

CODESA at the centre of a complex moral question:

**Traditional leadership in a negotiated
political settlement in South Africa**



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Introduction

The release of Rolihlahla Nelson Mandela by the apartheid regime and the acceptance of the principle of democracy as the fundamental principle to guide the crafting of democratic and inclusive governance in South Africa led to reflections on the roles of various constituencies – some having emerged during the colonial and liberation phase and some retaining elements of indigenous origin. Amongst these we could cite the bantustan governments; the liberation movements together with their military entities; and traditional leadership as a form of governance. Even though the position of some of these formations were solved by long and thoroughly negotiated political bargaining processes, the ambiguity of the position of traditional leadership was more lasting because of a combination of historical factors at the core of its continued existence. To this day there is a lack of resolve on the conflicting need for a broader national democracy (defined in terms of equity, equal opportunities for all and exercising political power), in contrast to the call for according legitimacy and clout to indigeneity, thus shoring up the continued existence of traditional leadership. The question of ‘continued existence’ of traditional leadership has itself been dealt with in academic discourse as a ‘mathematics of democratic logic’, disregarding completely the internal social logic in the examination of what traditional leadership does for people who uphold its value to their lives.

This chapter outlines the progression of stakeholder thinking on traditional leadership, looking specifically at the mix of ideological positions that characterised negotiations towards a new democratic government in South Africa. The chapter engages in detail with issues of dispossession of land; governance authority of the indigenous population; and the displacement of their systems even as liberation was being negotiated. The chapter also isolates issues that have been raised about traditional leadership and not sufficiently elucidated during the Convention for a Democratic South Africa (CODESA) phase; some of these issues still require that

various stakeholders be transparent about their position. Amongst these is the uniqueness of the role of traditional leadership *vis à vis* that of local government; the clarity on core roles and functions of traditional leadership as a form of governance within an alternative or co-existent other forms of democracy; the clarity on what guardianship of cultural norms and values means in the changing society; as well as the apparent relationship between traditional leadership and what appears to be a contradiction of the phrase ‘customary law’. Examination of all these issues is carried out within an overarching scrutiny of the question: What kind of ideological orientation should structure the relationship between government and traditional leadership? A historical analysis is adopted here as a way to capture the ideological displacement and complexity of legitimacy questions over time. At the basic level this complexity is demonstrated in the observed pre-occupation of traditional leaders with being ‘recognised’ by the post-1994 government in the debates that structured negotiations for a political settlement during the early 1990s. The chapter also highlights the explicit relationship linking colonial history and the present. To some extent the chapter also addresses the inherent conceptual weaknesses of the *Road to Democracy in South Africa* project whose official timeline begins in 1960, thus undermining the importance of the land issue as part of the national question in South Africa.

Land dispossession and the history behind ‘recognition’ of traditional leadership by the rapacious colonial state

It is important that the debates about the new South African constitution, which led to the formation of the House of Traditional Leaders in 1996, should be contextualised within the wars of resistance waged by African monarchies against land dispossession by white colonisers. This issue later intermingled with the politics of the late twentieth century and reared its head during the CODESA negotiations with iNkosi Mangosuthu Buthelezi, an astute politician, manipulating the history of the Zulu kingdom for the benefit of the Inkatha Freedom Party (IFP). There was nothing inherently wrong with Buthelezi’s political posturing because the stakes were high during substantive negotiations and the different parties adopted political strategies to best serve their political interests. Buthelezi used the history of the Zulu kingdom because of his genealogical connection with the Zulu royal house and in this regard he had a political ace up his sleeve; he used this effectively to protect the survival of the IFP during substantive negotiations and the hard bargaining at CODESA.¹ The exasperated editor of the *Financial Mail*, who referred to the IFP as the ‘petulant delinquent’ of South African politics, noted:

1 On Buthelezi’s use of history for political gain see P. Forsyth, ‘The Past in Service of the Present: The Political Use of History by Chief A.N.M. Buthelezi, 1951–1991’, *South African Historical Journal*, 26 (1992), 74–92; Mzala, *Chief with a Double Agenda* (London: Zed Books, 1988). Also see Buthelezi’s own views on his affinity with the Zulu Kingdom, M.G. Buthelezi, ‘Early History of the Buthelezi Clan’, in J. Argyle and E. Preston-Whyte eds, *Social System and Tradition in Southern Africa: Essays in Honour of Eileen Krige* (Cape Town: Oxford University Press, 1978), 19–35.

Inkatha is riven with uncertainty, caused, we suspect, by rifts within its own ranks. Only days after rejoining the Constitutional Assembly (CA) to help redraft the constitutional text to meet the objections of the Constitutional Court, it has withdrawn again. Its main declared reason is the insistence by a clear majority in the CA that they confine themselves to the issues referred back for specific reconsideration. These do not include the role of chiefs in local government or, more accurately, the failure of the draft Constitution to provide a clear role for them. Inkatha's concern that a niche be provided for chiefs within local government structure is understandable. It depends heavily on the backing of chiefs to maintain its political dominance in the rural hinterland of KwaZulu-Natal. It must be seen, therefore, to be taking up cudgels on behalf of the chiefs. But that does not justify withdrawal from the CA. It could have voiced its objections within the CA loudly enough for them to be heard by chiefs and headmen throughout rural KwaZulu-Natal. By staying in the CA, Inkatha could have made an important contribution to an issue which has been put on the agenda by the Constitutional Court: the balance of power between the provincial and central governments ... Inkatha has gained nothing from its latest exercise in political histrionics, except to confirm its image as the petulant delinquent of SA politics which kicks and screams when it cannot get its way. Inkatha cannot seem to reconcile itself to its status as a minority party.²

Pre-dating the implementation of the Shepstone system and the codification of customary law by white colonisers, Jabulani Maphalala writes that the 1846 Land Boundary Commission devised by Lt-Governor Martin West, after whom the former West Street in Durban was named, was preceded by the Boer invaders' forced evictions of the Zulu people from their ancestral land. This dispossession and forced eviction was mistakenly justified by, inter alia, the forged signature of King Dingane on the so-called Retief-Dingane Treaty which fraudulently claimed King Dingane gave Piet Retief and his followers virtually the entire Zulu Kingdom south of the Thukela River.³ Therefore, as early as 1839, the Boer invaders were in kwaMachibisa which they renamed Pietermaritzburg. This became their capital when the Republic of Natalia was established after King Dingane's defeat at Magqonqo by his brother, Prince Mpande, on 30 January 1840. The Boer invaders had no programme of their dealings with the thousands of Zulu people living in the Zulu Kingdom south of the Thukela. They focused their attention on Zulu livestock and the occupation of Zulu land by demarcating farms of 3 000 morgen in size for each white settler. The lack of labour to work the land necessitated savagery and brutal force against the Zulu population in which young children were abducted to work on the Boer

2 'Theatrical Indulgence without Purpose', *Financial Mail*, 11 October 1996; and 'Road to Nowhere', *Business Day*, 9 October, 1996. See also J. Sithole's chapter on Buthelezi and the Inkatha Freedom Party in this volume.

3 On this issue see J. Naidoo, 'Was the Retief-Dingane Treaty a Fake?', *History in Africa*, 12 (1985); and F.N.C. Okoye, 'Dingane: A Reappraisal', *Journal of African History*, 10, 2 (1969).

invaders' farms. This was the situation when *iNkosi* Ncaphayi of amaBhaca was invaded by the Boers in 1841. In addition to taking African children for farm labour, the Boers confiscated thousands of heads of livestock. The British government feared that Boer brutality would force the African people southwards towards the already war-torn Eastern Cape; imperial troops invaded and defeated the Boers at the battle of Khangela (referred to by colonisers as Congella which is situated south of the uThukela River) in May 1842. The following year, 1843, the British declared the part of the Zulu Kingdom south of the Thukela River as a British colony.⁴

Unlike the Boer invaders, the newly-formed British colony of Natal set up a Land Boundary Commission in 1846. This was a carefully devised programme of forced evictions of Zulu people from rich, arable lands to mimosa-ridden areas of stony, barren terrains that became known as the Native Reserves. Here the Zulu people were heavily taxed by means of a hut tax and a dog tax, despite the fact that they had no representation at any level of government. The European farms that were demarcated by the British were the same size as those allocated for Boer settlers, namely 3 000 morgen of land per farmer, a sizable quantity of land for which no payment was made. AmaZulu who refused to abandon the graves of their ancestors were killed and some became squatters on what were now dubbed European farms owned by the white settlers. The Zululand Delimitation Commission of 1902–1904 had the same objective as the 1846 Land Boundary commission, namely the 'opening up' of arable land and good grazing to the Europeans through forced evictions of Zulu people. However, there was an extended process of dispossession in the Zulu Kingdom north of the Thukela and Mzinyathi Rivers. Initially, it was defined by the British invasion and banishment of King Cetshwayo in 1879; this deprived the Zulu people of a central figure around whom they could develop cohesion. Secondly, the colonisers employed divide and rule tactics, sowing dissent in Zulu ranks by the appointment of traitors and *izikhulu*,⁵ most of whom were close to King Cetshwayo, ordering some of them to confiscate Zulu livestock left by the king through the *ukusiselana* custom⁶ to trustworthy members of the Zulu community. This dissent eventually escalated into civil war, and when King Cetshwayo returned to Zululand, it was to a drastically reduced Zulu Kingdom. He suffered the indignity of witnessing almost his entire

4 J.S. Maphalala, 'The Colonisation of the Zulu Kingdom with Special Reference to the Land Boundary Commission of 1846 and Zululand Delimitation Commission of 1902–1904'; Unpublished paper in the possession of the authors of this chapter. We take this opportunity to thank Professor Maphalala for forwarding to us a copy of his very interesting paper. On the politics and the existence of the Zulu Kingdom south of the Thukela, see amongst others, J. Wright, 'The dynamics of power and conflict in the Thukela-Mzimkhulu region in the late 18th and early 19th centuries: A critical reconstruction', Ph.D. thesis, University of the Witwatersrand, 1989; James Stuart Archives, KCM, 24316/7/8, evidence of Ngidi kaMcikazwisa, Killie Campbell Library, University of KwaZulu Natal, Durban; A. E. Cubbin, 'The English alliance with the Voortrekkers against the Zulus during March and April 1838', *Historia*, Volume 38, 2 (1988); A.E. Cubbin, 'Retief's negotiation with Dingana: An assessment', Paper presented at the Natal History Workshop, University of Natal, Pietermaritzburg (1990).

5 Senior trusted advisers.

6 This is a custom of placing livestock in the care of others who in return derive products such as milk, and increased breeding with their own stock, as well as any agreed form of payment over time.

izikhulu being massacred at oNdini on 21 July 1883 because of a plot arranged by his rival, Zibhebhu and H.F. Fynn, the British representative, on 21 July 1883.⁷

Maphalala further elaborates that King Cetshwayo was later poisoned by Melmoth Osborn's agents and died in a house at eShowe on 8 February 1884. Following the war of Tshaneni on 5 June 1884, Zibhebhu was defeated and 200 Boer invaders claimed to have assisted King Dinuzulu in that war and confiscated the best Zulu grazing land west of the Zulu Kingdom, inviting hundreds of other Boers to come and demarcate farms for themselves. On 22 October 1886, in terms of an Anglo-Boer agreement it was decided that the Boer invaders would establish and control what the Boers called 'their' New Republic on Zulu territory which stretched from eMakhosini valley in Babanango, including all the graves of Zulu kings, along the western parts of Nongoma and Mahlabathini to Mkhuze.

The British knew all too well that Zulu law prohibited the alienation of Zulu land; such land was indivisible and the Zulu king alone served as the custodian of the land belonging to the people. Yet, despite this understanding of Zulu law, the British agreed that the Boers should alienate this prime grazing land in the Zulu Kingdom. Both the Boers and British were colonisers of European descent and deemed it appropriate that their interests should be placed above those of the indigenous people, the traditional inhabitants of Zululand that included the San. On 19 May 1887, the British annexed the remaining part of the Zulu Kingdom and invaded King Dinuzulu's forces at kwaCeza, eventually banishing him to St Helena (1890–1898), once again depriving the Zulu people of a unifying figure. In Dinuzulu's absence a number of boundary commissions were instituted by the colonisers which culminated in the Zululand Delimitation Commission of 1902–1904 in the aftermath of the Anglo-Boer War (South African War) of 1899–1902. When the boundaries of the Native Reserves were fixed, Zulu people north of the Thukela River, like their compatriots south of the river, found themselves heavily taxed and obliged to live in these overcrowded barren and rocky Native Reserves from 1903 onwards, barely able to eke out a subsistence livelihood. Importantly, they were also without representation of any kind in any level of the colonial government.⁸ This situation was the same throughout the country and we are using the Zulu kingdom as a case study here. We are also using the Zulu monarchy as a case in point because its perceived status as part of the new dispensation almost scuppered the negotiation process at CODESA and the first democratic elections of 27 April 1994.

The Zululand Delimitation Commission (ZDC) was one of the reasons for the outbreak of the poll tax uprising of 1906 which is also referred to as *impi* kaBhambatha or *impi* Yamakhanda. The barren, poverty-stricken Native Reserves were not abolished; instead, in 1971, they were transformed into the so-called KwaZulu Homeland, ruled by Buthelezi, which the National Party (NP) government had

7 Maphalala, 'The Colonisation of the Zulu Kingdom'. As authors, we are using the KZN region as a case study because of readily available rich archival material and therefore we encourage others to engage in similar studies.

8 Ibid.

hoped would eventually become one of a number of 'independent' black homelands'. This was not to be. When the democratic South African state came into existence in 1994, its new constitution enacted in 1996 stipulated that fixed landed property is guaranteed. Those African people dispossessed of their land through colonisation and the apartheid system were permitted to make claim to land taken from them, dating back to the 1913 Natives Land Act enacted by the colonial government of the Union of South Africa. Although the new constitution recognised traditional leaders, this short-sighted decision meant that all the land which was confiscated in terms of the Land Boundary Commission of 1846 and through the Zululand Delimitation Commission of 1902–1904 was beyond the reach of the dispossessed African people. By 1994, most of this fertile land was being farmed as sugar cane plantations by white colonisers; this was one of the stark weaknesses of the political settlement in South Africa.⁹ This hesitation, or to put it bluntly, cowardice, in taking a firm stand on redressing the issue of land dispossession has legitimised an unjust situation, not only at the material level of landownership, but also on as far as questions of governance are concerned. Hence, the question of displacement of traditional leadership is also a telling factor here – one that was not satisfactorily resolved by the 1996 constitution.

Another crucial question to examine (which we dare say is behind the academic and political ambiguities on the question of traditional leadership) is the very issue of their need to be recognised by the government of the day. To be precise: it is both the need by the traditional leaders to be recognised by the new rulers, and the extent of that recognition (whether this implies delineation of mutual roles or resource reliance of one system on the other) that is at the core of the ambiguity. Despite the incorrect and often unchallenged contention that traditional authorities were created by colonial legislation, it may be argued that colonial legislation caused the perennial subjugation of a local, traditional form of authority under a new form of governance (the state). This imposed authority was initially illegitimate and was only accepted on the proviso that it be revised and re-oriented to make it innately fair to all concerned. If we accept the postulation that the colonial governments were democratic and humane it becomes logical to ask: Who should be recognised by whom in this relationship? A milder form of the question is perhaps: What is the defining moment at which there was mutual agreement that one specific form of governance was more acceptable than the other? This would imply that the direction of recognition of traditional leaders in the new political dispensation should adopt this defining logic. In some measure 'recognition' is as old as the institutionalisation of colonialism itself. The bottom line is that colonial despotism has outlined the parameters of recognition of indigenous governance. The brief discussion above of the impact of land dispossession in the area now referred to as KwaZulu-Natal has made this very clear. As an example, the Native Code of Law of 1891 was revised in 1932 in terms of the much cited Native Administration Act No. 38 of 1927. It states in Chapter II that:

9 Ibid.

The Governor-General, as Supreme Chief in respect of Natives in the Province of Natal shall exercise and enjoy all powers, authorities, functions, rights, immunities and privileges which according to the laws, customs and usages of Natives are exercised and enjoyed by any Supreme Paramount Native Chief ...¹⁰

This piece of legislation is the most usurping, absolute and perennial in reconstitution of the relationship between indigenous governance and colonial government – from powers, to fixation of tribal boundaries – even to the definition of roles. We will return to the subject of definition of roles shortly. For now, it is important to illustrate the subjugation and to problematise the direction of recognition. Chapter III of the Native Code of Law details the powers of consolidation of ‘tribal’ boundaries. Chapter III of this law specifies other controlling regulations in section 11:

Tribal boundaries shall be as defined from time to time under paragraph (a) of sub-section (1) of section five of the Act [the Native Administration Act as described above as framing the revision of the Native Code in 1932] and boundaries previously defined in terms of section five of Act No. 40 of 1896 or any prior law shall unless and until changed or modified, be deemed to have been defined under the said paragraph.¹¹

The chapter ends by proclaiming in section 14: ‘No native shall remove his kraal from one district to another except with the approval of Native Commissioner’. Chapter IV of the Native Code of Law outlines in fine detail the roles, functions and duties of Africans and this proscription is taken to extreme levels, as is done for all ‘natives’, not just the leadership. It begins in section 15 by proclaiming that:

The powers, authorities, duties, functions, rights and privileges of chiefs and headmen are as prescribed in the Act [Native Administration Act] and the regulations framed thereunder read in conjunction with this code.¹²

The code then proceeds to detail these duties in excruciating detail ranging from the appointment of officials assisting the chiefs, to the minutiae of fines and how to appoint successors – all in a way that makes it clear that the indigenous leaders and chiefs acted under the strict vigilance and approval of the native commissioners who were deputies of the ‘supreme chief’, the colonial governor-general. If we read through the details of such laws and policies it becomes clear that there was a great deal of work behind codification. While to this day, legislation talks about customary law as if it is a ‘real script’, it is very evident that colonialism created the self-contradictory notion it called ‘customary law’ which no doubt it fashioned by ‘freezing the custom’ through codification. The subjugation of traditional leadership under colonial government occurred by crystallising or freezing custom into law as

10 Governor-General E.G. Jansen, (Proclamation 168 of 1932) Natal Code of Native Law of Native Administration Act, No. 38 of 1927, reprinted in *African Studies*, 2, 1 (1943).

11 Ibid.

12 Ibid.

well as merely imposing colonial laws on indigenous people. But African people were not docile and accepting of this travesty, and continued to resist colonial subjugation. It is, therefore, important to analyse the historiography of this resistance, led by liberation movements, because it explains why issues about traditional leadership were part of the agenda at CODESA.

The road to Kempton Park: The political use of anti-colonial wars of resistance by liberation movements to justify the existence of African monarchies in the modern era

From its inception the African National Congress (ANC) accepted the important role that African monarchies played in holding together the fabric of African societies; the organisation later used the role that they played in waging wars of resistance against colonialism to conscientise ANC members and supporters. This trend was unmistakable when on 16 December 1961, the ANC officially formed Umkhonto we Sizwe (MK), its military wing, marking the beginning of its armed struggle. Prior to this, at the inaugural convention of the South African Native Congress (later renamed the ANC) in Bloemfontein on 8 January 1912, it was decided that its leadership would be divided into two tiers, namely the upper and lower houses. The upper house was made up of monarchies based in southern Africa and appointed as honorary vice-presidents. The lower house was made up of its National Executive Committee (NEC). The upper house of traditional leaders and African monarchies consisted of, among others, Dalindyebo of abaThembu; Montsioa of Barolong; Lwanika of Barotseland in Zambia; Khama of Bechuanaland (Botswana); Moepe of Bakgatla; Letsie II of Basutoland; and Sobhuza of Swaziland.¹³ Dinuzulu, the Zulu monarch, who was deposed by the British and exiled in the Eastern Transvaal, was later included by the ANC. He was also the father-in-law of Pixley ka Isaka Seme, the Secretary-General of the ANC who later became one of its presidents.

Due to internal politics in the ANC, the house of traditional leaders was abolished in the 1930s. But it resurfaced 60 years later at the insistence of O.R. Tambo, during the substantive negotiations at CODESA. The ANC's final constitutional guidelines thus included a provision which called for the recognition of the institution of traditional leadership.

Francis Meli writes that the various African monarchs were honoured, in accordance with African tradition, by being involved in the ANC as honorary presidents. They ruled the land on behalf of the people, the majority of whom had been dispossessed of their land by the marauding colonisers and settlers. Meli reasons that there was a need for an alliance between the peasants and the young African intelligentsia who were members of the ANC's NEC because the working class and peasant class were still nascent. It was also important that because African monarchies were in place

13 F. Meli, *A History of the ANC: South Africa Belongs to Us* (London and Bloomington: James Currey and Indiana University Press, 1989).

before the arrival of white settlers in southern Africa, their monarchs should speak on behalf of the oppressed majority. After all, they had fought against colonialism and some of them had been victimised and banished leading to a situation whereby the victorious white colonisers were able to manipulate the system of governance. It is said that when John Dube, the first President of the ANC, addressed a group of Africans in the then Zululand in 1912 to explain the formation of the new movement and to appeal for unity among African people by invoking the spirit of Bhambatha, a rejuvenated member of the audience shouted in appreciation: 'I thank Bambatha. I thank Bambatha very much. [I hope] this spirit might continue! I do not mean the Bambatha of the bush who perished in Nkandhla, but I mean this new spirit which we have just heard and [has been] explained [to us]'.¹⁴

Indeed, recent studies on the basis of oral history indicate that at a community level there is distrust of documented archival material on the so-called Bhambatha 'rebellion' which many white historians have continued to reproduce as fact. Not only have the 'facts' of that history been demonstrated to be incorrect (including information on royal genealogies and events documenting the death of Bhambatha), but interpretation has been exposed as being grossly skewed in favour of the victorious image of the colonial master and indispensability of colonial civilisation. Hence, what the affected people see as 'an uprising' is documented as 'a rebellion'. This being so, as a general rule it is important to be cautious of both fact and interpretation in historiography that does not take archival material through critical validation and thorough analysis.¹⁵

The African monarchs, as honorary presidents, were also behind political negotiations with the colonisers and thus supported the unsuccessful ANC delegations which went to England to plead the African cause to the British monarchy and government. But this position about pursuing a peaceful, diplomatic and non-violent solution to the national question in South Africa changed drastically when both the ANC and the Pan Africanist Congress (PAC) were banned by the apartheid regime in 1960. In 1961, 16 December marked ANC-organised acts of sabotage against the apartheid regime's installations. The ANC also acknowledged that 'the day MK was formed on 16 December 1961, 123 years after *impis* of Dingane confronted the white invaders at the banks of iNcome, which the racists call "Blood River"', was also a day of great historical significance to the oppressed majority. Here the ANC recognised the fact that prior to the arrival of the white colonisers the oppressed African majority had never recognised the existence of any place or river referred to as 'Blood River'.¹⁶ In addition, 16 December was commemorated by the ANC as 'Heroes Day'.

14 Ibid.

15 See a collection of papers by T. Magwaza, Y. Seleti and M.P. Sithole eds, *Freedom Sown in Blood: Memories of the Impi Yamakhanda, an Indigenous Knowledge Systems Perspective* (Thohoyandou: Ditlou Publishers, 2006).

16 See S. M. Ndlovu, 'The ANC's Use of History and History Education as a Weapon of the Struggle for Liberation during the 1970s', Conference paper presented at the University of London Institute of Commonwealth Studies, September 2004.

The ANC emphasised that King Dingane was portrayed by African nationalists, amongst others, as a courageous monarch and statesman who had defended land belonging to Africans and who had also fought for their freedom. In an incisive speech entitled 'Mobilise our Black Power', presented on the tenth anniversary of MK on 16 December 1971, Tambo elaborated:

Let us arm ourselves with the willpower and fearlessness of Shaka; the endurance and vision of Moshoeshe; the courage and resourcefulness of Sekhukhuni; the tenacity and valour of Hintsa; the military initiative and guerrilla tactics of Maqoma; the far-sightedness and dedication of S.P. Makgatho, Sol Plaatje, Langalibalele Dube, Isaka kaSeme, W.B. Rabusana, Meshack Pelem, Alfred Mangena, Paramount Chief Letsie II of Lesotho, and all the founding fathers of the African National Congress ... This is the day when we pause and re-examine ourselves and our organisation. Are we living up to what is expected of the members of the revolutionary and fighting organisation? Is the (MK) OATH we took of any meaning and substance to those who swore to fight until freedom is won? We unite and follow in the footsteps of our martyrs, in the footsteps of the men who fell in the frontline in South Africa and Zimbabwe and other countries, men such as Molefe, Mini, Khayinga, Mkaba, Bongco, Solwandle, Sallojee, Imam Haroun, Paul Peterson, Patrick Molaoa, and yesterday Ahmed Timol. What hope do their children have ... Let us think of all the patriots languishing in Vorster's dungeons – Mandela, Mbeki, Motsoaledi, Bram Fischer, Ahmed Kathrada, Goldberg. Others like Mrs Florence Matomela, Alpheus Madiba [and] Caleb Mayekiso were killed in prison ...¹⁷

Tambo's speech was intended to promote unity between the different indigenous ethnic groups and different generations. His focus on unity against ethnic division was inescapably influenced by the current circumstances and future political needs of the ANC in its struggle against the divide-and-rule strategies perpetuated by the apartheid regime through the establishment of the various bantustans. During the late 1970s and early 1980s, MK's own journal, *Dawn*, published various articles on African monarchies such as those of Makanda, Shaka, Sekhukhune, Moshoeshe and Dingane. These triumphalist articles eulogised their greatness as African nationalists and 'freedom fighters'. The journal also featured various counter-commemoration articles such as 'Izibongo zeNkos'uDingane'¹⁸ and 'Why did Dingane kill Retief at uMgungundlovu?' that challenged the dominant viewpoints on iNcome authored by white historians.¹⁹ In these articles, the readers are warned about the abuse of history by white South Africans, accused of using Social Darwinism as an ideological tool.

17 O.R. Tambo, 'Mobilise our Black Power', Address on the 10th anniversary of the founding of MK, 16 December 1971, *Sechaba*, February 1972. See also S.M. Ndlovu, 'Reclaiming Rolihlahla Nelson Mandela's Ancestral Memory', unpublished paper.

18 *Dawn*, 2, 6 (December 1978), 12.

19 *Dawn*, 3, 11 (December 1979), 4–9. For other pro-King Dingane images during this period, see *Injula*, 1 (November 1988).

The article defines Social Darwinism as a racist theory that proposed that certain races, the Negroid type, were static and slow to develop the refinements of civilisation, while the Caucasians were dynamic and had evolved into civilised groups. The same article provides a revisionist account of the battle that took place at iNcome in 1838. The author of the article argues that Boers, the so-called forces of 'light' and 'civilisation', neither defeated nor deposed the heroic King Dingane from his throne. It was his brother, Prince Mpande, who defeated him at the battle of Magqonqo in 1840, and this was an undisputed historical fact. As the article explains:

Every year, on December 16, there is a spate of claptrap from pulpits and platforms and press about how, at Blood River ... in 1838, the forces of civilisation and of light, the messengers of God ... destroyed the power of barbarism and darkness in the shape of Dingane's Zulus ... That was on 16 December, which the Afrikaners now celebrate as a public holiday to mark what they have been taught by Nationalist historians to believe was the 'decisive' battle between white and black. In fact, however, Blood River was by no means a decisive battle. The Afrikaners lacked the military power of the British ... It was only in January 1840 [at the hands of] Dingane's treacherous brother, Mpande ... that the latter [Dingane] was defeated and forced to flee.²⁰

The PAC also appropriated King Dingane in a positive, although slightly different way, through its Deputy President, Motseko Pheko, who participated in the negotiations at CODESA. In the 1980s, while in exile, Pheko wrote several articles on King Dingane, adopting an unashamedly pro-King Dingane stance. Pheko postulated the theory that African states, kingdoms and societies lived a harmonious, yet static life that was destroyed by the arrival of the white settlers. However, he failed to mention that there were disputes between African monarchies prior to the arrival of the white colonisers. He also argued that all towns with colonial names in South Africa should revert to their 'original' African names. Pheko went on to claim (incorrectly) that the pre-contact, original place names for the present-day city of Pietermaritzburg (the first town established by the Voortrekkers in the uMzimkhulu-Thukela region), was uMgungundlovu.²¹ It seems likely that before the arrival of Retief and party, indigenous Africans referred to the place where the present town is located by the names of various chiefdoms, such as Machibisa and Dambuza. These names still exist today but refer to African townships in the vicinity. The original name of the area was probably Machibisa and it fell under this chiefdom which at one stage was controlled by a female figurehead. This was by no means unique in African societies

20 *Dawn*, 3, 11 (December 1979).

21 S.E.M. Pheko, *Azania: Answer to Slave Colonial South Africa* (New York: New Africa Institute of Positive Education, 1991), 12–13; S.E.M. Pheko, *South Africa, the Betrayal of a Colonised People: Issues of International Human Rights Law* (Johannesburg: Skotaville, 1992), 10–11.

as is highlighted by the roles of the regent, Queen Mkabayi of amaZulu, and that of the warrior queen, maNtathisi of Batlokwa.

What Pheko did reflect accurately, however, is that Africans had long referred to Pietermaritzburg as uMgungundlovu, after King Dingane's royal palace which was destroyed by the white settlers and is about 300km from Pietermaritzburg, a town named after colonisers. Here black South Africans adopted a classic weapon of the weak; they associated an act of cultural subversion with an earlier episode of military resistance. How far back this went is uncertain but would be fascinating to know. Pheko, like Johannes Nkosi, Albert Nzula, Jordan Ngubane and Herbert Dhlomo before him, believed that the official commemoration of 16 December as 'Dingaan's Day' or 'Day of the Vow' by white Afrikaans-speaking South Africans was a charade and an insult to his people's dignity, civilisation and character.²² Pheko argued that the commemoration was used by white South Africans, in particular Afrikaners, to justify dispossession of land belonging to Africans as reflected in the so-called Retief-Dingane Treaty. For Pheko:

This 'agreement' supposedly signed by Dingane giving land to the trekkers is extremely puzzling and leaves unanswered many questions ... The land was being 'sold' to Retief, yet he did not sign the 'agreement' (someone else did on his behalf). It is more likely the alleged agreement (the so-called Retief-Dingane Treaty) was made out after Piet Retief's death to make a case against the British colonial government, which had its eyes on Natal. There can be no proof that the alleged X mark found on this document is that of King Dingane and it is most unlikely that Dingane would have been party to such an agreement as traditionally, land is not sold in African society. Yet despite the suspicious nature of this document, the 16th of December each year is celebrated by the Boer descendants in South Africa. The struggle between Dingane and Piet Retief is seen as a battle between light and 'western Christian civilisation' on one hand and 'darkness and barbarism on the other'.²³

By the same token, the commemoration of 16 December also propagated an exclusive identity based on white racism. Commemorative events, such as the 'Day of the Vow', were depicted by Pheko as part of Afrikaner mythology and having nothing to do with civilisation. For this reason, Pheko described King Dingane as a 'friend of true (African) civilisation'.²⁴ To him, African civilisation was the epitome of civilisation because it was inclusive and characterised by the indigenous people's quest for human rights in their own land. In a publication written in the early 1990s, he contended that the then political negotiations at CODESA for a democratic dispensation in South

22 See S.M. Ndlovu, 'The Changing African Perceptions of King Dingane in Historical Literature: A Case Study in the Construction of Historical Knowledge in 19th and 20th century South African History', PhD thesis, University of the Witwatersrand, 2001, chapter 6.

23 'The Battle of Blood River', in S.E.M. Pheko, *Apartheid: The Story of the Dispossessed People* (London: Marram Books, 1984), Chapter 6.

24 Ibid., Chapter 7.

Africa were of no value; he recalled the fatal King Dingane-Retief negotiations on the land issue.²⁵ He adopted a profound nationalist and 'one dimensional' viewpoint to make the claim that 'Azania was a land of milk and honey' before the arrival of the white settlers, referring particularly to the depredations of the Voortrekkers who invaded the Zulu kingdom.

As a result of the concerted efforts by the liberation movements to inculcate historical consciousness within its myriad supporters, we can deduce that the role of the traditional leaders and African monarchies was never in doubt; neither before, during, nor after the CODESA talks. Although the abuse of the indigenous governance system by white colonisers (represented by, among others, Shepstone and the apartheid regime) was apparent to the ANC and the PAC, a corrective measure was proposed when substantive negotiations began in the early 1990s. It then became a foregone conclusion that the National House of Traditional Leaders would become part of the new constitution as had been the case in 1912 when the constitution of the ANC established the upper house of tradition leaders. But now, in the new constitution, traditional leaders no longer belong to the upper house; nor do they have the right to become honorary presidents.

Changing perspectives of stakeholders on traditional leadership in the wake of democracy in South Africa

The issues raised above showcases several issues in the history of political change in South Africa. Firstly, there is the question of land dispossession that has not been handled correctly over time, in that the question of how far back to date the redress was not even opened for public deliberation. Secondly, it is clear that whilst the political liberation movements used all the ideological tools that they could derive from indigenous history (including historical events; traditional leadership; and interesting ways to influence political education initiatives), the closer they came to a political settlement during the early 1990s, the more indecisive they became about land and traditional leadership issues in particular. This is when the liberation vigour gave way to the current neo-liberal triumph that currently pervades the political landscape. Thirdly, and quite importantly, the current subtlety of inequality takes place through tactics of pseudo-scholarship which pretend that there is objectivity, whereas in reality, interpretation is 'sneaked' into overwhelmingly Afrikaner nationalist and liberal outcomes on land dispossession and traditional leadership. We argue here that this has not only been demonstrated in the historiography some of which has been vigorously opposed by the liberation movements, but also in the work of some academics and researchers as is demonstrated in the excerpts provided below.

The following is an excerpt from an interview that took place in 1994 between Padraig O'Malley (an author based in the United States (US)) and the ANC's Cyril Ramaphosa at a time when political settlement was high on the agenda. It also

25 Ibid.

underlines the importance of the land issue during negotiations and their views on the Ingonyama Trust Act:

O'Malley: Let me go back about five or six weeks ago, the international media arrived ... and it seemed that the last chance of letting Buthelezi into the process had gone by. Then he has one more meeting with De Klerk, I think you were represented at that meeting too, and suddenly this agreement is reached, violence dies down overnight and he gets the result which is 50.3 per cent of the vote in KwaZulu-Natal just enough to give him power to hang on there, 10 per cent nationally and everything seems to have just fallen into place like a miracle, almost too neat. For my sceptical mind I say, what kind of horse-trading went on first, to get him in to the election process, second, why wouldn't the ANC demand a recount? Any party in the US or France or Ireland or wherever, if the opposition got 50.3 per cent you damn well demand a recount; 0.3 per cent is not exactly a sizeable majority.

Ramaphosa: There was massive fraud in Natal. We don't believe in the end that the good showing that the IFP had in Natal is reflective of the support that they have. You must have read about this, there were accounts of pirate stations being opened in Natal in Chiefs' kraals and so on and that has motivated us to argue that we need to review the way the voting took place in Natal, but we have accepted the results for now but we think for everything to be legally and politically acceptable a review is necessary and our people in Natal are dealing with that. Horse trading? There was no behind the scenes horse trading beyond what is known generally to the public. In the end when the deal was struck it really arose from political shock treatment for Buthelezi because he had wanted to play the great political brinkman, to push everything to the very end and see whether people had nerves of steel and finally when the penny dropped for him he realised that we were proceeding with the entire process without him participating in the election. I think it was at the point when the mediators left that he realised that he was going to be relegated to the dustbin of history and decided that he should now reach some deal with us and the agreement that was struck is as straightforward as has been publicised.

O'Malley: Which was?

Ramaphosa: Which was he would come in, we would have the name of his party inserted on the ballot paper through the sticker and that we would amend the constitutional principle to give consideration to how the Zulu monarchy can be protected and all that and also that we would amend the current constitution to allow the province of Natal, when drafting the constitution, to reserve a special place for the Zulu monarchy which was not out of line with what we would have given. In the end he settled for

much, much less than what we had offered him, also than what he would have obtained if he had participated in the negotiations throughout because his participation would have in many, many ways enriched the constitution. It would have made it more whole, he would have exacted many more compromises from us which he failed to do by not participating. He was left with the crumbs that fell off the table because we were moving ahead in the process.

O'Malley: Then the details of this outrageous land deal where one third of the territory of KwaZulu-Natal is structured over to the monarchy. One, was De Klerk acting legally if he signed that without consulting the TEC? And two, what can be done about it?

Ramaphosa: He was acting legally to the extent that as head of state he has to approve legislation from the self-governing territories; but clearly illegally in terms of the TEC, because a matter like this had to be done in consultation with the TEC. So in that regard he acted illegally. What can be done about it? Obviously the matter has to be approached politically. You cannot approach it in an emotional way which one is tempted to do because it came as a shock all round to all of us to hear of this deal. In terms of addressing it politically, we have got to take into account a whole range of things but it is a proclamation or an Act that can be allowed when we pass legislation on land issues. It is morally indefensible in my view that one person through a trust should be able to own so much land or to have control over so much land.

O'Malley: It makes him the biggest land owner in the world.

Ramaphosa: Indeed, in the entire world.

O'Malley: One for the records.

Ramaphosa: Yes.²⁶

Another interview with Cyril Ramaphosa, conducted by O'Malley on 28 February 1995, elaborates on the IFP claim that it was betrayed on the question of international mediation, the Zulu monarchy and traditional leadership:

O'Malley: Do you, just through mediation ... sit around the table and say: 'There's nothing to negotiate?' Have you kept your obligation?

26 Mayibuye Archives, University of the Western Cape (hereafter UWC), O'Malley Archives, Interview with Cyril Ramaphosa, conducted by Padraig O'Malley, 26 May 1994. The O'Malley interviews are also available online to the public at large. See also S.M. Ndlovu, 'Using Literary Images as an Ideological Weapon: Padraig O'Malley on the National Democratic Revolution in South Africa', *The Thinker*, March 2009, 62–64.

Ramaphosa: International mediation? It should act in a particular context. Since the elections when the agreement was made, things have changed in the country. The constitution has had ... to deal with a number of issues that must be handled continuously at provincial level.

O'Malley: The provincial constitution?

Ramaphosa: Yes, the constitution allows [provinces] to draft their own provincial constitution so long as that constitution is not in conflict with the national constitution. The present constitution specifically provides that when they draft their constitution they should also make provision for the position the state has and the role of the Zulu monarchy in KwaZulu-Natal. So that is provided for. The proposals on his role and position still need to be put forward in a draft constitution. Hence, international mediation would seem to be pre-empting the discussion, the debate, the negotiations that need to take place. We should only go to mediation of any sort once we have reached a deadlock and there is no deadlock at the moment. The competencies and powers of provincial governments is a matter that should be dealt with, articulated in the Constituent Assembly where the IFP sits, or sat before they walked out. Then it should come forward with real proposals in the whole constitution making process, enrich the process by putting forward their own views and ideas.

O'Malley: Do you think Buthelezi is playing a game of brinkmanship or that he is serious when he talks about local elections not being held in KwaZulu-Natal?

Ramaphosa: They are serious about wanting to prevent local government elections in KwaZulu-Natal. They see the local government elections as eroding the power of the Chiefs in the rural areas and it is for this reason they have come out openly to say that we can have democratic representation at national and provincial level and at local level so long as it is not in the traditional areas. They have a principled opposition to democratic government at local level in the traditional areas and it is therefore convenient for them ...

O'Malley: So you say they have a commitment to principles ...?

Ramaphosa: No, they have a principled opposition to democratic elections in traditional areas because they see those elections as eroding the power of the Chiefs. The present constitution provides that you will have democratic government at all levels of government, including the rural areas, and where there are traditional leaders or Chiefs they would sit on elected local

government structures in an ex-officio capacity. Now you have a form of male chauvinism being stretched to the very limit in that in the rural traditional areas most of the people who live there, the people are largely made up of women and the Chiefs sit as overlords in these areas and they don't want to subject themselves to elections. They want half of the representatives in whatever structure as put up in the local traditional areas to be elected and the other half to be appointed and that will largely be Chiefs. So, they do have opposition to this and they are using international mediation as a convenience. It's very convenient for them.²⁷

It is questionable to what extent this is 'an information-seeking interview', given the 'expectations' of O'Malley in his questioning. Matters of land and traditional leadership were obviously not going to be given space of articulation through the lens of history in conversation such as this. They were already viewed within specific 'principles' and biases which were merely being tested by O'Malley through interviews with Ramaphosa and other prominent leaders of the liberation movement. Such subversive actions by biased individuals such as O'Malley are also complemented by complacency on the part of traditional leaders. This is evident in the way they stopped invoking the history of land dispossession and began to focus on pleading for recognition of their status by the new government.

The 1993 (Interim) Constitution is often cited as having had better regard for traditional leadership than the 1996 Constitution of the Republic of South Africa. For instance, where the Interim Constitution recognised, protected and defined a specific role for traditional leaders and authorities, the 1996 constitution significantly reduced the state's obligation to maintain traditional authorities; here the institutional role of traditional authorities is recognised but not protected, making their future existence far more precarious. Here are the glaring differences between the two constitutions. On traditional leaders, chapter 11 of the Interim Constitution of 1993 reads as follows:

181 Recognition of traditional authorities and indigenous law:

(1) A traditional authority which observes a system of indigenous law and is recognised by law immediately before the commencement of this Constitution, shall continue as such an authority and 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.

(2) Indigenous law shall be subject to regulation by law.

27 Mayibuye Archives, UWC, Interview with Cyril Ramaphosa, conducted by O'Malley, 28 February 1995; Ndlovu, 'Using Literary Images as an Ideological Weapon'.

182 Traditional authorities and local government:

The traditional leader of a community observing a system of indigenous law and residing on land within the area of jurisdiction of an elected local government referred to in Chapter 10, shall ex officio be entitled to be a member of that local government, and shall be eligible to be elected to any office of such local government.

183 Provincial House of Traditional Leaders

(1)

(a) The legislature of each province in which there are traditional authorities and their communities, shall establish a House of Traditional Leaders consisting of representatives elected or nominated by such authorities in the province.

(b) Draft legislation providing, subject to this Chapter, for the establishment, the composition, the election or nomination of representatives, and the powers and functions of a House contemplated in paragraph (a), and for procedures applicable to the exercise and performance of such powers and functions, and for any other matters incidental to the establishment and functioning of such a House, shall be introduced in a provincial legislature not later than six months after the election of the first Premier of such province in terms of this Constitution.

(c) The traditional authorities resident in a province shall before the introduction of draft legislation referred to in paragraph (b), be consulted, in a manner determined by resolution of the provincial legislature, to establish their views on the content of such legislation.

(2)

(a) A House referred to in subsection (1) (a), shall be entitled to advise and make proposals to the provincial legislature or government in respect of matters relating to traditional authorities, indigenous law or the traditions and customs of traditional communities within the province.

(b) Any provincial Bill pertaining to traditional authorities, indigenous law or such traditions and customs, or any other matters having a bearing thereon, shall be referred by the Speaker of the provincial legislature to the House for its comments before the Bill is passed by such legislature.

(c) The House shall, within 30 days as from the date of such referral, indicate by written notification to the provincial legislature its support for or opposition to the Bill, together with any comments it wishes to make.

(d) If the House indicates in terms of paragraph (c) that it is opposed to the Bill, the provincial legislature shall not pass the Bill before a period of 30 days as from the date of receipt by the Speaker of such written notification has lapsed.

(e) If the House fails to indicate within the period prescribed by paragraph

(c) whether it supports or opposes the Bill, the provincial legislature may proceed with the Bill.

184 Council of Traditional Leaders

(1) There is hereby established a Council of Traditional Leaders consisting of a chairperson and 19 representatives elected by traditional authorities in the Republic.

(2) The Chairperson and members of the Council shall be elected by an electoral college constituted by the members of the Houses of Traditional Leaders referred to in section 183.

(3)

(a) Draft legislation providing, subject to this Chapter, for the composition, the election of representatives and the powers and functions of the Council established by subsection (1), and for procedures applicable to the exercise and performance of such powers and functions, and for any other matters incidental to the establishment and functioning of the Council, shall be introduced in Parliament not later than six months as from the commencement of this Constitution.

(b) Section 183 (1) (c) shall apply mutatis mutandis in respect of draft legislation referred to in paragraph (a) of this subsection, and in such application a reference therein to a provincial legislature shall be construed as a reference to Parliament.

(4) The Council shall, in addition to any other powers and functions assigned to it by any other law, be competent –
(a) to advise and make recommendations to the national government with regard to any matter pertaining to traditional authorities, indigenous law or the traditions and customs of traditional communities anywhere in the Republic, or any other matters having a bearing thereon; and

(b) at the request of the President, to advise him or her on any matter of national interest.

(5)

(a) Any parliamentary Bill pertaining to traditional authorities, indigenous law or the traditions and customs of traditional communities or any other matters having a bearing thereon, shall, after having been passed by the House in which it was introduced but before it is passed by the other House, be referred by the Secretary to Parliament to the Council for its comments.

(b) The Council shall, within 30 days as from the date of such referral, indicate by written notification to the Secretary to Parliament its support for or opposition to the Bill, together with any comments it wishes to make.

(c) If the Council indicates in terms of paragraph (b) its opposition to the Bill, the other House shall not pass the Bill before a period of 30 days as from the date of receipt by the said Secretary of such written notification has lapsed.

(d) If the Council fails to indicate within the period prescribed by paragraph (b) whether it supports or opposes the Bill, Parliament may proceed with the Bill.²⁸

In contrast, chapter 12 of the 1996 Constitution reflected the following ‘empty’ clauses on traditional leaders:

211. Recognition –

(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 includes 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. –

(I) National legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities.

28 South African Government Information, at [http://www.info.gov.za/documents/constitution/93 constitution](http://www.info.gov.za/documents/constitution/93%20constitution).

(2) 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.²⁹

Buthelezi was to note this issue in October 1996 when he argued that there seemed to be an undeclared policy to eliminate and transform traditional leaders into mere ceremonial figures who could no longer work for the development of their own communities. He urged traditional leaders to form a stronger unity, claiming the 1996 Constitution ignored their importance in building a democratic South Africa. Speaking at a King Shaka commemoration event held at KwaMsane, Buthelezi elaborated:

It is true that the Constitution drafted [by the Constituent Assembly] ... sought to accommodate almost everybody, but refused to make significant concession to the Kingdom of KwaZulu-Natal or to the *amakhosi* and their traditional communities ... It is sad that the *amakhosi* from other regions in the country did not heed our earlier warning signals when we told them that walking down the path of an alliance with the ruling party [ANC] would be tantamount to a one-way trip into the lion's den ... We have no choice but to command ourselves and our neighbours that we shall close ranks to stand up for the rights of our people in rural communities to make to South Africa and the world the unequivocal statement that we shall be counted in the shaping of the new South Africa ... I do not think that anyone can impose municipal arrangements in our *amakhosi* area without our consent, and those who believe that they can change our national reality merely by writing one word after the other in a Constitution we did not participate in, are really formulating a recipe for conflict ...³⁰

Referring to the burning issue of land ownership, Buthelezi informed the audience that a stalemate had been reached between 'the kingdom of KwaZulu-Natal' and the central government, but the Zulu 'nation' would pursue a peaceful settlement. As if responding to the O'Malley and Ramaphosa interviews, Buthelezi argued that it would be 'very wrong' if land held by the Ingonyama Trust were to be transferred to the central government instead of being held by *amakhosi* on behalf of their communities. He explained, 'We hope that this land issue will not escalate into an explosive conflict which seems to be approaching, for we, *amakhosi*, live in peace and we want peace in

29 Ibid, <http://www.info.gov.za/documents/constitution/1996/108-96.PDF>.

30 'Traditional Leadership is Betrayed', *Citizen*, 7 October 1996.

our land.³¹ Earlier in 1995, Buthelezi, also a cabinet minister, increased the political temperature by calling on other traditional leaders to demand communal land from the central government. Speaking as a guest of Chief Kaizer Matanzima at Qamata in the Eastern Cape, Buthelezi said that indigenous and customary law should be placed on the same footing as common law. He called on traditional leaders based in the Eastern Cape to start a campaign to wrest control of communal land in the province from the central government, possibly through legislation similar to the Ingonyama Trust Act. Buthelezi told his audience that he:

would not know whether this [reclaiming the land in other parts of South Africa] could best be achieved by establishing a trust similar to the Ingonyama Trust which we have in KwaZulu-Natal, or whether land ought to be transferred to the Eastern Cape province so that it may establish legislation to recognise the institution of communal property.³²

The politically astute Buthelezi also shared a platform with the Congress of Traditional Leaders of South Africa (CONTRALESA) at the Union Buildings on 28 October 1995. Together with *Inkosi* Pathekile Holomisa, who was an ANC MP and chairperson of parliament's Land Affairs Committee, they presented a hard-hitting memorandum to President Mandela. Among other issues, the memorandum accused the government of wanting to introduce new forms of 'colonialism' by downgrading the position of chiefs and traditional leaders. They warned the ANC-led government that Western culture was being forced onto South Africa and the country was in danger of losing touch with traditional values in the name of forging 'a modern state'.³³ Commenting on this new-found alliance between Buthelezi and Holomisa, Mervyn Frost noted: 'Chief Buthelezi is a consummate political strategist. When it suits him he has aligned himself with nearly every party over the years. He plays alliance politics very adroitly.' According to Frost, the ANC would be forced to grasp the nettle of the political power possessed by traditional leaders and attempt to outbid or out-manoeuvre Buthelezi's IFP. The PAC's national organiser, Bamba Ndwadwe, held similar views; he argued: 'the conduct of Chief Buthelezi confirms a theory I have long held – that in politics there are no permanent enemies and no permanent allies ... we cannot afford a united opposition from chiefs'.³⁴ Holomisa had stepped out of line and the ANC summoned him to appear before a disciplinary hearing for allegedly contravening the ANC's constitution and code of conduct. One of the allegations against him was that he was alleged to have met with Inkatha-aligned chiefs in August 1995 and by implication, to have conspired with them against the ANC. He was also alleged to have linked up with Buthelezi in a protest march against the ANC at the Union Buildings in October 1995. Furthermore, he was accused of

31 Ibid.

32 'Buthelezi Calls on Traditional Leaders to Demand Communal Land', *Business Day*, 16 October 1995; 'Buthelezi in E. Cape Move', *Eastern Province Herald*, 16 October 1995.

33 'Buthelezi Takes the Lead in Traditional Leaders' Revolt', *Sunday Tribune*, 29 October 1995.

34 'Contralesa, amaXhosi Moving Closer Together?', *Sunday Tribune*, 16 April 1995.

embarrassing the ANC by taking the government to court to contest the legality of the law providing for local government structures in rural areas.³⁵ The ANC tribunal found Holomisa guilty of pursuing an anti-ANC line.

Also at play here were ideological battles with those who had arrogated the title of 'modern democrats', equating traditional leadership with authoritarianism or feudalism. Firstly, they were of the view that traditional leaders or African monarchs have never actually owned land as their private property; they have held it in trust for the people or various clans. This trusteeship, so the 'modern democrats' argued, has outlived its social and political function because people are now capable of owning, administering and managing land through a collective ownership system of their choice. Secondly, the 'democrats' claimed that there were various calls by those in rural areas for the adjudication of land boundaries and for surveying and sub-dividing land belonging to various clans with the ultimate aim of registering title deeds for those people who wanted private ownership of the land they lived on. Thirdly, the 'democrats' believed that various monarchs and traditional leaders in South Africa have never had the necessary so-called 'skills' to administer land information systems and were ill equipped to perform this task. Fourthly, the 'democrats' argued that if land allocation and administration were located within the traditional authority institution, it was likely that gender inequalities in access to and ownership of land would be perpetuated because of African women's minority status in customary law.³⁶ But the 'modern democrats' failed to mention that the existing customary law was developed and manipulated by the Roman-Dutch legal system that prevailed in South Africa. Nor did the 'democrats' mention that the majority of African people still believe in monarchies and chiefly rule. These subjects, who happen to be in the majority, are not averse to the modernisation of traditional leadership. Indeed this has been successfully accomplished in the United Kingdom (UK), Spain, Netherlands and Denmark, to name a few European countries that have kept the system of traditional leadership intact in the modern era. Commenting on these challenges, a *Business Day* editorial read:

The idea of unelected, hereditary chieftains continuing to operate as before, dispensing patronage and tribal justice without any checks and balances, is anathema to the concepts of modern democracy and universal franchise. But as much as democrats might want to wish away the traditional system, it will not disappear overnight. An accommodation must be found, particularly with much faith vested in the ability of new local government bodies being able to deliver reconstruction and development ... There is much of great value in the nation's old cultures that could enhance the democratic process greatly, such as the unifying and consensus building traditions. If this could be incorporated into local government without making chiefs

35 'ANC vs Contralesa', *Financial Mail*, 22 March 1996. See Holomisa's appeal in P. Holomisa, *A Double-Edged Sword: A Quest for a Place in the African Sun* (Houghton: Real African Publishers, 2011), 258–266.

36 'Chiefs at the Crossroads', *The Natal Witness*, 29 November 1996.

feel disempowered, tensions could dissolve. It will not be an easy task, but greater and more effort needs to be made more than has been the case thus far.³⁷

Mandela also agrees with us on the question of modernising traditional leadership in South Africa. He writes about this important matter in his autobiography wherein he elaborates:

Many of our traditional leaders are also not aware of the lessons of history. They do not seem to know that there were once absolute monarchs in the world who did not share power with their subjects ... It is monarchs...themselves or their predecessors, (who) decided to allow elected representatives of the people to govern, and who became constitutional monarchs who survived, like Queen Elizabeth II of Britain, King Carlos of Spain, Queen Beatrix of the Netherlands, Queen Margrethe II of Denmark, King Harald of Norway and King Carl XIV Gustaf. Had these monarchs clung stubbornly to their absolute powers they would long have disappeared from the scene.³⁸

CONTRALESA, which demanded a central role during the CODESA negotiations, was formed in 1987 by certain traditional leaders of the erstwhile homeland of KwaNdebele. The organisation operated under the auspices of the United Democratic Front (UDF), with the material and political support of the ANC. It was due largely to the resistance of these traditional leaders, as part of the Mass Democratic Movement (MDM), that the apartheid programme of homeland-style independence was derailed. The office bearers of CONTRALESA included, among others, Chief M.J. Maphumulo; Chief S.P. Holomisa; Prince K.M. Mahlangu; V.T. Sifora; and Chief G.R. Tshikalanga. On 11 April 1992, at a meeting of its National Executive Committee, CONTRALESA issued a press statement calling for full participation in CODESA. It read as follows:

The meeting reiterated its support for the negotiations taking place under the auspices of the Convention for a Democratic South Africa. At this stage there is no viable alternative to it. The meeting noted with concern the delay on the part of the (CODESA) Management Committee coming to a decision on the question of the participation of traditional leaders in the negotiations process. We believe, however, that reason will prevail and that they will see the wisdom of our inclusion in CODESA. We expect nothing short of a full participatory status like all the other participants. We reject the notion that we are entitled only to observer status. In accordance with tradition, though, we hold the view that our kings should be given the status of interested observers.³⁹

37 'Chief Question', *Business Day*, 20 September 1995.

38 Mandela, *Conversations with Myself* (London, Basingstoke and Oxford, Macmillan, 2010), 13.

39 'Contralesa Seeks Full Participation in Codesa', 11 April, 1992; in Holomisa, *A Double-Edged Sword*, 191.

CONTRALESA was aware of the complex politics represented by the Zulu monarchy. As an organisation, it questioned the recognition of the Zulu king by F.W. de Klerk and the apartheid regime as 'unique' and that as such the Zulu king deserved a special status at CODESA. In contrast to this opinion, CONTRALESA claimed that the king was 'represented' by Buthelezi through the IFP:

The Congress of Traditional Leaders of South Africa regards De Klerk's declaration that the Zulu monarch is in a unique position and different from other kings in South Africa, is a clear indication that the National Party government is still committed to the policy of dividing the African community along tribal lines. The Zulu kingdom is by no means different to that of other communities. We are opposed to the representation of King Zwelithini at Codesa ... all the other traditional leaders should be accorded a similar status.⁴⁰

The fact that the majority of Africans still believe in traditional leadership means that tensions posed by the 1996 Constitution still remain. CONTRALESA has lamented this conundrum even in recent times. In its statement following the election of the ANC government in 2009, as led by President Jacob Zuma, CONTRALESA reminded the president of the long awaited constitutional reforms:

As a result of the traditional leaders' participation in the Constitutional Talks the interim (1993) Constitution was much clearer on the role of traditional leaders in the new era of democracy than the final (1996) Constitution. Under the former all legislatures were obliged to refer relevant draft legislation to the appropriate House of Traditional Leaders before they could be passed into law. At the local level heads of traditional authorities were automatically members of municipal councils having jurisdiction over their areas of rule ... Traditional authorities were allowed to continue to perform their tasks and exercise their powers as local government structures and as courts of justice ... The final Constitution, unlike the interim [one], was made without the full participation of traditional leaders. This was due to the fact that the government failed to establish the National House of Traditional Leaders before its finalisation. A comprehensive submission that was made by CONTRALESA to the Constituent Assembly was never taken into account when the relevant provisions were considered for adoption.⁴¹

Whilst this official vulnerability is recognised, there is also realisation that through the power of influence, traditional leaders have 'attained some recognition'⁴² by the

40 'Contralesa's Reaction to F.W. de Klerk's Declaration that the Zulu Monarch is Unique', Press statement, 13 January 1992, in Holomisa, *A Double-Edged Sword*, 188.

41 Congress of Traditional Leaders of South Africa (Contralesa), undated, 'Memo to the ANC', at <http://contralesa.org/communiques.html>

42 'Attainment of recognition', which has been so rigorously pursued by traditional leaders is one of the issues this chapter ponders upon.

government over the years. The origins of this recognition are somewhat precarious, with this situation being exacerbated by the weakening of the constitutional status in the progression from the 1993 to the 1996 Constitution. However, the political mileage of the strong relationship between traditional leaders and people in their constituencies has led to the various presidents being unable to ignore the demands of traditional leaders over the years. Despite the constitutional issues, Mandela (himself a traditional leader by birth) is quoted as saying at the inauguration of the National House of Traditional Leaders in 1997, that:

When the new constitution was drafted, there were concerns that it did not define in sufficient detail the status and role of traditional leaders and that it did not, unlike the interim constitution, oblige government to set up this council ... But we argued as the majority party and the government that we would be true to our word, true to our South Africanness, true to the traditions that form part of our rainbow nation ... The respect and recognition of the institution of traditional leaders require more than fine-sounding declarations in a constitution ... They should reside in our hearts and the launch of this Council today is one vivid expression of that.⁴³

Of course traditional leaders have criticised the element of being at the mercy of specific political regimes on the issue of recognition. They argue that recognition should be officially accorded in legislative proclamations. The ANC's *Negotiations Bulletin* of March 1992 acknowledged that a sub-committee had been set up to discuss the participation of traditional leaders in CODESA. This publication made it clear that 'the position of the ANC is that all traditional leaders should be accorded observer status' at the negotiations.⁴⁴ It might be era-centrism to assume that this was meant to raise traditional leadership above party politics, because the ANC had unresolved issues about the amenability of traditional leadership with the basic principle of democracy as adopted by the main parties in the negotiations process. There are currently no recorded views that hint at anything other than democracy as a concept of electoral representativeness. Thus, the 'observer status' did not imply recusal of traditional leadership from competitiveness towards accessing state power; nor did it recognise the sanctity of a royal institution as being responsible for human well-being without party political favour. It actually meant that the ANC was unsure whether the concept of traditional leadership complied with the ideological basis upon which the substantive negotiations at CODESA were undertaken. This point is further explained by the fact that the majority of those who advised the ANC on legal matters pertaining to traditional leadership were divided into two groups – those who were Marxist-influenced social democrats; and those who could be described as liberals. Also, the South African Communist Party (SACP), an alliance partner, was, for obvious reasons, opposed to traditional leadership. The SACP's reductionist view

⁴³ 'Establishment of the NHTL in Keeping with Constitution: NHTL Celebrates 10 Years', *NHTL Newsletter*, 2007

⁴⁴ *ANC Negotiations Bulletin*, 7 (March 1992).

was debated within the party's echelons.⁴⁵ This is an old debate between the ANC and its alliance partner, dating back to the late 1920s. Providing the historical context concerning these vigorous debates, Philip Bonner elaborates:

An even more damaging attack on communist party credentials, and by extension on those of all fellow travellers, was launched from an entirely different direction. Since its inception the ANC had been closely associated and for much of the time strongly supported by chiefs. This was especially true of the Transvaal. White communist party militants had little conception of the enduring power of the institution of chieftainship in South Africa, portraying it as an anachronistic and dying institution. Operating from the basis of a totally mistaken analogy, they equated the Romanovs with the chiefs and openly celebrated the abolition of the monarchy in Russia and the physical extinction of this line. Even Gumede himself was surprisingly insensitive on this issue, and publicly applauded the execution of the Czar. The reservations of even congress militants on this subject are reflected in Peter Matseke's comments at an ANC conference in 1928, where he observed, 'the chief should be particularly careful in regard to the Communist Party, as this party has as its aim and object the overthrow of the rules of any land' ... Seme and congress conservatives capitalized hugely on this blind spot of the SACP. In June 1930, shortly after Gumede's defeat in the ANC Presidential election the party newspaper *Umsebenzi* reported that ANC officials had 'been touring the country spreading the story that the CP wishes to abolish chiefs'. This was mistaken, – *Umsebenzi* went on, and one might have expected it to attempt at this point to counter the canard. Instead it exposed its own distance from South African realities and dug itself further into a hole by dismissing the chiefs as a serious political force with the fatuous observation that 'the chiefs have abolished themselves'.⁴⁶

The liberation movement's pre-1994 standpoint on traditional leadership was based mainly on the rich historiography of the anti-colonial struggle – particularly the wars of resistance to colonial domination. From his autobiography, Mandela was to observe:

45 See E. Maloka, 'Traditional Leaders and the Current Transition', *African Communist*, 141, 2nd Quarter (1995) and the SACP position paper authored by B. Nzimande in Essop Pahad Papers, Report on SACP Workshop on Party Building, 1–2 February 1992. Archival material in the possession of Essop Pahad and now housed with SADET are hereafter referred to as Essop Pahad Papers. For an opposite view about African monarchies and African workers' support of traditional leaders and monarchy, see S.M. Ndlovu, 'Johannes Nkosi and the Communist Party of South Africa: Images of "Blood River" and King Dingane in the late 1920s–1930' in *History and Theory: Theme Issue 39*, December 2000, 111–132.

46 P. Bonner, 'Afrocentrism and Eurocentrism in the politics of South Africa's black elite between the wars'. This paper was presented at the conference held in September 1999 in Moscow by the Institute of Asian and African Studies of the Moscow State University and the Institute of General History, Russian Academy of Sciences. Its title was 'Eurocentrism and Afrocentrism on the eve of the 21st century: African studies in a world context'.

We (should) never forget that the institution of traditional leaders is sanctified by African law and customs, by our culture and tradition (including our history). No attempt must be made to abolish it. We must find an amicable solution based on democratic principles, and which allows traditional leaders to play a meaningful role in (various) levels of government.⁴⁷

In contrast, the post-1994 position which led to the reduction of the role of traditional leaders as defined by the 1996 Constitution was premised on purely legal matters linked to electoral politics. This highlights the ANC's inability to operate outside the confines of the Roman-Dutch Law system that still operates in South Africa. Phathekile Holomisa welcomed the warm support for traditional leadership expressed by Tambo and Walter Sisulu, together with Mandela representing the older generation of ANC leaders. Holomisa recalls the following concerning the ambiguous position of the ANC during substantive negotiations:

The real attitude of the newly elected leadership of the ANC towards Contralesa and traditional leaders became clear when preparations for constitutional negotiations began. Despite numerous representations to both the ANC and the government for participation by Contralesa in the negotiation process, our call was rejected. As you know traditional leaders were not represented in the aborted Codesa. A spurious excuse was given that Contralesa did not represent all South African traditional leaders, as if there has ever been a single organisation that ever fully represented its constituency base. On the other hand, reactionary, murderous, white racists, separationist organisations were begged to be part of the process ... When he could hardly walk on the escalators at the World Trade Centre because of failing health, Mr O.R. Tambo and Mr Walter Sisulu came to meet Contralesa and other traditional leaders, out of their free will, and paid their respect to them. Comrade Oliver Tambo conferred with the Contralesa delegation and confirmed our view that it was unacceptable for traditional leaders in the land of their birth to be excluded from talks concerning the future of this country ...⁴⁸

The *amakhosi*⁴⁹ themselves remember very clearly the 'tangible uncertainty' of the 1990s on their position. *Inkosi* Bhhekizizwe Luthuli recalls that as *amakhosi* they tried to influence CODESA negotiations and at one point even met to discuss the legal position of the *amakhosi* and iSilo (the king) for KwaZulu-Natal. He is clear that the intention of the negotiations was to sideline the *amakhosi* rather than assign them to

47 N. Mandela, *Conversations with Myself*, 14.

48 Holomisa, *A Double-Edged Sword*, 245–246.

49 *Amakhosi* (*Inkosi*: singular; and *Amakhosi*: plural) is isiZulu for senior traditional leaders (chiefs). The term 'chief' is regarded with distaste in some parts of South Africa, especially in KwaZulu-Natal because of its association with colonial abuse. *iNkosi* in isiZulu is also a synonym for king, hence the word chief and king have the same meaning in isiZulu but we know that only the king/monarch holds the absolute power. As recently as 21 March 2011, at a gathering of students from 'Go Africa go German Scholarship', *Inkosi* Buthelezi explained why the term is regarded as derogatory. He said it was a deliberate decision to ban it from use in KwaZulu-Natal.

any influential position. He also laments that there is no clear statement on their roles within the Constitution and also sees the 1996 Constitution as a downgrade from the earlier (1993) Interim Constitution.⁵⁰

The traditional leaders persisted with their demands, lobbying for recognition by those heading the negotiating process. This does not mean that the traditional leaders were speaking with an absolutely unified voice; nor does it imply that they did not have their own fissions. On 20 April 1994, CONTRALESA issued a statement that struggled to balance the 'excitement' about the official recognition of the Zulu monarchy and the IFP agreeing to join the elections on the one hand, and the 'disgust' at the lack of a national resolution of the question of traditional leadership as a whole by the negotiating team during CODESA, on the other. It was a long-winded statement which, in the final analysis, sounded like a painful warning – even to those issuing it:

Contralesa has learnt that part of the deal relates to the constitutional recognition and relocation of the Zulu Monarchy. While we hail this gesture as an acceptance of the historical fact that our liberation means the return of the land to its rightful owners and a recognition of the existence of the Zulu Kingdom, we reject and condemn outright its [the deal's] failure to take into account the existence of other deserving Kingdoms and monarchies throughout the length and breadth of South Africa. The Zulu monarchy is just but one of many. It deserves no less and no more recognition than any of the others. We expect, therefore, that the constitution will automatically extend the same rights, privileges, prerogatives and obligations to other Kings. Failure to do so will be a recipe for tribal conflict and even civil war in the future, because it will be a statement to the effect that violence is the key to the country's solutions. We have confidence that the ANC and the De Klerk regime will be wise enough to see the dangers attendant to the deal as it now stands. Accordingly, Contralesa urges the Negotiating Council to amend the agreement by the three parties to the effect that all monarchies in all the proposed provinces be accorded *mutatis mutandis* the same constitutional recognition extended to the Zulu Kingdom. Feelings of national pride amongst other African communities must not be undermined.⁵¹

There is ample evidence that some traditional leaders associated with homelands found it difficult to associate with the new government and fight for the interests of the institution.⁵² Other writers recognise the rivalries that existed between CONTRALESA and the IFP on questions of traditional leadership; but they also acknowledge that incrementally the differences became progressively less relevant

50 Interview with Inkosi Bhekizizwe Luthuli, conducted by M.P. Sithole, 22 February 2011.

51 'Contralesa's Reaction to the Announcement of Constitutional Recognition of the Zulu Monarch and Zulu Kingdom by the ANC, RSA Government and IFP, 20 April 1994', in Holomisa, *The Double-Edged Sword*, 229.

52 Archival Record 55 and Archival Record 69, in Holomisa, *The Double-Edged Sword*, 200, 227.

as the new government maintained its ambiguous indecision on the question of traditional leadership.⁵³

Leslie Bank and Roger Southall largely attribute the indispensability of traditional leadership to the fact that they controlled communal land and allocated land to those who were willing to be their subjects.⁵⁴ They disregard the reality that this system of leadership existed centuries before the formation of modern South Africa and is entrenched in the country's indigenous knowledge systems. Bank and Southall also recognise the initial power of the threat by the IFP to boycott the 1994 elections and thereby delegitimise the early processes of negotiations. They argue:

... in order to avert a threatened boycott of the first democratic election by the Zulu based Inkatha Freedom Party (IFP), an amendment to the constitution was accepted whereby provincial constitutions should be allowed to 'provide for the institution, role authority and status of a traditional monarch', particularly for the Zulu Monarch in the case of KwaZulu/Natal.⁵⁵

This political arm-twisting and self-assertion by traditional leadership is a favourite citation by academics.⁵⁶ Some scholars fall within the school of thought that sees no pragmatic compatibility between democracy as pursued by the modern state, and traditional leadership. There is, however, another school of thought that questions the wisdom of a formulaic approach to democracy – one which prioritises representative politics linked to the national state and does not scrutinise the social and internal logic of the persistence of traditional leadership within traditional communities.⁵⁷ What is often ignored or downplayed by many academic analyses is the intricate embeddedness of traditional leadership in the kinship system of many Africans, especially those of Nguni, Sotho-Tswana and Venda origin. Most writers do not explain how proponents of the democratic course fall short in explaining people's affinity to traditional leadership. Mandela, in his autobiography *Long Walk to Freedom* (1994) makes this acknowledgement quite early and not timidly:

The Xhosa are a proud and patrilineal people with an expressive and euphonious language and an abiding belief in the importance of laws, education and courtesy. Xhosa society was a balanced and harmonious social order in which every individual knew his or her place. Each Xhosa

53 See T. Meer and C. Campbell, 'Traditional Leadership in Democratic South Africa: Democracy Development Programme', Unpublished typescript, 2007. Paper in the possession of the authors.

54 L. Bank and R. Southall, 'Traditional Leaders in South Africa's Democracy', *Journal of Legal Pluralism*, 37/38 (1996), 411.

55 Ibid., 409.

56 L. Ntsebeza, *Democracy Compromised: Chiefs and the Politics of Land in South Africa* (Cape Town: HSRC Press, 2006); B. Oomen, *Chiefs in South Africa: Law, Power and Culture in the Post-Apartheid Era* (Pietermaritzburg: University of KwaZulu-Natal Press, 2005); M. De Jong, 'He who Pays the Piper...': The Anomaly of Custom, Local Government and Traditional Leadership', *Anthropology Southern Africa*, 29, 1/2, 2006, 8–16.

57 M.P. Sithole, 'State Warming up to Culture: An Ambivalent Integration of Traditional Leadership into the South African Governance System, 1994–2009', in P. Jackson, J. Muzondidya, V. Naidoo, M. Ndletyana and M.P. Sithole, *South African Governance Review: Anti-Corruption, Local Government and Traditional Leadership* (Cape Town: HSRC Press, 2009).

belongs to a clan that traces its descent back to a specific forefather. I am a member of the Madiba clan, named after a Thembu chief who ruled in the Transkei in the eighteenth century. I am often addressed as Madiba, my clan name, as a sign of respect.⁵⁸

In 1962, Mandela, the combative revolutionary, at his trial held at the Old Synagogue in Pretoria, cogently expressed the following view about traditional leaders and democratic rule during 'pre-colonial' times:

Many years ago, when I was a boy brought up in my village in the Transkei, I listened to the elders of the tribe^[59] telling stories about the good old days, before the arrival of the white man. That our people lived peacefully, under the democratic rule of their kings and their *amapakati*, and moved freely and confidently up and down without hindrance. Then the country was ours, in our own name and right. We occupied the land, the forest, the rivers; we extracted the mineral wealth beneath the soil and all the riches of this beautiful country. We set up and operated our own government, we controlled our own armies and we organised our own trade and commerce.⁶⁰

The above excerpt demonstrates that South Africans have harboured divergent views on traditional leadership, ranging from those by sceptical academics that are formulaic about democracy; those that are willing to entertain a different form of governance; statesmen who are torn between roots that favour traditional leadership and a steadfast formulaic kind of democracy; to traditional leaders themselves being torn between asserting their role quite strongly to being keen to working in co-operation with various governmental structures in modern South Africa. This history of diverse views has created a situation whereby South Africa has held rather 'long negotiations' over traditional leadership. They have been negotiations beyond CODESA and they have seen a slow emergence of neo-traditionalism in governance.

Postscript: The meaning of 'recognition' since the democratic negotiations

Without devaluing the need for a struggle by traditional leaders to restore their dignity, it is perhaps their consistent use of the language of 'recognition' and the demand for a definition of their roles and duties by government that is puzzling and becomes somewhat of a betrayal of their own endeavours. Such a statement must, however,

58 N. Mandela, *Long Walk to Freedom* (London: Abacus, 1994), 5.

59 The abuse of this ideologically loaded term in African historiography is noted by the authors; its use is unacceptable.

60 'Posterity will Prove that I was Innocent', 15 October–7 November 1962, cited in K. Asmal et al., *Nelson Mandela: From Freedom to the Future, Tributes and Speeches* (Johannesburg and Cape Town: Jonathan Ball, 2003), 20. For an explanation on the concept of democracy in 'pre-colonial' times, see S.M. Ndlovu, 'Reclaiming Rolihlahla Nelson Mandela's ancestral memory', Unpublished manuscript. Mandela's notion of people living 'peacefully' before the arrival of the white settlers is problematic because there were disputes between African societies. However, these were not perpetual battles that underpin the ideologically driven colonial discourse about African people in general.

be balanced with pondering on what other language they can use – since indeed they are not against modern governments, even though they are the indigenous form of governance with which colonial governments wrestled. *Inkosi* Phathisizwe Luthuli argued that it is the lukewarm attitude of the current government that is disappointing. He asserted that in fact the *amakhosi* have fulfilled their role of managing the communities for the people's benefit quite well: organising work teams on communal projects; seeking and begging for development even from an illegitimate (white) government; as well as attending to social issues as they arise locally. The disappointment that comes across of the need for recognition is in reaction to the lukewarm attitude of the current government that has stripped the *amakhosi* of all their operative discretion and has yet not written any powers to them officially.⁶¹

As is shown above, the 'recognition' that that they were given by the colonial government involved a great deal of circumscription of their powers and functions. Before the specific legal stipulations of subjugation it was the very fact that they were dictated to by the colonial government and vetoed by it that made them vulnerable. From the early 1990s, they expected 'justice' to prevail in that the democratic government that was being ushered in would 'recognise' them. What does 'recognition' mean? Does it mean that they admit to having been stripped of their powers during the colonial period? Does it mean that they want to assert their authority in relation to managing people and land? Does it mean that they want to be recognised as 'the servants of the people' in the same way as the current government does when it serves the people through its local government structures?

These questions are asked here to highlight that there are deeply historical conceptual issues involved in the relationship between the *amakhosi* and the government. It is not simply the regard these institutions have for each other that matters – it is also the fact that population dynamics and the format of society's access to services have changed; there is now mutual endorsement of political boundaries that are still redolent with colonial history. Many *amakhosi* have lamented for a long time the emasculation of their powers by the new government, especially during the demarcation process and the formation of local government structures. They have also cited various pieces of legislation as stripping them of their dignity – such as the prescripts that they only have an ex-officio status in the municipalities.⁶² However, no debate has been encouraged specifically on the fundamental principles behind the co-existence of the two forms of governance, despite questions being raised such as:

Does recognition of elective authority automatically mean discarding of ascriptive authority?

Is the significance of identity discarded in governance in favour of mere rationalisation of services?

61 *Inkosi* Phathisizwe of uMnini Trust was interviewed by M.P. Sithole at eMathulini. 22 February 2011. He is a different Luthuli from iNkosi Bhekizizwe Luthuli cited above.

62 M.P. Sithole 'The Secular Dynamics of Traditional Leadership in KwaZulu-Natal, South Africa', in *Unequal Peers: The Politics of Discourse Management in the Social Sciences* (Pretoria: Africa Institute of South Africa, 2009).

What is 'customary law' and is it a fair coinage for use by the institution that mixes governance and maintenance of law and order such as is the case with traditional leadership?

It is questions such as these that highlight the contemporary specificity of evolution of systems and institutions in the merger between the historically imported governance systems in South Africa and the indigenous governance system. It is precisely because space to deliberate directly on such issues has not been opened up, that explains why the undemocratic formulaic approach to declaring traditional leadership obsolete has not worked.

Conclusion

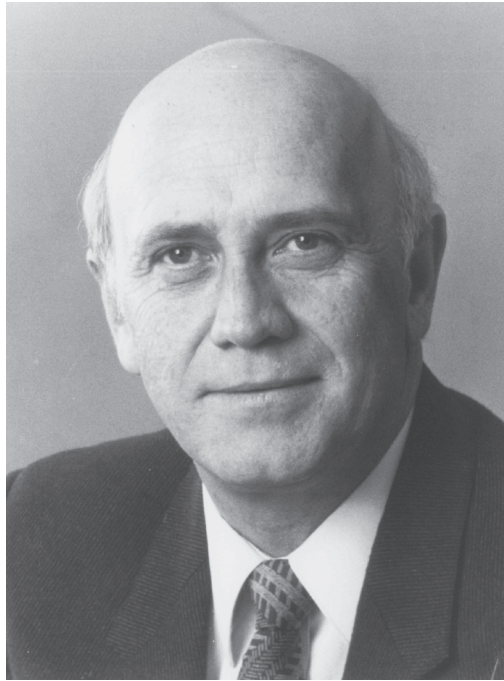
This chapter has demonstrated the intricacies of issues related to traditional leadership as they happened over time. There is a need to be decisive about how to use history to contribute to the future of a nation such as South Africa. In the first place, action relating to redress over assets is steeped in history. The ideological basis to act and to persuade all concerned to be 'genuinely redressive' exists in historical material as we have captured it here on land dispossession. The choice not to act in this (relevant) era is a build-up to fatal tensions the like of which have been witnessed in other parts of Africa where states have yielded to pushing the matter of assets redress under the carpet. Stipulations such as land redress that recognises '1913 onwards' as the basis for land reform are unjustifiable in the light of historical materialism.

There is a need to be well-informed and decisive in 'engineering' a political settlement on governance typologies, specifically the space of traditional leadership within the broader evolution of South Africa and its governance system. The colonial phase sought to convert traditional leadership to instrumentalism within a governance system that was both corrupt and 'rationalist' in its principles of operation. The negotiation phase was then confronted with a choice between this 'rationalist' instrumentalist orientation (forcing a formulaic definition of democracy) or recognition of the linkages between governance and identity for traditional leadership. For a long time this became a tough call for the new government and it still lives with the challenges of this same call. Thus, we find that in contemporary times, traditional leadership is in an unresolved state while the elected government attempts to democratise the institution and co-exist with it.

On the one hand, traditional leaders suffer self-degradation in their constant lobbying for 'recognition' by government – just as they have done through the past years under a negotiated democracy in South Africa. On the other hand, it is their very acceptance of the *modus operandi* based on state governance that necessitates that they must be legally recognised in order to enjoy existential identity. However, somewhere within this dichotomy, there are sensitive issues of power, authority and dependency as well as the overriding need for ideological legitimacy. These questions will not only be addressed on the drawing table but also through a 'swing of effectiveness' – traditional leaders using the broader institutional forums they have achieved thus far need to set the agenda for negotiation. Importantly they must demonstrate the work

they do to justify their role in society. This statement is not simply motivational but it points to the integral need to deal with historical subversions by being transparent and in defining the logic of relationships between traditional leadership and the modern state as well as the gains from sustaining both institutions for social welfare rather than simply political compromise.





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F.W. De Klerk the President of the Republic of South Africa.



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Three dissatisfied white South Africans protesting against the democratic dispensation and substantive negotiations.