the disabled and the elderly people



KEY PROBLEM AREAS			
What is your customer service strategy regarding the followings?			
Access to offices	Civic centre is accessible every day during the week	There are no restrictions; people are allowed to access the offices and the headmen any time during the day.	There are no restrictions; people are allowed to access the offices and the headmen any time during the day.
Office hours	8:00 to 17:00	7:30 to 16:30	8:00 to 16:00
Availability of officials to assist the elderly, disabled, illiterate and others	Wheel chairs can access the building. headmen assist with their vehicles	Headmen render assistance at village level	The tribal police play a notable role in assisting the disabled and the elderly people
Follow up and complaints	Headmen and Traditional councillors do follow ups	Headmen follow up cases and complaints	Tribal police follow up cases and complaints
Differences between services rendered by traditional leaders and municipalities as established under Local Government: Municipal Structures Act, 1998 (Act 117 of 1998)			
Basic services	Basic services are rendered by a traditional leader	Basic service are rendered by the municipality	Basic and primary services are rendered by the central government
Community development services	The traditional leader and the headmen involve communities in development initiatives	The municipal Council proposes social development initiatives with involvement of the traditional leaders	The ministry of local government is responsible for the community development initiative
Type of communication between traditional leaders and communities			
Radio	Mafisa and Motswedi radio stations	Thobela radio station	Botswana television
Newspaper	Segoagoa newspaper	Sowetan newspaper	Botswana radio
Newsletter	n/a	n/a	n/a

Source: Own construction based on information from the research interviews.

5.5.1 KEY PROBLEM AREAS INVESTIGATED

5.5.1.1 Training

All the tribal authorities where interviews were conducted have the same problem namely, lack of training. The Royal Bafokeng Administration still uses the former Bophuthatswana Tribal laws to conduct court proceedings. The Royal Bafokeng Administration has converted and improved the Bafokeng laws, traditions and customs into documented traditional by-laws. However, there is no formal training in place. The king is in the process of encouraging all the headmen to study and get tertiary qualifications in different disciplines. In Botswana, the tribal laws are different from the Botswana westernised judicial system. Traditional leaders in Botswana are not linked to the country's judicial system, but to the ministry of local government. It is at the traditional leader's discretion to obtain formal training at a tertiary institution.

5.5.1.2 Human Resources

According to the information received from interviews conducted at the respective tribal authorities, each tribal authority has staff shortages and therefore cannot promote municipal service delivery except for the Royal Bafokeng Administration. There are insufficient funds from the governmental structures to appoint additional employees. However, the Royal Bafokeng Administration is well resourced and have adequate human resources to render services.

5.5.1.3 Communication strategy

There are no formal communication channels at the respective traditional leaders' institutions. The traditional leaders depend on traditional councillors and headmen to gather information and transmit it to the tribal authority. The headmen will disseminate the message from the traditional leader to the nation. Newspapers and radio stations are used only when there is an urgent message from the traditional leader. Royal Bafokeng Administration uses the local newspaper called Segoagoa to communicate with the nation.

5.5.1.4 Revenue sources

The Royal Bafokeng Administration's source of revenue is the platinum mines situated within the jurisdiction of the Bafokeng nation. The Modjadji Tribal Authority generates R178 000 a year from the Modjadji Nature Reserve, which is insufficient in terms of municipal service delivery. Private companies pay a levy to the tribal authority for trading in the Modjadji area. There is no budget allocation by the Limpopo provincial legislature to the tribal authority. The municipal council in each of the areas within which a tribal authority falls controls the funds and the traditional leaders do not have direct access to the budget allocated for service delivery.

5.5.1.5 Customer service

There is a high level of customer service satisfaction in Botswana, the Modjadji Tribal Authority and the Royal Bafokeng Administration. The headmen play a significant role in ensuring customer satisfaction to the nation. There is access to tribal offices and courts are recognised, ensuring that there is customer satisfaction.

5.5.1.6 Impact of legislation on traditional leaders in the Republic of South Africa

Section 81 (1) of the Municipal Structures Act, 1998 states that traditional authorities observe a system of customary law in the area of a municipality. They participate through the leaders, identified in terms of subsection (2), in the proceedings of the council of that municipality. Those traditional leaders are not allowed to participate in meetings of the council. Section (2) (a) states that the MEC for local government in a province in accordance with Schedule 6 and by notice in the Provincial Gazette must identify the traditional leaders who in terms of subsection (1) may participate in the proceedings of a municipal council. In terms of subsection (b), the number of traditional leaders that may participate in the proceedings of a municipal council may not exceed 10 % of the total number of councillors in that council, but if the council has fewer than 10 councillors, only one traditional leader may participate. However, the Modjadji Tribal Authority is represented in municipal council meetings but the representatives are not allowed to participate.

The powers vested in traditional leaders are limited. Decision making power regarding municipal services and municipal policy making are vested in elected municipal councillors. The Modjadji Tribal Authority representatives attend municipal council meetings as observers. However they are not allowed to make recommendations and participate in decision-making. According to the Traditional Leadership and Framework Act, 2003, a traditional leadership institution is required to have 11 traditional councillors. The Royal Bafokeng Administration had 15 traditional councillors. The king had to reduce the number of traditional leaders from eleven to six to comply with the requirements of legislation. According to the research findings, the new legislation did not impact negatively on traditional leaders' financial situation. However, it did have a negative impact on the level of authority entrusted to the traditional leaders by the government.

5.5.1.7 Municipal services rendered by traditional leaders

In Botswana, the central government is responsible for the supply of water, electricity, education, safety and security, sewerage services and social developments. Traditional leaders are vested with powers to manage the proceedings of cases at the tribal courts and drafting of the letters of acknowledgement when people apply for land allocation and other tradition related services. In the Modjadji district, the municipal council is responsible for the supply of water, electricity and infrastructure development. No funds are allocated to the traditional leader to render services. The traditional leader does not have powers and resources to promote municipal services. The Royal Bafokeng Administration supplies water, houses, land, schools, emergency services, law enforcement, health centres, sports and recreation facilities, roads and infrastructure for the Bafokeng nation.

5.5.1.8 Land allocation

In Botswana, traditional leaders and the central government have joint responsibility for the allocation of land. The application for land starts at the tribal authority with the traditional leader. It is referred to the Botswana land board for administration and registration purposes. The Modjadji Tribal Authority does not sell the land to

members of its communities. The traditional leader has the power to allocate land without the involvement of the government. The Royal Bafokeng Administration allocates land to people who are married. Land is not sold to individuals.

5.5.1.9 Infrastructure development

There is synergy between the North-West provincial government and the Royal Bafokeng Administration pertaining to infrastructure development initiatives. The legislature and the king contributed R106-million towards the construction of a road between Sun City and Phokeng. The Royal Bafokeng Administration contributed R140million. The national government paid R40- million for the construction of a stadium in the Greater Phokeng region.

5.5.1.10 Challenges faced by traditional leaders in rendering municipal services

The participation of traditional leaders in Botswana and the Republic of South Africa concerning municipal service delivery is limited. The powers of a traditional leader has been reduced by the Traditional Leadership and Governance Framework Act, no.41 of 2003. There is no funding from the government to ensure that traditional leaders are empowered to promote the delivery of municipal services. Traditional leaders are not fully integrated into the government structures. There is no specific resource allocation by the government to enable traditional leaders to meet the needs of the nation. The powers vested in elected municipal councillors overshadow the powers of the traditional leaders. No formal organised training is provided for traditional leaders by the respective governments.

5.6 CONCLUSION

This chapter outlined the key areas and issues investigated at the Royal Bafokeng Administration, the Modjadji, Botswana tribal authorities. The objectives of the interviews were to assess the participants knowledge of and experience in, as well as their agreement or disagreement with the following issues:

- ❖ training

- ❖ municipal services rendered by traditional leaders
- ❖ land allocation
- ❖ customer service
- ❖ Human resources
- ❖ communication
- ❖ infrastructure development
- ❖ the impact of legislation on traditional leaders
- ❖ revenue sources
- ❖ challenges faced by traditional leaders pertaining to municipal service delivery

Similar problem areas were identified in the three tribal authorities where interviews were conducted, such as a lack of training, municipal services rendered by either the central or the local level (sphere) of government, infrastructure development and communication. The only difference was at the Royal Bafokeng Administration with regard to the issue of a budget allocation of R700-million a year for the promotion of municipal service delivery. The enactment of the Royal Bafokeng Administration by-laws also differentiates it from other traditional institutions. The provision of police and trained administrative staff by Botswana central government empowers the traditional leaders to conduct tribal courts proceedings and other services.

CHAPTER 6

SUMMARY, CONCLUSION AND RECOMMENDATIONS

The study investigated the following question: to what extent can traditional leaders provide and add value in the promotion of municipal service delivery, which will contribute to the new constitutional dispensation of South Africa? The research analysed the present state of municipal service delivery by traditional leaders by conducting interviews at three tribal authorities in Botswana and South Africa, namely Balete, Kweneng, Tlokweng in Botswana, the Royal Bafokeng Administration and the Modjadji Tribal Authority. Municipal service delivery has been and still is influenced by various factors such as financial constraints, staff shortages, limited powers conferred on traditional leaders, communication and training and development.

At present there is a huge backlog in South Africa with regard to access to basic services. There is a legacy of inequitable distribution of resources as well as inefficient practices in some areas. In order for traditional leaders to carry out their responsibility, the government has to fully integrate them into the promotion of municipal service delivery.

The empowerment of traditional leaders by the government is important because it improves and extends service delivery in a sustainable manner. In the light of the above, it is necessary to review what has been written in the previous chapters and to weigh the accumulated evidence against the present state of municipal service delivery.

Traditional leaders are recognised by the government, but have not been fully integrated into the current democratic structures in South Africa. The study suggests that synergy between traditional leaders and municipalities should be reached. It is important to train and develop traditional leaders to accelerate municipal service delivery. Service delivery by South African municipalities requires a joint service delivery initiative by traditional leaders and municipalities. It is of vital importance to

redress the imbalances of powers entrusted to municipal councillors, as well as the challenges that impede traditional leaders' capacity to deliver services, for example, financial constraints and non-participative decision-making by traditional leaders at municipal council meetings.

6.1 SUMMARY

The objectives of the research were discussed in Chapter 1. It introduced a brief outline of the importance of the study. It was mentioned that the interviews undertaken for this thesis would form an important source of information for the research. It was also stated that the research would be conducted by direct fieldwork, encompassing visits to different tribal authorities. The aim of the research questions, research methods, sources and research methodology were briefly discussed, and lastly a sequence of chapters was outlined.

In reviewing the literature (Chapter 2), the historical background and the development of public administration were discussed. It is of vital importance to include the history of public administration as part of the study because municipal service delivery is a component of public administration and the research is within the discipline of Public Administration. The chapter discussed the foundations of public administration because Public Administration is a special field of activity characterised by identifiable foundations, which can serve as guidelines and value norms according to which the activities of those in public employment ought to take place. The nature of public administration was also outlined because traditionally public administration is viewed as the function required in accomplishing governmental goals.

The chapter covered the purpose and the scope of public administration because the study of Public Administration is a subject concerned with the administrative functions, structure and functions of government as well as the study of institutions of government, which is the essential basis from which studies in this field must logically start. The functions of public administration were also discussed in detail in this chapter because they are the essential building blocks in the practice of any public institution. No institution can exist or continue without these building blocks. Public

administration is the life blood of all government institutions as well as traditional leadership structures. It will be impossible for traditional leaders to render services without honouring the functions of public administration.

Chapter 3 dealt with the impact of the government environment on traditional leaders. The chapter outlined the macro-environment in detail because it has a direct impact on traditional leaders. The macro or general environment consists of political, economic, social, cultural and technological components. It includes all influences outside the boundaries of the institution, which are all the factors external to the institution's micro and intermediate environment influencing the functioning of these environments. In this chapter, the legal environment was discussed because it includes factors such as the constitutional system, the nature of the legal system and legislation determining the form and control of government institutions.

In Chapter 4 a brief historical background was given and the role of traditional leaders. The history of the Royal Bafokeng traditional leadership system was discussed in detail. The chapter entailed a comparative study of different traditional leader systems such as in Botswana, Swaziland, Lesotho, Namibia and KwaZulu-Natal. The main objective was to establish to what extent they differ from the Royal Bafokeng Administration in terms of municipal service delivery.

In the chapter on local government services, selected case studies were based on empirical evidence. In this chapter, interviewees indicated that:

- ❖ training and development of traditional leaders on management and administration are insufficient;
- ❖ traditional leaders are not entrusted with the same powers as municipal councillors;
- ❖ most traditional authorities in South Africa experience serious financial constraints;

- ❖ there is inadequate staff which is a result of insufficient funding from the government.

Recommendations and conclusions were also provided. It is clear from the findings that the areas that need urgent attention are: training and development, entrusting of traditional leaders with similar powers to render services like of municipalities, personnel, government funding and resource allocation. This research concludes with Chapter 6 which provides a summary and recommendations based on the previous five chapters.

6.2 CONCLUSION

This study has identified the key problem areas that impede traditional leaders in the promotion of municipal service delivery. The study pointed out that government must set the socio-economic empowerment strategies for traditional leaders.

In terms of Section 152 (1) (b) of the Constitution, 1996, municipalities are responsible for ensuring the delivery of basic services to all South Africans. At present, a large backlog exists in South Africa with regard to basic services as defined in the Reconstruction and Development Programme, the Constitution and other applicable legislation. In order to carry out this responsibility, municipalities will need to have a joint service delivery initiative with traditional leaders.

The broad objectives of municipal restructuring were to ensure that municipalities deliver services in a sustainable, equitable, efficient, effective and affordable manner and consistent with the Batho Pele principles of service delivery, namely consultation, service standards, access, courtesy, information, openness and transparency, redress and value for money.

Municipal transformation since 1994 aimed to make municipalities more efficient and effective. The Intergovernmental Fiscal Review states that the Department of Provincial and Local Government has introduced a variety of initiatives to effect wide-ranging transformation programme. The Local Government Transition Act, no. 209 of 1993, provides a comprehensive vision and a plan of action to democratise

municipalities. Municipalities are faced with a range of competing pressures on resources for service delivery with regard to municipal services.

In terms of Section 4 (1) (b) of the 1996 Constitution, all spheres of government are required to secure the well-being of the population. Local government is empowered to deal with a number of functions that are closely related to disaster management under part B of Schedules 4 and 5 of the Constitution. In addition, Section 152 (1) (d) of the 1996 Constitution requires local government to promote a safe and healthy environment.

The government's objectives of municipal service delivery will be enhanced as soon as traditional leaders are fully integrated into and are vested with legislative powers in the democratic structure of the country. The participation of traditional leaders in the promotion of municipal service delivery will add value in redressing municipal service delivery inequalities and imbalances in South Africa. The study confirmed that traditional leaders can add value in municipal service delivery.

6.3 RECOMMENDATIONS

A number of problems have been identified. Recommendations to solve these problems are training and development, delegation of power, government funding and synergy between municipalities and traditional leaders. Three recommendations will be discussed as follows:

6.3.1 Partnerships between municipalities and traditional leaders

The study suggests that the national government and all provincial governments must promote partnerships between municipalities and traditional councils through legislative and other measures. Any partnership between a municipality and a traditional council must be based on the principles of mutual respect and be guided by principles of co-operative government. The national and provincial governments must ensure that a traditional council enters into a service delivery agreement with a

municipality in accordance with the Local Government: Municipal Systems Act, no.32 of 2000 and any other applicable legislation.

The national government and provincial governments should adopt the required legislative or other measures as may be necessary to support and strengthen the capacity of traditional leaders within the provinces to fulfil their functions. The South African local government must benchmark against the Botswana government's traditional leadership system's use of the application best practices. For example the Botswana central government provides all the tribal authorities with trained administrative personnel and trained police officials. The Botswana Ministry of Local Government provides traditional leaders with motor vehicles, offices and office equipment to enable them to render efficient and effective services. The study suggests that the South African provincial and local spheres of government must make similar provisions to empower traditional leaders in South Africa.

6.3.2 Government funding

There is no specific budget allocation for traditional leaders to render municipal exclusive services. The provincial governments allocate funds to municipalities for service delivery in South Africa and traditional leaders have no access and control over such funds regarding their tribal areas. The study recommends that the traditional leadership legislation promulgated in KwaZulu-Natal to benefit traditional leaders should be enacted in all other eight provinces in South Africa to clear the current imbalances and inequalities among traditional leaders. In 2007 the KwaZulu-Natal provincial legislature passed the Royal Household Trust Act, no.2 of 2007 and together with this Act, the KwaZulu-Natal Traditional Leadership and Governance Act, no 5 of 2005 the Premier and the members of the provincial executive council have given recognition of the role of traditional leadership in KwaZulu-Natal province. This has not been the case before. The legislature has subsequently established the Royal Household Trust Act, no. 2 of 2008 concerning the Royal Household.

The study suggests that the KwaZulu-Natal legislation should be generic to all the provinces and it will assist traditional leaders with the funding of their Royal households.

6.3.3 Training and development

The findings of the study confirmed that there is no formal training for traditional leaders and some of the traditional leaders experience problems when performing managerial and administrative functions. This results in traditional leaders not being sure of what role they should play in municipal councils. It also revealed that tension exists between traditional leaders structures and municipalities because some traditional leaders are not trained in local government matters. The study confirmed that training of traditional leaders will enhance effectiveness and efficiency in the promotion of municipal service delivery. The study proposes that there should be provisions for formal training of the existing and future traditional leaders at tertiary level. They ought to reinforce the culture of studying in different fields such as public administration, leadership, finance and commerce.

6.3.4 Delegation of powers

Traditional leaders have performed some municipal service delivery function even prior to the establishment of local government structures. The powers of the provincial houses of traditional leaders should in general be strengthened and expanded. The same applies to the National Council of Traditional Leaders. The fact that the houses in terms of the interim Constitution have only advisory powers and their advice can be ignored by the provincial legislature and Parliament thus undermining traditional leaders' credibility and legitimacy. The respective houses of traditional leaders should, at least have a veto regarding those matters pertaining to the powers and functions of rural municipalities, the demarcation of rural government areas, the organisation of district councils and matters that directly affect the culture, customary laws, communal land, conventions and usages of communities served by traditional authorities.

The Constitution does not clearly state the role of traditional leaders in municipal services. It, however, gives a clear disposition of the role of municipalities. A vacuum exists between the two structures. The study proposes that district municipalities should relinquish some of their duties to traditional leaders in order to deliver efficient and effective municipal services. The level of authority vested in municipal councils should not ignore the authority of tribal authorities headed by traditional leaders. The findings of the study confirm that political office-bearers in the formal governmental structures are entrusted with more legislative power than traditional leaders.

There is a need to further explore and investigate the socio-economic empowerment of traditional leaders. Further research should be conducted in outlining the role of traditional leaders within the current democratic structures in South Africa.

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