

WATER GOVERNANCE IN TRADITIONAL RURAL COMMUNITIES OF SOUTH AFRICA

Report on Policy Options for Effective Water Governance in Traditional Rural Communities



Report to the
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by

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Front cover photograph: Sub-chief Lekola and representatives of water users in Phetwane Community, Greater Sekhukhune District (near Flag Boshielo Dam)

“Secure access to water is an integral part of people’s multi-faceted livelihoods... [and] manifestations of social water scarcity become most evident at the micro-levels of social organization namely, communities and households at the local level. People at these micro-levels often perceive social water scarcity to be inadequacy of the quality and quantity of available water to meet their multiple-use requirements, which affects their capabilities to secure and enhance existing livelihood asset ‘portfolios’ against vulnerability to risks and hazards within their given contexts. As such, narratives over social water scarcity often allude to people’s unmet expectations for water services, on the one hand, and ‘wasteful’ water use, on the other hand. By contrast, narratives over social water security are often closely linked to narratives over livelihood sustainability. Such narratives are imbued with power dynamics underlying discourses over meanings and the structure of institutions governing social relations in organized society....

Local people are often aware of these power dynamics and therefore see social water scarcity as largely an end-product of dominance by the more powerful political, economic and social interests. The latter tend to define and dominate discourses over meaning, the structure of resource allocation and relations between themselves and water services institutions and institutional actors. Where such meanings, institutions and relations are perceived to be sub-optimal, local communities and households will exercise their agency to adopt a range of livelihood strategies to safeguard themselves against vulnerability to risks. They mobilize their individual and collective livelihood assets such as financial resources, human labour, social networks and socio-political platforms, to cope with water insecurity and/or to engage with institutions on the need for change. Outcomes of these coping and engagement strategies depend on, on one hand, capabilities entitlements and claim-making power of affected communities and households. On the other hand, such outcomes also depend on the ‘legitimacy’, ‘accountability’, ‘effectiveness’, ‘preparedness’ and ‘robustness’ of water services institutions.” – Tapela (2012)

EXECUTIVE SUMMARY

A key policy issue to be considered in the decentralization of South African water governance is that the broadening of stakeholder participation in the envisaged institutions should be based on clear understandings of existing institutional arrangements and practices that shape water use in traditional rural communities and households. Field evidence shows that in many rural contexts, local people often devise their own strategies for coping with water insecurity independent of traditional leadership (Tapela, 2011a, b). They use available water sources for their multiple livelihood requirements. Indeed, the very fact that water is a ubiquitously decentralized or 'fugitive' resource suggests that rural women and men engage with, appropriate, use, develop and safeguard water wherever they find it. They do so irrespective of presence or absence of municipalities and catchment management institutions, irrespective of political power dynamics between elected municipal councillors and traditional leadership and irrespective of restrictive rules associated with single-use water infrastructure design. By contrast, traditional leadership roles are largely related to land governance rather than water governance. The latter is often incidental rather than central to the governance of land. It is therefore not feasible that, in water governance, traditional leadership can singularly and effectively represent the diversity of primary stakeholders, who include vulnerable gender groups and water-linked ecological systems within traditional rural communities.

However, the significance of the institution of traditional leadership cannot be ignored. As Houston & Somadoda (1996:1 in Maphosa, 2010) observe, South Africa has approximately 800 traditional leaders, who are assisted by 10 000 traditional councillors. Furthermore, over 18 million rural people (about 40% of the national population) live under the jurisdiction of traditional leaders (Kgosi Molotlegi, 2003:5, *ibid.*) and are distributed in seven of the nine provinces. Some of the traditional leadership institutions wield a lot of power within their jurisdictions. For example, Ingonyama Trust wields enormous power over large land territories and has recently stated its intention to claim land in virtually the whole of KwaZulu-Natal. In the North West, the Royal Bafokeng traditional leadership commands extra-ordinary financial power and has recently demonstrated its commitment to embracing the democratic ideal and partnering with government in the delivery of water, sanitation and other social services and infrastructure. The implications of powerful traditional leadership institutions for water governance are that their potential to either strengthen or undermine water governance should not be under-estimated. This calls for the adoption of sound mechanisms for constructively engaging with rather than marginalizing this institution, as well as frankly weighing the benefits and disbenefits of involving this institution at various levels and scales of water governance. Traditional leadership roles should primarily serve to enhance democracy and

gender equity rather than carve out new power niches within governance arenas hitherto outside the customary domain of traditional leadership institutions.

Government has made heraldic statements about significant traditional leadership roles in the governance of rural development and service delivery. In resonance, traditional leadership has strongly expressed an interest in becoming actively involved in rural development and delivery of social services. However, a key challenge for the water sector is that mechanisms for integrating traditional governance systems into existing water institutions remain incomplete. The on-going restructuring of water sector institutions indeed provides a critical entry point for ensuring that the articulation of legal pluralism in water governance appropriately and sufficiently reflects the range of community level interests in water instead of elevating to apex position a single institution, such as traditional leadership.

Visions of a significant role for traditional leadership in South Africa will need to be tempered with the acknowledgement of views that the hereditary basis of traditional rule as well as the historical co-option of much of traditional leadership leaders into the oppressive apartheid system renders such leadership irreconcilable with democratic values of the South African Constitution (Ntsebeza, 2002a,b). Conversely, decentralization options will need to take cognizance of research findings that in certain traditional community contexts, senior traditional leadership can be a formidable local governance institution, which commands a significantly higher degree of authority, legitimacy and acceptance than elected councillors and sub-chiefs (Sithole, 2008). Primary research evidence confirms that both these diametrically positioned perspectives can be found in different community contexts, and divergent perspectives often co-existing within a single community. This is not surprising, given that 'community' is not a homogenous entity, and where a singular voice is advanced there might be a silencing of the less powerful voices.

Indeed it is worth noting that in practice, power relations play out in very complex ways and therefore the need for a more nuanced understanding of power relations underlying the diversity of local perspectives. In his pivotal and nuanced analysis of power from the perspective of domination and indignity, Scott (1992) clarifies the manner through which power relations impose upon the powerless or the less powerful. Scott distinguishes between 'public transcripts', which are the open interaction between subordinates and those who dominate, and 'hidden transcripts', which refer to the discourse that takes place 'offstage' and therefore beyond direct observation by power-holders. The scholar surmises that there is a sharp divide between the behaviour, language and customs that dominated groups assume in public, and the language, jokes and criticisms that structure their lives within the back streets, slave quarters, or rice paddies of their within-group experience. Both public transcripts and hidden transcripts have effects on the everyday politics of power.

Public transcripts are conventional patterns of speech used by the dominated. These are stylized public performances, through which the dominated adopt the forms of deference and respect for the powerful. These forms of behaviour are needed so as to avoid conflict with the powerful. Scott maintains that this performance, however, is only skin-deep. The dominated are by no means taken in by their own affirmations of the justice and good manners of their masters. Behind the scenes we may expect to hear much raucous laughing, merciless lampooning, and bitter criticism. This is the off-stage, where subordinates may gather beyond the intimidating gaze of power. It is within the off-stage that a sharply dissonant political culture becomes possible. For example, within the relative safety of their quarters, slaves can speak the words of anger, revenge and self-assertion, which they normally must choke back when in the presence of the masters and mistresses. By shedding light on this hidden transcript, Scott's idea is that an understanding of this level of consciousness of the dominated is much closer to the reality of their lived experience and provides a better basis for understanding their political behaviour than the postured public transcript.

Legitimacy often derives from the extent to which community representatives pursue the interests of their constituencies. The choice of representation at multiple scale of water governance needs must be left to women and men in each given traditional rural community. This resonates with the indigenous Nguni tenet that "*Inkosi yinkosi ngabantu*" or "*kgosi ke kgosi ka batho*" (E: "A king is a king because of people"). Effectively, legal safeguards will need to be put in place to ensure that the qualitative framing of the process of nominating and electing community representatives for different levels and scales of water governance is democratic rather than imposed, and facilitated by non-partisan and accountable institutions such as non-governmental organizations (NGOs). A facilitated and democratic process will contribute to enhancing the legitimacy, acceptability and effectiveness of water governance institutions. At the core of legitimacy and effectiveness issues is the need to address the water security requirements of vulnerable gender groups and ecological systems in traditional community contexts and elsewhere within watercourse systems. Where traditional leadership is locally seen as legitimate and downwardly accountable, where it has ensured the emergence of home-grown common property resource (CPR) institutions for water governance to fill the void created by inefficient, ineffective and/or 'absent' institutions, and where local women and men choose to work with traditional leadership structures, these institutions should be supported rather than excluded from formally recognized water governance (Tapela et al., 2011b; Tapela, 2009; Malzbender et al., 2005).

Although certain aspects of 'old' ways of life and governance are still evident, it is not clear to what extent such remnants provide a sufficient basis for mainstreaming the role of traditional leadership in water governance. In Makuleke, for example, alienation of land and water resources due to forced removals in the late 1960s thrust the community and its traditional leadership into an unfamiliar and drier agro-ecological environment, which hindered their reliance on long-held IKS and practices

developed in the wetter floodplains, wetlands and riverine areas of Old Makuleke. Although the Makuleke have retained a stock of memories and memorabilia of their indigenous knowledge about water governance, management, use and safeguarding, such knowledge cannot be casually applied to land that is disconnected from the navel of the multiple generations of the living, the deceased and the yet-to-be-born women and men who make up the Makuleke community. Some of the similarly-displaced rural communities share similar dilemmas to those of the Makuleke, but a greater proportion of these seem to have lost much of their IKS social capital pertaining to water governance, use, management and safeguarding¹.

In the final analysis, the case of South Africa might be, to an extent, exceptional to strong arguments by African scholars for governments to bestow traditional leadership with significant roles in water governance. Such arguments are based upon views that in African rural community contexts, traditional leadership strongly exercises custodianship responsibility over traditional cultures, indigenous knowledge as well as customary rules, rights and laws pertaining to land, water and related natural resources. Evidence from South Africa suggests, however, that the historical legacy of systematic dismantling by colonial and apartheid governments of indigenous and customary social organization largely persists in the guise of rural communities that are characterised by erosions of customary practices and indigenous knowledge (Tapela, 2011b).

¹ In the case of traditional rural communities in the Incomati Catchment Management Area (CMA), water institutions have decried a peculiar practice of dumping dead cats and dogs and household waste in rivers, which goes against IKS for using water resources. Source: Khaile, D. (2010). 'Incomati CMA: Lessons on Stakeholder Participation in Transboundary Water Management. PRIMA Workshop presentation, Pongola (KZN), September.

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1 INTRODUCTION

1.1 PURPOSE OF THE REPORT

The purpose of this Report is to present literature review findings regarding water governance in traditional rural communities of South Africa. The report gives particular attention to questions raised about traditional leadership, among others, in water governance. The report is part of an exploratory Participatory Action Research (PAR) project funded by the Water Research Commission (WRC). The PAR process was structured as follows:

- Step 1: Compilation of research evidence on ‘social’ water scarcity and water use (Tapela, 2012) from multiple primary and secondary data sources (Deliverable 1: this report). The objective was to develop a knowledge benchmark towards clear understandings of (1) key issues and existing institutional arrangements for water governance and use in traditional rural communities; (2) traditional leadership structures and their roles or lack thereof in water governance; (3) selected indigenous knowledge and practices (IKS) for water governance and use in traditional rural community contexts; and (4) policy options for decentralization of water governance that involve appropriate participation by HDIs in rural communities.
- Step 2: Policy Dialogue Workshop to explore and benchmark, from the perspective of rural community representatives, key issues, existing knowledge about water governance institutions (both erstwhile and envisaged) at catchment, basin, municipal and grassroots levels (Deliverable 2: Workshop Proceedings Report). The objective was to gather information about a possible way forward regarding outputs-based future policy dialogue.
- Step 3: Conclusion of the PAR process, by way of a Policy Brief (Deliverable 3).

This report begins by outlining the Research Problem, Questions, Objectives and Methodology. This is followed by a description of the nature of the institution of traditional leadership in South Africa. After this, the review presents an outline of the historical trajectory that has shaped the post-1994 political roles of traditional leadership in local governance in general. The review proceeds to examine the institutional context within which the issue of traditional leadership roles in water governance has come to the fore during the post-apartheid era, particularly since 2009. The report then draws on primary and secondary research for evidence on the manner in which traditional leadership has intersected with water resources and services governance within selected traditional community contexts. Finally, the report presents a discussion on all three objectives above.

1.2 BACKGROUND TO THE REPORT

Evidence abounds that traditional leadership customarily plays minimal roles in water governance while focusing much of their attention on land governance. By contrast, vulnerable women and men commonly assume *de facto* key roles in informal water services provisioning and productive water use within traditional community contexts characterized by virtual 'absence' of government and social constructs that militate against their equitable access to bases of social power and productive wealth. Despite this, questions have been asked about traditional leadership roles in water governance.

The background to these questions relates to the on-going restructuring of the South African water sector towards greater decentralization and effectiveness of institutional linkages between the macro- and meso-levels of water governance and micro-levels of water use. Questions about traditional leadership roles emanate from multiple perspectives and platforms. For example, the questions can be seen from the perspective of post-2009 South African government policy interventions, which accompanied President Jacob Zuma's accession of into office, as well as scholarly debates on the political economy of African water sector reforms.

From a South African interventionist perspective, the Office of the Presidency launched the Outcomes Approach in mid-2010. Government Ministers, MECs and, in some cases, municipalities, agreed on a set of 12 outcomes, which would be a key focus of work between 2010 and 2014. Each of the 12 outcomes has a Delivery Agreement, which often involves all spheres of government and a range of partners outside government. Delivery Agreements are negotiated charters that reflect the commitment of the key partners involved in the direct delivery process to working together to undertake activities effectively and on time to produce the mutually agreed-upon outputs which in turn will contribute to achieving specified Outcomes. Outcomes 7 and 9 speak directly to questions about traditional leadership and water governance.

Outcome 7 specifically relates to the Delivery Agreements for 'Vibrant, equitable and sustainable rural communities and food security for all'. The governance of water resources associated with traditional rural communities, which are subject to customary rule and traditional leadership, falls within the domain of this Outcome. Outcome 9 speaks about 'A responsive, accountable, effective and efficient local government system'. The governance of water and sanitation services within traditional rural communities similarly falls within this Outcome's domain. The Outcomes Approach is only one example of a multiplicity of post-2009 policy interventions. Other key examples include the South African water sector institutional review process, among a range of other interventions.

From the point of view of scholarly debates on the political economy of African water sector reforms, African scholars (e.g. Keulder, 1998; Van Koppen, 2009; Derman, 2000; Sithole, 2005; Juma & Maganga, 2005; Chikozho & Latham, 2005; Meinzen-Dick & Nkonya, 2005) have argued that African governments should implement legal pluralism and support institutional roles for traditional leadership in water governance within traditional community contexts. Based on perceptions that policy reforms instituted since the 1992 Rio Conference² have largely been driven by countries of the north, African scholars have decried the precedence of Roman-Dutch and English laws over African customary law for having led to sectorial reforms that enshrine Euro-centrist notions of 'property rights' associated with European traditions on land and thereby vest water governance responsibility within state institutions.

The report begins from the premise that the broadening of stakeholder participation in the envisaged water governance institutions should be based on clear understandings of existing institutional arrangements and practices that shape water use in traditional rural communities and households. Field evidence shows that in many rural contexts, local people often devise their own strategies for coping with water insecurity independent of traditional leadership (Tapela, 2011a, b). They use available water sources for their multiple livelihood requirements. Indeed, the very fact that water is a ubiquitously decentralized or 'fugitive' resource suggests that rural women and men engage with, appropriate, use, develop and safeguard water wherever they find it. They do so irrespective of presence or absence of municipalities and catchment management institutions, irrespective of political power dynamics between elected municipal councillors and traditional leadership and irrespective of restrictive rules associated with single-use water infrastructure design. By contrast, traditional leadership roles are largely related to land governance rather than water governance. The latter is often incidental rather than central to the governance of land. It is therefore not feasible that, in water governance, traditional leadership can singularly and effectively represent the diversity of primary stakeholders, who include vulnerable gender groups and water-linked ecological systems within traditional rural communities.

1.3 RESEARCH PROBLEM OUTLINE

The post-apartheid era has seen government make commendable achievements in broadening access to water for historically disadvantaged people (HDI) in rural, urban and peri-urban areas. However, as the deadline for Millennium Development Goals (MDGs) targets approaches in Year 2015, many women and men in South African traditional rural communities continue to live with inadequate access to water resources and services. They remain vulnerable to risks associated with existing water infrastructure. They also endure lower levels of water services than urban

² The International Conference of Environment and Development held in Rio De Janeiro in 1992

areas, often without foreseeable prospects of moving up the water ladder and progressively realizing similar levels of human and socio-economic rights of access to water.

Water insecurity in traditional communities runs counter to MDGs and government's reiterated commitment to addressing macro-economic policy challenges of poverty, inequality and unemployment, as well as objectives of rural development and agrarian reform. With increasing perceptions that rural water insecurity is both a legacy of the country's historical political economy and a product of post-apartheid institutional failure to meet rural people's expectations for water governance, the efficacy (or lack thereof) of existing institutional arrangements for water governance has come under scrutiny. In the case of traditional communities, questions revolve around the extent to which current articulations of legal pluralism have sufficiently incorporated the roles of traditional leadership, among others, within a decentralized water governance framework.

The National Constitution recognizes the institution of traditional leadership, and statutes such as the Water Services Act of 1997 and the National Water Act (NWA) of 1998 respectively provide clear guidelines on water governance roles for municipalities and catchment management agencies. However, the roles of traditional leadership structures remain unclear and subject to contestation. There are also unresolved debates around legal frameworks, such as the Traditional Leadership and Governance Framework Act, National House of Traditional Leaders Act, Traditional Courts Bill and the recently suspended Communal Land Rights Act (CLRA) of 2004, which gave significant powers to Traditional Councils. Effectively, the gap in rural local governance created by the repeal of the apartheid-era Bantu Authorities Act has yet to be fully resolved. There is a need to develop clear understandings about the institution of traditional leadership, as a precursor to defining its roles in water governance.

Perceptions by African scholars (e.g. Keulder, 1998; Van Koppen, 2009; Derman, 2000; Sithole, 2005; Juma & Maganga, 2005; Chikozho & Latham, 2005; Meinzen-Dick & Nkonya, 2005) are that the milieu of policy reforms instituted since the 1992 Rio Conference³ have largely been driven by countries in the north. The scholars argue that the precedence of Roman-Dutch and English laws over African customary law has led to sectorial reforms that enshrine Euro-centrist notions of 'property rights' associated with European traditions on land and thereby vest water governance responsibility within state institutions, contrary to evidence that water rights in African contexts can derive from many sources besides the government (Meinzen-Dick & Nkonya, 2005). The scholars therefore argue that African governments should implement legal pluralism and support institutional roles of traditional leadership in

³ The International Conference of Environment and Development held in Rio De Janeiro in 1992

water governance. While South Africa has a significant number of traditional leaders and traditional councillors (Houston & Somadoda, 1996:1 in Maphosa, 2010), a major problem is that visions of a significant role for traditional leadership may not be tenable, owing to divergent views within South African social, political and scientific circles. There is a need for clear understandings of this diversity of perspectives as well as the extent to which South Africa is exceptional (or not) to the broader African case.

With specific regard to the South African water sector, Keulder (1998) argues that traditional leadership and its governance procedures are not only a simpler form of government, but also more accessible, better understood and more participatory. Keulder considers the institution of traditional leadership to be closer to subjects than any other system of government because subjects live in the same village as their leader and, since any individual can approach the leader, subjects have more direct access to their leaders. Keulder also states that the collective decision making framework, which is based on consensus, creates greater harmony and unity. The scholar further considers that the traditional leadership and governance framework is transparent and participatory, since most subjects may attend tribal meetings and express their views directly and not through representatives. Keulder concludes that harmony and unity prevail because the interests of the tribal unit, rather than an individual or group of individuals, are pursued and expressed (*ibid.*). Similarly, Derman (2000) argues that in the midst of “massive social, economic and environmental change”, traditional leaders have an important role to play in narrowing the gap between policy and practice. Derman premises his argument upon “sufficient” evidence of the need to integrate traditional systems of water control and management into formal institutional structures provided for by the South African National Water Act (NWA). With specific regard to traditional leadership representation of traditional rural communities, the South African water sector has yet to fully test the assumptions of democracy and efficacy within this developmental logic of decentralization.

Although there is a need to further interrogate the points put forward by both Keulder and Derman, it is worth noting that the significance of the institution of traditional leadership in South African rural governance cannot be ignored. Houston & Somadoda (1996:1 in Maphosa, 2010) observe that South Africa has approximately 800 traditional leaders, who are assisted by 10 000 traditional councillors. Over 18 million rural people (about 40% of the population) live under the jurisdiction of traditional leaders (Kgosi Molotlegi, 2003:5, *ibid.*) distributed in six of the nine provinces namely, KwaZulu-Natal, Eastern Cape, Free State, Mpumalanga, North West Province and Limpopo. While the significance of traditional leadership might seem to suggest that African scholars’ arguments have wide-ranging applications for rural South Africa, indications are that this country might be, to a certain extent, exceptional to strong arguments for traditional leadership roles in water governance.

Ntsebeza (2002:1) observes that the issue of traditional leadership roles in the governance of a democratic state in South Africa raises a host of historical, political and conceptual questions. One question is how traditional authorities have endured the emergence of the ANC-led democratic state in 1994 when many traditional leaders collaborated with the apartheid regime in the persecution of leaders of the liberation movement among their own people. Another question is whether or not an inherently undemocratic, hereditary institution can serve the interests of democracy, which is purportedly modelled on the liberal tradition of representative government and upholds a Constitution that enshrines the Bill of Rights, while simultaneously serving the political interests of un-elected and unaccountable traditional authorities. These contradictions raise further questions about whether rural inhabitants in the former Bantustans and homelands will continue to be subjects under the political rule of un-elected traditional authorities or enjoy citizenship rights, including the right to choose leaders and representatives as conferred by the Constitution (*ibid.*). At another level, questions about traditional leadership have centered around whether or not democracy is objective and universal following a liberal tradition, whether the cultural relativist approach is at the core of what the approach to democracy should be, or whether there is a mid-way approach that encourages relative discussion on rights on a case-by-case basis (Sithole, 2008).

Notwithstanding these questions, the institutional restructuring that accompanied President Jacob Zuma's accession into office in 2009 underscored the importance accorded by the newly-formed government to traditional leadership in the lives of rural people living in 'traditional communities'. Such communities are subject to traditional leadership rule and customary law. Many women and men in traditional communities continue to grapple with poverty and inadequate access to water resources and services long after the promulgation of water sector reforms in the late-1990s. Government has announced that South African traditional leadership will partner with it in rural development and service delivery. Echoing government sentiments, South African traditional leaders have forthrightly expressed their interest in playing active roles in the governance of rural development and service delivery (e.g. CONTRALESA, 2011). The positions adopted by both government and traditional leaders have elicited divergent responses from various quarters (e.g. see Jara, 2011), including the Tripartite Alliance and civil society organizations, as well as generated a vibrant and on-going debate. While this debate highlights the unresolved contestations regarding roles of traditional leadership in a democratic South Africa and poses challenges to the task of finding possible roles in water governance for this institution, it also provides an opportunity to explore the benefits and disbenefits of traditional leadership.

A major problem for the water sector, however, is that although traditional leadership is poised to contribute to enhancing rural development and service delivery in traditional communities, government has not provided adequate mechanisms for the integration of traditional governance systems into the new dispensation for water

management in South Africa (Kapfudzaruwa & Sowman, 2009). Understandings about the nature of the institution of traditional leadership and its potential contributions to water governance also remain unclear. The research problem is captured in the following questions:

- 1) What is the nature of the institution of traditional leadership and what are the parameters within which it can be beneficial in overall water governance?
- 2) Can the equity principle be best served from a traditional leadership point of view?
- 3) What are the benefits and disbenefits of creating an institutional environment for a legally pluralistic system of water governance in South Africa; and
- 4) What roles can traditional leadership play in decentralized and democratized water governance, resource management and services institutions?

This interim report explores the first three of the questions above. The report refrains from exploring possible options for traditional leadership roles in water governance (this aspect is addressed by the Final Report). Similarly, a detailed analysis of debates around traditional leadership roles in a democratic South African state falls outside the scope of this report.

1.4 OBJECTIVES

The objectives of this report are to:

- 1) Deepen knowledge about traditional leadership and the parameters within which it can be beneficial in overall water governance;
- 2) Determine whether or not the equity principle can best be served from a traditional leadership point of view; and
- 3) Identify the benefits and disbenefits of creating an institutional environment for a legally pluralistic system of water governance in South Africa.

1.5 METHODOLOGY

The project relied on both primary and secondary data sources. For reasons of cost-effectiveness, much of the primary research was linked to on-going WRC-funded studies. This enabled the project to gain useful empirical and secondary insights into the research problem. Field research methods included interviews with various traditional leaders in Limpopo and KwaZulu-Natal Provinces. Methods also included key respondent interviews, focus group discussions, meetings and workshops with various stakeholders within traditional rural communities. To a lesser extent, reviews of secondary research reports were used to obtain views of key respondents in Mpumalanga, North West and the Eastern Cape. Reference was also made to broader national debates around traditional leadership roles in South Africa.

2 TRADITIONAL LEADERSHIP AND ITS RELATIONSHIP TO EXISTING WATER GOVERNANCE INSTITUTIONS: LEGAL FRAMEWORKS

Observations have been made that without a clear understanding of the range and complexity of existing ‘institutions’ that shape water use in rural communities and households, efforts to improve water allocations and resource management may be ineffective or even have the opposite effects from those intended (Meinzen-Dick & Nkonya, 2005). Scott (1995:3) defines institutions as consisting of cognitive, normative and regulative structures that provide stability and meaning to social behaviour. Mainstream institutional theory defines institutions as being the rules, regulations and conventions that impose constraints on human behaviour to facilitate collective action (North, 1990). According to North (ibid.), institutions include both formal rules, such as laws and constitutions, and informal constraints, such as conventions, norms (p.4) and self-imposed codes of conduct (North, 2005b). The “major role of institutions in a society is to reduce uncertainty by establishing a stable (but not necessarily efficient) structure to human interaction” (North, 1990: 6). North (2005a,b) further extends his definition of institutions to include the enforcement characteristics of both formal rules and informal constraints.

This section (Section 2) reviews a selection of existing legal frameworks that define the nature of traditional leadership institutions as well as their roles (or lack thereof) in water governance. The legal frameworks reviewed in this section range from the South African National Constitution to legislation pertaining to traditional leadership and water governance. Attention is given to the Traditional Leadership and Governance Framework Act (Act 41 of 2003) and National House of Traditional Leaders Act (Act 22 of 2009), as well as the National Water Act (Act 36 of 1998) and Water Services Act (Act 108 of 1997). However, given that much of the water use in traditional rural communities falls outside the ambit of the state and formal water economies, a strictly legalistic approach has limitations. Subsequent sections of the report (Sections 3 and 4) therefore draw on primary and secondary research evidence to deepen understandings about the nature and existing roles of traditional leadership, and how this institution intersects with formal institutional arrangements for the governance of water resources and services.

2.1 NATIONAL CONSTITUTION OF SOUTH AFRICA

Chapter 12 of the South African Constitution (Act 108 of 1996) (South Africa, 1996) deals with Traditional Leaders. Section 211 of Chapter 12 formally:

- 1) Recognises the institution, status and role of traditional leadership, according to customary law, subject to the Constitution;

- 2) States that 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; and
- 3) States that the courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law.

Regarding the role of traditional leaders, Section 212 of the Constitution states:

- 1) National legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities;
- 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;
- 3) National or provincial legislation may provide for the establishment of houses of traditional leaders; and
- 4) National legislation may establish a council of traditional leaders.

2.2 TRADITIONAL LEADERSHIP AND GOVERNANCE FRAMEWORK ACT

The Traditional Leadership and Governance Framework Act (Act 41 of 2003) (South Africa, 2003) makes provisions for 'traditional communities', leadership positions within institution of traditional leadership, 'traditional councils', houses of traditional leaders and roles and functions of traditional leadership. It is within this framework that this report explores options for traditional leadership roles in water governance.

2.2.1 TRADITIONAL COMMUNITIES

According to the existing legal framework, traditional leadership roles apply specifically to the governance of 'traditional communities'. Chapter 2: Section 2 of the Traditional Leadership and Governance Framework Amendment Act (Act 41 of 2003) states that a community may be recognised as a traditional community if it is subject to a system of traditional leadership in terms of that community's customs and if it observes a system of customary law.

However, the Act also stipulates that prior to such recognition provincial legislation must provide for a process that will allow for reasonably adequate consultation with the community concerned and prescribe a fixed period within which the Premier of the province concerned must reach a decision regarding the recognition of a community envisaged as a traditional community. In other words, affected communities must collectively concede to being defined as a traditional community.

Furthermore, the Section 2.3 of the Act states that a traditional community must transform and adapt customary law and customs relevant to the application of the Traditional Leadership and Governance Framework Amendment Act so as to comply

with the relevant principles contained in the Bill of Rights in the Constitution, in particular by:

- Preventing unfair discrimination;
- Promoting equality; and
- Seeking to progressively advance gender representation in the succession to traditional leadership positions.

While this requirement strives towards the equity principle, which is enshrined in the Constitution, it is not clear whether or not in practice the equity principle can best be served from a traditional leadership point of view.

2.2.2 LEADERSHIP POSITIONS WITHIN INSTITUTION OF TRADITIONAL LEADERSHIP

The Act distinguishes between ‘traditional leaders’ and ‘traditional leadership’. *Traditional leader* means any person who, in terms of customary law of the traditional community concerned, holds a traditional leadership position, and is recognised in terms of the Traditional Leadership and Governance Framework Amendment Act. By contrast, *traditional leadership* refers to the customary institutions and/or structures, or customary systems or procedures of governance, recognised, utilised or practised by traditional communities.

The types of traditional leaders recognized by the Act include ‘kings and queens’, ‘senior traditional leaders’, ‘headmen and headwomen’, ‘regents’, ‘persons acting as traditional leaders’ and ‘deputy traditional leaders’. *Kings and queens* are those traditional leaders under whose authority or within whose area of jurisdiction senior traditional leaders exercise authority in accordance with customary law. *Senior traditional leaders* pertain to specific traditional communities and they exercise authority over a number of headmen or headwomen in accordance with customary law or within an area of jurisdiction in which a number of headmen or headwomen exercise authority. *Headmen or headwomen* are traditional leaders who are under the authority of or exercises authority within the area of jurisdiction of a senior traditional leader in accordance with customary law. A *regent* refers to any person who, in terms of customary law of the traditional community concerned, holds a traditional leadership position in a temporary capacity until a successor to that position who is a minor is formally identified by the royal family, according to customary law, and recognised by the Premier of the respective province. *Persons acting as traditional leaders* are identified and appointed by royal families, in accordance with provincial legislation, to act as a king, queen, senior traditional leader, headman or headwoman (as the case may be) in circumstances whereby a successor to a given position of traditional leader has not been identified by the royal family concerned, or where the identification of a successor to the position of traditional leader is being reconsidered and resolved, or where the incumbent traditional leader is absent from his or her area of jurisdiction for a period of more

than six months for the treatment of illness, study purposes or any other lawful purpose.

Deputy traditional leaders are appointed by a king, queen, senior traditional leader, headman or headwoman (as the case may be) after consultation with the royal family, to act in their stead whenever that traditional leader becomes a full-time member of a municipal council, is elected as a member of a provincial legislature, is elected as a member of the National Assembly, is appointed as a permanent delegate in the National Council of Provinces and/or is elected to or appointed in a full-time position in any house of traditional leaders. The Act is silent on leaders appointed as 'sub-chiefs'. However, records of the Department of Constitutional Development (1994 in Myers, 2008) show that many (between 1500 and 2000⁴) sub-chiefs held leadership positions during the apartheid era and were classified as headmen in the Eastern Cape and *izinduna* in KwaZulu-Natal.

Based on the view that traditional leaders have different levels of seniority, in accordance with customs, the Act recognises three main categories of leadership positions namely, 'kingship', 'senior traditional leadership' and 'headmanship'. Kingship refers to the position held by a king or queen. Senior traditional leadership refers to the position held by a senior traditional leader. Headmanship refers to the position held by a headman or headwoman. The exercise of these leadership positions varies according to each given local context.

2.2.3 TRADITIONAL COUNCILS

Traditional Councils are the structures that exercise day-to-day jurisdiction over traditional communities. In terms of the Section 3.2 of Chapter 2 of the Act, the councils are established and gazetted by Premiers of respective provinces, in line with principles set out in provincial legislation, when given communities have become recognised to be traditional communities. Council membership is composed of (i) traditional leaders and members of the traditional community selected by the senior traditional leader concerned, in terms of that community's customs, as well as (ii) other members of the traditional community, who are democratically elected for a term of five years and who must constitute 40% of the membership. A traditional council may have no more than 30 members, depending on the needs of the traditional community concerned. At least a third of the members of a traditional council must be women. Where it has been proved that an insufficient number of women are available to participate in a traditional council, the Premier concerned may, in accordance with a procedure provided for in provincial legislation, determine a lower threshold for the particular traditional council than that required by the Act.

⁴ The exact number of sub-chiefs is disputed.

The efficacy of these requirements, which evidently seek to safeguard the democratic principle and gender equity in particular, has yet to be tested.

Table 1 shows the functions of Traditional Councils set out in Section 4.1 of the Act. The performance of these functions is regulated by applicable provincial legislation, consistent with the Constitution.

Table 1 Functions of Traditional Councils

1	Administering the affairs of the traditional community in accordance with customs and tradition.
2	Assisting, supporting and guiding traditional leaders in the performance of their functions.
3	Supporting municipalities in the identification of community needs.
4	Facilitating the involvement of the traditional community in the development or amendment of the integrated development plan of a municipality in whose area that community resides.
5	Recommending, after consultation with the relevant local and provincial houses of traditional leaders, appropriate interventions to government that will contribute to development and service delivery within the area of jurisdiction of the traditional council.
6	Participating in the development of policy and legislation at local level.
7	Participating in development programmes of municipalities and of the provincial and national spheres of government.
8	Promoting the ideals of co-operative governance, integrated development planning, sustainable development and service delivery.
9	Promoting indigenous knowledge systems for sustainable development and disaster management.
10	Alerting any relevant municipality to any hazard or calamity that threatens the area of jurisdiction of the traditional council in question, or the well-being of people living in such area of jurisdiction, and contributing to disaster management in general.

Through provisions for cooperation and partnerships between municipalities and traditional councils, Sections 4 and 5 of Chapter 2 of the Act formally recognise traditional councils to be an integral component of local governance, alongside democratically-elected municipal councils. The Act also provides for the downward accountability of traditional councils to their respective traditional communities.

Section 4.2 requires traditional councils to keep proper records, have their financial statements audited, disclose the receipt of gifts and adhere to the code of conduct. Section 4.3 requires traditional councils to co-operate with any relevant ward committee established in terms of Section 73 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998). This section also requires traditional councils to also meet at least once a year with their traditional communities to give account of the activities and finances of the traditional council and levies received by the traditional council. No finances are to be used to fund the interests of political parties.

Section 5.1 requires national government and all provincial governments to promote partnerships between municipalities and traditional councils through legislative or other measures. Such partnerships should be based on the principles of mutual respect and recognition of the status and roles of respective parties, and be guided by and based on the principles of co-operative governance. Furthermore Section 5.3 states that a traditional council may enter into a service delivery agreement with a municipality in accordance with the Local Government: Municipal Systems Act (Act 32) of 2000 and any other applicable legislation. National and respective provincial governments may adopt such legislative or other measures as may be necessary to support and strengthen the capacity of traditional councils within the province to fulfil their functions. A traditional council and its resources may not be used to promote or prejudice the interest of any political party.

2.2.4 HOUSES OF TRADITIONAL LEADERS

Chapter 4 of the Traditional Leadership and Governance Framework Act provides for the establishment of houses of traditional leaders, in accordance with Section 212(2)(a) of the Constitution. Three categories of these are the national, provincial and local houses of traditional leaders. The Act directs that local houses of traditional leaders must be established for the area of jurisdiction of a district or metropolitan municipality where more than one senior traditional leader exists (Khunou, 2009). Members of a local house of traditional leaders are elected by an 'electoral college' consisting of all kings or queens, or their representatives, and senior traditional leaders residing within the district or metropolitan municipality in question. This body of electors must seek to elect a "sufficient" number of women to make the local house of traditional leaders representative of the traditional leaders within the area of jurisdiction in question. The act does not clarify the gender equity implications of such representation in cases whereby men comprise most or all of the kingship or senior traditional leadership.

The national and provincial structures are elected from among the ranks of local houses of traditional leadership and sanctioned by provincial legislation, which must similarly provide for mechanisms or procedures that allow a 'sufficient' number of women to be represented in the provincial house of traditional leaders concerned

and to be elected as representatives of the provincial house of traditional leaders. Similar to requirements for traditional councils, houses of traditional leaders should not prejudice the interest of any political party.

The functions of a local house of traditional leaders are to:

- Advise the district municipality or metropolitan municipality in question on (i) matters pertaining to customary law, customs, traditional leadership and traditional communities within the district or metropolitan municipality, (ii) the development of planning frameworks that impact on traditional communities and (iii) the development of by-laws that impact on traditional communities; Members of a local house of traditional leaders are elected by an electoral college;
- Participate in local programmes that have the development of rural communities as an object; and
- Participate in local initiatives that are aimed at monitoring, reviewing or evaluating government programmes in rural communities.

In cases where a local house of traditional leaders cannot be established, the functions of a local house of traditional leaders are performed by the traditional council within the district municipality or metropolitan municipality concerned.

2.2.5 ROLES AND FUNCTIONS OF TRADITIONAL LEADERSHIP

Chapter 5 of the Traditional Leadership and Governance Framework Act deals with the roles and functions of traditional leadership and states that a traditional leader performs the functions provided for in terms of customary law and customs of the traditional community concerned, and in applicable legislation. Guiding principles for allocation of roles and functions are that national government or a provincial government, as the case may be, may, through legislative or other measures, provide a role for traditional councils or traditional leaders in respect of the following functions:

- (a) Arts and culture
- (b) Land administration
- (c) Agriculture
- (d) Health
- (e) Welfare
- (f) The administration of justice
- (g) Safety and security
- (h) The registration of births, deaths and customary marriages
- (i) Economic development
- (j) Environment
- (k) Tourism
- (l) Disaster management
- (m) The management of natural resources

(n) The dissemination of information relating to government policies and programmes

Although the some of the above functions implicitly include the governance of water resources, there is no clear or implicit reference to traditional leadership roles in water service delivery.

Section 2 of Chapter 5 Traditional Leadership and Governance Framework of the states that whenever an organ of state within the national government or a provincial government considers allocating a role for traditional councils or traditional leaders in terms of subsection (l), that organ of state must:

- Seek the concurrence of the Minister, if it is an organ of state in the national sphere of government, or the Member of the Executive Council (MEC) responsible for traditional affairs in the province concerned, if it is an organ of state of that province;
- Consult with the relevant structures of traditional leadership and the South African Local Government Association (SALGA);
- Ensure that the allocation of a role or function is consistent with the Constitution and applicable legislation;
- Take the customary law and customs of the respective traditional communities into account;
- Strive to ensure that the allocation of a role or function is accompanied by resources and that appropriate measures for accounting for such resources are put in place;
- Ensure, to the extent that it is possible, that the allocation of roles or functions is implemented uniformly in areas where the institution of traditional leadership exists; and
- Promote the ideals of co-operative governance, integrated development planning, sustainable development and service delivery through the allocation of roles and functions.

Section 3 of Chapter 5 of the Act states that where an organ of state has allocated a role or function to traditional councils or traditional leaders as envisaged above, the organ of state must monitor the implementation of the function and ensure that it is consistent with the Constitution and the function is being performed.

2.3 NATIONAL HOUSE OF TRADITIONAL LEADERS ACT

A major objective of the National House of Traditional Leaders Act (Act 22 of 2009) is to ensure that traditional leaders make an important contribution to the development of society. The Act provides for a 5-year term for members of the National House of Traditional Leaders, $\frac{1}{3}$ representation of women, elected membership drawn from senior traditional leaders in each Provincial House of Traditional Leaders, as well as institutional procedure and practice. The Act also

outlines the 'powers and functions' of the National House of Traditional Leaders and the 'cooperative relationships and partnerships' with national government (see Section 3.2).

2.4 NATIONAL WATER ACT AND WATER SERVICES ACT: OVERVIEW

Water use practices in South Africa are formally governed by two pieces of legislation namely, the National Water Act (Act 36 of 1998) and the Water Services Act (Act 108 of 1997). The Water Services Act, on the one hand, governs domestic water supply services and delegates responsibilities for such services to Water Services Authorities (WSAs), such as Category A and C municipalities. These in turn can either directly provision water services or enter into service levels agreements (SLAs) with Water Service Providers (WSPs), who might include private water utilities, Category B municipalities or other service providers. The National Water Act, on the other hand, identifies water rights as pertaining to basic human and ecological needs for water. Such uses are termed the 'Reserve' and are given priority in water allocations. All other uses are regulated through 'registration' and through different types of 'authorisations'. The three types of water authorisations are Schedule One, General Authorisations and Water Use Licences.

Schedule One of the National Water Act outlines permissible uses of water that do not require a licence and do not have to be registered. Water use activities that fall under Schedule One include those that, due to the small quantities used, have a very small impact on the water resource and therefore pose minimal or no risk. Effectively, Schedule One water uses include:

- Taking water directly from any water source for domestic use in households provided that water users have lawful access to that water;
- Storing and using run-off water from a roof;
- Small gardening that is not for commercial use;
- Watering animals for subsistence use;
- Using the water surface or surrounding land for recreational use; and
- Using water for emergencies, such as firefighting and drought relief.

General Authorisations are permissions that allow slightly larger volumes of water use from less stressed sources, such as rivers and aquifers. Such authorisations allow people to use water without a licence provided that the water use is within the conditions stipulated in the General Authorisation. For example, limits are placed on water use depending on the nature of use and the capacity of the resource to accommodate use without significant degradation. Examples of general authorizations include abstracting a limited amount of water from certain rivers and groundwater sources as well as storing a limited quantity of water in a dam. The authorisations are granted by the Minister and published in the Government Gazette. In view of the wide range of water use activities and the logistical implications of

registering myriad of individual water users, general authorisations are used as strategies to cut down on unnecessary administrative efforts. General authorisations may also attach conditions relating to water management activities, such as monitoring and reporting, in accordance with Section 29 of the National Water Act.

Water licences are mechanisms for regulating water use that exceeds the limits outlined in Schedule One and general authorizations. Water use licences apply to any relatively new (post-1998) water use that is not covered by Schedule One or general authorizations. In instances where users have legally used water since prior to the National Water Act of 1998, provision is made for 'continuation of existing lawful use'. Such users may register that use and continue using water without having to apply for a licence. This provision is a transitional measure intended to allow existing lawful water users to continue using water under the same conditions, until water use is formally licensed. Water licences give existing and new water users formal authorization to use water for productive and beneficial purposes, and specify the conditions under which the water can be used.

Licences are issued by 'responsible authorities' namely, the Department of Water Affairs (DWA) or catchment management agencies (CMAs). Currently, the licensing procedure requires new and potential water users to apply for a licence or to register their water use with the responsible authority namely, the Regional Office of DWA. This regulatory function is envisaged to devolve to CMAs when these become fully operational.

Initially 19 CMAs were created by the NWA but, for reasons of administrative efficiency, these have since been reduced to 9. In order to assist the CMAs and ensure the representation and consultation of local users, the NWA provides for the establishment of water user associations (WUAs). Furthermore, the Department of Water and Sanitation (formerly DWA) is currently reviewing the water governance framework for South Africa. Among other interventions, both the NWA and WSA are envisaged to merge into one piece of water legislation while existing WUAs might possibly be disestablished and re-formulated in line with emerging thinking about improved efficacy of institutional arrangements.

Without formalization through permits, much of the productive water use by the rural poor largely remains insecure. Backlog reduction in rural water services has been hampered by lack of municipal funding and human resources capacity, poor accountability mechanisms, high levels of corruption and poor practices for infrastructure operation and maintenance as well as drinking water quality (DWQ) management. Amid growing public discontent about these challenges, government in 2009 introduced the Local Government Turn-around Strategy (LGTAS).

2.5 LOCAL GOVERNMENT TURN AROUND STRATEGIES (LGTAS)

The objectives of the Strategy are to curb poor performance and enhance local governance and services delivery. The LGTAS adopts a ‘decentralization’ approach as a means to strengthening institutional arrangements prescribed by existing legislation, such as the Municipal Systems Act and the Municipal Structures Act, among others. Decentralization entails a dispersal of authority or responsibility from the state centre to institutional role-players at multiple levels of the resource governance and/or management hierarchy. Examples include ‘devolution’ of political decision-making power to institutions at the local level and ‘delegation’ of administrative functions from central government to other governance institutions, such as parastatal agencies, the private sector and/or civil society organizations (CSOs), non-governmental organizations (NGOs), community based organizations (CBOs) and faith based organizations (FBOs). Decentralization may also involve ‘dispersion’ of responsibility over publicly-funded or ‘public interest’ assignments and projects from the state centre to governance institutions at local, regional and national levels. Within the decentralized institutional framework, Key Focus Areas 1 and 2 of the LGTAS envisage traditional leadership to partner with government and play key roles in the governance of socio-economic development and service delivery, particularly within ‘traditional community’ contexts. Traditional communities are defined as being those that are subject to a system of traditional leadership and observe a system of customary law. A problem however is that the LGTAS does not specify clear roles for traditional leadership, and this creates difficulties owing to varying views regarding the legitimacy of this institution.

2.6 DISCUSSION

Although the South African Constitution and water laws indeed embrace principles of legal pluralism and recognize traditional leadership institutions, the roles of traditional leaders in water governance remain poorly defined. There also seems to be a stronger emphasis on institutional structures that are formalized in terms of statutory law than on ‘customary’ law. Malzbender et al. (2005) points to Section 211.2 of the Constitution, which stipulates that 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”. According to the scholars, this principle effectively establishes the superiority of statutory law over customary law, since the latter is only tolerated only when it does not contradict statutory law. Field evidence (Section 4 of this report) reveals that this principle limits the power and influence of traditional leadership roles in water resources governance, with varying consequences for the exercise of customary law and ‘customary rights’ to water.

According to Kabudi (2005), customary rights to water relate to water access and uses that have been practiced by individuals or communities since time immemorial

in the belief that such access and use creates binding rights and obligations. In the case of Tanzania, Juma & Maganga (2005) distinguish between three different permutations of 'customary law', which includes 'tribal' customary laws of specific groups, 'formal' customary law which is recognized in courts of law and customary law as it is enforced by traditional authorities such as chiefs and headmen. The scholars comment, however, that unless Tanzania's attempt at embracing legal pluralism explores alternatives to formal property rights and protected common property systems, such efforts would not usher in any shift of the position and place of customary water law and mainstream policies and laws would continue to regard customary laws as a transient system that is expected to die.

In the case of Zimbabwean, although water reforms attempt to embrace both Roman Dutch law and customary law (Derman & Hellum, 2003 in Chikozho & Latham, 2005), such pluralism has not resolved the conflict relating to formalization of informal water use by small-scale irrigators within rural communities. In South Africa, the case of the Mythical Snake of Tete Pan within the Pongola River Floodplain (Tapela, 2014), for example, demonstrates the difficulties that traditional leaders face in navigating between customary and Constitutional law, since these laws are predicated on different forms of knowledge. Furthermore, South African traditional leadership has a wide socio-economic differentiation, by nature, with some institutions (such as the Bafokeng and Bakwena) being richly endowed with massive financial wealth while many of the others are resource-poor. Such diversity needs to be recognized.

3 HISTORICAL BACKGROUND: EROSION OF TRADITIONAL LEADERSHIP LEGITIMACY AND POWER

Based on the view that a degree of knowledge of the history of traditional leadership in South Africa can enhance understandings of the positions and roles adopted by present day traditional leaders and other interested stakeholders (Independent Projects Trust 2006 in Day, 2007), this section presents an abridged review of pertinent historical literature.

3.1 PRE-COLONIAL ERA

Prior to colonialism in South Africa, traditional systems of governance characterised most forms of administration and governance in rural communities (RSA, 2003 in Kapfudzaruwa & Sowman, 2009; Turner & Meer, 2003, *ibid.*). Evidence shows that a significant proportion of the pre-colonial Southern African population was organised into political groupings with centralised authority vested in hereditary leaders known as 'chiefs' (Spiegel & Boonzaier, 1988 in Khunou, 2009). According to Khunou (2009) traditional leaders and traditional authorities in the pre-colonial era were important institutions. They gave effect to traditional life and played an essential role in the day-to-day administration of their territorial areas and the lives of traditional people. The relationship between the traditional community and traditional leader was very important. Traditional authorities were responsible for the normal functioning of traditional communities. Pre-colonial traditional leadership was based on governance of the people, where a traditional leader was accountable to his subjects.

Informed mainly by cultural practices and customary rules, traditional leaders were responsible for allocating land, managing natural resources, such as water, and administering other resource-related functions, such as conflict mediation (Kapfudzaruwa & Sowman, 2009). Traditional leaders were not actively involved in water service delivery, which was largely a role performed by women and, to a minor extent, less influential men. However, they could intervene in times of crisis. More commonly, traditional leaders presided over traditional courts and adjudicated disputes relating to the shared use of water resources within their land territories, according to customary rules (Tapela, 2012c). They also played active roles with respect indigenous knowledge systems (IKS) and practices around the use, development, management and safeguarding of water resources (Tapela, 2012a, b, c). For example, the traditional leadership of the Netshiavha group of vhaVenda reportedly exercised custodianship over Lake Fundudzi since pre-colonial times (Tapela, 2011, 2012c; Khorommbi, 2002). By contrast, the Mphamphuli chieftainship among the Venda was responsible for safeguarding a natural spring along Mutshindudi River (Tapela, 2012c). In communities associated with inland fisheries,

such as natural lakes and floodplain pans (e.g. ox-bow lakes), traditional leaders governed customary practices for seasonal collective basket fishing practices, such as *imfonya* among the Tembe-Thonga of north-eastern KwaZulu-Natal and *xirongo* among the Tsonga-speaking Makuleke of north-eastern Limpopo Province (Tapela, 2012a). Zulu traditional leaders governed IKS and traditional practices for ensuring the reliability of rainfall and food security, such as *Umkhosi kaNomkhubulwana* or *Ukulima insimu yenkosazana*⁵, and *ukweshwama*⁶ among the Zulu, for example (Tapela, 2012c; Kubeka-Ngobese, 2004).

The foregoing examples show that traditional leadership roles in water resources governance date back to pre-colonial times. The next section presents an overview of some of the ways by which the advent of colonialism (and its permutation, apartheid) shifted the nature of these roles.

3.2 COLONIAL ERA

Ntsebeza (2005; 2002) states that during the colonial era, prior to the inception of apartheid, the leadership monopoly of traditional leaders changed when the colonial administrators and rulers introduced the British system of indirect rule. The colonial government recognised the institution of traditional leadership as an important political instrument for managing black labour reserves. Traditional authorities largely became instruments of indirect rule and agents of colonial governments, serving more to manage the Africans under colonial administrative rule rather than to enfranchise them. They remained as nominal heads of their people but their powers were severely truncated. The breaking down of the powers of traditional authorities was accomplished through enactment by successive colonial governments of a considerable number of legislative measures to change the pre-colonial structures, roles and powers of traditional leaders (Khunou, 2009).

The Native Administration Act (Act 38 of 1927) became the first Black Administration Act (Claassens & Cousins, 2008). This Act awarded colonial (and apartheid) governments the power to not only select and appoint traditional authorities but to also designate or relocate the traditional authority's areas of jurisdiction (IPT, 2006 IN Day, 2007). The law therefore gave limited powers and roles to traditional leaders due to the fact that the Governor-General was made the supreme chief of all traditional leaders in the Union of South Africa (Khunou, 2009). While the policy of indirect rule purported to preserve the pre-colonial structures of traditional leadership, in reality it was established as a means of controlling traditional communities in their areas. During the colonial era, therefore, traditional authorities became recognised and shaped by colonial governments to suit, adopt and promote

⁵ Zulu indigenous practice for ensuring good rainfall and harvest, therefore food security.

⁶ Zulu traditional harvest ceremony.

the objectives and aims of their colonial strategies and missions (ibid.). Those that refused to collaborate with colonialists were dethroned and new ones appointed (Ntsebeza, 2002). However, some among these retained their legitimacy precisely because the colonial state denied them administrative powers and functions (ibid.).

With specific respect to rural local government, the Glen Grey Act of 1894, which was promulgated during the tenure of Premier Cecil John Rhodes, introduced the District Council system as compensation for loss of franchise especially by the educated Africans (Ntsebeza, 2002: 42). Although this council system seems to have been a radical plan to transform rural local government, the partially-elected representation only applied at a district and territorial level and not at the grassroots 'location' level, where the notion of elected representatives did not feature at all and power was concentrated in the hands of un-elected and compliant traditional authorities and headmen. The traditional authorities and headmen were accountable to the all-powerful magistrate operating at a magisterial district level (p. 46). The very fact that the colonial administration remunerated chiefs on the basis of their position as a traditional leader, as well as the way in which the colonial government not only restricted and defined chiefs roles and duties points to the fact that for all intents and purposes chiefs appeared to be employees of the colonial government (Palmary, 2004:12 in Day, 2012).

Evidence therefore shows that during the colonial era, traditional leaders played no roles in service delivery (Day, 2007) although they continued to exercise customary governance over the management of land and water resources in their respective rural communities (Kapfudzaruwa & Sowman, 2009). Effectively, the establishment of a single colonial government for the whole of South Africa in 1910 did not yield any roles at national and provincial levels for the institution of traditional leadership (DPLG, 2003). Instead, the institution was used as a platform to divide and rule the people (ibid.). The 'new' traditional leadership structures "did not have, as their primary objective, the delivery of services to the people, but rather the delivery of the people themselves to become subservient to the successive colonial and apartheid administrations" (ibid.).

The power of traditional leadership was severely limited by various colonial laws, principally the Native Land Act (Act 27 of 1913), which subsequently led to nationwide land dispossessions for black people. Despite the erosion of traditional leaders' powers, there were systems and channels in place that allowed communities to contest chief's decisions and actions (Palmary, 2004:12 in Day, 2007). Traditional authorities were therefore, to an extent, still accountable to their communities. Such systems were subsequently displaced under the latter colonial and apartheid regimes (ibid.).

3.3 APARTHEID ERA

The institution of traditional leadership continued to exist in South Africa under apartheid but its roles in governance and socio-economic development had already been significantly undermined and manipulated by the previous colonial regimes (Maphosa, 2010). Under the apartheid government, little changed in terms of the payment of chiefs and definition of their responsibilities (Palmary, 2004:12 in Day, 2012). Under both the colonial and apartheid administrations, traditional leaders in effect primarily answered to the government of the day as opposed to the communities over which these leaders presided (*ibid.*). During the apartheid era the power of tribal authorities was so significantly reduced that their only real form of power came from their ability to allocate and distribute land (Khan & Lootvoet, 2001:3 in Day, 2007). The apartheid government's influx controls applied to areas where black people could reside, and they could only settle and claim land within areas designated as rural homelands (*ibid.*). Since the apartheid government afforded tribal leaders the authority to dismiss people from such areas, these leaders had the final say not only on who owned land but also on who lived on the land (*ibid.*).

The ascendance of the Nationalist Party to power in 1948 was followed by further changes in the form of attempts by the apartheid government to extend its control over traditional leader's authority and jurisdiction through the introduction of additional regulatory measures (Khan & Lootvoet, 2001:2 in Day, 2007). Such measures included the Black Authorities Act (Act 68 of 1951), which significantly redefined the indigenous political institutions (DPLG, 2003). Under provisions of this Act, traditional leaders assumed the central position of leader at not only a tribal level but also at regional and territorial levels (Khan & Lootvoet, 2001:2 in Day, 2007). According to the Department of Provincial and Local Government (DPLG, 2003), the Bantu Authorities Act established tribal authorities in the African reserves, in line with the government's stated intention of preventing "squattening" and eliminating black land ownership in "white areas". The overall intention of the policy of separate development was to use the African reserves as reservoirs for cheap mine labour. The movement of young able-bodied Africans into urban centres and the rapid growth of the population in the reserves crippled productivity in these areas (*ibid.*).

Legislation such as the Bantu Authorities Act, Bantu Promotion of Self-Government Act (Act 46 of 1959), Native Land Act of 1913 and Native's Trust and Land Act (Act 18 of 1936) all combined to enable the apartheid government to consolidate these so-called black areas to create black labour reserves that were either 'self-governed' or 'independent' homelands. The homeland system had serious implications for chiefs (Khan & Lootvoet, 2001:3 in Day, 2007).

According to Khan & Lootvoet (*ibid.*), the age-old system of traditional leadership appointment on the basis of hereditary descent was abolished as the new homeland

system stipulated that new chiefs could only be appointed following the ratification of the appointment by the overarching homeland government. Furthermore, traditional procedures that had long been used since the pre-colonial era to appoint tribal councillors were disregarded. Very few councillors were elected due to the fact that chiefs appointed most of the councillors. Consequently, tribal authorities were dispossessed of the pre-colonial regulatory measures and systems that were previously used to temper the powers of tribal chiefs.

With regard to water governance, Van Koppen et al. (2002 in Kapfudzaruwa & Sowman, 2009) states that during the apartheid era, the homeland government held decision-making powers for most aspects of water management but delegated certain responsibilities to traditional chiefs. Within rural communities, chiefs and/or chieftainesses and their headmen were the main contact persons for the homeland government and any other outsiders intervening in issues concerning water supply facilities. Specific tasks, such as the operation and maintenance of water supply systems were usually delegated to members of the tribal council, who then formed relevant committees in the villages. However, many of the traditional leaders were co-opted by the state or corrupted into furthering the aims of the apartheid government (Turner & Meer, 2001 in Kapfudzaruwa & Sowman, 2009). The protracted forced removals and social engineering that occurred during the apartheid era disrupted traditional forms of governance and customary law (Hauck & Sowman, 2003, *ibid.*) and led to the erosion of IKS (Tapela, 2012a, b).

From the foregoing account, it is evident that the apartheid system of Bantu authorities eroded the culture of consultation and, instead, traditional leaders relied more on the power of their backers than on the collective wisdom of the communities they were leading (DPLG, 2003). Traditional authorities during the apartheid era therefore came to be viewed largely as agents of the state (Shackleton et al., 1998 in Kapfudzaruwa & Sowman, 2009; Turner & Meer, 2001 in Day, 2007), who facilitated the execution of apartheid policies and laws. With increasing pressure on the peasants to leave the countryside in search of wage labour, what followed was increased oppression through traditional leaders, most of who eagerly complied with government policy (DPLG, 2003). The institution lost its inherent traditional role of providing leadership to the people (*ibid.*). However, despite the perversion and corruption of the traditional leadership institution as well as the erosion of customary values, IKS and practices, this institution seems to have persisted. In some areas traditional institutions and management systems retained their legitimacy (Ntsebeza, 2002; 2005), customary functions and respect (Kapfudzaruwa & Sowman, 2009). Some traditional leaders led the early resistance against colonial subjugation of the African people in such areas as Witsieshoek (1950), Sekhukhune (1956), Zeerust (1957) and Pondoland (1960) (DPLG, 2003; Delius, 1996). It is against this chequered historical background that institutional options for traditional leadership roles in water governance should be explored.

3.4 EARLIER PHASE OF THE POST-APARTHEID ERA: 1994 TO 2003

The advent of democracy in South Africa in 1994 marked the beginning of a new social, economic and political discourse, which allowed the new government to embark on a range of reforms in accordance with the new democratic dispensation (Maphosa, 2010). The new Constitution adopted in 1996 recognized traditional leadership in the country and charted the trajectory of restoration and integration of the institution within the democratic governance system (ibid.). It was left to the government, through national legislation, to attend to the provincial-specific details of the place and role of traditional leadership in the new democratic dispensation (DPLG, 2003). Subsequent legislation enacted includes, the National House of Traditional Leaders Act (1997), Council of Traditional Leaders Act (Act 10 of 1997), Municipal Structures Act (1998), Traditional Leadership and Governance Framework Act (2003), White Paper on Traditional Leadership and Governance (2003) and the Communal Land Rights Act (2004), which has since been suspended.

The National House of Traditional Leaders Act provides for the formation of the National House of Traditional Leaders, whose function is to “promote the role of traditional leadership within a democratic constitutional dispensation” (DPLG, 2003). In the context of local government legislation, Section 81 and subsections (1) to (4) of the Municipal Structures Act (1998) make provision for the consultation of traditional leaders in decision-making in those municipalities presiding over areas that fit the definition of a ‘traditional community’. The Municipal Structures Act (Act No. 117 of 1998), in particular, served to entrench the focus on the role of traditional authorities in local development but under the firm authority of municipal councils (ibid).

According to DPLG (2003), a noteworthy piece of legislation aimed at outlining the role and function of the institution of traditional leadership within the broader post-apartheid dispensation is the Traditional Leadership and Governance Framework Act of 2003. Section 2 (1) (a) of the Traditional Leadership and Governance Framework Act, which defines a “traditional community” as any community which “is subject to a system of traditional leadership in terms of that community’s customs, and accordingly “observes[ing] a system of customary law”. Section 3.2 (b) underscores the role of traditional leaders as “custodians of culture, tradition and custom”. Furthermore, Section 3 (1) and (2) provides for the establishment of traditional councils by a “recognized traditional community”.

The White Paper on Traditional Leadership and Governance (2003) provided in broad terms, for a cooperative model within which traditional leadership could co-exist with municipalities (ibid.). This blended approach conceptualised a “mixed government” (according to Richard Sklar 1993, 1999a, 1999b, ibid.) that could potentially provide an increasingly widespread and important foundation for political

rule in a democratic South Africa (Bank & Southall, 1996:407, *ibid.*). From this perspective, the integration of traditional leadership into democratic governance is constructed as a form of rule that “conserves traditional authority as a political resource without diminishing the authority of the sovereign state” (*ibid.*).

The mixed government perspective led to the formulation of various provincial-specific acts to deal with locally-specific issues, which were enacted within the provisions of the Traditional Leadership and Governance Framework Act of 2003 (*ibid.*). An important objective of this Act was therefore the establishment and recognition of traditional councils at a local level⁷.

Khunou (2009: 112) observes that the Traditional Leadership and Governance Framework Act and the now-suspended Communal Lands Rights Act were intended, among many other things, to revamp and resuscitate the powers and functions that traditional leaders enjoyed under the notorious Black Authorities Act and various other pieces of homelands legislation. The scholar cites the Framework Act’s endorsement of tribal authorities, which were historically set up in terms of the Black Authorities Act, as a foundation for establishing the traditional councils, while the Communal Land Rights Act recognises these councils as having the authority to administer and allocate land in the traditional authorities’ areas. The suspension of the Communal Land Rights Act should signal to the water sector the need for genuine consultations with all key stakeholders, particularly the diversity of interest groups within rural communities, regarding the issue of traditional leadership roles in water governance.

3.5 LATTER PHASE OF THE POST-APARTHEID ERA: 2003 TO PRESENT DATE

Since 2003, government has formulated further institutional frameworks and arrangements to bolster the institution of traditional leadership. Many of these have emerged with the accession into Presidency by Jacob Zuma in 2009, as part of the renowned ‘Turn-around Strategy’. New legal frameworks included the National House of Traditional Leadership Act (Act 22 of 2009), Traditional Leadership and Governance Framework Amendment Act (Act 23 of 2009) and Traditional Courts Bill. By contrast, the Communal Land Rights Act (2004) has been suspended. Key national departments established included, among others, the Department of Cooperative Governance and Traditional Affairs (COGTA), which emerged from a restructured DPLG in 2009, and the Department of Traditional Leadership, which was established in April 2010. The Commission on Traditional Leadership Disputes was also formed.

⁷ See Section 3.1.2 for a detailed examination of this Act.

Meanwhile, government publicly proclaimed that it remained “committed to strengthening the institution of traditional leadership”, appreciated the roles it plays in society and regarded traditional leaders as ‘partners’ in the implementation of its programmes⁸. Furthermore, government announced that it was already working on policies relating to unity and diversity, initiation, traditional healing, traditional leaders’ protocol, family trees as well as uniform norms and standards for the remuneration and benefits of traditional leadership. Other relevant government initiatives included discussions around the Traditional Courts Bill, the suspension of the Communal Land Rights Act of 2004 and a review of the Land Restitution Act.

The plethora of efforts to recognize and empower the institution of traditional leadership perhaps accounts for views that the period after 2003 has seen a surprising ‘resurgence’ of traditional authority, custom and culture in post-apartheid South Africa (Khunou, 2009; Sithole, 2008; Ntsebeza, 2008; Cousins, 2007). Views on this development vary widely. They range from perceptions of a conscious African renaissance to perspectives that the moves are largely about the consolidation of ANC power. A detailed analysis of this debate is beyond the scope of this report.

Nonetheless, it is worth noting that although the country’s historical political economy is widely acknowledged to have played a significant role in entrenching rural poverty and insecurity, contributions by contemporary drivers have increasingly come to the fore. Against the background of on-going discourses about ‘rapid urbanisation’, ‘rural de-agrarianization’, ‘climatic change’, ‘water-food-and-energy mega-nexus’ and ‘green economy’, among others, the search is underway to find effective ways to resolve the conundrum of water insecurity that affects a diversity of rural, urban and peri-urban contexts across the country. Amid rural grievances about unmet expectations for service delivery, rural development and land and agrarian reform, focus has turned towards institutional arrangements that more effectively link the meso- and micro-levels of water governance, resource management and service delivery with micro-community and household levels of water use. It is into these institutional arrangements that traditional leadership must be inserted to help strengthen the efficacy of rural water service delivery and resource management in traditional communities, especially where formal water institutions are often perceived to be ineffective or absent.

The institutional restructuring that accompanied President Jacob Zuma’s accession into office in 2009 underscored the importance accorded by the newly-formed government to traditional leadership in the lives of rural people living in traditional communities, which are subject to a system of traditional leadership and observe a system of customary law. While various Zuma Era institutional frameworks, such as the National House of Traditional Leaders Act (Act 22 of 2009), and structures such

⁸ <http://info.gov.za>

as Department of Traditional Leadership and Houses of Traditional Leaders articulate government's intention, the Traditional Leadership and Governance Framework Act (Act 41 of 2003) remains a critical legislative framework while the Department of COGTA is a central to local governance reforms.

COGTA, in particular, emerged from the erstwhile Department of Provincial and Local Government (DPLG) and, like all other government departments, seeks to address the 10 priorities of the Medium Term Strategic Framework (MTSF) for 2009 to 2014 emphasised by President Zuma in his first State of the Nation Address (SONA) on the 3rd of June 2009. Emphasis was on capacity building and skills development, improving the effectiveness of interventions directed at the 'Second Economy' and poverty eradication, and strengthening the processes of government to ensure that it has the capacity to respond to developmental imperatives. COGTA also addresses findings from the 15-year review by the erstwhile DPLG on the State of Intergovernmental Relations in South Africa (South Africa, 2008).

Some of the key findings of the review were that while good progress had been made in consolidating democratic institutions and an administration committed to good governance, there was a need to give attention to issues of public participation, access to information, accountability and trust. State capacity challenges were identified to include skills, systems and institutional arrangements. Needs included the further development of planning capacity, while limitations to the fight against corruption related to implementation capacity. Sithole (2008) remarks that it is interesting to note that the preceding *Ten Year Review on Government Programmes* (2003) avoided the analysis of traditional leadership, which points to the possibility that government was as divided on the issue of traditional leadership roles.

Beyond governance institutions, the intention to promote traditional leadership roles in rural development and service delivery also seems to be associated with the unfolding issues of rural governability. The urgency to find institutional solutions appears to be partly driven by pressure from below, in the form of rampant social protests that have risen to unprecedented levels and spread into rural communities hitherto considered to be the 'silent backdrops' of South African society (according to Tapela, 2012). For example, preliminary findings by a task team on social protests in Mpumalanga province, which was appointed in 2009 by the then Minister of Cooperative Governance and Traditional Affairs (COGTA) Mr Sicelo Shiceka, included:

- Lack of responsiveness to issues raised by communities;
- Tensions between the political and administrative sections of the municipalities;
- Ward committees that are not fully functional, resulting in poor communication with communities;
- Financial mismanagement and allegations of fraud and corruption;

- Poor planning, maintenance and management of infrastructure resulting in poor service delivery; and
- IDP and budgeting processes not aligned in some municipalities.

COGTA's 5 key priorities for the Electoral Term from 2009 to 2014 included the improvement of the developmental capability of institution of traditional leadership (South Africa, 2009). The department envisages collaborations with stakeholders such as the South African Local Government Association (SALGA), South African Cities Network (SACN), the Municipal Demarcation Board and the Development Bank of Southern Africa (DBSA) in pursuing these priorities. From a strategic perspective, the issue of traditional leadership roles in South African water governance needs to be seen in light of COGTA's Strategic Priorities for 2009 to 2014. These are to:

1. Build the developmental state in provincial and local government that is efficient, effective and responsive;
2. Strengthen accountability and clean government;
3. Accelerate service delivery and support the vulnerable; and
4. Foster development partnerships, social cohesion and community mobilisation.

The above Strategic Priorities address government's 10 priorities of the Medium Term Strategic Framework (MTSF) for 2009 to 2014 emphasised by President Zuma in his first State of the Nation Address (SONA) on the 3rd of June 2009. Emphasis was on capacity building and skills development, improving the effectiveness of interventions directed at the 'Second Economy' and poverty eradication, and strengthening the processes of government to ensure that it has the capacity to respond to developmental imperatives.

In outlining lessons learnt from the past, Section 14 (d) of the COGTA Review states that government focus on the institution of Traditional Leadership has been weak and limited to the establishment of institutions. Consequently, "the central role of Traditional Leadership to rural development is now better appreciated together with the need to position the Institution of Traditional Leadership to partner with Government to accelerate development". This adjustment is part of the broader institutional shifts:

- From a weak undefined role to *strong mandate* for governance;
- From supply-side service delivery to *community-driven* development approaches;
- From abstract policy and interventions to *programmes based on* real experience and knowledge, including community or indigenous knowledge;
- From technocratic models of accountability to *community oversight* of government;
- From paternalistic support to *empowering provincial and local institutions* to perform their functions;

- From state supply to state *facilitated partnerships for development*, in particular with Institutions of Traditional Leadership;
- [From] domestic focus to growing *regional and international influence*; and
- From fragmented strategic plans to pursuing the minimum objectives that give *maximum impact*.

The Zuma Era (2009 to date) has been characterised by varying views, however, about the rationale for government's promotion of the institution of traditional leadership and, effectively, the different camps within government are replicated in the civil society and academic spheres (Sithole, 2008). Among some of the diverse perceptions that prevail are views that the rise in prominence of traditional leadership has been due to strategic interests by some actors within the ruling African National Congress (ANC) party to consolidate political power and influence (e.g. Jara, 2009; Ngqongwa, 2009; Sithole, 2008). Although the varying narratives and unresolved debates indicate that there might be multiple imperatives for promoting traditional leadership roles in governance, the significance of the traditional leadership institution cannot be ignored.

4 CASE STUDIES OF TRADITIONAL LEADERSHIP ROLES IN WATER GOVERNANCE

This section primarily draws on a few selected case studies to shed insights into existing traditional leadership roles in water governance. Traditional leadership has been observed to play broadly similar roles in water governance across varying traditional community contexts, but context-specific peculiarities are also evident in many instances. The objective of this section is not to give an exhaustive examination of examples but to simply highlight pertinent evidence and issues for this report's key questions.

4.1 CASE OF THE BAFOKENG TRADITIONAL LEADERSHIP

According to Thornhill & Selepe (2010), the Royal Bafokeng Administration has shifted from being a traditional institution embracing the Bafokeng customs, traditions and value system to operating as a corporate entity that delivers municipal services. The scholars describe the Royal Bafokeng Administration as a future-oriented traditional leadership structure that has expanded its horizons and aligned its traditional approach to a corporate approach that works in synergy with the Greater Rustenburg Municipality.

4.1.1 BACKGROUND

The Royal Bafokeng traditional leadership presides over a total of approximately 150,000 people, who are mainly distributed across 29 villages in the five Bafokeng regions within the North West Province. The Bafokeng own a portion of land on which the world's largest deposits of platinum group metals were discovered in 1925 (Business Day, 2014⁹). Mining companies pay royalties to the Bafokeng in exchange for the right to mine these metals, and these deals are widely viewed as successful models of community participation for the mining sector (ibid.). The Royal Bafokeng is the wealthiest of all traditional leadership institutions in South Africa (RBA, 2013). Not all residents of Bafokeng land are ethnic Bafokeng (Business Day, 2014).

According to Business Day (2014), the Bafokeng investment arm is Royal Bafokeng Holdings (RBH). The RBH is the largest community investment vehicle of its kind, and has stakes in companies including Impala Platinum Holdings (Implats), Rand Merchant Bank, DHL Express and Morafe Resources. Implats is one of three mining companies hit by a five-month strike in the platinum sector. The three mining companies together contribute 40% of global supply, and have lost R23.4bn in combined revenue. Workers, too, have lost billions in forfeited salaries. The Royal Bafokeng Administration (RBA) Annual Report of 2013 confirms that annual

⁹ 'Royal Bafokeng want answers on Assets'. Article in Business Day, 23 June 2014. <http://www.bdlive.co.za/business/mining/2014/06/23/royal-bafokeng-want-answers-on-assets>.

dividends from Implats Mining Company have declined from R1.2 billion in 2008 to R162 million in 2012 (RBA, 2013). Members of the communities under the Bafokeng's power have been "seething" as they say developments in the community and service delivery are at a standstill.

The Business Day article further reports that stakeholders such as the Bafokeng Land Buyers Association have attributed the anger to massive retrenchments at the RBA, the curtailment of powers of the RBA Chief Operations Officer and, most of all, an announcement by the *Kgosi* (King) that he would be going into business for himself and therefore planned to open a family trust. Stakeholders also suppose that the Kgosi could be attempting to avert a recurrence of the hardship experienced by his family at the hands of Lucas Mangope's Bantustan regime while his father was exiled to Botswana. Notwithstanding the views above, this section seeks to clarify – by way of the Bafokeng case study – the following key questions:

- 1) What is the nature of the institution of traditional leadership and what are the parameters within which it can be beneficial in overall water governance?
- 2) Can the equity principle be best served from a traditional leadership point of view?
- 3) What are the benefits and disbenefits of creating an institutional environment for a legally pluralistic system of water governance in the case of the Bafokeng?

4.1.2 TRADITIONAL LEADERSHIP ROLES IN SERVICE DELIVERY AND RURAL DEVELOPMENT

4.1.2.1 Contributions to Multiple Delivery Sectors

Over the years, the RBA has been allocating a proportion of income from mining dividends towards social services, infrastructure development projects and other community requirements. Consequently, the rural communities under RBA enjoy generally higher levels of development in various delivery sectors. Over R2 billion of the Royal Bafokeng nation's funds have been spent on roads, utilities, schools, clinics, municipal services such as water and sanitation, electricity, emergency services, law enforcement, health services and other public amenities over the past decade (Thornhill & Selepe, 2010). The RBA's 2013 Annual Report states, for example, that over 96% of households have access to electricity and 95% have access to piped water. The majority of the users of these amenities are non-Bafokeng residents and visitors to North-West Province (Carroll, 2006:1 in Thornhill & Selepe, 2010). These achievements, which have been attained during the 10-year reign of *Kgosi* (King) Leruo Molotlegi, are higher than those found in the majority of traditional rural areas in the country (RBA, 2013).

4.1.2.2 Contributions to Water Services Governance and Delivery

The RBA's 2013 Annual Report states that over 95% of households in the 5 Royal Bafokeng regions have access to piped water. Contributions by the RBA have been

critical to the realization of this achievement. The roles of the RBA in water services differ from those of Greater Rustenburg Municipality (Thornhill & Selepe, 2010). While the municipality purchases water in bulk from Rand Water Board and Magaliesburg Water, the RBA subsidises by 60% the cost of water supply services to the entire Royal Bafokeng Nation. The RBA has also installed water meters for all the households to manage water demand and promote water conservation. However, amid these formidable achievements, there is a concern that the growth of informal settlements on land under the jurisdiction of RBA is impacting negatively on the allocation of water to the Royal Bafokeng Nation, since these settlements also benefit from the water allocation earmarked for the Royal Bafokeng Nation. Informal settlements are found in areas such as Chaneng and Luka villages, which are the two key mining communities within the Royal Bafokeng jurisdiction.

4.1.3 NEW PARTNERSHIP FOR THE GOVERNANCE OF SERVICE DELIVERY AND RURAL DEVELOPMENT

Recently on 14 August 2014, Royal Bafokeng Administration and Rustenburg Local Municipality formalized their longstanding partnership (Box 2). This move pioneered CONTRALESA's interests to play active roles in the promotion of municipal service delivery and rural development. Furthermore, the partnership articulated government's intentions to partner with traditional leadership in the delivery of social services and rural development. Specifically, the partnership speaks to Outcomes 7 and 9 of the Delivery Agreement framework launched by the Office of the Presidency in mid-2010, which respectively relate to 'Vibrant, equitable and sustainable rural communities and food security for all' and 'A responsive, accountable, effective and efficient local government system'. While the landmark partnership seems to firmly establish RBA's commitment to embracing democracy and partnering with government to enhance delivery outcomes in rural communities, the extent to which the RBA intends to materially contribute to enhancing the quality of life and livelihoods within its territorial jurisdiction has been the subject of contentious debate.

Box1 Excerpt: “Applause as Bafokeng leader inks pact”

- 🚩 History was made on Thursday [14 August] when the Rustenburg Local Municipality and the Royal Bafokeng Nation collaborated to improve socio-economic conditions on the world’s second-largest platinum belt...
- 🚩 The signing of a memorandum of understanding at the Rustenburg city hall marked the country’s first agreement between a traditional authority and a municipality...
- 🚩 Those who attended the event applauded and ululated when executive mayor Mpho Khunou and the king of the Bafokeng, Kgosi Leruo Molotlegi, inked the agreement.
- 🚩 The agreement also formalises an understanding between the two parties as far as service delivery and developmental matters in the area are concerned...
- 🚩 “In the 2013/2014 financial year, there was an allocation of approximately R70 million towards infrastructure projects, specifically to improve and develop roads”
- 🚩 “The 2014/2015 financial year has an allocation of R44.8m” ...

(Source: IOL News article, 15 August 2014)

Further insights into the partnership between Rustenburg Local Municipality and the Royal Bafokeng Nation show that the aim of integrating efforts of both parties is to develop a master plan for the Rustenburg area, drawing lessons from the knowledge and experience gained from the Royal Bafokeng Master Plan launched in 2006 (IOL, 2014). This master plan focused on the year 2035, and initiated “groundbreaking” projects, such as Lebone II College, the five-star Royal Marang Hotel, a Sports High Performance Centre and the upgraded Royal Bafokeng Sports Palace, which warranted new thinking with regard to spatial and economic transformation (ibid.).

4.1.4 GOVERNANCE AND DELIVERY FRAMEWORK OF THE ROYAL BAFOKENG NATION

The structure of the Royal Bafokeng traditional leadership governance and delivery framework is shown in Figure 1. The Kgosi sits at the apex of the entire hierarchical institutional framework and exercises governance roles in close collaboration with a Supreme Council.

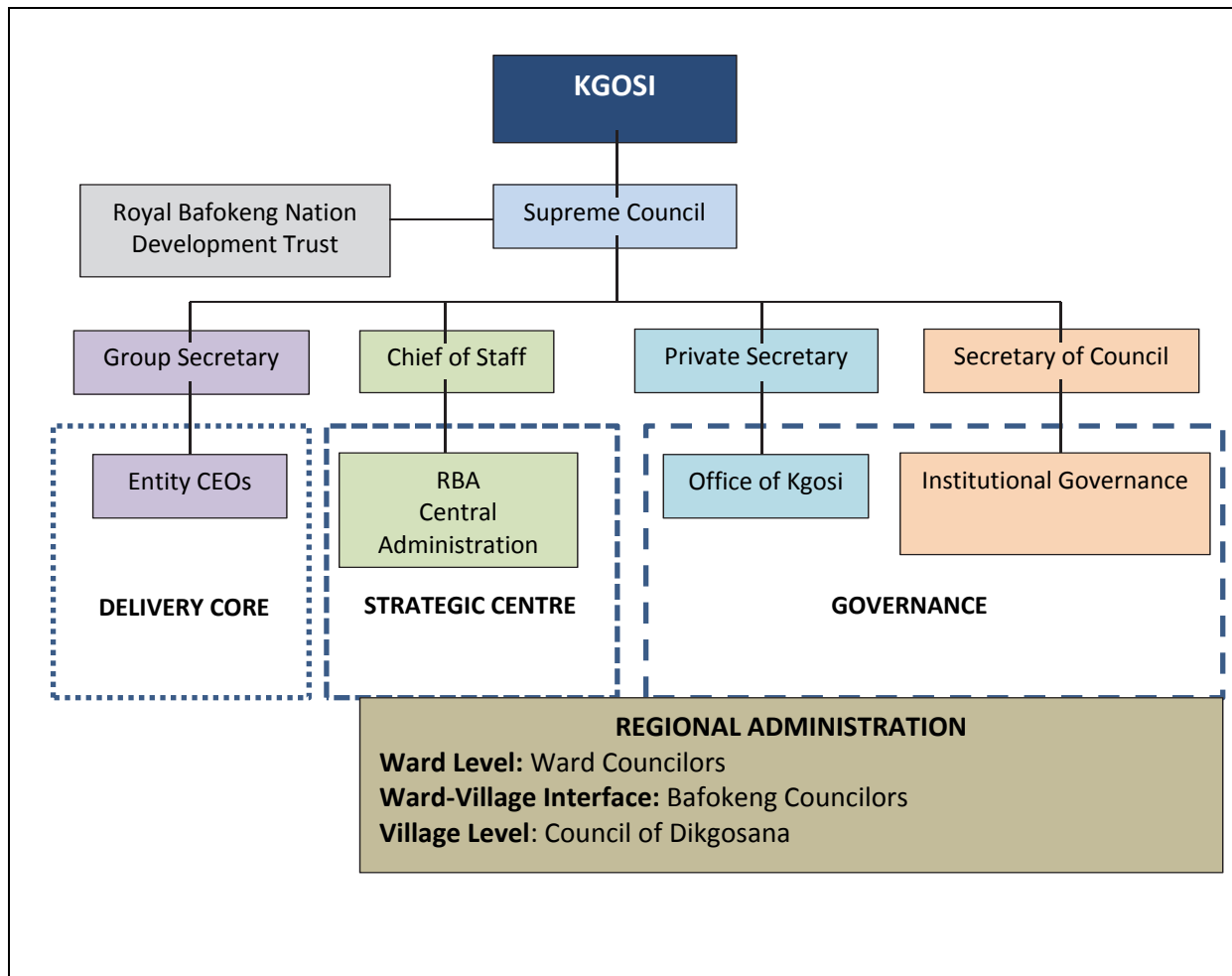


Figure 1 Royal Bafokeng Traditional Leadership Governance and Delivery Framework¹⁰

In the upper echelons of the institutional framework, the Supreme Council interfaces laterally with the Royal Bafokeng Nation Development Trust, which is the structure that holds custodianship over the Royal Bafokeng Nation's (RBN's) revenues. In disbursing these revenues, the Council has identified, approved and articulated 9 key focus areas for the budget process. These include social services, infrastructure development sectors, and a range of other areas (Table 2). Against the background of declining revenues and budgets, it is notable that the Supreme Council increased allocations for Public and Community Utilities from 16% in 2012 to 24% in 2013 (effectively a 50% increase).

¹⁰ Source: RBA, 2013.

Table 2 RBN Financial Budgets: 2012 and 2013

Budget Line Item	Allocation as a Percentage of Total Annual Budget	
	2012	2013
Education	26%	26%
Governance and Administration	24%	22%
Health and Social Development Services	9%	5%
Public and Community utilities	16%	24%
Sports and Recreation	9%	7%
Safety and Security	6%	7%
Economic Development	4%	2%
Environment and Land Use	5%	5%
Bafokeng History and Heritage	1%	1%
Food Security	1%	1%
TOTAL ANNUAL BUDGET	R922.5 million	R716.5 million

Source: RBA (2013)

In the higher levels of the institutional framework, the Supreme Council also interfaces downwardly – via Secretaries and/or Chief of Staff – with 4 key governance, strategy and delivery structures. These structure are: i) The ‘Office of Kgosi’ and ii) ‘Institutional Governance’, which perform high level *Governance* roles; iii) ‘RBA Central Administration’, which is the centre for *Strategy* development, integration, co-ordination, compliance and good governance practices; and vi) Entity CEOs, who form the *Delivery Core*.

Although the Royal Bafokeng Administration relies on indigenous law and traditional forms of conflict resolution to mediate most conflicts at local traditional authority level, it is also subject to the laws and legal procedures of the Republic of South Africa (Molotlegi, 2007:6). Principally, the RBA seeks to abide by the democratic principles enshrined in the South African National Constitution’s Bill of Rights. The RBA also strives to articulate the ethos and purposes of the Traditional Leadership and Governance Framework Act (Act 41 of 2003) and the cooperative governance ideal and principle of the Department of COGTA. Such frameworks are central to local governance reforms across a diversity of Delivery sectors, including ‘water

resources' and 'water services and sanitation' sub-sectors. Consequently, in pursuing its Governance, Strategy and Delivery objectives and roles at higher (regulatory) levels, the Royal Bafokeng Traditional Leadership closely collaborates with South African local and provincial government structures. In the lower rungs of Royal Bafokeng Traditional Leadership and Governance, the new RBN framework provides for a Regional Administration, which ensures that services are planned, delivered and monitored closer to grassroots level communities "for best customer experience" (according to RBA, 2013).

Key institutional role-players at the lower levels are the Bafokeng Councillors, Ward Councillors and, in the villages, *Dikgosana* (i.e. headmen). The Bafokeng Councillors constitute the traditional council, which works in close collaboration with Rustenburg Local Municipality councillors to achieve the development goals of each of the five Bafokeng regions (Molotlegi, 2007 in Thornhill & Selepe, 2010). The rationale is to ensure closer alignment between the Rustenburg municipal councillors and the Royal Bafokeng traditional councillors (ibid.). Evidence suggests that traditional councillors were inducted on all aspects of the RBN governance system and business processes, and the Office of the Kgosi, RBA, RBH and RBI assisted traditional councillors with their plans and processes to achieve an understanding of the goals of the RBN. *Dikgosana* play roles in the day-to-day governance of traditional villages.

The day-to-day ward and village governance roles of Regional Administration institutional actors are complemented by 2 forms of periodic interface with higher level governance structures. The first is the *KgothaKgothe* or Annual General Meeting (AGM) convened by the RBA as a mechanism to gather community feedback and encourage community decision-making. The second is the new recent innovation of 'Dumela Phokeng'¹¹, which involves weekly meetings at the beginning of the year enable the king to keep in touch with the community and thereby afford villagers an opportunity to share ideas (Molotlegi, 2007:6). This innovation emerged as a response to perceptions that *KgothaKgothe* did not sufficiently cater for effective governance by higher level traditional leadership. Dumela Phokeng is therefore an adaptation intended to strengthen democratic practice. Dumela Phokeng sees King Leruo Molotlegi and key institutional representatives visiting and interacting with each of the nation's 29 villages (Molotlegi, 2007:6 in Thornhill & Selepe, 2010).

A crucial structure for ensuring the effectiveness of governance is the Secretary of Council Office. This structure is intended to adequately support the Supreme Council in carrying out its Governance responsibilities, as mandated by the Bafokeng community. Among other things, the Secretary is tasked to:

¹¹ Dumela Phokeng draws inspiration from the word *dumela*, meaning "Greetings!" in SeTswana.

- ✚ Ensure that the total RBN governance framework and community by-laws are effectively operational;
- ✚ Strengthen the management of the Supreme Council, statutory and non-statutory committees with respect to the function of the Supreme Council, Traditional Council and Council of Dikgosana.

Molotlegi (2007 in Thornhill & Selepe, 2010) states that, as a traditionally governed entity, the Royal Bafokeng system of governance embraces a range of mechanisms for ensuring that people's concerns, opinions, and ideas are integrated into policy-making. The institutional mechanisms also ensure that sufficient checks and balances are in place to avert the risk of branches of the traditional system acting in fragmented and uncoordinated ways. Democratic practices also include Royal Bafokeng's introduction of elected village councillors, of which there are more women in positions of authority than previously (Thornhill & Selepe, 2010).

While the RBA has made commendable efforts to continually adapt and strengthen democratic practice and cooperative governance, the 'paradigm shift' appears to have been (unsurprisingly) fraught with challenges pertaining both to institutional change management and the diversity of perceptions between the RBA and local people at the grassroots. The next section reviews literature about local perspectives on RBA governance practices.

4.1.5 LOCAL PERSPECTIVES ON RBA GOVERNANCE PRACTICES

4.1.5.1 Participation in Problem Identification and Decision Making

Canon et al. (2010) state that although the RBA often refers to the *KgothaKgothe* as a mechanism to gather community feedback and encourage community decision-making, in 2009 the views of local respondents at the village level differed from this. Instead, local people reportedly did not feel that *KgothaKgothe* (or the AGM) was a place to voice their concerns or participate. They also felt compelled to listen to reports meanwhile they could not speak openly about their frustrations.

Grievances about *KgothaKgothe* show that elements of socio-cultural constructs that militate against equity among the Bafokeng continue to constrain democratic participation in decision-making platforms, contrary to good intentions by traditional leadership. Despite this difficulty, it is worth noting that Bafokeng traditional leadership's subsequent adoption of an adaptive approach to democratic governance, in the form of Dumela Phokeng, strengthens the resilience of the unfolding institutional framework. Unlike *KgothaKgothe*, which is top-down and meets once a year, Dumela Phokeng involves King Leruo Molotlegi and key RBA representatives weekly visiting and consulting all 29 villages at the beginning of each year (Molotlegi, 2007:6 in Thornhill & Selepe, 2010).

4.1.5.2 Communication and Information

An empirical study by Cannon et al. (2010) found that a common criticism from within the RBA and from the broader Bafokeng community was that the Supreme Council did not provide any guidance. Respondent unanimously considered the Supreme Council to be the weakest part of the traditional governance system. The Council was effectively seen as the locus for breakdown of communication and the feedback network. The scholars caution though that the lack of communication was not solely due to lack of clarity about or weaknesses in the existing RBA institutional framework, but also reflected the political tensions at the village level.

Local people at village level lacked clarity about the internal workings of the RBA and the individual institutional actors, who occupy the relevant posts (ibid.). Consequently, they tended to arbitrarily take their issues either to village-level representatives or to the *Kgosi* without any sense of the structures that separate the two. The scholars cite the 'Luka Memorandum of Demands' (Box 3) as evidence of local people's lack of information about appropriate communication protocols for voicing their concerns to the RBA. In cross-referencing the analysis by Cannon et al. (2010), however, this report finds that the problem of communication and information might need to be examined through the lens of related customary institutions and practices that local people in traditional rural communities are familiar with, such as the 'tribal court'.

Box 2 Luka Memorandum of Demands:

Luka village is one of the 29 villages under Royal Bafokeng. The village is one of two key mining communities within the Royal Bafokeng jurisdiction. For many reasons, some historical and others contemporary, the village is distinguished by a very high degree of socio-political involvement by political parties and the Municipality, on the one hand, and mistrust of the Royal family and the RBA, on the other hand.

The Luka Community Association recently handed a memorandum to Bafokeng representatives, in which they demanded clarity on the mining companies in which stakes are owned, and access to a R2illion master plan budget for development in Luka Village. Grievances were associated with perceptions that the king was (undemocratically) dictating the terms for holding the Bafokeng nation's assets and had failed to use its wealth to improve service delivery for the people of Luka Village (Cannon et al., 2010).

"We want to know what is happening in these companies that are also in the portfolio. We want to see a return on investment in our community.... Kgosi (the king) is strong because of Morafe. Without Morafe there is no kgosi," – Mr X¹, Luka Village representative.

Thornhill & Selepe (2010) state that tribal court is situated within the RBA headquarters in Phokeng. Tribal cases are heard and tried daily. The cases start at village level. Intervention is made at village level to resolve problems. If the headman is unable to resolve the issues at the village level, the matter is then referred to the tribal court. Conversely, the headman or the complainant can also refer the matter to the tribal court. Should the tribal court fail to resolve the matter, it will then be transferred to the Kgosi to give a verdict. The nation is encouraged to take disputes to the headman and if there is no solution, the headman will refer the matter to the tribal court (ibid.).

This example suggests that Cannon et al.'s (2010) inference that many of the local people lack the requisite knowledge about the appropriate communication and information protocols might be an over-statement. Luka village, which the scholars refer to, is a relatively large rural mining hub that is characterized by a proliferation of informal settlements, contentious politics and a general distrust of traditional leadership. It is therefore possible that a great proportion of reasons for communication and information breakdown may lie in the social, economic and political cleavages associated with this village and, in particular, between these village residents and traditional leadership.

4.2 CASE OF PHETWANE COMMUNITY NEAR FLAG BOSHIELO DAM

4.2.1 BACKGROUND

Phetwane community is located along the Olifants/Lepelle River, immediately downstream of Flag Boshielo Dam and Water Supply Scheme (WSS) in Elias Motswaledi Local Municipality, Great Sekhukhune District (Limpopo Province) (Figure 2). The community is situated approximately 30km to the north-east of the town of Marble Hall and is part of the Upper Olifants/Lepelle smallholder irrigation scheme, which consists of five village communities. Phetwane community falls under two tiers of traditional leadership. The overarching leader is Chief Matlala, who governs the village community among a number of other baKone baMatlala communities. At the village level, a headman administers the day-to-day affairs of the community. Unlike many traditional communities, whose members largely share common historical backgrounds and identities, Phetwane's peculiar defining feature is that the community mostly consists of a conglomerate of people originally from different places, who settled under apartheid government-appointed Chief Matlala (the deceased father of the current chief) in the late 1950s to the 1960s following promulgation of the Promotion of Bantu Self-government Act of 1959. The community has a relatively low degree of cohesion.

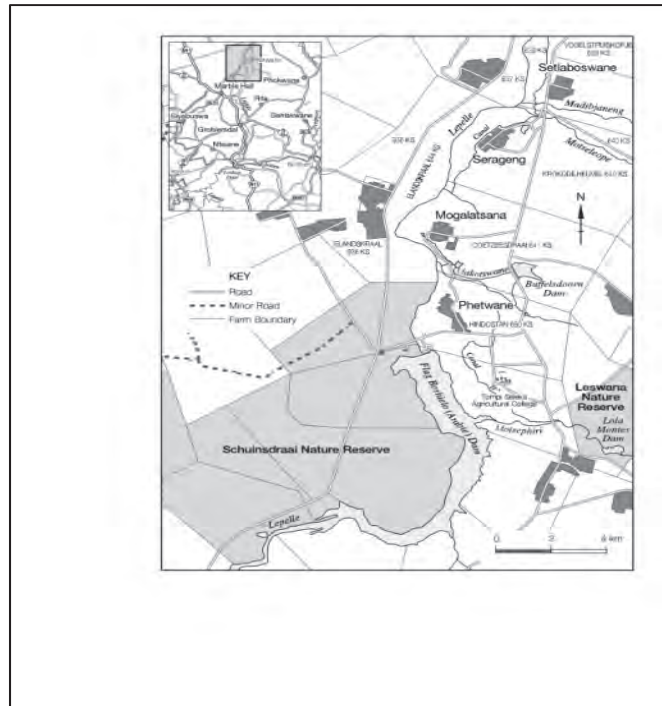


Figure 2 Location of Phetwane Community

4.2.2 TRADITIONAL LEADERSHIP ROLES IN WATER SERVICES GOVERNANCE

Phetwane traditional leadership does not play any roles in water services governance. Greater Sekhukhune District Municipality is the WSA. The municipality obtains bulk water supplies from DWA, which is the authority responsible for Flag Boshielo Dam. The district municipality then delegates the responsibility for water services provision and cost recovery within the Flag Boshielo WSS area to Lepelle Northern Water (LNW) Board, which is a private water utilities company. The delegation is through a contractual Service Level Agreement. A water purification plant operated by the water utilities company is located immediately below the dam wall, less than a kilometre upstream of Phetwane village. LNW provides water services to Phetwane and at least five village communities downstream, which include Mogalatsana (Coetzeesdraai), Krokodilheuwel ("Crocodile"), Setlaboswane, Mphane (Gaataan) and Makgwabe (De Paarl).

Phetwane enjoys improved water services at above RDP levels, with most of the households having yard or in-house taps. In 2008, about half (49.7%) of these connections were formally registered with the water utilities company. A significant proportion (40%) of households had 'illegal' connections. A small number (10.3%), mostly the poorest of households were not connected and obtained water from neighbours and directly from the Lepelle River. Such households either could not afford the R1250 required for formal homestead tap connections by the water utilities company or were reluctant to use the services of informal plumbers, who charged

between R1000 and R1250 – paid for in negotiated instalments – for ‘illegal’ connections.

There was also evidence of informal dual connections to both the old communal reticulation system, which no longer supplied communal taps but remained functional, and the newer individual homestead reticulation system, for which households were required to connect legally and pay for water. The combined frequency (146%) of connections to categories ‘Yard tap to municipal reticulation network’ and ‘Yard tap to communal standpipe’ exceeded the total percentage (100%) of households who indicated that they had access to water services. The dual connections were due to awareness by Phetwane households of both the 6000-litre ‘free basic water’ allowance and the non-decommissioning of pipelines supplying the old communal standpipes, which therefore could still issue water even though the communal taps had been sealed. Many of the involved households partitioned uses of water from these two sources. They used water from legal connections for minimal basic needs while using illegal connections to the old communal reticulation system for garden irrigation, laundry and bathing. That way, they kept their monthly water bills below 6000 litres. This strategy was a safeguard against possible future repercussions associated with cost recovery for arrears from illegal connections. An unintended effect of the strategy, however, was that communities downstream often had insufficient water.

Prior to the new reticulation system, Phetwane households used to buy ‘tokens’ from the water utilities company, which they used to pay for domestic water supplies from communal taps (or ‘stand pipes’). These taps had since been dismantled, leaving no alternative source of water for the few identified indigent households, who could not afford connection fees for homestead taps and were thus compelled to rely on either the goodwill of neighbours or raw water sources. Despite overall improvements to domestic water supplies, Phetwane sometimes experiences problems of inconsistent water supply and infrastructure breakdowns. Respondents from the community stated that water supply was inconsistent, and it often took up to nine (9) weeks for infrastructure breakdowns to be repaired. Consequently, local households were sometimes compelled to use raw water from the river for laundry and bathing and to source potable drinking and cooking water from neighbouring villages or Tompi Seleka College of Agriculture, which was about 2.5km away.

Neither the headman nor the chief use their traditional leadership authority to intervene in the various water services issues within Phetwane, some of which impact on downstream communities. While it is not clear whether or not the chief is aware of Phetwane water services issues, it seems inconceivable that the village headman has been oblivious of these. A contributing factor to the hands-off attitude by traditional leadership seems to be a long-standing tension between the baKone baMatlala traditional leadership and elected municipal councilors. This appears to

hinder the two sets of local leadership from overcoming technicalities imposed by the legal separation of functions and working collaboratively in the public interest.

Despite leadership contestations at higher levels, there are clear rules regarding access to water services within the community. Since the phasing out of communal water taps in the late 2000s, there have been no local water point committees. However, community engagement by elected councilors and the community's proximity to both the dam and the water utility have contributed to a relatively high level (93.1%) of awareness by community members of the division of institutional roles between the District Municipality as the WSA, Lepelle Northern Water Board as water utility company, and DWA as policy maker and bulk water supplier. An unintended consequence of this awareness, however, has been that households tend to manoeuvre their water services access and use to by-pass the rules set by these external institutions. They make private investments to dually access and use water formally and informally from operational homestead reticulation infrastructure and discontinued communal supply infrastructure, respectively, thereby artificially keeping formal consumption levels below the free basic allowance.

With respect to formal and informal private investments in homestead (yard or in-house) water supply services infrastructure (79.3%), such investments were generally not seen as a prerequisite for access rights to water. Those households that were not connected, due to either inability to pay or failure by formal institutions to provide connection services, had to obtain permission from owners of infrastructure before they could gain access to water within private homesteads. Community members could therefore access water whether or not they had made such investments, but owners of such infrastructure had the prerogative to make and change rules of access.

Similarly, unwritten local rules were that those formally registered households that intended obtaining dual access, by informally connecting to the communal reticulation system in addition to their formal connections, had to negotiate with existing informally (or "illegally") connected households downstream of the intended point of connection. The reason was that many 'illegal' connections had meters, while informal access by registered (or "legal") users had no meters. Consequently, there was apprehension that, in the event of future cost recovery from illegal users, un-metered and hidden abstractions by dual users would significantly increase the measured consumption and therefore arrears of openly illegal users.

It would seem that in cases such as Phetwane, there is a need for village-level water committees composed of elected and/or nominated ordinary women and, to a lesser extent, men residing within the locality. These committees, rather than traditional leadership, would play active roles in the participatory formulation of access rules, oversight of day-to-day operational activities, resolution of minor disputes and ensuring compliance. Traditional leadership roles would be more appropriately

geared towards the mediation of major disputes and/or mobilization of the community in times of disaster, such as the outbreak of deadly diseases or protracted water shortage.

4.2.3 TRADITIONAL LEADERSHIP ROLES IN WATER RESOURCES GOVERNANCE

Chief Matlala plays greater roles in the governance of access to water resources than water services within his area of jurisdiction. This is intricately related to the chief's control over land resources over which he exercises customary law. By contrast, the village headman has very limited powers and his role appears mainly to be to report to the chief any problems or issues that arise in the utilization of land and associated water resources. This paper cites two examples of traditional leadership roles in water resources governance. The first relates to the handling of Phetwane smallholders' grievances regarding a Revitalization of Smallholder Irrigation Schemes (RESIS) Programme project, which was driven by the provincial Department of Agriculture. The second example relates to attempts by landless Phetwane women and men to enhance their livelihoods by utilising land abutting the Oliphants/Lepelle River to develop recreational fishing areas and the local Buffelsdoorn Dam to initiate poultry and vegetable projects.

4.3.2.1 RESIS Joint Ventures: Traditional Leadership Intervention and Interference

RESIS joint ventures in Phetwane began towards the end of 2003, following a preliminary two-year infrastructure rehabilitation phase that began in 2001. In 2004, soon after inception of a cotton production joint venture with Noordelike Sentrale Katoen (NSK), the majority (82.6%) of irrigation plot holders were women and men aged 60 years and above. At least 15.2% of all plotholders were over 80 years old, and two of these were aged 102. With the progression of time, a number of elderly farmers have since died and the plots registered in their names have become inherited by members of their nuclear and/or extended families. Contrary to requirements by old formal legislation governing Permission to Occupy certificates (PTOs), which stipulated that land tenure thus accorded would apply only during lifetime of a permit holder, the chief seems to have conflated formal legislation with the customary practice whereby land customarily allocated to a household remains at the disposal of its members for so long as they remained part of the community. Through this case-specific practice, plot-owning households have enjoyed associated access to water resources of irrigation farming, while the landless have had to resort to either accessing such water through social networks for share-cropping or other labour arrangements.

Traditional leadership has played key roles in the governance of Phetwane irrigation scheme since its establishment in the 1960s. During the 1960s, the chief used PTO

certificates to allocate plots of land in the scheme to early settlers. Beneficiaries were mostly male heads of households, who often left farming to their wives while they went away to work as migrant labourers in the mines, farms and urban centres, mainly in Gauteng. To a lesser extent, the chief also allocated land to single, widowed and divorced women heads of households, who often had to till his land for 5 years before being awarded their own PTOs. By the time the RESIS Programme began in Phetwane in 2001, most of the male PTO holders had died, leaving their elderly widows in possession of the PTOs. Consequently, many of the elderly Phetwane farmers perceived their PTOs to be a secure form of land tenure, and the usufruct rights accorded by PTOs to be inalienable. Such perceptions persisted despite that the repeal of the 1936 Native Trust and Land Act in 1991 through the Abolition of Racially Based Land Measures Act rendered PTOs obsolete. The Communal Land Rights Act (CLRA) of 2004, in particular, converted 'old order rights' into 'new order rights', which effectively meant that land rights held through PTOs by most of Phetwane's farmers could remain secure in perpetuity. This frustrated the youth in the village, who wanted the elderly and mostly female farmers to be removed from the irrigation scheme in anticipation of monetary incomes from joint production ventures with private investors. Chief Matlala intervened on behalf of the elderly plotters, using authority deriving from both his control over land and involvement in the RESIS project.

From the start of RESIS Programme implementation in Phetwane, traditional leadership was involved in the governance of agricultural commercialization projects. A Water User Association (WUA) model was adopted, which encompassed all identified key stakeholders and local water users in particular. This model was informed by customary governance practices of the community. Although the Phetwane WUA subsequently floundered, the insights yielded by the model regarding roles of traditional leadership in water resources governance have since continued to unfold and spread into other water resources-related arenas within Phetwane community. By 2004, the RESIS project facilitator, Ndzalo consultancy, had made commendable effort to maximize synergies between customary, municipal and new institutional arrangements for RESIS, but overlooked the strength of the traditional leadership's grip on power within communities such as Phetwane. The stronghold of traditional leadership was clearly demonstrated when the elderly among farmers appealed to Chief Matlala for intervention following failure by the joint venture with NSK to generate expected incomes. The elderly farmers, who were in the majority, absolutely rejected any suggestion of role play by elected councilors and instead voted for the removal from office of most of the younger members of management committees for both Phetwane Farmers' Association and its umbrella body, Upper Arabie Balemi Trust. These were perceived to be aligned to the militant, landless and unemployed youth, who invoked a principle of the ANC's Freedom Charter that "The land shall be owned by those who work it".

While plot-holding farmers strongly believed that their rights to irrigated land were secure, a number of landless youth argued that irrigated plots should be redistributed in their own favour. Since the youth provided much of the labour on the scheme, under the employ of elderly plottolders, they considered that they were better placed than the latter to play active roles in commercialized agriculture within the scheme. Given the high levels of unemployment in the community, the youth were initially optimistic that RESIS would generate entrepreneurial and employment opportunities. Traditional leadership intervened in this inter-generational contestation and, using *de facto* customary rules and their political might, significantly shifted the balance of power in favour of the elderly and mostly female farmers.

It is perhaps worth noting that the Phetwane youths' citing of the ANC Freedom Charter could have been linked to the fact that an erstwhile locally-elected councilor of Ward 9 was among representatives who tabled their views against the Communal Land Rights Bill at parliamentary hearings in 2003. It is therefore possible that inter-generational contestations were product of the youths' clear understandings of provisions of this piece of legislation. Although the joint venture with NSK did not yield the anticipated financial gains, the chief's intervention prevented many vulnerable elderly women plottolders from losing their land rights and access to water resources in the scheme and simultaneously lost the opportunity to find tenable alternative strategies to address the young people's unmet needs for livelihood security.

Subsequent interventions by the chief, however, had negative consequences for farmers. This was during the interlude between the first RESIS joint venture with NSK and a new RESIS-Recharge strategic partnership with Arthur William Creighton (AWC) trading as 'empowerment' company Temong cc. The younger and more educated among farmers, who had inherited plots from their deceased parents, raised concerns that the strategic partnership contract not only disadvantaged farmers but was also a poorly executed cut-and-paste job whose technical errors rendered it legally invalid. Their quest for redress was thwarted when the AWC black economic empowerment (BEE) partner privately solicited the support of Chief Matlala and thereby influenced the mostly illiterate elderly farmers to reject the younger farmers' position. At a meeting to discuss the signing of the contract, the chief is reported to have literally forced the young male chairperson of Phetwane Farmers' Association to sign the flawed and contested contract. The chief's intervention not only deprived farmers of an equal share of profits deriving from their contribution of land and water as equity, but also created divisions among farmers.

4.3.2.2 Aquaculture Project: Traditional Leadership Intervention or Interference?

The divisions emanating from RESIS-related disputes had subsequent repercussions on a new aquaculture project started by the younger farmers, as

Sehlo-kola Aquaculture Cooperative Limited. Sehlo-kola's vision for aquaculture entailed members of the cooperative producing fingerlings to sell and initiating the farming, processing and packaging of fish. Local communities, schools and hospitals were projected to gain health and nutrition benefits from buying fish more cheaply and making it part of their regular diet. The species identified were tilapia and carp, which were said to be abundant in the Olifants (Lepelle) River and already consumed by local households.

Given the risk of attacks by crocodiles in the river, which reportedly resulted in losses of at least one person per year, cooperative members saw the aquaculture project as offering a safer means of deriving economic benefits from exploiting fish. Aquaculture also seemed to provide a quicker solution to unemployment for young farmers in Sehlo-kola Cooperative, who were socio-economically as vulnerable as the majority of the unemployed and landless men and women in the village. Although both groups were keen to gain formal access to Flag Boshielo dam fisheries for livelihoods, progress was stalled by the emergence of a large scale illegal gillnet fishing operation around the dam, which the Limpopo Department of Economic Development Environment and Tourism (LEDET) was in the process of resolving through Community Outreach and compliance enforcement. Many of the illegal gillnet fishers were accessing the dam through a small fishing camp, Matlala Aloe Park, which was owned or controlled by the chief. While Sehlo-kola's quest to engage in aquaculture seemed a more tenable option, therefore, the cooperative had experienced a series of set-backs that effectively destroyed their plans.

The first setback emerged when members of the co-operative asked traditional leadership for permission to start an aquaculture project using communal land close to the Buffelsdoorn Dam (locally known as "Mariri"). The small dis-used irrigation dam is located close to Phetwane and to the north east of Flag Boshielo Dam. The traditional leaders declined giving three reasons. The first was that the land was already allocated to livestock farmers and could not accommodate additional uses without exacerbating the prevailing shortage of grazing land. The second reason was that, as soon as land around Buffelsdoorn Dam was allocated to Phetwane people for aquaculture and economic benefits from the project became perceived, traditional leadership would have to contend with additional demands for access to land from people living in neighbouring communities, such as Mogalatsane. The third reason given by traditional leaders was that they wanted to preserve the dam because they believed that it would be used once again for irrigation and should therefore be reserved as backup in case Flag Boshielo Dam became empty. The last reason did not make sense to the cooperative members, since Flag Boshielo was considerably larger and had recently been raised by 5 metres, while Buffelsdoorn was very small and likely to dry out first. The traditional leaders' refusal to give permission was a major setback for the co-operative, which had applied for funding from the LDA to renovate Buffelsdoorn Dam and purchase requisite material for starting-up and

operating the project. The LDA aquaculture official had also linked the cooperative to technical and business experts.

The second setback arose when the aquaculture cooperative resorted to requesting permission to use balancing dams within the irrigation scheme (Figure 3). The elderly farmers unanimously voted the young farmers out of the balancing dams, despite that the Limpopo provincial Department of Agriculture had further awarded them funding of approximately R200,000. In intervening to resolve the dispute, traditional leadership not only upheld the elderly farmers' objection but also proceeded to endorse Sehlo-kola's voluntary surrender of irrigation scheme-based aquaculture project plans and funding. Subsequently, officials of the provincial Department of Agriculture intervened to resolve tensions and the aquaculture project was re-formulated to be a community-wide project.



Figure 3 Phetwane: Disused irrigation balancing dam converted into aquaculture ponds, 2010¹²

4.3 CASE OF MAKULEKE COMMUNITY: MULTIPLE WATER SOURCES

4.3.1 BACKGROUND

4.3.1.1 Location

Makuleke community is located in Ward 5 of Thulamela Local Municipality in Vhembe District (Figure 4). Before 1994, this area fell under jurisdiction of the Gazankulu homeland government. The community is situated within Nthlaveni (2 MU) communal area along the western boundary of the Kruger National Park (KNP) (Figure 3). The specific area occupied by the Makuleke people is referred to as the 'Makuleke area'. This area extends from three to sixteen kilometres to the south west

¹² Photo source: Mr Jackie Phosa, Aquaculture Officer, Limpopo Department of Agriculture.

of the KNP's Punda Maria gate. The Makuleke area is approximately 5 000 hectares in extent (Carruthers, 1995 in Tapela, 2002).

In addition to the Makuleke area, the community owns land in the Pafuri area, historically known as the 'Crooks' Corner' (Harries, 1984 in Tapela, 2002). Since 1998, the area has also been referred to as the Makuleke Region. The Pafuri area is situated at the confluence of the Limpopo and the Luvuvhu Rivers along the northern boundary of the KNP. This is the point where the boundaries of South Africa, Zimbabwe and Mozambique intersect. This area, which is 21 887 hectares in extent (South Africa, 1998), is not occupied by the community but has been set aside as a resource that will be used to offset community development.



Figure 4 Location of Makuleke Community

4.3.1.2 Socio-economic Profile

The Makuleke community is distributed among three villages namely, Makuleke (or Block I), Mabiligwe (or Block J) and Makahlule (or Block H). Community records show that the population consists of 3244 households (Table 3).

Table 3 Population Distribution in Makuleke Community by Number of Households, 2008

Name of Village	Number of Households
Makuleke (Block I)	1444
Mabiligwe (Block J)	1000
Makahlule (Block H)	800
TOTAL POPULATION	3244

Source: Makuleke Community Administration Office, 2008

Like many traditional communities in South Africa, Makuleke community has a relatively low level of social service and infrastructure development. Mean household incomes are relatively low (Tapela, 1997; Tapela & Omara-Ojungu, 1999; Tapela, 1999; 2002; 2008) while the unemployment rate for heads of households and the rest of the working age population is relatively high (ibid.). Local formal employment opportunities are scarce, and most males of working age tend to migrate to other areas in search of employment opportunities (Tapela, 1999). Members of the community use multiple natural and man-made water sources and infrastructure. Land use in the Makuleke area is mainly agricultural, and Makuleke Irrigation Scheme constitutes a major development project in the area. There are two types of tenure systems operating within the Makuleke area. The first is the traditional communal system in which the chief allocates land. The communal tenure system applies to village settlement areas, rain-fed croplands and grazing lands. The second tenure system is the leasehold system in which land allocation is performed by the Provincial Department of Lands and Agriculture, through consultation with the Tribal Council. This system applies to land in the Makuleke Irrigation Scheme.

4.3.1.3 Community Governance Framework

The Makuleke community is administered by three governance structures. Firstly, there is the Tribal Council, which is headed by Chief Makuleke and the Royal Family. The Tribal Council is the traditional authority within the community and is composed of village headmen and elders, who advise the chief on various aspects of customary governance. Secondly, there is a Community Development Forum (CDF), which consists of elected members representing various portfolios including agriculture, women, health, education, transport and housing. The third prominent structure is Makuleke Communal Property Association (CPA), which owns land in the Pafuri area of the northernmost portion of Kruger National Park.

The CDF was established following recognition that, in replacing the Transitional Local Government Act (TLGA) of 1995 (South Africa, 1995), the Municipal Systems Act of 2000 had not made adequate provision for community level representation in the IDP process. Historically, the TLGA provided for community representation through ward councillors within Transitional Local Councils (TLCs). TLCs were the democratically-elected third tier of government, and ward councillors wielded a considerable degree of political power owing to the fact that TLCs were legally responsible for service delivery and community development. Prior to 1994, Tribal Councils and South African National Civic Organization (SANCO) had fulfilled such roles. In the late 1990s the CDF replaced Makuleke Civic Organisation, which had historically acted as a pressure group urging for the delivery of services denied to the community under the previous apartheid government. Concomitantly, the Tribal Council continued to wield considerable power as it controlled access to all communally-held land within the Makuleke area. The political clout of the Tribal Council has also been based upon a historical legacy of established authority

derived from kinship and descent. The blending of traditional and elected structures in Makuleke contrasts with tensions typically observed between similar structures in many rural communities in South Africa (Ntsebeza, 2006), such as Phetwane. Such blending seems to have contributed to the relatively high degree of social cohesion observed by various scholars (LRG, 1995; Tapela, 1999, 2002, 2007; Steenkamp, 2003).

Although both the CDF and the Tribal Council can be construed to be a localized component of the building blocks of Thulamela Local Municipality, the latter structure appears to be the stronger of the two since it is legally recognised as an integral part of the local municipality, while the CDF is only indirectly represented through a ward councillor. Personal observations over a period of 10 years revealed that the balance of power within the community is strategically maintained through a blending of the traditional and newer elected structures. This blending was initiated through formation of the Makuleke Tribal Authority Executive (TAE) in the mid-1990s. The TAE was a blended CBO structure aimed at creating a unified front to deal with external institutional actors during the land claim process. TAE membership included Chief Makuleke, the Tribal Council, an elected Ward 5 councillor who resided in the community and representatives of the Civic, Youth, Women's and Farmers' organisations. After the land claim settlement in 1998, the TAE became reconstituted as a Makuleke CPA Executive Committee.

The CPA owns the land that was restituted to the Makuleke in 1998 and is administered by an elected Executive Committee. This committee is responsible for ensuring the success of a Community Based Natural Resources Management (CBNRM) initiative within the restituted Pafuri area. Membership of the CPA is not universal within the community, but includes, in theory at least, only those who had valid claims to land in the Pafuri area of the KNP. These were listed in 1997 and, following constitution of the Makuleke CPA as a representative and accountable legal entity in 1998, were formally registered as members of the CPA. The first Executive Committee was largely drawn from the Makuleke Land Claim Committee, which in turn had evolved from the TAE. Many members of the first Executive Committee have since been replaced by newer elected members, in line with Makuleke CPA constitutional requirements for three-year tenure. Such changes inadvertently result in loss of institutional memory as well as power dynamics between outgoing and incoming members. In an attempt to maintain continuity and strength within the CPA, Chief Makuleke once appointed a long-standing member of the TAE and CPA as an "official representative" of Makuleke community. The individual concerned had been a former councillor for Ward 5 of Thulamela Local Municipality as well as the Chairperson of both the Makuleke Land Claims Committee and CPA. The power base of the Makuleke CPA was primarily its ownership of land in the Pafuri area. Although usage of this portion of land for community revenue, employment and power requires the Makuleke CPA executive committee, CDF and Tribal Council to work in close collaboration, there have been

episodes when power dynamics between the latter two structures has undermined their working relationship, while that of the CPA executive committee and Tribal Council has become strengthened.

The above power dynamics suggest that community governance can be very complex and highly charged. Therefore any attempts by the water sector to introduce or modify institutional arrangements for water governance in traditional communities, such as Makuleke, should take into account existing governance structures and their associated roles, resources and relationships. In particular, it is advisable to avoid blatant disregard for community power dynamics and to adopt instead a more engaged and bricolaged approach towards effective water governance arrangements.

4.3.2 TRADITIONAL LEADERSHIP ROLES IN WATER RESOURCES AND SERVICES GOVERNANCE

The Makuleke area is dissected by a number of rivers and streams, which include Mphongolo, Mapangu and Dumbuzi Rivers. Mphongolo River is the largest drainage feature in the area. The river is a secondary tributary of the Olifants River, which is a constituent of the Limpopo Watercourse System. While the smaller streams are ephemeral, the larger rivers flow for longer durations during rainy seasons and a proportion of streamflow is impounded in a dam and numerous pools within river channels thus remaining available for use during the drier months. A significant proportion of Mphongolo River water is impounded by Makuleke Dam mainly for irrigation purposes within a local smallholder irrigation scheme. Water is channeled from the dam by a concrete-lined irrigation canal to a balancing dam and an electricity-powered pump station in the scheme. Access to Makuleke dam is open to members of other communities¹³, but the Makuleke are the primary beneficiaries. Man-made infrastructure also includes water storage tanks, boreholes, water pumps, dip tanks, livestock watering ponds, communal water taps and homestead taps within private dwelling units.

Besides irrigation of crops, local people use water from the rivers, dam and canals for laundry, fishing, car washing and livestock watering. Use of river water for domestic purposes was particularly prevalent in the early years following Makuleke people's resettlement, before water reservoirs (tanks) and boreholes were constructed by the apartheid government, the latter of which have mostly been decommissioned due to old age. The community also relied on a spring (*xihlobo*) and, as from the early 1990s, Makuleke Dam as alternative sources of raw water in times of scarcity, such as dry seasons and droughts. Domestic use of raw water was

¹³ For example, the range of water use for car washing purposes goes beyond Makuleke community boundaries and includes car and taxi owners from villages as far as fifteen kilometres away.

accompanied by a prevalence of water-borne diseases, including diarrhoea, particularly among the younger children (LRG, 1995). The practice has since given way to a greater reliance on alternative sources of cleaner water from infrastructure developed by formal institutions prior to and after accession by the African National Congress (ANC) led government in 1994.

This section examines the roles played by traditional leadership in the governance of water resources associated with various water resources within the community. These include the smallholder irrigation scheme, rivers, groundwater, springs and wetlands.

4.3.2.1 Makuleke Irrigation Scheme

Makuleke Irrigation Scheme was established by the Gazankulu homeland government in 1991, at the behest of Chief Joas Phahlela Makuleke and his traditional council, who foresaw their people's need to rise above poverty and under-development. Soon after the scheme was established, Chief Makuleke allocated irrigated plots in consultation with the local agricultural extension officer. The plots were allocated to 52 individual tenants, who paid an annual rental of R100, initially to the Gazankulu government department responsible for agriculture and, after 1994, to the Northern Province Department of Lands and Agriculture. Tenants were not exclusively drawn from the Makuleke community, but included people from neighbouring communities, such as Mhinga. Agricultural productivity remained generally low, owing to allocation of plots to part-time farmers who were gainfully employed elsewhere. Makuleke women made up the bulk of the labour force in the scheme. In the mid-1990s, these women were paid wages of R180 per month, which were very low compared to the average income of R1500 per month for employed Makuleke heads of household at the time. Crop production in the scheme declined sharply in 1999 due to the cessation of government subsidies.

In 2002, Makuleke Irrigation Scheme was included in the Limpopo Provincial Department of Agriculture's "Water Care" Programme, which was a sub-programme of RESIS. The land was redistributed in favour of 43 full-time aspirant commercial farmers and 277 subsistence food producers, who were mostly indigent women (69.6%) and men (30.4%). Land allocation was restricted to residents of Makuleke community, who had no alternative sources of income except social grants. Four (4) of the food plots were subsequently reallocated to a consortium of 4 emerging commercial farmers, who produced vegetables in a greenhouse built with funding from Gesellschaft Technische Zusammenarbeit (GtZ, now GIZ). In 2010, the irrigation scheme was re-surveyed and the numbers of food plots and subsistence irrigators increased from 273 to over 300. All the displaced riverside gardeners were accommodated. These adjustments were in line with the gender-sensitive vision for community development, which had been developed by the blended governance

structure comprising traditional and elected leadership during the land claim process of the mid-1990s.

It is worth noting that while the allocation of food plots was primarily intended to favour the most indigent households within the community, a number of non-poor households were found among food plotheolders. Such households had been displaced from their rain-fed crop fields when scheme was established, and in 1989 the chief ensured that these households were compensated through allocations of food plots.

Although traditional leadership roles in the governance of Makuleke Irrigation Scheme have mostly been laudable, there have also been instances whereby the involvement (or lack thereof) of traditional leaders has exacerbated problems and created a sense of insecurity among farmers. These largely relate to issues of land tenure insecurity associated with the irrigation scheme.

Firstly, while some of the farmers originally displaced from the rain-fed crop fields received compensatory food plots within the irrigation scheme, land rights of 6 women subsistence farmers from Mabiligwe village became extinct when their fields were included in the irrigation scheme area without compensation. At the time, traditional leadership did not heed the women's pleas for clemency. Although the women claimed that they had been discriminated against, Makuleke traditional leadership responded that these women had failed comply with a community rule against initiating new cultivation on land already earmarked for the envisaged scheme. Hence, the women were not counted among the group of *bona fide* farmers qualifying for compensation. A closer examination of how the women had actually gained access to the lost land showed that when the Makuleke were resettled in 1969, the chief allowed residents of Mabiligwe village to acquire arable land to the west of the village. The chief did not object to the location of the women's fields in that western portion of land, but warned them about possible removal a few months before the irrigation scheme was established in 1991. Owing to negative perceptions about their non-compliance, as well as their low social status and lack of influence, the women's voices remained unheard among a cacophony of many other similar voices of vulnerable women and men in the community. This example shows that in rural communities characterized by pervasive poverty, traditional leadership often has to confront the tension between justice and mercy. It takes a lot of stature and tenacity for traditional leadership to rise above ingrained cultures of allegiance, social inequality and gender discrimination in order to genuinely pursue a governance practice that is democratic, gender-sensitive, nurturing and humble rather than self-serving.

Secondly, among emerging commercial irrigation farmers, tenure insecurity was partially rooted in the fact that irrigated land on the scheme has historically been considered state land and Makuleke farmers therefore have had no title deeds to it.

Tenure insecurity mainly affected commercial plottolders, for whom the process of land allocation deviated from customary practice in that both the chief and the agricultural extension officer jointly allocated the plots through informal lease agreements. Although there was a formal register of plottolders and these farmers had since 2002 paid a rental fee to the Department of Agriculture for the use of state-funded irrigation infrastructure, such arrangements changed in 2005 with Irrigation Management Transfer (IMT). Tenure insecurity became re-enforced following discontinuation by the RESIS project of rental payments to the provincial Department of Agriculture. Instead, Chief Makuleke introduced a requirement for all commercial plot holders to pay a form of royalty to him. This requirement was not accompanied by any formal tenure security arrangements for plot holders, such as lease agreements. Farmers reported that tenure insecurity discouraged them from making private and collective investments within the scheme, and was therefore a major constraint in their efforts to become commercial farmers.¹⁴ By contrast, land tenure in the food plots clearly followed customary norms and rules. Consequently, subsistence food plottolders had a higher degree of tenure security. This was demonstrated when Chief Makuleke intervened and reinstated 273 subsistence farmers displaced by a strategic partnership in 2007. Furthermore, the chief helped to ensure that additional plots were allocated to more than 30 landless indigent women and men as well as displaced riverside gardeners. The foregoing example highlights the fact that, if the water sector's envisaged devolution of governance roles is to take traditional leadership outside their customary domains, then such devolution critically has to be accompanied by interventions to build the organizational capacity of this institution.

Awareness creation around the importance of demonstrating principles of good governance will also be necessary, since the legitimacy of traditional leadership in a democratic state will partly depend upon this institution's ability to exercise sound governance. The case of Makuleke Irrigation Scheme shows that, amid a lot of commendable decisions and actions that traditional leadership has demonstrated, this institution has also shown a propensity to abuse, when expedient, their access to governing platforms to further their own political self-interest rather than democratic ideals and citizenship rights. For example, in spite of good intentions to redistribute plots in favour of unemployed, full-time aspirant commercial farmers and indigent food producers, which took place at the beginning of the RESIS Watercare Project in 2002, three eligible farmers were deliberately excluded due to local political power dynamics and their perceived lack of allegiance to the chief. These exclusions reinforced perceptions about tenure insecurity among emerging commercial farmers. Ironically, the farmers who benefited from the exclusions were three members of the farmers' management committee, who visibly paid allegiance to Chief Makuleke. Without good governance principles to counter the divisive

¹⁴ Feedback workshop convened by the researcher in Thohoyandou on 09 May 2007.

effects of cultures of allegiance, traditional leadership roles in water governance could inadvertently become a threat to the very ideals and objectives that integrated water (or natural resources) management seeks to achieve.

4.3.2.2 Informal Crop Irrigation: Riverside Gardening

The number of riverside gardens increased dramatically since 2007, when a new strategic partnership involving a private investor and commercial plottolders in the irrigation scheme commenced. Most of the riverside gardeners were subsistence food plot holders, who were excluded from the irrigation scheme by the strategic partnership. A few of the gardeners were emerging commercial farmers, who were frustrated by the lack of provisions by the strategic partnership for active involvement by farmers in crop production. A fair proportion of riverside gardeners were pensioners, who reported that their household food security had been severely compromised by food price increases.

At least sixteen (16) riverside gardens were identified in and around Makuleke village, along Mphongolo and Mapangu Rivers in 2008. Although both men and women were involved in riverside gardening, the majority of gardeners were men. The few women identified gained access to land through their relationships with men. Eleven (11) men and 2 women practiced riverside gardening on 11 small plots along Mapangu River. The women were allowed to share access to a plot that was jointly established by their two elderly male neighbours, who continued to grow crops alongside the women. Of the 5 riverside gardens immediately below Makuleke Dam along Mphongolo River, 4 were owned by men while 1 was owned by a woman. The woman was a widow who inherited the garden after her husband's death. A number of gardens were also identified in a 3 ha area along the perennial Dumbuzi River close to Makahlule village. Due to the breakdown of a borehole that provided irrigation water during the dry season, crop production on this site had become confined to the wet season.

Sizes of gardens varied and seemed to be related to gardeners' resource endowments, which differed according to each farmer's socio-economic status. Generally, the more affluent gardeners tended to have larger gardens and greater investments in hydraulic infrastructure, such as water lifting devices (e.g. petrol and diesel pumps and buckets), water reservoirs (e.g. "jojo" tanks) and irrigation technology (e.g. pipes and drip irrigation kits). Investments by resource-poor gardeners tended to be limited to buckets, labour for constructing furrows and rudimentary earth platforms from which to safely draw water using buckets.

Makuleke farmers generally required no permission from traditional leadership to use small portions of land along the river, which often fall within communal grazing lands and outside of the irrigation scheme and residential areas. Local traditional institutions also did not require farmers to obtain permission to use river water for

small-scale informal commercial enterprises and food production. Use of these natural resources was commonly viewed as legitimate since it contributed towards enhancing livelihoods and food security within the community. Despite that access to riverside land located outside of village settlement areas generally required no specific permission from the chief or headman, between 2007 and 2010 only the male community members claimed this land and established gardens. The fact that women could only gain access through their relationships with men points to the existence of unwritten social constraints that prevent women from claiming rights to riverside land. Such constraints might perhaps be linked to the fact that the land in question has historically been part of communal pasture, whose access is customarily dominated by men.

In July 2008, there were fish deaths in the local rivers following the strategic partnership workers' washing out of some tanks in the irrigation scheme. Soon after this, crops in riverside gardens, which were irrigated with river water, also died. Local people conceded that they were not clear whether the cause of fish and crop deaths was solely pollutants from the scheme or a combination of these pollutants and dry weather. Although traditional leadership had been made aware of the pollution problem, they lacked the capacity to thoroughly investigate the cause of the problem and/or enforce compliance and rehabilitative measures upon the strategic partnership. The result was that members of the community remained concerned about possible risks from water pollution and therefore insecure.

In 2010, traditional leadership issued a decree basically bringing to a halt all riverside gardening. The reason for this decision was not so much concerns about water pollution and safety but, rather, about conflicts between gardeners and livestock owners. The latter are generally wealthier and more powerful than the gardeners, and have used the commons long before the advent of riverside gardening. Towards safeguarding against further vulnerability of the displaced people, Chief Makuleke successfully got government to extend the number of irrigated food plots in the scheme so as to accommodate riverside gardeners and ensure that these and all other subsistence irrigators gained access to water for productive use. This demonstrated a remarkable degree of fairness, responsibility and capacity to resolve day-to-day conflicts. The widespread acceptance of the chief's verdict regarding the conflict between riverside gardeners and livestock owners indicates the relatively high level of legitimacy that the leader enjoys within his community, as well as the social cohesion that persists despite on-going power dynamics.

Although Makuleke traditional leadership did not initially restrict access by gardeners to river water, members of the community were quick to point out that their community is "not an open access system" but has clear restrictions and freedoms (Tapela *et al.*, 2007). They cited that water use for irrigation of land outside the irrigation scheme and residential areas, which had not been allocated to any specific use, did not to require community members to obtain specific permission from

traditional leadership. However, water use that entailed the exclusive use of communal land close to residential sites for commercially-orientated or other purposes required the prospective user to obtain land access rights from the Chief or, in the case of Makahlule village, headman¹⁵. The foregoing example indicates that in traditional rural communities, traditional leadership's governance of water resources is intricately linked to the governance of land. It is therefore from this perspective that traditional leadership roles in water governance should be seen.

4.3.2.3 Wetlands and Springs

The study identified one wetland area in this largely dry area. The wetland surrounds a natural spring or "*xihlobo*" that is located in a secluded and tree-shaded area approximately fifty (50) metres below the dam wall. People living in Makuleke village have historically relied on the spring as an alternative source of drinking and cooking water during times of severe water shortage. With increasing population in Makuleke village, however, the spring has become a less viable option for many people since it can only supply a limited amount of water per day. Access to the spring has been affected by dam infrastructure development. Seepage from the Makuleke dam wall has made the wetland waterlogged persistently rather than seasonally, which restricts access to the spring via two narrow footpaths. There is widespread awareness within the community that the lack of a protective fence around the spring makes water quality vulnerable to contamination through both human carelessness and the wild animals and birds that share it.

No customary rules have been established to govern the use of the Makuleke spring. For purposes of safety and control of contamination, the only existing rule in the community is that children should not visit the spring unaccompanied by an adult. During drier seasons, three farmers abstract water from the wetland to irrigate gardens on adjacent higher ground. One of these uses a generator-powered pump while the other two use buckets. These abstractions of wetland water have not required the users to obtain permission from traditional leadership or any other governance structure within the community. The uninvolved of traditional leadership in the governance of this resource is due to the fact that the Makuleke are relatively new settlers in their current location, owing to their forced removal from Pafuri in 1969. Makuleke traditional leaders and elders have expressed views that they face certain constraints in attempting to apply some of the customary rules and indigenous practices they used to exercise in their old home. This therefore suggests

¹⁵ The discrepancy on who grants land access rights at very localized levels is rooted in the local power dynamics and disputes over the legitimacy of Chief Makuleke's chieftainship. These dynamics have emerged from the historical forced removals and resettlement of people in the Nthlavheni Communal Lands. They have intensified following post-apartheid land, traditional leadership and governance reforms, and perceptions of benefits Makuleke land claim settlement and a new strategic partnership in the 'revitalized' irrigation scheme.

that traditional governance of water resources is closely tied to indigenous knowledge systems associated with control over ancestral land.

4.3.2.4 Groundwater

Groundwater is an important source of water for domestic use, stock watering and dipping. Groundwater abstraction augments the piped bulk water supply from the Xi-Kundu Dam within the local municipality. There are both publicly and privately funded infrastructure for groundwater abstraction. Communal infrastructure associated with groundwater abstraction and storage includes state-funded boreholes, reservoirs and dip tanks. Prior to 1994, these were constructed by the Gazankulu Homeland government. Mvula Trust and the Vhembe District Municipality took over this role after 1994. Each of the 3 villages has 2 communal boreholes that were developed by government agencies during the late 1990s drought that severely affected rural communities in Limpopo Province. Groundwater abstracted through these boreholes is stored in two communal water storage tanks per village. The larger reservoirs supply communal water needs for domestic use, through stand pipes, and livestock-related uses, through diptanks and drinking troughs. Water scarcity has more recently been associated with breakdowns and inadequacy of the bulk water supply and reticulation systems, the obsolescence of old infrastructure and periodic floods due to heavy rains. Although Makuleke traditional leadership plays minimal roles in the day-to-day operations of water service delivery, the institution has put in place the governing rules and structures, such as village and water point committees, as well as employed a salaried water bailiff. Given the prevailing problem of potable water scarcity in 2 of the villages in the community, the power and legitimacy of Chief Makuleke has largely been critical to ensuring that available groundwater is shared equitably and conserved.

A few individuals have also invested in private boreholes, which are located either within their homesteads or in their fenced fields. Makuleke village has the highest number (10) of individually-owned boreholes. A few of such boreholes serve as safety nets for the community during times of water shortage, when their owners vend water at a price of fifty (50) cents per litre. According to records of the Makuleke administrative office, there are eighteen (18) privately owned boreholes in the community, and six (6) state-owned boreholes. Each village also has at least one (1) institutional borehole that provides water for public health clinics. These statistics were confirmed by ground truthing, which also identified a few additional non-functioning communal boreholes that date back to the community's early resettlement history.

4.3.2.5 Rainfall

Rainfall is mostly used for rainfed agriculture, which includes cultivated croplands and communal pastures. While access to communal pastures is open to recognized

members of the community, rainfed crop fields are allocated mostly to households that settled earlier in the Makuleke area. Such households reside in the “old stands” within the three villages. Households residing in the newer extensions generally lack access to rainfed croplands. The contraction of Makuleke land resources from 21 887 ha to 5000 ha following their forced removal in 1969 and the subsequent resettlement of other xiTsonga-speaking peoples in the Nthlavheni area (Tapela 2002) contributed to land shortage for the growing Makuleke population (see Table 3 on page 24).

In both the croplands and pastures, the use of harvesting rainfall technologies is minimal. Crop farmers plough the topsoil to allow a greater proportion of incident rain water to percolate. No other rainwater harvesting technologies are used. Similarly, no rainwater harvesting technologies are used in the pastures. The study identified one case in which a livestock farmer appropriated a soil abstraction pit that was left unrehabilitated by a road construction company in 2005. The farmer uses this pit, which is located close to his homestead, to water his livestock during rainy periods. However, absence of erosion and sediment control infrastructure has resulted in the pit progressively becoming silted up over the past four (4) years thus severely reducing its water storage capacity. No permission from traditional leadership was required, and no one required the livestock farmer to implement land and water care measures. The siltation of the pit seems to have largely gone unnoticed.

There is a limited degree of rainwater harvesting in Makuleke community, mostly by a few of the old retail shops in the three villages. Rainwater is collected from roofs using gutters and stored in tanks next to the shop buildings. Such investments point not only to the history of potable water shortages in the community but also to the relative affluence of shop owners. Traditional leadership plays no roles in approving investments in rain water harvesting within homesteads.

4.3.2.6 Potable Water: Bulk Water Supply And Reticulation

The water reticulation system for domestic water taps is provisioned through a bulk water supply pipeline from the recently-constructed Xikundu Dam, which is located within Thulamela Local Municipality. Through a project implemented by Mvula Trust in 1996, domestic water supply has improved from a few communal water taps or “stand pipes” (Tapela, 1999a) to a combination of both communal stand pipes and individual homestead taps. Improvements in water supply infrastructure have been accompanied by a densification of pit latrines, which remain a key feature of community sanitation. Health care workers report fewer outbreaks of diarrhea, particularly among younger children, than in the 1990s when members of the community were often compelled to supplement their domestic water needs with unpurified water from the dam or irrigation canals. Despite these improvements, the main source of domestic water for most of the households remains communal water taps. This is due to inadequate bulk water supply, which restricts delivery of water

services to individual homesteads. Access to potable water particularly remains a major challenge for two of the villages namely, Makuleke (Block I) and Makahlule (Block H). Residents of these 2 villages often use raw water from the dam to augment piped domestic water sources. Water insecurity has compelled many households in these villages to make private investments in homestead taps and boreholes for domestic water supply. While some of these investments are formally registered with the community administration office (also locally known as the “tribal office”), most are informal and termed “illegal” by both community authorities and members. The study could not ascertain to what extent the Tribal Council was able to ring fence these funds, for use in defraying costs of water infrastructure operation and maintenance.

Despite informal investments in boreholes and homestead taps, state-funded communal water taps remained the main source of domestic water for the majority of households in two of the villages. Research showed that almost all households in Makuleke village (96.6%) and Mabiligwe village (96.7%) relied primarily on communal stand pipes, while Makahlule village has the lowest (6.9%) reliance on communal water taps. Degrees of access to water from communal taps also varied between the three villages. The lowest proportion (13.6%) of reliable and functioning communal taps was found in Makuleke village. The highest (100%) was found in Mabiligwe village, while less than half (36%) of communal taps in Makahlule village functioned and provided reliable water supply. Makuleke village had the highest deficit of water from formal communal water supply infrastructure. Makahlule village had the second highest deficit and Mabiligwe had the lowest. A cross-tabulation of ‘reliance on communal stand pipes’, on the one hand, and ‘degrees of access to water’, on the other hand, seemed to indicate that the water availability in Makahlule village was anomalous.

Evidence showed that there was a degree of potable water use in food production within homesteads. The prevalence of homestead gardens varied according to village-level assurance of water supply. Sources of water for homestead gardening activities included communal water taps, boreholes and Mphongolo River. Due to piped water shortages in Makuleke and Makahlule villages, homestead gardens were established only by the few households that had invested in boreholes. By contrast, abundant and reliable domestic water supply had resulted in a large number of households in Maviligwe village establishing homestead gardens. These were irrigated with water from communal taps. Despite widespread awareness by village residents of community rules against connecting hosepipes to irrigate homestead gardens, many gardeners ignored the rule. Power dynamics at the traditional leadership level had eroded the capacity of water committees to enforce rules, thus creating an opportunity for community members to use the free basic water without regard to quantities consumed.

The main reason given for using hosepipes instead of buckets was that it was difficult for women and children, who played greater roles in fetching water for irrigation and other uses, to repeatedly carry 20 to 25 litre buckets full of water over distances up to 200 m every day. By contrast, borehole owners paid electricity costs for water supply. Many also owned water storage tanks and were aware of the frequency with which they filled up the tanks. However, since these boreholes and tanks were located within homesteads, water was used for multiple purposes. This made it difficult and perhaps pointless to determine how much water was used for crop irrigation as opposed to other uses. The study identified one case of water abstraction directly from a river into a homestead garden. The gardener used a diesel-fueled pump, pipes and a drip irrigation system.

Although both traditional leadership (including the Chief, the village headman and the Tribal Council) had tried to compel Mabiligwe households to comply with community rules for using potable water, the majority had adamantly refused to obey. This form of rural civic disobedience was spearheaded by the women of Mabiligwe. The women felt aggrieved about a number of issues within the community. They were unhappy about the male domination of decision making structures and the co-option of a few compliant and/or relatively affluent women, which denied vulnerable and impoverished women the voice to express their interests. The women were also unhappy about the displacements from the irrigation scheme of food producers, who were mostly women. The poorest and most vulnerable among Mabiligwe women were dissatisfied about their perceived exclusion from access to tangible benefits from land restitution and tourism development in Pafuri.

Although in patriarchal traditional community settings, such as Makuleke, male villagers are culturally expected to ensure that women abide by rules made by traditional leadership, the reality in Mabiligwe village was that a significant number of men felt vulnerable to discrimination owing to politics of identity and 'belonging'. Having been forcibly removed from other Tsonga communities elsewhere and resettled under Chief Makuleke in the 1970s, the men's assumptions that they fully belonged to Makuleke Community had subsequently been found to be found to have been misplaced. With the economic benefit streams that flowed from the Makuleke Land Claim Settlement Agreement in 1998, the community became stratified in terms of '*bona fide*' and 'other' community members (i.e. those not originally from Pafuri or "Old Makuleke"). One senior male respondent from Mabiligwe decried such divisionism as creating two hierarchies of citizenship within the village, contrary to the National Constitution's Bill of Rights. The Makuleke Royal Family was said to be at the centre of such discriminatory practices, and was perceived to be acting in self-interest.

Triangulation, however, also showed that the problem emanated from the time of the land claim process in the mid-1990s, when the blended traditional and elected

leadership structure sought to strengthen community cohesion as a means to withstanding the anticipated onslaught of outsiders interested in the precedent-setting case and economic benefits thereby. The community building strategy socially engineered a unified vision, which also served to bolster perceptions of a large critical mass of land claimants. In reality, the official register of Makuleke claimants narrowly included only those individuals and households whose origins from Old Makuleke were clear and traceable. These were effectively the *bona fide* beneficiaries of the Settlement Agreement and subsequently became formal members of the Communal Property Association (CPA). Nonetheless, the collective vision for community development that was developed during the land claim process ensured that the rest of the Makuleke people could derive benefit from the CPA's communal investments in services and infrastructure in various sectors, such as electricity, education, information and communication services, social projects and administration services.

4.3.2.7 Informal Water Vendors

When water is scarce, all villages rely on communal boreholes and informal water vendors for alternative sources of water. Makuleke village residents also rely on the spring and the dam. Informal water vendors consist of a few enterprising individual members of the community, who diversify their livelihood strategies during times of water scarcity in order to generate income while meeting community water needs. The vendors supply water from their own private boreholes, communal taps in neighbouring villages and Makuleke Dam.

Vendors use trucks (or “*bakkies*”) to transport twenty (20) and twenty-five (25) litre cans of water from communal taps in neighbouring villages and from the dam to households in the community. At R2.00 for a 20 or 25 litre can, the price of potable water from communal taps and raw water from the dam is the same, irrespective of size of container and water quality. The price of a 200 litre drum of raw water from the dam is R40.00, which at R5.00 per 25 litre unit costs more than double the price of water sold in the smaller 25 litre containers. The most expensive alternative source, however, is borehole water supplied by individual informal water vendors.

Such water costs fifty (50) cents per litre, which translates to R10 for a 20 litre can and R12.50 for a 25 litre can. Vendors justify the relatively high price by alluding to the need to cover costs of running the electric pump. The purchase of borehole water involves interested household members personally collecting water from the vendor's source rather than the vendor delivering the water to buyers, as is the case with sales of water from the dam and neighbouring villages. Community members consider borehole water to be cleaner and safer for drinking and cooking purposes than the other alternatives. Those who can afford the price, however, purchase this water from vendors either as a last option or in cases of emergency. The majority of community member cannot afford the price of privately supplied borehole water.

Traditional leadership is not at all involved in the governance of informal water vending decisions, rules and practices. The rules governing this type of informal water services provision are negotiated purely and privately between the service provider and the water consumer. The lack of governing rules for this water source contributes to existing concerns among some of the consumers, who often have no assurance about the water quality management standards of unregulated water vendors.

4.4 CASE OF TETE PAN MYTHICAL SNAKE: ZAMAZAMA COMMUNITY IN PONGOLA FLOODPLAIN

Tete Pan is one of the numerous pans (or ox-bow lakes) found within Phongola River floodplain in northern KwaZulu-Natal. The pan is used by subsistence fishers from the local Zamazama traditional community, which consists of Tembe-Thonga people who have strong fishing traditions. The fishers catch fish such as tilapia and catfish for livelihoods and food security. They share the use of pan water resources with food gardeners, reed harvesters and livestock farmers. In 2012 the local traditional leader, *Inkosi* (King) Mabhudu Tembe, found himself straddling the fine line between customary law and Constitutional law, and at risk from losing credibility from either his people or the broader South African civic public realm. The governance dilemma was linked to the burden of proof in adjudicating a court case in which material evidence was lacking, but the intangible 'proof' widely perceived by local people as very real.

In the first half of 2012, it was reported that a mythical snake had caused most members of the community to abandon their use of Tete pan for different subsistence purposes. According to key respondents, such fears were linked to an unresolved mystery surrounding the death of a male fisher in the neighbouring Madonela Pan in 2011, whose body could not be found until the community called in the Shembe Church to offer prayers. In the case of Tete Pan, traditional leaders convened three community meetings between May and August 2012 but were unable to resolve the case due to difficulties in overcoming the 'burden of proof' regarding the mythical snake in question.

Of particular difficulty was their lack of practical options for reconciling the customary rules, which require the expulsion of a community member accused of witchcraft or wizardry, and national constitutional provisions for the protection of human rights. As traditional leadership grappled with straddling the fine line between downward accountability to its community, which exerted pressure for the accused to be expelled, and broader accountability to upholding democratic principles of the national Constitution, the dilemma was resolved when the suspect voiced his decision to leave the community. He clearly asserted that his decision was specifically due to the social pressure exerted by the community. After this, local people reportedly returned to fully using Tete Pan.

The case of Tete Pan highlights the need for clear guidelines regarding practical applications of legal pluralism in traditional communities. In particular, there is a need for research to examine the resonance and dissonance of Customary Law and Constitutional Law in matters pertaining to water resources and services governance in rural communities characterised by strong beliefs in spiritual IKS associated with water. Such guidelines will help traditional leadership and other stakeholders to navigate more easily the fine line between the different laws and understandings.

While such guidelines might enable traditional leaders to play more effective roles in the governance of water resources within land areas under their jurisdiction, evidence from Zimbabwe shows that although water reforms attempt to embrace both Roman Dutch law and customary law (Derman & Hellum, 2003 in Chikozho & Latham, 2005), such pluralism has not resolved the conflict regarding formalization of informal water use by small-scale irrigators within rural communities (Tapela, 2002). Without a clear understanding of the range and complexity of existing institutions that shape water use in rural communities and households, efforts to improve water allocations and resource management may be ineffective or even have the opposite effects from those intended (Meinzen-Dick & Nkonya, 2005).

While traditional leaders living within Phongola Floodplain, such as *Inkosi* Mabhudu Tembe, have actively tried to resolve widespread local concerns and fears about mythical snakes, there is no clear indication that the King has played effective roles in the governance of Pongola Dam water releases, which negatively affect subsistence fishing and endanger fishers' lives. Owing to the broad geographic spread of WUA jurisdictions, traditional councillors represent the King and rural communities in both Pongola Dam WUA and Imfunda YoPhongola (Phongola Floodplain WUA). However, their involvement in these water institutions has yet to yield significant gains for the most vulnerable of women and men in the community, who include subsistence fishers, gardeners and natural resources harvesters. By contrast, it is the more powerful and affluent commercial farmers who have derived greater economic benefits from access to water-related decision-making platforms.

Evidence from various pans, including Tete, Nhlangano, Mfelo, Madubiyane, Mboza and Madonela, shows that not all the impacts of dam water releases are negative. Subsistence fishers reported that in the past, dam releases tended to bring smaller numbers of fish into the pans. More recently, however, the management of dam releases had resulted in an abundance water in the pans, and a fisher could catch around a bucketful or dishful of fish per day, depending on the fishing spot. The downside of this was that communities could no longer widely practice indigenous fishing methods, such as *imfonya*. Furthermore, the high volumes of water in pans meant that in drier seasons, water users had to wade through tracts of deep mud before they could access the pan. Traditional leadership was not at all involved in the day-to-day governance of pan fisheries. The King concentrated on land governance issues rather than water resources and services governance, and was even further

removed from pan fisheries governance. Local *indunas* (chiefs) intervened to resolve conflicts and adjudicate issues around access rights. The subsistence fishers set the rules governing access to and use of local pan fisheries. They strongly rejected the notion of involving traditional leadership in pan level fisheries governance. Their reasoning was that traditional leaders would only hinder rather than promote effective governance.

4.5 CASE OF NANDONI DAM COMMUNITIES

4.5.1 BACKGROUND

Nandoni Dam is situated in Thulamela Local Municipality, within Vhembe District of Limpopo Province. The dam is located approximately 12km away from the small town of Thohoyandou, which prior to 1994 was the capital of the former Venda homeland. The dam is surrounded by six traditional village communities namely, Budeli, Mutoti, Tshiulungoma, Mulenzhe, Dididi and Pitiboyi, which were displaced to make way for dam construction and subsequently given monetary compensation and promised access to water services as a benefit. The communities fall under two tiers of traditional leadership. At a higher level, there are two paramount chiefs namely, Mphaphuli and Ramovha, whose jurisdiction encompasses areas beyond the vicinity of the dam. At the lower level, sub-chiefs administer the respective village communities on a day-to-day basis.

4.5.2 TRADITIONAL LEADERSHIP ROLES IN THE GOVERNANCE OF WATER SERVICES

Field research reveals that traditional leadership institutions in this case, as in many similar examples elsewhere in South Africa, normally do not play any roles in water services governance in the Nandoni area. Vhembe District Municipality is both the WSA and WSP. The municipality obtains bulk water supplies from the Department of Water Affairs (DWA) and is responsible for providing water services to the six traditional communities around the dam. The two senior traditional leaders have, however, used their authority to successfully intervene in major disputes between the traditional communities, elected councilors and government officials.

In September 2012, Nandoni community members threatened to embark on a violent social protest about unmet expectations for water services and alleged corruption by institutional actors within DWA and Vhembe district municipality (Tapela, 2013). Grievances were that women and men in these communities had continued to endure poor and erratic access to water services for nearly a decade since dam project completion in 2005. Community members were dissatisfied with the fact that water supplies 'leap-frogged' them to accrue to residents of urban settlements further afield, such as Thohoyandou, Giyani and Louis Trichardt. Furthermore, a succession of private contractors, which was engaged to construct pipelines from the dam's

water treatment works, had not completed projects to supply water to the six communities. The subsequently prolonged court case between government and one of the contractors had also hamstrung the water supply process, while alternative strategies to erect parallel pipelines were continually bogged down by various other issues.

Community members also cited corruption to be a major problem, whereby institutional actors were perceived to engage incompetent contractors, who in turn employed under-skilled labour to do the work. Respondents pointed out that the main problem was absence of effective governance. Citing lack of confidence in DWA regional officials and the municipality, Nandoni community members engaged human rights lawyers, approached the office of the Public Protector and sought audience from the Deputy Minister of Water Affairs for assistance. In the absence of urgent responses by these institutional actors, the two paramount chiefs intervened and successfully helped to quell the threat of violent social protest.

4.5.3 TRADITIONAL LEADERSHIP ROLES IN WATER RESOURCES GOVERNANCE

Paramount chiefs Mphaphuli and Ramovha play greater roles in the governance of access to water resources than water services within their respective jurisdictions. This is strongly related to their control over land within their customary jurisdictions. However, in an interview, Chief Mphaphuli acknowledged that traditional leadership lacked sufficient capacity to effectively govern access to water and related resources. He cited two examples, namely Nandoni Dam fisheries and Mutshindudi River sand abstraction.

Regarding access to Nandoni Dam fisheries, an open-access scenario had developed in which profit-seeking outsiders colluded with and/or employed local fishers to overfish the dam, to the detriment of local livelihoods and food security. Although the paramount chiefs were regularly kept informed about the problem, a number of factors limited the effectiveness of their governance roles. One challenge was that, although the dam was surrounded by communal lands, responsibility for the infrastructure was vested in the DWA, which effectively controlled access to the dam. A problem, however, was that the dam perimeter fence was partially complete, and any fisher could gain access through many points along the shoreline. Efforts by senior traditional leadership to control dam access through customary protocols for outsiders' entry into communal land within the villages tended to be undermined by power dynamics among the various sub-chiefs.

Given that paramount chiefs oversaw vast land areas, logistical constraints prevented them from monitoring fishery access issues on a day-to-day basis. Consequently, they were compelled to rely on the South African Police Services (SAPS) as well as compliance and enforcement officers of the provincial Parks

Board. Chief Mphaphuli further stated that traditional leaders could not entirely rely on indigenous knowledge systems (IKS) to set rules for access and management. The effectiveness of their governance roles would be limited by lack of adequate knowledge about the dam fishery. Traditional leaders therefore need their capacity to be developed before they could play effective roles in the governance of Nandoni dam fishery.

With respect to the governance of sand abstraction in Mutshindudi River, which flows through Chief Mphaphuli's area, the problem related large-scale resource extraction by construction companies contracted by the University of Venda. Although the Mphaphuli traditional leadership earned royalties from sand abstractions, the institution was loath to generate financial gains at the expense of sound governance of the river for the broader benefit of local and downstream communities. To safeguard the river, traditional leadership had tried instituting rules to govern and limit abstractions to sustainable levels. However, the construction companies and certain (unspecified) stakeholders retaliated by threatening to use radio broadcasts to mobilize public opinion against the 'oppressive' and 'retrogressive' tendencies of the traditional leadership. Such pressure was calculated to play upon negative public sentiment about the unpopular roles that traditional leadership often played during the colonial and apartheid eras. Chief Mphaphuli capitulated out of fear of being labelled a 'sell-out', but remained deeply troubled about the plunder of resources entrusted to him through his lineage.

4.6 CASES OF WOMEN'S TRADITIONAL LEADERSHIP

This section examines three examples of women's traditional leadership roles and/or structures prevailing in South African traditional communities today. These are the cases of *Makhadzi* institution of the Venda, women's leadership in *Umkhosi kaNomkhubulwana* or *Ukulima insimu yeNkosazana* and *ukweshwama* IKS practices among the Zulu of KwaZulu-Natal, Tsonga female *Hosi* (Chief) Nwamitwa and Tsonga female indigenous salt makers of Soutini-Baleni Hot Springs in Limpopo.

4.6.1 VENDA: INSTITUTION OF MAKHADZI

Makhadzi is not just a name or a title, but it is a spiritual role played by a Venda woman (Makaulule, 2013), who holds specific status as senior sister of the family head's or chief's father, where seniority is not necessarily that of age (Matshidze, 2013). She would have been *khadzi*¹⁶ to the predecessor chief (ibid.).

Regarding traditional community and/or family leadership roles, Makaulule states:

¹⁶ Senior sister of family head or chief, who is set to become makhadzi to his successor. She is usually the daughter of a different mother but the same father as the chief (Matshidze, 2013).

Makhadzi is the only one who says prayers to God (uphasa). The hands, mouth, knees, heart and a voice of the makhadzi is the heart which holds or carry the wellbeing and harmony of a person; the wellbeing of the Venda people. Makhadzi is our mediator who connects us to God... Through ...exchange learning processes and dialogues with elders from the Amazon, Altai, Kenya, Ethiopia... we find the same understanding of the Law of Origin. For all of these cultures, Zwifho (Natural sacred sites) are spiritual places. They are the home of our ancestor spirits, of the water, the forests, and all life in that forest – from soils and stones, down to where we do not know, and up to the stars above. The whole sacredness of our spirituality can be found in Zwifho.



Figure 5 Vhomakhadzi at Mukhasi River for their wilderness healing ((Makaulule, 2013)¹⁷

4.6.2 ZULU: IKS, GENDER AND WOMEN'S TRADITIONAL LEADERSHIP IN UMKHOSI KANOMKHUBULWANA OR UKULIMA INSIMU YENKOSAZANA

Nomkhubulwane is the Zulu Goddess of rain, nature, and fertility, and is regarded as the Mother Earth (Alan Paton Centre and Struggle Archives-UKZN, 2009). *Umkhosi kaNomkhubulwana* or *Ukulima insimu yeNkosazana* is a gender exclusive indigenous Zulu practice, whereby young maidens collectively perform certain rituals for requesting the rain princess, UNomkhubulwana, to provide ample rainfall and bumper harvests. Such rituals include dancing, singing, walking from homestead to homestead collecting various types of seeds, and ploughing and planting the seeds in a field reserved for the rain princess. According to Kubeka-Ngobese (2004), no one is allowed to harvest the crop yield from this field, but crops are allowed to ripen and dry up until the post-harvest season, when domestic livestock is normally

¹⁷ Photo credit: The Mupo Foundation.

allowed into the fields to forage on the dry stalks and leaves (*amahlanga*). Observing that this indigenous practice has generally declined in use, key respondents explained that in the past the rituals were customarily led by the Queen Mother, who organized the maidens. Cross referencing showed that this festival in honour of the goddess was held annually over 200 years ago, but with the introduction of Christianity, the worship of the female aspects of the gods waned, although the worship of the male aspect, Unkulunkulu, remained ((Alan Paton Centre and Struggle Archives-UKZN, 2009).

It is worth noting that although some traditionalist Zulu women and men have advocated for a revival of this practice, others who support the Commission on Gender Equality and belong to the Midlands Women's Group have vehemently opposed it (ibid.). According to a report by the Alan Paton Centre, the controversy has been due to the fact that the maidens who participate in the festival must be virgins, according to ancient custom. Therefore, calls for the Nomkhubulwane practice to be revived were also accompanied by a revival of the custom of virginity-testing, as part of the festival. Opponents of this gender-specific practice cited concerns about young women's possible vulnerability to HIV/Aids and loss of personal dignity.

4.6.3 TSONGA: FEMALE INDIGENOUS SALT MAKERS OF SOUTINI-BALENI HOT SPRINGS

The case of female indigenous salt makers of Soutini-Baleni hot springs shows that, in some localities, traditional Ecological Knowledge abounds amongst the elders, specifically the traditional women, who live in close interaction with their natural environment, because they have long been and/or continue to be dependent on it (Box 1¹⁸; Figure 5). The hot springs are situated 25 km east of Nkomo-Goxani village near Mahumani vlei on the southern bank of Klein Letaba River. They fall under the Mahumani Traditional Authority in Greater Giyani Municipality, Mopani District Municipality, along the western margins of Kruger National Park.

¹⁸ The Greater Mapungubwe Heritage Route. Go Limpopo tourism brochure. Internet [http://www.golimpopo.com/sites/default/files/public/files/mapungubwe_route.pdf.

Box 3 Excerpt: Women's Customary Leadership Roles in Indigenous Salt Mining

Baleni-Soutini hot mineral spring (geo-thermal spring) is a unique natural feature in the otherwise arid Mopane veld wilderness, south east of Giyani, in Mopani District. It has been declared as a Natural Heritage Site (1999), because of its unique ecology. It is a hot spring of which the water has got mineral contents. The population of a stunted species of fish, *Oreochromis mossambicus*, lives in the fountain. The surrounding swamp is covered by mostly by bulrushes and reeds.

According to archaeological excavations, indigenous people have made salt at this fountain for the past 2000 years. Stone tools also tell us that Stone Age people have been active at Baleni. There are three similar fountains in Mopani District Municipality, but all three have been destroyed by developmental activities. Baleni-Soutini is thus the only salt production site, where indigenous people harvest salt according to indigenous technologies, practices and customs.

Every winter, local traditional women still produce salt at Baleni. Traditional customs which accompany the salt making process, include interaction with the ancestral world through ritual and appeasement offerings at the sacred dry leadwood tree (the shrine) – tangible or living heritage. The natural fountain is significant to a broader indigenous community (then only the salt makers) because of its mythical character. It is referred to as *Mukhulu*.

According to an article by Peace Parks Foundation's Southern Africa Transfrontier Parks Destinations (TFPD, 2012), the salt mining is viewed as a spiritual activity and the women involved are well-respected in their community. The women scrap the salt crust off the edges of the swamp in the dry winter months, and a raised cone filter made from branches and ant-hill clay is filled with the crust. Water from the river is then poured into the filter to wash the salt out of the soil. The water is then boiled off to leave a salt residue (Figure 6). This is then spread out on sacks and dried in the hot winter sunshine.



Figure 6 Soutini-Baleni Hot Springs: Woman boiling salt on an outdoor fire¹⁹

In terms of indigenous customary practices, Mahumani traditional leadership is not directly involved in the governance of salt mining, but has oversight of the rules governing access to and use of land surrounding the springs. Local communities respect the rules, and traditional healers are the main buyers of the Baleni salt. From sustainability perspective, plans to commercialize Baleni women's salt mining activities for pharmaceutical health purposes raise concerns about possible resilience-failure for this ancient livelihood resource. Further research is required to develop clear understandings about the extent to which Baleni women's leadership roles can withstand the pressure of external economic interests. Such research would also explore the possibility of locally acceptable and beneficial roles for traditional leadership in governing the envisaged economic activity.

4.6.4 TSONGA: FEMALE *HOSI* (SENIOR TRADITIONAL LEADER) N'WAMITWA, VALOYI / N'WAMITWA COMMUNITY

Hosi Tinyiko Lwandlamuni Phillia N'wamitwa is a female Senior Traditional Leader (*Hosi*) of the Valoyi (N'wamitwa) community near Tzaneen in Limpopo Province. She is also referred to as 'Queen N'wamitwa'. Following her active involvement in the struggle against apartheid, the *Hosi* was elected as a Member of Parliament in 1994. Her parliamentary role spanned 15 years from 1994 to 2009. During that time in 1998, she was installed as the bona fide *Hosi* (Senior Traditional Leader, in this case, Queen) of the Valoyi. Her installation was strongly contested by some of her male relatives, but extensive consultations with the Valoyi and related communities confirmed the validity of her credentials.

¹⁹ Photo credit: Transfrontier Parks Destinations (TFPD), Peace Parks Foundation, Southern Africa. Internet [<http://www.tfpdfoundation.org/blog/mining-baleni-salt-on-the-african-ivory-route>] 15 July 2012.

In playing both the traditional and elected leadership roles, Hosi N'wamitwa has effectively combined her custodianship and political roles with a culture of nurturing as well as an affirmative developmentalist approach. According to Kilroe (2012), the Hosi initiated a gender-sensitive community Food Security Programme in 2009, which combines vegetable production with aquaculture and poultry. Ford Foundation provided donor funding and Cape Town-based Etafeni Trust provided assistance with implementation. Since then, the project has benefited vulnerable gender groups, such as the unemployed youth (18 to 30 years old), orphans and vulnerable children, women and poor men (including the HIV and AIDS affected). Achievements by 2011 included 25,000 meals for HIV and AIDS patients taking ARVs and their children; 303 food parcels for malnourished HIV and AIDS patients; secure jobs for 15 youth (mostly young women), with individual monthly incomes of R2000 and a total project profit of R20,000. These benefits have enhanced the status of livelihood and food security among vulnerable gender groups within the Valoyi community. Safeguards for ensuring that this project remains sustainable include:

- The hedging of profits, for re-investment in the food production enterprise;
- A participatory and adaptive project development approach;
- A multi-pronged skills development programme to build the emergent young farmers' capacity in horticulture, aquaculture, poultry farming and management of planning, production and marketing;
- An incubation phase for ensuring that the youth who grow out of the collective farming enterprise are sufficiently prepared to embark on their own individual farming enterprises;
- Access to a portion of restituted farmland, of which the Hosi has committed to allocating 0.5 ha food plots to young women and men who successfully complete the incubation phase;
- Access to water in a nearby 1.8 km-long dam within the restituted farm; and
- Use of low-tech production methods and systems, which free the N'wamitwa Food project from risks associated with capital-intensive project (such risks often emanating from requirements for significant loans relative to farmers' own seed capital, i.e. poor gearing).

The Hosi has demonstrated that traditional leadership CAN be a democratic institution. The replicability and/or extrapolation of her community governance and development approach, however, will depend on the extent to which the mostly male-dominated institutions of traditional leadership can commit to genuinely democratic and gender-sensitive practices and cultures of affirmation, nurturing and community development. At the least, contrasts and comparisons can be drawn with the male-dominated example of Makuleke.

The Makuleke case exhibits a remarkable tenacity in attempts to blend traditional and elected leadership into one institutional structure, which seeks to champion a gender-sensitive vision for community development. However, as the case shows,

constraints to the sustainability of this effort include the entrenchment of discriminatory cultures of patriarchy and royal privilege, which militate against degrees of freedom for Makuleke women and vulnerable men to influence decision making. Unfavourable effects of such cultures have included the exclusion of mostly female food producers from the irrigation scheme in 2007. Examples also include the collapse of women's projects, owing to lack of funding. Vulnerable male subsistence fishers, among others, have also had to endure the disempowering effects of not having power and influence over decisions affecting their livelihoods. For example, the fishers found themselves with no recourse when a senior member of the Makuleke Royal Family arbitrarily and unilaterally over-turned the Crown Prince's decision to support their acceptance of *Hosi* N'wamitwa's invitation for Makuleke fishers to visit the Valoyi community to exchange knowledge and learn about the N'wamitwa Food Security Project.

4.7 CASE OF LAKE FUNDUDZI: INDIGENOUS KNOWLEDGE SYSTEMS AND LEGENDS

Lake Fundudzi is a relatively large natural lake located in the Nzhelele valley in the northern parts of Limpopo Province. The lake is 3 km long and has a surface area of 144 ha and a maximum depth of 27 m (Van der Waal, 1997 in Khorommbi, 2000). It is surrounded by Venda-speaking rural communities of the Vhathavhatsindi group, who settled in the area a number of generations ago (Tapela, 2013; Tapela & Musyoki, 1997). These communities have historically considered the lake to be a sacred site and this has historically contributed to the conservation of natural resources within the vicinity of the lake (Khorommbi, 2000). Chief Netshiavha of Tshiavha community claims to have singular prerogative over the custodianship of water resources in Lake Fundudzi. This claim is contested by the chiefs of 3 neighbouring communities.

Cultural taboos precluded Venda people from eating fish from the lake or from any other sources, such as rivers. More recent observations, however, indicate that there has been an erosion of indigenous cultural practices, partly associated with contestations over control of the lake. As a result, subsistence fishing practices have emerged on the lake, as well as concerns by some among traditional leadership that such practices compromise the integrity of the lacustrine ecosystem. Consequently, these leaders have insisted that any plans to develop and manage Lake Fundudzi need to take cognizance of the local IKS and practices, including a prohibition of fishing on the lake.

Local fishers are not happy with the traditional leaders' intended prohibition. Respondents reported that one of the chiefs habitually harassed vulnerable male fishers and female reed harvesters and confiscated their produce. Given the deep poverty of these mostly illiterate gender groups, decisions to prohibit rather than develop sustainable resource harvesting practices can exacerbate these women and

men's livelihood and food insecurity. In cases such as this, there is need for a facilitated process that will develop shared understandings, visions, objectives and responsibilities for water governance. Ultimately, water resources governance institutions that build on what people already know are more likely to be acceptable to local people and leadership than those designed by technicians and/or imposed by Kings, Queens, Chiefs, and/or Headmen.

5 DISCUSSION OF FINDINGS

5.1 NARROW DEFINITION OF 'TRADITIONAL LEADERSHIP'

Field evidence suggests that government policies and formal legislation narrowly define 'traditional leadership' in ways that emphasize (often male-dominated) political roles within traditional communities at the expense of customary leadership roles perceived as largely non-political and/or female-dominated (e.g. *Makhadzi* of the Venda). Some of these peculiar institutions are less recognized outside of their local contexts, but play important governance roles within their own traditional rural communities.

If the South African water sector is to achieve the objectives of enhancing water governance in traditional rural communities, then, from a conceptual and practical point of view, the term 'traditional leadership' might need to be re-examined. What IS 'traditional' leadership, as opposed to 'Traditional Leadership'? For example, in cases whereby ordinary rural women and men customarily play greater leadership roles in the governance of water resources and services than Traditional Leadership institutions formally recognized by legislation, should not roles of such informal leadership be recognized in thinking about 'traditional leadership and water governance'? Should the leadership roles of Baleni women salt miners, for example, be air-brushed out of the water governance vistas that portray traditional leadership as being an exclusive prerogative of the more powerful, political and legally-recognized Kings, Queens, Chiefs, Headmen and Regents? Rural women's IKS social capital in the protection of water sources and provision of water services has often formed the basis for women's leadership roles in the governance of present-day rural water point committees. Such capital, which is grounded in customary gender roles and intricately linked to women's present-day productive and reproductive roles, can contribute significantly to the enhancement of water governance roles in rural communities. The point is that, for practical purposes, an expanded definition of traditional leadership CAN accommodate both the legally-recognized Traditional Leaders and *de facto* social and/or customary leadership of ordinary rural women and men within blended water governance structures.

- Policy options might need to consider expanding definitions of the concept of traditional leadership so as to include the beneficial roles of *de facto* leadership roles of ordinary women and men within traditional communities. There is a need to identify the range of such leadership institutions, and to develop clear understandings about their historical, current and potential roles in water governance.

5.2 AFFIRMATION OF GENDER EMPOWERING TRADITIONAL AND/OR CUSTOMARY LEADERSHIP

Research findings show that formal governing frameworks (i.e. policies and legislation) have tended to strengthen the recognition of (mostly male-dominated) traditional leadership institutions, such as Kingship, Chieftainship and Headmanship. However, they have tended to either ignore or not sufficiently recognize certain gender-specific traditional leadership structures, which may or may not be informal but which play key customary roles with respect to water-related IKS and the governance, management and safeguarding of water resources and services within traditional communities. Since local people are familiar with these structures:

- Policy options need to further examine, through research, the potential governance roles that these institutions can play in water governance in traditional rural communities.

Examples of gender-specific leadership institutions, whose roles in water and related natural resource governance have widely been viewed as legitimate and desirable, include the female *Makhadzi* of Venda traditional communities and male leadership of specific clans (e.g. Gumedede) among Tembe-Thonga and Makuleke communities, who have strong fishing traditions.

- Policy options will need to be cognizant of gender-specific traditional and/or customary leadership structures and sub-structures, which exercise explicit roles in indigenous knowledge systems (IKS) and practices pertaining to water resources, but are often not recognized by formal legislation.

In light of observations about declines in the usage of some indigenous traditional leadership roles and practices, such as above:

- Policy options will need to adopt a flexible approach that accommodates differences in extents to which these gender-specific traditional institutions are used.
- Policy options will also need to adopt participatory approaches in engaging with members of traditional rural communities regarding their perspectives on the usefulness of discontinued or declining leadership institutions within contemporary water and natural resources governance.

However, it must not be assumed that the mere 'gender political correctness' of a customary leader confers unquestioned legitimacy to such leadership. Gender-specific traditional and/or customary leadership, including that involving women, can have positive and/or negative implications for vulnerable rural women and men. This calls for due diligence in ensuring that traditional leadership roles in water

governance do not reinforce the voicelessness and vulnerability of rural women, in particular. Rather, gender-specific leadership roles should be seen to enhance opportunities for rural women to enjoy more secure democratic rights, both as an end in itself and as a means to an end.

There is also a need to avoid pitfalls associated with gender disempowering elements of customary practices, even as possibilities for retaining beneficial aspects of these practices are explored. The example of the Zulu Queen Mothers' historical leadership of *Umkhosi kaNomkhubulwana* or *Ukulima Insimu YeNkosazana* demonstrates that there can be divergent views, emotive issues and deep sensitivities around certain elements of gender-specific traditional and cultural leadership practices. The fierce opposition by gender organizations and KwaZulu-Natal Midlands women of plans to reinstate controversial gender-specific indigenous practices associated with *Umkhosi kaNomkhubulwane*, such as virginity testing, suggests that:

- Policy options will have to diligently ensure that the revival of gender-specific traditional IKS leadership and practices does not undermine women's gains in equity and empowerment as well as their Constitutional rights; and
- Policy options will need to be underpinned by clear understandings of the reasons why certain forms of traditional leadership practices have long since been discontinued or are currently falling into disuse.

5.3 DIVISION OF ROLES AND RESPONSIBILITIES

Case studies of Nandoni, Makuleke, Flag Boshielo and Tete Pan (Zamazama) show that there are divisions of governance roles and responsibilities within, between and among traditional and customary leadership structures. Clear division of roles and responsibilities between senior and junior traditional leadership were evident. For example, all the senior traditional leaders examined, such as Kings, Queen and Chiefs, exercised custodianship responsibilities over water, land and related natural resources in their jurisdictions. These leaders played greater roles in the governance of access to land than water resources. They also generally played even more limited roles in the governance of other water-related resources, such as inland fisheries and aquatic plants (e.g. reeds), within their areas of jurisdiction. This was intricately related to the senior traditional leaders' control over land resources in their customary jurisdictions. By contrast, village headmen (i.e. *izinduna*, *dikgosana*, etc.) had very limited powers and their roles appeared mainly to be to report to the King or Chief any problems or issues that arose at the village-level about access to and use of land, water and other natural resources.

- Policy options for the involvement of traditional leadership in water governance will need to take into account divisions of roles and responsibilities between senior and junior traditional leadership structures.

- Policy options will also need to take into account divisions of roles and responsibilities among various apex traditional governance structures, such as Chieftainship and/or Kingship, Tribal Councils, Royal Families and Elders, whether or not such structures are *de jure* or *de facto*.
- Policy options will need to adopt a case-by-case approach so as to capture context-specific anomalies to conventional divisions of roles and responsibilities, such as the case of Chief Netshiavha of the Venda, who has singular prerogative over the custodianship of water resources in Lake Fundudzi.

5.4 CAPACITY TO GOVERN WATER AND RELATED NATURAL RESOURCES

All the senior traditional leaders examined by the study, such as Kings, Queen and Chiefs, seriously took their custodianship roles and responsibilities over water, land and related natural resources. However, custodianship roles of traditional leadership were found to be increasingly challenged by on-going agrarian transitions from subsistence to commercially-orientated farming and natural resource harvesting practices. For example, traditional subsistence practices of utilizing natural resources associated with water-linked ecosystems, such as floodplain pans, lakes, wetlands, springs, river valleys and mountain catchments, were transitioning towards commercially-orientated resource harvesting and agricultural practices (e.g. Tapela, 2013; 2014; Shackleton et al., 2011; Shackleton et al., 2007; Shackleton & Shackleton, 2007; Shackleton, 2004; Twine, 2003; Wynberg et al., 2002; Bebbington, 1999; Leach et al., 1999; Taylor et al., 1996).

Indications were also that the social capital of indigenous knowledge, which has hitherto ensured the maintenance of sustainable levels of floodplain resources use, might not alone be sufficient in averting looming threats to water and related natural resources, particularly when outsiders were involved. In the case of Nandoni's Chief Mphaphuli, for example, outsiders used their financial clout and political influence, as well as threatened to mobilize public sentiment against the 'oppressive and retrogressive' tendencies of traditional leadership. Anxious to avoid being labelled as 'undemocratic', 'oppressive' and 'hindering progress' within the local municipality, the Chief was compelled to concede to their demands for excessive levels of river sand abstraction.

In other cases, however, such as Makuleke and Lake Fundudzi, traditional leaders successfully used IKS social capital relating to their control over access rights to land territories within their jurisdictions. Chief Makuleke and his Traditional Council succeeded through an unwavering insistence on the requirement for outsiders to adhere to local customary protocols for community entry and access to 'Makuleke resources'. By contrast, Chief Netshiavha capitalised on Lake Fundudzi's wide renown as a sacred place formidably steeped in spiritual mystique and ancient

legends. Such reputes protected the lake from harmful onslaught by outsider interests.

Difficulties with reliance on IKS social capital also related to the challenges that traditional leaders face in reconciling customary law with Roman Dutch and English laws, a latter inform much of South Africa's natural resources legislation. A case in point is that of the mythical 'snakes' of Tete pan (as well as Madonela and other pans) within Phongola floodplain in northern KwaZulu-Natal, which were reportedly hindering subsistence fishing within some of the traditional rural communities. In the case of Tete pan, the traditional leader was unable to resolve the dispute in his tribal court, and the matter was finally settled by the alleged wizard's decision to leave the community. The case of Tete pan is not unique. Given the prevalence of indigenous customs and spiritual belief systems around water resources in traditional rural communities, the possibility is real that diverse permutations of this legal pluralism challenge do exist in many local contexts.

A further capacity constraint relates to the commonly observed erosion of IKS social capital, which seems to have been critically accelerated by land dispossessions and forced removals by the apartheid state. Traditional leaders' capacities to halt the erosion of such social capital was found to be stretched by the complexity of challenges associated with social transitions on-going in traditional rural communities today. Such transformations included the commercialization of longstanding subsistence production and harvesting systems (e.g. Soutini-Baleni, Phetwane, Makuleke, Nandoni sand and Phongola Floodplain) as well as the emergence of newer forms of leadership and allegiance (e.g. in Bafokeng's Luka village). In many local contexts, the intensity of rural people's hunger for incomes and aspirations to move out of poverty traps were high. Without effective strategies to promote and strengthen the capacity of 'blended' plural legal structures for community governance, as well as to provide alternative opportunities for livelihood security and wealth creation, no amount of traditional leadership exercise of customary and political authority will avert the risk of over-exploitation, resource degradation and, possibly, resilience failure.

Bafokeng traditional leadership has adopted a particularly robust and innovative approach to strengthening its governance and delivery roles, including roles in the water sector. However, the Bafokeng RBA starkly stands out as anomalous to the majority of impoverished and resource-poor traditional leadership institutions across the country, for which the achievement of similar levels of robustness and innovation are untenable without external intervention and support. Many of the traditional leaders interviewed expressed an awareness of traditional leaders' of their limitations in attempting to effectively fulfil custodianship responsibilities, particularly in the context of increasing pressures on water resources and services. In light of this

- Policy options will need to include assessments of traditional leadership's capacity requirements (e.g. Capacity Building Needs Assessment Surveys) so as to benchmark the existing water governance capacity strengths, weaknesses and needs of traditional leadership.
- Consultations with traditional leadership as well as various water institutions, primary stakeholders (including rural communities, among others) and secondary stakeholders about the desired capacities for effective vertical and horizontal linkages, interfaces and support roles.

5.5 GOVERNANCE OF RURAL WATER SERVICES DELIVERY

Observed traditional leaders invariably respected the requirements democratic Constitution and developmental and water service delivery mandates of municipalities. According to Nandoni respondents, the water services governance issue revolved around power struggles amongst the seven sub-chiefs around the dam. These struggles were complicated by the fact that some of the sub-chiefs were not formally appointed but instead informally acted as self-appointed chiefs (Tapela, 2012). Such contestations not only hampered progress but also undermined the legitimacy and public regard for sub-chiefs, as a traditional leadership institution. Consequently, it was not possible to reach any effective solution so long as engagement remained at the level of these sub-chiefs.

By contrast, community members held the two paramount chiefs, Mphaphuli and Ramovha, in high esteem and were likely to respect and pay heed to the two senior chiefs. This was because the paramount chieftainship was a long-established institution, whose successive incumbents had earned people's respect and trust. Owing to this heritage, community members strongly believed that paramount chiefs were likely to act in more accountable, responsible and sensible ways than the sub-chiefs. However, the paramount chiefs clearly stated that legally, water service delivery was the domain of the District Municipalities and their institution only became involved if there were disputes that affected their communities. Evidence of the authority, legitimacy and widespread local acceptance of higher level traditional leadership institutions emerged when the two paramount chiefs halted an imminent violent social protest in September 2012, which elected councilors could not.

Although they possessed remarkable social capital in terms of indigenous knowledge about water resources, these leaders were keenly aware of their limitations with regard to 'scientific' knowledge about the newer contexts of natural resources management, engagements with powerful external institutional actors and capacity to govern large geographical areas. Of particular note were the difficulties that traditional leadership institutions faced as custodians of water-related resources of economic value to outsiders.

5.6 IDENTITY AND MEANING OF 'TRADITIONAL RURAL COMMUNITY' IN TRANSITIONING AGRARIAN SOCIAL CONTEXTS: WHAT IMPLICATIONS FOR WATER GOVERNANCE?

This report observes that in local contexts characterized by fundamental social transitions, such as associated with rapid urbanization, industrialization and transformations of agri-food systems, the term 'traditional rural community' might not appropriately capture the changing identity and meaning of community. The example of Luka village in the case of Bafokeng illustrates this (see Section... of this report). Luka village is a rural mining settlement whose local economy has attracted large numbers of people from outside the jurisdiction of the Royal Bafokeng traditional authority. Luke is presently characterized by a proliferation of informal settlements, contentious politics and a general distrust of traditional leadership. The social, economic and political cleavages associated with this village resulted in communication and information breakdown between Luka village residents and traditional leadership, which culminated in the villagers' protest march and submission of a Memorandum of Demands to the RBA.

While further research on cases like Luka should be able to elicit more nuanced and useful insights, a question that must be asked perhaps is whether or not, within transitioning agrarian economies such as those found in South Africa today, rural communities with hybrid forms of traditional and elected leadership as well as changing demographic profiles should be 'locked' into historical notions, meanings and identities that may no longer serve to define their existing character? In other words, at what point does social change in so-called traditional rural communities become formally recognized, embraced and acceptable both to government and traditional leadership? What is the threshold at which transitioning rural communities can begin to legitimately exercise their democratic prerogative and freedom to define for themselves what they understand their community to be, rather than be stuck with labels such as 'traditional community', which may have lost meaning and relevance? Given that these questions invoke emotive political issues, is there sufficient space in existing South African platforms for constructive discussion of these leadership and identity issues?

The foregoing questions are posed not so much to suggest that the term 'traditional rural community' has become irrelevant, but rather that the reality of its obsolescence in certain contexts may have to be acknowledged and new names and meanings crafted for these emerging hybrids. In essence, therefore, villages such as Luka highlight the need to address the unresolved tensions about leadership and identity, as well as to 'walk' the rhetoric about good governance. Without constructive and democratic engagement, attempts to harness social transition through impositions of 'traditional' identities and meanings that are rapidly losing currency

might not restrain groups of people that are already straining against the reins. One of the greatest tests of traditional leadership's purported commitment to the democratic ideal might well be the extent to which this institution will voluntarily yield its power grip (or stranglehold) and thereby allow the emergence of newer ways of defining and governing water resources and services within transitioning communities.

6 CONCLUSION

6.1 OVERVIEW OF RESEARCH FINDINGS

The aim of the study was to develop an evidence-based information resource for a Participatory Action Research (PAR) process to benchmark existing knowledge and explore possible options for further policy dialogue on water governance in traditional rural community contexts. This report set out to pursue the objectives to:

- Develop clear understandings about water issues and challenges pertaining to the decentralization of water governance in traditional rural communities of South Africa;
- Deepen knowledge about the institution of traditional leadership and the parameters within which it can be beneficial in overall water governance;
- Determine whether or not the equity principle can best be served from a traditional leadership point of view; and
- Identify the benefits and disbenefits of creating an institutional environment for a legally pluralistic system of water governance in South Africa.

Through literature review and primary research findings, Sections 2, 3, 4 and 5 of the report have addressed these objectives. This section presents some concluding remarks and recommendations for further research.

Field evidence shows that in many rural contexts, local people often devise their own strategies for coping with water insecurity independent of traditional leadership (Tapela, 2011a; b). They use available water sources for multiple livelihood requirements, irrespective of restrictive rules associated with single-use water infrastructure design and perceptions about 'water scarcity'. Indeed, local people complexity ways in which traditional rural , the need to develop clear understandings of existing institutional arrangements and practices that shape water use in traditional rural communities and households is therefore essential to formulating effective decentralization approaches to water governance and avoiding unintended consequences for vulnerable gender groups and water-linked ecosystems, in particular.

The significance of the institution of traditional leadership in South African rural governance cannot be ignored. As Houston & Somadoda (1996:1 in Maphosa, 2010) observe, South Africa has approximately 800 traditional leaders, who are assisted by 10 000 traditional councillors. Furthermore, over 18 million rural people (about 40% of the national population) live under the jurisdiction of traditional leaders (Kgosi Molotlegi, 2003:5, *ibid.*) and are distributed in six of the nine provinces.

Research findings also suggest that senior traditional leadership can be a formidable local governance institution, which commands a significantly higher degree of

authority, legitimacy and acceptance than elected councillors and sub-chiefs. By contrast, sub-chiefs, who often govern individual villages on a day-to-day basis, do not command the same degree of authority and respect as Kings, Queens and Senior Chiefs. The differentiation of water governance roles for these leadership strata will be necessary.

In KwaZulu-Natal, for example, Ingonyama Trust wields a lot of political power over large land territories and has recently stated its intention to claim land in virtually the whole of KwaZulu-Natal. In the North West, the Royal Bafokeng traditional leadership commands extra-ordinary financial power and has recently demonstrated its commitment to embracing the democratic ideal and partnering with government in the delivery of water, sanitation and other social services and infrastructure. The implications of powerful traditional leadership institutions for water governance are that their potential to either strengthen or undermine water governance should not be under-estimated. This calls for the adoption of sound mechanisms for constructively engaging with rather than marginalizing this institution.

It is worth noting though that while government has made heraldic statements about significant traditional leadership roles in the governance of rural development and service delivery, mechanisms for integrating traditional governance systems into existing water institutions remain incomplete. The envisaged restructuring of water sector institutions provides a critical entry point for ensuring that the benefits and disbenefits of traditional leadership roles in water governance are rigorously weighed and tested. In particular, a more thorough rendering of evidence-based research and policy debate is required so as to determine whether or not the equity principle can best be served from a traditional leadership point of view management in South Africa.

Visions of a significant role for traditional leadership in South Africa might also need to be tempered with the acknowledgement of views that the hereditary basis of traditional rule as well as the historical co-option of much of traditional leadership leaders into the oppressive apartheid system renders such leadership irreconcilable with democratic values of the South African Constitution (Ntsebeza, 2002a, b). Primary research evidence indicates that while there is validity to such observations in some rural contexts, in many other settings traditional leadership enjoys a relatively high degree of legitimacy and/or influence with regard to water resources governance and service delivery than democratically-elected local political leadership. Since legitimacy often derives from the extent to which community representatives pursue the interests of their constituencies, traditional leaders who succeed in filling the governance and delivery void created by inefficient, ineffective and/or 'absent' water governance institutions should be supported rather than excluded from formally recognized water governance (Tapela et al., 2011b; Tapela, 2009; Malzbender et al., 2005).

In the final analysis, the case of South Africa might be, to an extent, exceptional to strong arguments by African scholars for governments to bestow traditional leadership with significant roles in water governance. Such arguments are based upon views that in African rural community contexts, traditional leadership strongly exercises custodianship responsibility over traditional cultures, indigenous knowledge as well as customary rules, rights and laws pertaining to land, water and related natural resources. Evidence from South Africa suggests, however, that the historical legacy of systematic dismantling by colonial and apartheid governments of indigenous and customary social organization largely persists in the guise of rural communities that are characterised by erosions of customary practices and indigenous knowledge (Tapela, 2011b).

Although certain aspects of ‘old’ ways of life and governance are still evident, it is not clear to what extent such remnants provide a sufficient basis for mainstreaming the role of traditional leadership in water governance. In Makuleke, for example, alienation of land and water resources due to forced removals in the late 1960s thrust the community and its traditional leadership into an unfamiliar and drier agro-ecological environment, which hindered their reliance on long-held IKS and practices developed in the wetter floodplains, wetlands and riverine areas of Old Makuleke. Although the Makuleke have retained a stock of memories and memorabilia of their indigenous knowledge about water governance, management, use and safeguarding, such knowledge cannot be casually applied to land that is disconnected from the navel of the multiple generations of the living, the deceased and the yet-to-be-born women and men who make up the Makuleke community.

While many other similarly-displaced rural communities have shared the same dilemmas as the Makuleke, a greater proportion of these have lost most of their IKS social capital pertaining to water governance, use, management and safeguarding. In the case of traditional rural communities in the Incomati Catchment Management Area (CMA), water institutions have decried a peculiar practice of dumping dead cats and dogs and household waste in rivers²⁰.

Given the diversity and case-specificity of rural local contexts in South Africa, and that the focus of traditional leadership is largely restricted to the local level, it is necessary to ensure that decision-making about traditional leadership in water governance is guided by a rigorous consultative process that involves a broad range of stakeholders. Decision making also needs to be informed by further evidence-based research.

²⁰ Khaile, D. (2010). ‘Incomati CMA: Lessons on Stakeholder Participation in Transboundary Water Management. PRIMA Workshop presentation, Pongola (KZN), September.

6.2 RECOMMENDATIONS FOR PARTICIPATORY ACTION RESEARCH (PAR) PROCESS

This report recommends that the PAR process should aim to determine – through a consultative process and policy dialogue – definitive ways through which various community-based stakeholders can play democratic and beneficial roles in water governance. The research will need to exercise greater circumspection in thinking about legal pluralism. Consultations and dialogue will have to go beyond the narrow lens of ‘Traditional Leadership’ and thereby embrace a wider range of possibilities about how this institution can be integrated into a democratic water governance framework that involves a broader range of stakeholders. Also requisite will be a Gender-sensitive approach that foregrounds and affirms the often-marginalized interests of vulnerable rural women and men, children, the elderly, the ailing and the landless and unemployed youth.

To ensure that research Outcomes are broadly acceptable to stakeholders and give clear guidance regarding policy options for effective water governance in traditional community contexts, the Action Research process will need to ensure meaningful participation by a broader range of interested formal and informal institutions and actors than traditional leadership. Critically, rural women and vulnerable men, who formally and informally play key roles in water governance, management, use and safeguarding at micro-levels of community and household, will need to be actively involved in various stages of the research process.

For ethical reasons, the Action Research process will need to be guided primarily by the ethos of the National Constitution. The research will also need to be underpinned by the principles of historical awareness and respect. The principle of historical awareness requires sensitivity that discussions about traditional leadership roles in the governance of a democratic South Africa can evoke emotive sentiments within a society that remains scarred by the ravages of past injustices. The principle of respect demands realisation that the identities, cultures and livelihoods of many black South African women and men are closely linked to IKS social capital associated with traditional leadership and traditional rural communities, and therefore their views should rightfully be heard.

BIBLIOGRAPHY

- Alan Paton Centre and Struggle Archives. 2009. The Goddess, the Festival and Virginity Testing. Nomkhubulwane Collections, University of KwaZulu-Natal (UKZN). <http://paton.ukzn.ac.za/Collections/Nomkhubulwane.aspx>.
- Bavikatte, K. 2005. South African case study on the hoodia plant, the San, and bio-piracy. Paper presented at a Regional ABS Capacity-Building Workshop for Eastern and Southern Africa. www.abs-initiative.info/.../ZA-HoodiaGordonii-KB-Background-2005-1.
- Cannon, S., Thebyane, H. & Cook, S. 2010. Democracy and traditional authority: The transformation of village level governance in the Royal Bafokeng Nation. Unpublished report.
- Cele, S. B. 2012. A Closer Look at the Relations between Traditional Leaders and Local Government Councillors. SALGA (KZN) Discussion Paper on the Role of Traditional Leaders in a Democratic South Africa.
- Cleaver, F. 2012. Development Through Bricolage: Rethinking Institutions for Natural Resource Management. London: Earthscan.
- Chikozho C. & Latham, J. 2005. Shona Customary Practices in the Context of Water Sector Reforms in Zimbabwe. In Van Koppen, B., Giordano, M. & Butterworth, J. (Eds.), African Water Laws: Plural legislative frameworks for Rural Water Management in Africa. Proceedings of an International Workshop held in Johannesburg from 26 to 28 January.
- Day, J. 2007. The Role of Traditional Leadership in Service Delivery! Paper prepared towards to the Service Delivery Commission.
- CONTRALESA. 2009. The Role of Traditional Leadership in Service Delivery. Presentation by the Congress of Traditional Leaders to the Service Delivery Commission on 04 February in Cape Town.
- CONTRALESA. 2011. Service Delivery in Communal Areas. Position paper
- DPLG. 2003. White Paper on Traditional Leadership and Governance. White paper issued by the Department of Provincial and Local Government (DPLG), July.
- DPME. 2013. Strengthening Citizen Based Monitoring. Update by the Department of Performance Monitoring and Evaluation, Office of the Presidency, April.

- Independent on Line (IOL) News. 2014. Applause as Bafokeng Leader Signs Pact. Article by Kennedy Mudzuli, 14 August. Internet [<http://www.iol.co.za/news/south-africa/north-west/applause-as-bafokeng-leader-inks-pact-1.1735963#.VAW-JfmSzh8>] 15 August 2014.
- Juma & Maganga, 2005. Current Reforms and their Implications for Rural Water Management in Tanzania. In Van Koppen, B. et al., Giordano, M. & Butterworth, J. (Eds.), *African Water Laws: Plural legislative frameworks for Rural Water Management in Africa*. Proceedings of an International Workshop held in Johannesburg from 26 to 28 January.
- Kabudi, P. J. 2005. Challenges of Legislating for Water Utilisation in Rural Tanzania: Drafting New Laws. In Van Koppen, B., Giordano, M. & Butterworth, J. (Eds.), *African Water Laws: Plural legislative frameworks for Rural Water Management in Africa*. Proceedings of an International Workshop held in Johannesburg from 26 to 28 January.
- Kilroe, S. 2012. Telling Our Stories of Joy and Creating Hope: N'wamitwa Food Security Project. Internet [http://nwamitwa.org.za/wp-content/uploads/2012/05/Food_Security_2.jpg] May 2012.
- Makaulule, M. 2013. The Role of Makhadzi: Passing knowledge to future generations. Internet [<http://mupofoundation.org/2013/the-role-of-makhadzi/>], 01 May.
- Matshidze, P. E. 2013. The Role of Makhadzi in Traditional Leadership among the Venda. D.Phil thesis, Faculty of Anthropology and Development Studies, University Of Zululand
- Malzbender, D., Goldin, J., Turton, A. & Earle, A. 2005. Traditional Water Governance and South Africa's National Water Act: Tension and Cooperation. In Van Koppen, B., Giordano, M. & Butterworth, J. (Eds.), *African Water Laws: Plural legislative frameworks for Rural Water Management in Africa*. Proceedings of an International Workshop held in Johannesburg from 26 to 28 January.
- Meinzen-Dick R. & Nkonya, L. 2005. Understanding Legal Pluralism in Water and Land Rights: Lessons from Africa and Asia. In Van Koppen, B., Giordano, M. & Butterworth, J. (Eds.), *African Water Laws: Plural legislative frameworks for Rural Water Management in Africa*. Proceedings of an International Workshop held in Johannesburg from 26 to 28 January.

- Nkhatha, B. A., Mosimane, A., Downsborough, L., Breen, C. & Roux, D. J. 2012. A typology of benefit sharing arrangements for the governance of social-ecological systems in developing countries. *Ecology and Society* 17(1): 17. <http://dx.doi.org/10.5751/ES-04662-170117>.
- NPC. 2011. National Development Plan: Vision 2030. Document prepared by the NPC on behalf of the Office of the South African Presidency, 11th of November.
- Ntsebeza, L. 2011. Traditional Authorities and Democracy: Are we Back to Apartheid? In Ruiters, G. (ed). *The FATE of the EASTERN CAPE: History, Politics and Social Policy*. Pietermaritzburg: University of KwaZulu-Natal Press. Pp. 75-92.
- Ntsebeza, L. 2002. Structures and Struggles of Rural Local Government in South Africa: The Case of Traditional Authorities in the Eastern Cape. Doctoral thesis, Department of Sociology, Rhodes University, Grahamstown.
- Phiri, C. 2009. Livestock, rural livelihoods and rural development interventions in the Eastern Cape: Case studies of Chris Hani, Alfred Nzo and Amathole District Municipalities. Doctoral thesis for the degree of Doctor of Social Science (Rural Development), Faculty of Social Science, University of Fort Hare.
- Sithole, P. 2008. Fifteen Year Review on Traditional Leadership. HSRC Research Paper on
- Tapela, B. N. 2014. Final Report on Effective Management Processes and Governance Systems for Inland Fisheries in Dams, including roles and responsibilities of individual households, groups in rural villages and relevant authorities (at tribal local, provincial and national levels). PLAAS Deliverable 29 report towards WRC-funded Baseline and Scoping Study on the Development and Sustainable Utilisation of Water Storage Dams for Inland Fisheries and their Contribution to Rural Livelihoods.
- Tapela, B. N. 2013. Cry Water! Struggles for Access to Water in Ntlalavini (*Ingqinamba Yamanzi*). PLAAS video report documenting gendered struggles for access to water and fishing rights in Pongola Dam, KwaZulu-Natal, South Africa. Internet: <http://www.plaas.org.za/plaas-publication/cry-water>.
- Tapela, B. N. 2012a. Livelihoods Impacts of Commercialization in Emerging Small-Scale Irrigation Schemes in the Olifants Catchment Area of South Africa. Unpublished doctoral thesis, University of the Western Cape.

- Tapela, B. N. 2012b. Progress report on effective management processes and governance systems for inland fisheries in dams, including roles and responsibilities of individual households, groups in rural villages and relevant authorities (at tribal, local, provincial and national levels). Deliverable 21 Report towards a 'Baseline and scoping study on the development and sustainable utilisation of storage dams for inland fisheries and their contribution to rural livelihoods', WRC K5/1957//4.
- Tapela, B. N. 2011a. Social Water Scarcity and Water Use. Final Report, (WRC K5/1940//3)
- Tapela, B. N. 2011b. Final Report (Report 5) on Indigenous knowledge systems and current practices and techniques for inland fisheries in SA. Deliverable 16 Report towards a 'Baseline and scoping study on the development and sustainable utilisation of storage dams for inland fisheries and their contribution to rural livelihoods', WRC K5/1957//4.
- TFPD. 2012. Mining Baleni Salt on the African Ivory Route. Blog article by Peace Parks Foundation's Southern Africa Transfrontier Parks Destinations. Internet [<http://www.tfpdfoundation.org/blog/mining-baleni-salt-on-the-african-ivory-route#comment->] 15 July 2012.
- Thornhill, C. & Selepe, M.M. 2010. The role of the Royal Bafokeng Administration in the promotion of municipal service delivery. *Journal of Public Administration*, 45(1): 162-173.