Traditional Leaders
Christiaan Keulder

Introduction

Traditional leadership is an important relic of the precolonial and colonial political orders that poses a special challenge to postcolonial State-makers. Over time, the institution of traditional leadership underwent many changes: in its procedures and rules of appointment, in its roles and functions and in its jurisdictions and powers. Some of these changes resulted from the natural evolution of the institution whereas others resulted from outside interference (especially during the colonial period).

In Namibia, as is the case elsewhere on the African continent, traditional leaders’ relevance for the postcolonial political order and State-craft stems from their control over (predominantly) rural communities. Traditional leaders continue to control most of the important rural survival strategies: allocation of land, natural resources, communal labour practices and in some instances law and order.

Their strength as rural leaders derives not only from their command over their communities, but is also firmly rooted in colonial policies of indirect rule or what Mamdani (1996:37) calls decentralized despotism. It was common for traditional leaders to be given extensive powers, especially powers of coercion. They became local-level lawmakers, tax collectors, Police commissioners and judges. Customary law became a mechanism for upholding the colonial order: perhaps even to the extent that the colonial order became the “customary”. Colonial authorities frequently intervened in matters traditional and customary. They regularly appointed chiefs where there were none and deposed those traditional leaders that opposed them.

Although Mamdani’s (ibid.) argument is a compelling one with great explanatory value he, like so many other scholars, is guilty of treating the often very complex relationship between traditional leaders and colonial authorities in an oversimplified manner. To start with, one can present sufficient evidence that not all traditional leaders accepted playing their part as despots. They resisted the colonial authorities, but not always in open confrontation. Secondly, he sets the relationship between traditional leaders and the colonial authorities in a rather rigid cast. He suggests not only that all traditional leaders were (decentralised) despots, but also that they were so all the time. This, we know, is also not entirely true. Like most other social actors, traditional leaders constantly reviewed their relationship with the colonial State, and it was not uncommon for sympathisers to become challengers. However, decentralised despotism had at least five important consequences for the institution of traditional leadership in postcolonial times:
• Many traditional leaders effectively transformed themselves from custodians of their people into custodians of the colonial order. This not only eroded their support base, but also overemphasised their coercive functions.
• Frequent interventions by the colonial authorities into matters traditional and customary, coupled by the strategy to employ customary law as a mechanism to enforce the colonial order, transformed the customary into a site of contention and struggle.
• Decentralised despotism meant that traditional leaders were incorporated into State structures. They were paid by the State and performed State functions; hence, they became civil servants in most respects.
• The fact that many traditional leaders acted in the interests of the colonial order pitted them directly against other more progressive social forces that resisted that same order. This paved the way for an inter-elite strife in the postcolonial order.
• The fact that the “tribe” was used as the political base for the colonial order, and that the subsequent development of tribalism became the dominant socio-political ideology, ensured that ethnicity would remain an omnipresent ingredient of the postcolonial political order.

**Defining Traditional Leadership**

Tradition is commonly regarded to be the basis of any traditional leader’s authority; it is this characteristic which differentiates traditional leaders from all other leaders in any society. Any attempt to define traditional leader and, hence, identify such individuals, must start with a discussion of the notion of tradition. Tradition commonly refers to that which is “old”. However, many scholars (e.g. Hobsbawm & Ranger 1994) have drawn our attention to the existence of what they have termed invented traditions. These are traditions that are claimed to have been around since time immemorial, yet historical evidence proves the opposite. According to Hobsbawm and Ranger (1994:1), an invented tradition constitutes –

... [A] set of practices, normally governed by overtly or tacitly accepted rules of a ritual or symbolic nature, which seek to inculcate certain values and norms of behaviour by repetition, which automatically implies continuity with the past. In fact, where possible, they normally attempt to establish continuity with a suitable historical past. (emphasis added)

According to Hobsbawm and Ranger (ibid.:4-5), traditions are likely to be “invented” when and if –

... [A] rapid transformation of society weakens or destroys the social patterns for which “old” traditions have been designed, producing new ones to which they are not applicable, or when such old traditions and their institutional carriers and promulgators no longer prove sufficiently adaptable and flexible, or are otherwise eliminated:
in short, when there are sufficiently large and rapid changes on the demand or supply side.

The notion of *invented tradition* suggests, therefore, that tradition can be used as a strategic resource. In this sense, tradition is considered to be flexible and fluid and can be changed to suit a current purpose. The carriers of tradition are also its creators and, hence, are agents who use this resource to shape or influence current outcomes.

Treating *tradition* in this manner freed it from the rigid mould introduced by Max Weber (as cited in Gerth & Mills 1946:78); but it also introduced some degree of cynicism amongst students of tradition and traditional leaders. The cynicism is at least partly based on the understanding of the purpose of the inventions: to give “rapid and recognizable symbolic form to developing types of authority and submission” and “to allow Europeans and certain Africans to combine for ‘modernising’ ends” (Hobsbawm & Ranger 1994:237). Thus, on the African continent at least, invented traditions have their roots in colonial rule. Both the coloniser and the colonised invented traditions, and in more than one way these inventions were employed in the strategies of decentralised despotism and tribalism.

Perhaps the most commonly used definition of *tradition* as a basis of authority is Max Weber’s (cited in Gerth & Mills 1946:78):

> [It is] ... the authority of the “eternal yesterday”, i.e. of the mores sanctified through the unimaginably ancient recognition and habitual orientation to conform. This is “traditional” domination exercised by the patriarch and the primordial prince of yore.

Many contemporary scholars have remained in this mould. Adewumi and Egwurube’s (1985:20) definition of *traditional leaders* serves as an example:

> ... [T]he group referred to as traditional leaders/rulers or tribal leaders/rulers are individuals occupying communal political leadership positions sanctified by cultural mores and values, and enjoying the legitimacy of particular communities to direct their affairs. ... Their basis of legitimacy is therefore tradition, which includes the whole range of inherited culture and way of life; a people’s history; moral and social values and the traditional institutions which survive to serve those values. (emphasis added)

But what tradition are they referring to? More often than not this question is not answered. Where answers are given, a clear preference for the precolonial traditions is expressed. The definition offered by His Royal Highness Erediauwa, the *Oba* of Benin in Nigeria (cited in Aborisade 1985:vii), is a case in point:

> Traditional ruler means the traditional head of an ethnic community whose stool conferred the highest traditional authority on the incumbent *since before the beginning of British rule*. (emphasis added)

In many respects defining *traditional leader* has become a political exercise. The quest of His Royal Highness the *Oba* of Benin is for more powers to traditional leaders in Nigeria. His project is to “purify and protect” the institution of
traditional leadership from the “contamination” of the colonial period, hence his reference to the precolonial as a source of authority. The romantic portrayal (ibid.) of such leadership as a “consensus-driven institution that involves all affected parties”, as the “unifying factor” in their communities, and “as a mere catalyst for decision-making” has to be placed in the current (postcolonial) political context. The fact is that, like all other social groupings, traditional leaders compete for political space in the postcolonial dispensation. Given their tarnished image, this was never going to be easy; hence the attempts at present to “reinvent” the institution and its basis of authority.

The truth of the matter is that traditional leaders derive their authority from custom and not so much from tradition; and custom, not tradition, is the basis of appointment. Customs, although closely intertwined with tradition, are generally more flexible than tradition and thus more useful in facilitating change. Hobsbawm (1994:2) argues as follows in this regard:

It does not preclude innovation and change up to a point, though evidently the requirement that it must appear compatible or even identical with precedent imposes substantial limitations on it. What it does is to give any desired change (or resistance to innovation) the sanctions of precedent, social continuity and natural law as expressed in history. (emphasis added)

Custom, therefore, is a source of legitimacy. There is no actual distinction between “real” or “invented” customs; nor is there any limitation on the time during which they supposedly developed. In many respects the only “real” or “legitimate” customs are the ones in use today. These customs may or may not be the same as those that obtained in earlier times, and they may or may not be recent in origin. In all cases, however, these customs will reflect some of the changes that took root in the various communities. In Namibia today, for example, some Nama communities have headmen and not their customary Kaptein (“Captain”, or “chief”);1 this is the result of direct intervention by the South African Administration. Furthermore, most Nama communities directly elect their traditional leaders, also as a result of South African interference. In other parts of the country the practice is very different. Among the remaining Owambo kingdoms the Omukwaniilwa (“King”) still rules and little has changed about the way he is appointed. However, there is little to suggest that what is today considered to be the custom among the Nama (in respect of electing a leader) is less “true” or “legitimate” than what is found among the Owambo.

Traditional leaders are, therefore, not traditional leaders in the true sense of the word, but rather customary leaders. In fact, there is little traditional about traditional leaders. Many are educated, belong to Christian denominations, speak and

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1 See the section marked “Chieftainships” later herein on the structure of the Nama/Orlam leadership hierarchy.
understand the official language and are by no means uninformed about what happens in areas outside their own. They are mobile and some are regular participants in affairs that are often regarded as “modern”. The only real issue that distinguishes traditional leaders from other types of leaders is that they are appointed by members of a relatively closed community, usually defined in terms of some form of ethnic criteria, and that they are appointed by means of the legitimate customs of that community. Hence, traditional leader can instead be defined as “individuals that are appointed by members of a specific, ethnically-defined community by means of the accepted customs of the day, to preside over that community”.

The Issues

This chapter focuses on two interrelated themes. Firstly, it deals with the attempts to build and strengthen the postcolonial State, and secondly, it discusses the attempts to dismantle decentralised despotism and replace it with democratic structures and procedures. Both of these themes have implications for the future role of traditional leaders in the administration of the country.

At least three important issues confronted policy-makers immediately after Namibia’s Independence. The first related to the recognition of the “real” traditional leaders. Colonial policies of intervention had a great impact on customary practices of appointment and as a result it is difficult to distinguish between those who were legitimately appointed by their communities, and those who were appointed by the colonial Administration.

The second issue concerned bringing the institution of traditional leadership within the broad legal and policy framework of the State. Among those issues considered to be important were reconciling the institution with policies of gender equality; communal land administration, and environmental conservation; democratic governance; and rural development. A related aspect was how, and to what extent, traditional leaders were to be remunerated by the State.

The third issue, and one that is in many ways related to the second, dealt with finding an appropriate role for the traditional leadership institution in the day-to-day administration of the country. The debate on this issue revolved around the question of whether or not the processes and customs contained within the institution were compatible with the spirit of democratic governance and effective administration.

This chapter aims to provide details, perhaps at a more practical rather than theoretical level, of the Namibian experience in dealing with these issues. Starting with a synoptic discussion of the various past and current models of traditional leadership, the aim is to highlight the effects of colonial intervention and the current state of affairs. Subsequent sections of the chapter deal with the issues identified above.
Models of Traditional Leadership

At least three broad models of traditional leadership currently exist in Namibia. These are kingdoms, chieftainships and headmanships. Whilst the former two are modified artefacts of the precolonial area, the latter is entirely a product of colonial rule. This raises the question of how “traditional” traditional authorities are. Traditions, like customs and culture, are dynamic social artefacts. They are constantly being reviewed and altered to meet the demands of changing times and contexts. This has prompted some scholars to describe traditions as socio-cultural and political “inventions” (e.g. Hobsbawm & Ranger 1994). As traditions are exposed to change, so are the models of governance which they underpin. As a result, the three broad typologies of traditional leadership identified below all show some degree of deviation from what existed prior to the arrival of the colonial forces.

The Kingdoms of Northern Namibia

The Owambo peoples of north-central Namibia consist of seven related communities: the Ondonga, Uukwanyama, Ongandjera, Uukwambi, Ombalantu, Uukwaluudhi and Uukolonkadhi (Hahn 1928, Tötemeyer 1978, Williams 1994). All of these except the Uukolonkadhi were politically organised into kingdoms. The development of the centralised systems of power accompanied the development of agro-pastoral economies and the subsequent need for control over land (Williams 1994:98).

In early times, the King was selected from the royal clan, and during his reign he was assisted by a number of Councillors. These were appointed by him, not strictly from the clan structures, but from his age group. The highest authority (after the King) was the King’s Council. The Council consisted of six senior Councillors appointed by the King after consultation with the elders (Williams 1994:106). This Council acted as the chief executive, as well as the judicial and legislative body, and all its decisions were kept secret. One member of this Council acted as the King’s closest advisor, his Chief Minister. Usually, the kingdom was subdivided into a number of wards (often as many as 57 wards existed). These were headed by Under-councillors appointed by the King. They, in turn, formed the District Council, a second-tier authority that presided over ward affairs and made inputs to the King’s Council. A number of less significant bureaucratic positions existed in the kingdom, most of which were allocated to the running of the royal court. Among these were the courtiers, the bodyguards, attendants, messengers, herdsmen and cooks.

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2 This was done during his young days, when a prospective King would observe his playmates for certain special qualities such as bravery, diligence and hard work. It was the custom of those times that a newly appointed King would “inherit” his predecessor’s Councillors (Williams 1994:106).
The King’s powers were wide-ranging and gave him control over the army, the clergy and all components of the polity. Some (e.g. Tönjes 1996:107) have argued that “(a) king’s powers are unlimited. He rules over the life and the property of every person living in his country”. Williams (1994) presents the organisational structure for the early Owambo kingdoms as follows:

![Organisational structure of early Owambo kingdoms](image)

These kingdoms were all seriously affected by colonial rule. The drawing of the colonial boundaries in 1891 divided the Uukwanyama kingdom between the then German South West Africa and Angola. In 1908 King Nande signed a “protection treaty” with the German Administration and Uukwanyama became a formal German Protectorate (ibid.:152). Hereafter a second treaty was signed with the British, and King Mandume was requested to surrender arms. Military offences against the Uukwanyama kingdom increased in the period that followed, first by the Portuguese from Angola, and later by the combined forces of South Africa and Britain. In February 1917 a final skirmish took place, resulting in Mandume’s death and the “end” of the Uukwanyama kingdom. A similar fate awaited the Uukwambi kingdom after the offence against King Ipumbu in 1932. In both these cases, a Headmen’s Council was appointed to replace the deceased King. The headman system was also applied to the areas of the Ombalantu and Uukolonkadhi (Tötemeyer 1978:44). Under the colonial Administration, the Kings became “Chiefs” and the procedure by means of which they were appointed was changed to include colonial supervision and “popular elections”.

*Figure 1: Organisational structure of early Owambo kingdoms*
Chieftainships

The original chieftainships existed in the areas to the south of the infamous Police Zone, and in the Kavango and Caprivi Strip. The Kavango is currently divided into five subregions, each under the jurisdiction of a Hompa (“Chief”). It is the custom that Hompas are elected from a matrilineal line of succession. Each of the subregions have timbi (village heads or headmen) that are appointed by the Hompa after being elected by the community (GRN 1991:29). It is the custom that the Hompa must come from the royal lineage, and the timbi from any lineage. The Hompa is assisted in her duties by a Chief’s Council.

A similar structure is found among the Herero communities, with one exception: the Herero have a “Paramount Chief.” There are two conflicting views (GRN 1991:22-23) on the origin of this position. Both acknowledge that, prior to the arrival of the German occupants, the Herero had no single, central leader or even a central royal house. It was only after the defeat of the Namas in 1863 that a single “Paramount Chief” emerged. One view claims that all Herero clans met to choose a single leader. The second view, put forward by some historians and anthropologists, claims that the position was created by the German Administration to promote indirect rule. Lineage and descent are currently used to determine new Chiefs and “royal houses” are often mentioned (ibid.:23-28).

A second type of chieftainship is found among the Nama of southern Namibia. Most of these communities (usually the larger ones) are administered by a Kaptein and a Kapteinsraad or Stamraad. These chieftainships are different from the others in the sense that they are derivatives of the military-style political organisation of the Orlam immigrants. These structures had their origins in the Commando Groups formed along the frontiers of the Cape Colony, which were used by frontier farmers and colonial administrators to enforce law and order. Very similar institutions were adopted by renegades to raid livestock and assert social control on the outskirts of the Colony. The Orlam Commando Groups, upon their arrival in southern Namibia, were primarily geared toward military conquest and cattle

3 The Police Zone consisted of southern and central Namibia to which white settlement was directed. Unlike the territories north of this so-called Red Line, which were governed through a system of indirect rule, in the Police Zone the Administration employed policies of direct control.

4 The Mbukushu leader’s title is Fuma.

5 Prior to the 1904 Uprising, at least five “great chieftainships” existed: Okahandja, Otjimbingue, Omaruru, Otjozondjupa and Okandjoze (see Vedder 1928:189).

6 The debate on the Herero leadership has been long and intense. The current incumbent Paramount Chief – Chief Kuaima Riruako – has been an active campaigner for more powers to traditional leaders. His own position has been questioned by some as “self-appointed” and not true to custom.

7 I have retained the Afrikaans names primarily because these structures developed from the Commando Groups that were brought into the territory by the Orlam migrants from the Cape Colony after ca. 1750 (see Lau 1987).
raiding. Hence, the titles and original functions allocated within these structures reflected their paramilitary origins. The title Kaptein, translated from its original meaning, was therefore “Captain” rather than “Chief”. The original Nama groups adopted these “modern” and European-inspired structures and to this day some of their leaders are called Kaptein.

![Organisational structure of the /Kobesin (Witbooi) Stamraad](image)

Figure 2: Organisational structure of the /Kobesin (Witbooi) Stamraad
Source: Du Pisani (1976)

Figure 2 above presents an organisational structure of the /Kobesin (Witbooi) Stamraad. Many of the positions have little more than symbolic value today, but their military influence and origin is still clear. Not all Nama communities have retained their military-styled traditional authority. Most commonly today, Stamrads consist of a Kaptein, an Onder-Kaptein and a number of Councillors.

**Headmanships**

It was said earlier that all headmanships have their origins in the colonial era. In some cases, these were constructed by the colonial Administration to replace other forms of traditional leadership, as was the case in at least three of the Owambo
Traditional Leaders

In other cases, these structures were created to assert control over resettled communities, or to organise and control so-called acephalous communities.

In southern Namibia, among the Nama-speaking communities, a number of headmen were appointed to preside over areas expropriated under the Odendaal Plan to enlarge existing “homelands”. Such areas include Kriess, Amper-Bo, and perhaps even Vaalgras. The resettled communities were made up from multiple parochial backgrounds, and as such had no traditional leadership structures in place. In these instances, the colonial Administration appointed headmen. Headmen were also appointed wherever and whenever the colonial Administration had problems extending its social control over defiant communities. In this respect, headmen who were sympathetic or at least not openly hostile to the colonial authorities replaced the incumbent leaders. This happened in northern Namibia as well.

Finally, headmen were appointed to preside over those communities that, traditionally, had no such leadership structures: the so-called acephalous societies. This means that certain San communities received “traditional” leaders, some of which were incorporated in the multi-ethnic, transitional Government arrangements that were attempted prior to Independence.

Postcolonial Developments

The invention, alteration and demise of traditional leadership structures is by no means complete. Several postcolonial developments are worth noting. Firstly, the passing of the Traditional Authorities Act, 1995 (No. 17 of 1995) confines the models of traditional leadership to only two: chieftainships, and headmenships. Officially, the Namibian Government no longer recognises kingdoms; these are being treated as chieftainships.\(^8\)

Just after Independence, Government recognised 36 traditional authorities and 176 traditional leaders (Keulder 1997a). Recognised traditional leaders are paid according to three wage categories: Chiefs receive N$700 a month, Senior Headmen N$450 a month, and Headmen N$300 a month.

There are, however, new proposals to introduce new salary scales, i.e. Chiefs would receive a monthly sum of N$1 000, Senior Headmen N$800, Councillors N$700, and Secretaries N$600, respectively. Only traditional leaders without official wage employment qualify for such Government salaries. Under the new scheme only the Chief, six Councillors and the Secretary are paid by the Government. Additional office-bearers have to be remunerated from the Community Trust Fund provided for by the Traditional Authorities Act. In some communities a

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\(^8\) Section 7 of the Traditional Authorities Act, 1995 (No. 17 of 1995) states that members of the traditional community are free to address their leaders according to the traditional titles afforded to their positions, but that such titles shall have no bearing on the status, powers and functions of the institutions, other than those assigned by the Act.
“community levy” has been introduced, as well as a levy on the sale of liquor, to generate income for the Fund.

A second important development concerns various attempts to restore old and invent new structures of traditional leadership. Shortly after Independence, the intention to “restore” the dysfunctional Uukwanyama kingdom became clear. Thereafter, the Damara community “restored” their “kingdom” under the authority of a /Goab.9 In the Caprivi in particular, smaller kinship-based communities have emerged to claim autonomy from the larger ethnic entities. Such claims are accompanied by claims for independent leadership structures, authority and territory, and for recognition by the Government.

Elsewhere, NGOs have facilitated a process whereby “acephalous” communities have been organised under “traditional” leadership. One such example is the Centre of Applied Social Sciences’ (CASS) project in Western Bushmanland (Thoma & Piek 1997). Under this project a number of leadership structures were created and implemented by the project team through a series of workshops facilitating community participation. In the final instance, these structures were being presented as “traditional” authorities. In addition hereto, existing customs were to be codified into a single system of customary law, a concept that is also alien to the communities concerned. The central purpose of the exercise is clear: to organise and mobilise ethnic communities within the broad constitutional and legal framework laid down by the Government (ibid.:16):

Activating customary rules in Western Bushmanland would enable the Bushman communities to prove to the government of Namibia that they can handle their own affairs according to their traditions and within the constitutional context of Namibia.

As a final assessment, one would have to conclude that these postcolonial inventions of traditional leadership are political in nature. Their primary aim is to access the State and its structures, resources and opportunities.10 Land claims and claims for recognition are based on, and legitimised through, “tradition” (even if presented in a distorted form).

9 This move has to be evaluated with some degree of scepticism. Firstly, nowhere in the existing historical sources does one come across such a “kingdom”. Secondly, the drive behind the “restoration” of this (imaginary) kingdom cannot be separated from what seem to be mainly political motives. However, the resurrected kingdom forms part of a larger politico-cultural exercise that includes the documentation of the Damara people’s history. In a broader, national context, the Damara people’s attempt to “rediscover themselves” is part of a larger process whereby ethnic minorities have expressed their dissatisfaction with the State’s cultural and socio-political projects. In the context of perceived neglect and marginalisation, ethnic minorities have begun to rely on parochialism to communicate their perceived entitlements. Among those groups that have employed this type of strategy are the Rehoboth Basters, the Ovahimba, various San groups, and the Nama.

10 These and other themes linking traditional authorities with a quest for greater representation in State structures are documented in Keulder (1997b).
The Jurisdiction of Traditional Leaders

There are two contending arguments in this regard. The first maintains that a traditional leader’s jurisdiction is confined to the territory under his or her immediate control. The second is a more expansive view and maintains that the jurisdiction of a traditional leader is confined to all his/her subjects, irrespective of where they live. The latter is the official view pertaining to all traditional leaders in Namibia. Section 2(2) of the Traditional Authorities Act states that –

[A] traditional authority established in respect of a traditional community shall in the execution of its duties and functions and exercise of its powers, have jurisdiction over the members of that community. (emphasis added)

Although no accurate estimations in this regard exist, one can safely assume that most – if not all – people living in the communal areas of Namibia are currently under the jurisdiction of a traditional leader of some sort. Although, in terms of the above Act, all the members of a specific community are considered to be under the jurisdiction of their traditional leader, it is unlikely that those residing outside the communal areas will be exposed to the authority of such leader on a daily basis. Based on this proposition, one can estimate that around 150 000 families or 855 000 people in Namibia are subject to the authority of a traditional leader on a daily basis (UNDP 1996).11 Most traditional authorities are found in the communal areas of Namibia, which are spread across all thirteen Regions.12

Political Structures and Processes Affecting the Institution of Traditional Leadership

Traditional leaders have been seriously affected by the postcolonial process of State-building. After Independence, the Namibian State was subjected to structural reorganisation. This saw the abolition of the ethnically-based second-tier administrations implemented by the South African regime. Traditional leaders who were part of those structures and, hence, part of the colonial State, were directly affected. In addition to this, tribal police forces were abolished. This reduced traditional authorities’ capacities with regard to policy implementation and law enforcement. The introduction of Regional Councils as de jure rural local Government is perhaps the most significant aspect of postcolonial State-building to have affected the institution of traditional leadership: in effect, all administrative powers previously allocated to traditional authorities were transferred to the newly established Councils. Together with the Traditional Authorities Act, the

11 The number of families living in the communal areas was obtained from the UNDP’s (1996) Human development report, whilst the number of people was calculated from the average household size for Namibia, i.e. 5.7.

12 That is if one includes the Rehoboth area in the Khomas Region.
introduction of Regional Councils effectively saw the subordination of traditional authorities to the structures of the State. This trend will be continued once the proposed structures of land administration are implemented.\textsuperscript{13} In no instance does any of the legislation dealing with rural, local administration make formal provision for the inclusion of traditional leaders into local State structures. The only official role reserved for traditional leaders in the administration of the rural areas is that of supporting State structures. Section 10(2)(a) to (c) is clear in this regard:

(2) In addition to the functions specified in subsection (1), the members of a traditional authority shall have the following duties, namely –

(a) to assist the police and other law enforcement agencies in the prevention of crime and apprehension of offenders within their jurisdiction;

(b) to assist and co-operate with the organs of the central, regional and local government in the execution of their policies by keeping the members of the traditional community informed of developmental projects in their area; and

(c) to ensure that the members of their traditional community use the natural resources at their disposal on a sustainable basis and in a manner that conserves the environment and maintains the ecosystems, for the benefit of all persons in Namibia.

Section 12(1) and (2) is equally clear about the relationship that ought to exist between traditional authorities and other organs of State:

(1) In the performance of its duties and functions and exercise of its powers under customary law or as specified in this Act, a traditional authority shall give support to the policies of the central Government, regional councils and local authority councils and refrain from any act which undermines the authority of those institutions as established by law.

(2) Where the powers of a traditional authority or traditional leader conflict with the powers of the organs of the central Government, regional councils or local authority councils, the powers of the central Government, regional council or local authority council, as the case may be, shall prevail.

To date, and on the surface, the relationship between traditional authorities and their elected counterparts seems harmonious. A closer look at the state of affairs reveals that the harmony is precarious – perhaps even superficial. First and foremost to consider in this regard are the limited capacities and powers of the Regional Councils. Because of these limitations, Regional Councils have not been very active in areas that currently fall under the jurisdiction of traditional leaders. There is, thus, little overlap or room for a conflict of interests.\textsuperscript{14} Secondly, the

\begin{footnote}
\textsuperscript{13} The legislation dealing with the administration of communal land has not yet been finalised and, hence, cannot be included in the discussion here. It is sufficient to mention that an early draft of the Bill excluded traditional leaders from the proposed system of Land Boards. The traditional leaders have rejected this but the outcome of the process is unlikely to change.

\textsuperscript{14} For a more detailed discussion of these and other issues pertaining to the relationship between traditional leaders and Regional Councils, see Keulder (1997b:37-47).
\end{footnote}
conflict between traditional leaders and elected councillors often stems from the competition between the two sets of incumbents aspiring for the status, power, wealth and prestige attached to the right to represent members of the locality. For the members concerned, the issue is entirely different. For them, having to survive under sometimes extremely bad ecological, economic and political conditions, the issue is not so much who represents them, but rather whether or not they are represented at all. In the process of securing access to the State, its agencies, projects and programmes, members of marginalised rural communities seem to have little preference for elected leadership over traditional ones, and vice versa (Keulder 1997b:47).

With the proposed policy of decentralisation and continuous efforts to expand the State into the rural hinterland, conflict between the two contending sets of elites may increase in the near future.

The State of the Institution

Structural Problems

Although it is difficult to assess in any exact manner the structural capacity of all local authorities in Namibia without close scrutiny of each individual case, a number of problems are immediately obvious.

Firstly, most, if not all, traditional authorities are experiencing financial difficulties. After Independence, traditional authorities lost most of their main sources of income (such as grazing fees) and currently receive little financial or institutional support from the Government. However, the Traditional Authorities Act makes provision for traditional authorities to establish a Community Trust Fund that could be used to support the traditional authority and its projects. Nonetheless, it is unlikely that these Trust Funds will be able to generate enough capital and security to overcome the existing financial problems.  

Secondly, a substantial number of traditional authorities lack the capacity to enforce decisions and customary law rulings. The lack of capacity in this regard stems from the abolition of their tribal police forces, and coercive infrastructure. Traditional authorities no longer have the power of detention and none are allowed to operate a jail. Although the extensive coercive powers and instruments allocated to traditional authorities by the colonial Administration were abused for political reasons, there has in fact been a rise in rural crime since Independence. One of the reasons for this is the reduction of the powers of traditional authorities,

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15 In expressing their financial needs, traditional leaders often referred to the arrangements of the past. In a discussion with a senior Government official, the Linyanti Traditional Authority claimed that the South African Administration not only paid them better salaries, it also gave them substantial fringe benefits such as a Police force and cleaners, four-wheel-drive vehicles and a variety of wildlife for their cultural festivals (GRN 1997).
whilst another has to do with the State’s failure to penetrate rural areas with its coercive apparatus.\(^{16}\) In southern Namibia, customary courts fell into disuse after an offender charged with wrongful seduction and given eight lashes as punishment, brought a successful legal case against the traditional authority of Hoachanas. As a result of this case, the *Stamraad* was obliged to pay a fine of N\$120 or serve a month in prison.

Thirdly, some traditional authorities (and this pertains specifically to traditional authorities in southern Namibia) are weakened by the absence of traditional leaders from their communities. Chiefs and councillors are often absent for economic reasons. A substantial number of them are employed elsewhere whilst others have taken up commercial farming. In one extreme case (the Isaak authority in Berseba), only one councillor resides in the community headquarters. The problem is compounded by the fact that traditional leaders are often not full-time incumbents. They are also farmers, Church leaders, teachers, politicians\(^{17}\) and businessmen. This means that they have to divide their time, energy and resources between their employment and leadership responsibilities.

**Additional Problems**

Traditional authorities are affected by numerous non-structural problems. First among these are the intense leadership disputes. Some of these disputes have their roots in the precolonial era, whilst the more politically motivated ones are the legacies of colonial practices. Leadership contentions take three forms: a) two leaders disagree on who is the rightful incumbent; b) some traditional leaders claim autonomy from existing structures and seek independent recognition from the Government; and c) members of some communities contest the incumbent leader’s right to the position on the grounds that such leader was appointed by the previous Administration and not by the members of the community themselves. In such cases, some community members have come forward to claim the leadership position as “rightfully” theirs.

Secondly, the weakness of State structures has caused traditional leaders some problems. Traditional leaders often complain about the lack of consultation between them and the elected representatives. They feel that the elected representatives, including those at the political centre, often bypass or marginalise them when matters pertaining to their Regions are discussed. As a result, communica-

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\(^{16}\) Sharp increases in stock theft prompted at least one ethnic community to form its own “anti-stock theft unit”, Epango. Formed in 1992 by the Otjiherero-speaking communities, Epango employed methods of detention and punishment commonly regarded as “unconstitutional”. However, these communities defended their actions by pointing to the failure of the Police to contain crime and protect private property.

\(^{17}\) This option is technically no longer available as the Traditional Authorities Act prohibits traditional leaders from holding stool (leadership of a traditional community) and public office simultaneously.
tion between people in remote rural areas and their elected Regional and Central Government representatives frequently breaks down. As a result of inadequate communication and the weakness of the regional structures, traditional authorities have found it difficult to access the State and its projects. This problem is compounded by their exclusion from the formal structures of rural administration.

Thirdly, some traditional communities find it difficult to adapt to the new legal and constitutional frameworks developed after Independence. Custom and “tradition” often conflict with the new political demands of gender equality and greater representation for women. Certain customs regulating inheritance in some communities have discriminated against widows, and in other communities, women are generally excluded from decision-making processes. This has caused tensions between traditional authorities and some institutions, including the Government.

Fourthly, some traditional authorities are negatively affected by the quality of their leadership. Although it is impossible to make a general assessment of the general quality of leadership without assessing each individual leader, it is more common for the older leaders to be illiterate and affected by illness. These leaders and, by association, the traditional authorities they govern, are at a disadvantage when dealing with the legal and technical discourse of Government.

Fifthly, traditional leaders are affected by the political climate that has prevailed in Namibia since Independence. In some circles they are still considered as “backward” and as “custodians of tribalism” and, hence, as hampering the Government’s nationalist and developmental projects. For some they remain “stooges” of the colonial Administration with little, if any, contribution to make in an independent Namibia.

Another aspect related to the political climate is that party divisions, rooted in the colonial era, continue to divide local communities. Regional and Central Government representatives are often accused of favouring their own support bases at the cost of others (GRN 1997).

A sixth problem is related to some of those already mentioned. It deals with the Government’s quest to find and register the “rightful” traditional leaders and their authorities. It has become an increasingly difficult and important issue in the light of the establishment of a Council of Traditional Leaders, and also to cope with the increased demand for recognition, land and remuneration. The issue is complicated not only by the factors mentioned above, but also by the lack of a sound and reliable information base against which contested claims could be substantiated.

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18 A good example of such divisions is the community of Berseba, where precollonial leadership disputes transformed themselves into political divides that persist despite several attempts to reconcile the factions. Although the Isaaks (who belong to the DTA) and the Goliaths (who belong to the SWAPO Party) are related by blood, a request was presented to the Kozonguizi Commission that the two factions be recognised as two separate peoples. Currently, each faction has its own Kaptein and Stamraad. See Keulder (1997b).
Addressing the Problems

It cannot be expected of Government to solve traditional authorities’ financial problems. Most traditional authorities preside over communities with limited financial resources, which makes it difficult to extract additional resources for the maintenance of leaders. Some traditional leaders have accesses to the donor community, not to support their institutions but rather to generate funding for community projects. In southern Namibia, the Nama Traditional Leaders’ Council held several meetings to address the financial predicament and several proposals, such as trophy hunting, were discussed. Another possibility was to generate resources through conservancies or to raise levies from activities such as selling alcohol.

Current proposals with regard to the establishment of community courts under the Ministry of Justice may help to improve traditional authorities’ capacity to enforce customary law and address the crime problem in general. Such structures may improve the relationship and cooperation between the State and traditional authorities in this regard.

The absence of traditional leaders is caused by a need for income. It is unlikely that even the new salary structures proposed by Government will make absent traditional leaders return to their communities, or to being full-time incumbents of the position. What it will do, however, is to support unemployed traditional leaders and make it worth their while to remain in their positions. It may thus serve as an incentive to make the institution more attractive for younger, unemployed members of the community. Such individuals could be encouraged to make themselves available for election to leadership positions.

The weakness of State structures might be reversed through the implementation of the decentralisation policy. The policy will devolve more funding and human resources to the various localities and assign to them new and increased powers to deal with the politico-administrative and socio-economic developments in the Regions. This should bring traditional authorities and Regional Councils closer to each other. Regional and local authorities should have more capacity to create local-level structures to incorporate traditional authorities into the day-to-day administration of their localities. The outcomes of such developments are difficult to predict and considerable variations across the Regions may develop. It is also quite possible that the focal point for dealing with the daily issues pertaining to traditional authorities will be shifted to the Regional Councils. This will no doubt have an impact on the existing power relations in the Regions, which, in turn, could see an increase in the levels of conflict between traditional authorities and elected representatives.

With regard to (re)moulding the institution to meet the demands of the new constitutional and legal framework, one has to say that the traditional authorities

19 Chief Kooitjie of the Topnaar community has raised around N$1 million for a community school.
themselves must be credited with much of the initiative shown thus far. One case in point is the Ondonga Traditional Authority, which obtained the services of an NGO (CASS) to assist them with the codification of their customary laws (ELCIN 1994). At the same time this authority abolished the heritage laws discriminating against widows. At the second meeting of the Nama Traditional Leaders’ Council, a decision to include women in each delegation to the Council was adopted and included in its constitution.

As far as the leadership disputes are concerned, the Traditional Authorities Act makes provision for a judicial commission of inquiry to be appointed. Once a community has informed the relevant Minister of a dispute by way of a written petition, section 9(2) and (3) of the Act apply:

(2) On receipt of a petition ... the Minister may in accordance with the Commissions Act, 1947 (Act 8 of 1947), appoint a judicial commission to investigate the dispute and to report to the Minister concerning its findings and recommendations.

(3) On receipt of the report of a judicial commission referred to in subsection (2), the Minister shall take such decision as he or she may deem expedient for the resolution of the dispute.

In these cases the recommendations and decisions have to take cognisance of the existing customary laws of the community. Where leadership disputes develop in communities that are without customary law, or where there is uncertainty about the provisions of their customary law, leaders are to be elected by a majority vote.

Partly to deal with leadership disputes and partly to cope with the new demands for recognition, the Ministry of Regional and Local Government and Housing has embarked on a new process whereby all traditional leaders and authorities are encouraged to apply for registration as such. Registration forms, indicating current office-bearers, possible leadership disputes and the means of ascendency to the position, were distributed to all such leaders for completion. Completed forms have to be returned to the Ministry via the Regional Councils; the Ministry, in turn, submits the applications to the Cabinet Committee on Land and Social Issues. An initial decision regarding the legitimacy of the claim to leadership is taken here. In all cases where leadership disputes exist, the matter is forwarded to the President and through him to the (yet to be established) Council of Traditional Leaders. Recommendations from the Council to the President shall inform the decisions made. The formal recognition of traditional authorities is published in the Gazette. Those communities whose leadership structures are not officially recognised will be allowed to continue their normal business but their leadership will not be entitled to remuneration from the Government.

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20 This Committee is chaired by the Minister of Regional and Local Government and Housing, and includes the Ministers of Lands, Resettlement and Rehabilitation; Health and Social Services; Basic Education, Sport and Culture; and Agriculture, Water and Rural Development.
Traditional Authorities and the State

It was said earlier that traditional authorities have been subordinated to the structures and branches of Government. The figure below maps the relevant decision-makers and links them in a line of authority.

![Organisational structure - State and traditional leaders](image)

*Figure 3: Organisational structure - State and traditional leaders*

The structures dealing with the recognition of traditional authorities are the President, the Council of Traditional Leaders (to be formed), the Cabinet Committee on Land and Social Issues, the Ministry of Regional and Local Government and Housing (MRLGH), the Regional Councils, and the traditional authorities themselves. Those dealing with the administration of the rural authorities are the MRLGH (as the main body responsible for the traditional authorities), the traditional authorities themselves, and the Ministry of Lands, Resettlement and Rehabilitation (as the main body responsible for land administration). Once established, the Land Boards will join the line of command.

The single most important feature about the postcolonial State-building project is, perhaps, the omission of traditional authorities from the main administrative structures, namely the local authorities, the Regional Councils and the Land Boards. Traditional authorities’ functions are confined to supporting the State structures in the performance of their duties, and to the areas of culture.
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