

**CUSTOMARY LAND GOVERNANCE IN POST-APARTHEID SOUTH
AFRICA: A GUMBI CASE STUDY**

Sibongiseni B. Hlabisa

B.Tech. Nature Conservation (MUT) ND: Nature Conservation (MUT)

School of Applied Media and Social Sciences

Gippsland Campus

Monash University

Australia

Submitted in fulfilment of the requirements for the degree

Master of Arts

2013

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Abstract

Land governance is a politically charged and emotionally laden concept. This is particularly so in post-colonial countries with grossly inequitable land ownership patterns and fragmented institutions of governance. The often conflicting roles of the various institutions of land governance and their contestations for land control authority means that land governance processes of the post-colony are infused with tensions. The South African post-Apartheid state has attempted to manage these tensions by reforming customary land tenure and reconciling customary governance with democratic values. This reform attempt has generated much controversy and debate. Various interest groups, including traditional leaders (chiefs) have contested the state's reform policy initiatives. This thesis examines the encounter between the South African post-Apartheid state and the customary land governance structures over land rights, and the ensuing effect on rural people's access to land.

Data for this thesis was collected in the Gumbi Traditional Authority area in northern KwaZulu-Natal, South Africa. This community successfully claimed about 26 000 hectares of farmland under the Land Restitution programme in 2005. The land is held under a community trust that coexists with a traditional authority that was re-introduced in 2005 and has jurisdiction over the same area.

The thesis employed a triangulated case study research design (Yin, 2009; Teddlie & Tashakori, 2009). Sixty one participants (n=61) from the Gumbi Traditional Authority area (that is, 6.1% of the population) were surveyed. To gain depth and clarify certain key issues emanating from the survey, eight community members from the Gumbi Traditional Authority Area, two officials from the Department of Land Reform and Rural Development and the uPhongolo Local Municipality were interviewed. The researcher attended several community meetings to observe some of the community dynamics arising from these discussions.

The results indicated that the chieftaincy is a central player in land governance in the area and it is also regarded as the principal institution with the authority to control land access and use. Despite its lack of official land ownership status, in this area, the chieftaincy's subjects and local state officials regard the chieftaincy as the original, ultimate land proprietor and final authority on land and community issues. In a sense, the chieftaincy is the bearer of local households' sovereign rights over the land.

This thesis demonstrates the formidable strength of the customary institutions of governance, and unveils the weaknesses of the post-Apartheid state. It argues that the regional particularism of the customary institutions does not bode well for the state formation and post-Apartheid state's nation-building initiatives. The thesis also demonstrates the implications that this has on the experiences of land tenure rights by the rural poor.

Declaration

I, the undersigned, hereby declare that the work contained in this thesis is my own original work and that it has not, in its entirety or in part, been submitted before either by me or any other individual at any university for a degree.

.....
Sibongiseni B. Hlabisa

30 July 2013

Acknowledgements

I would like to express my deep gratitude to my research supervisors, Dr Michelle Duffy, Dr Agnes Babugura, and Prof. Colleen Lewis, for their patient guidance, enthusiastic encouragement, and useful critiques of this research work.

My sincere thanks to members of the Gumbi community who agreed to participate in this research.

Furthermore, I acknowledge, with much appreciation, the crucial role of Dr Ina Shaw in advising and assisting in the final stages of the project.

Acronyms

ANC	African National Congress
CONTRALESA	Congress of Traditional Leaders of South Africa
IFP	Inkatha Freedom Party
CODESA	Convention for a Democratic South Africa

Glossary

Bantu People

The term 'Bantu people' is a linguistic concept used to designate the approximately 60 million Africans who speak languages from the Bantu language family. They are roughly distributed from Cameroon, east across Central Africa and Eastern Africa to Southern Africa. The word 'Bantu' groups together all tribes in whose language the term for 'people' incorporates the sound 'ntu'. Although the term 'Bantu' is regarded as derogatory by many black people as a result of its association with the Apartheid regime (Khumalo, 1984), it is still the only term used to designate the Iron Age farmers who migrated to South Africa approximately 2 000 years ago (Nurse, 2006; Omer-Cooper, 1977).

Beneficiary

In this thesis, the word 'beneficiary' is used to refer to two classes of people. Firstly, it refers to people who have been identified as part of the land claimant community that was dispossessed by the South African Union government and later on, by the Apartheid state. Secondly, it refers to people who are residents (*izakhamizi*) in the Gumbi Traditional Authority Area.

Chief/ Chieftaincy

The majority of South African traditional leaders regard the words 'chief' and 'chieftaincy' as disrespectful, due to their association with Apartheid, and they usually prefer to be referred to as traditional leaders or to be addressed by the terms in their indigenous languages, such as *iNkosi* in the Zulu language (Williams, 2010). This thesis adopted chief for *inkosi* and chieftaincy for the institution of *ubukhosi*, due to their wider applicability both locally and internationally. Therefore, 'chief' will be used to refer to the hereditary leader, and 'chieftaincy' to the office he occupies and the entire institution. 'Traditional leadership' will be used to refer to all chiefs combined (kings, queens, chiefs and *izinduna*).

Community Conservation Area

This refers to the area that the community has set aside for biodiversity conservation and tourism purposes.

Cropping Land Use

Cropping land use refers to that part of arable land that is under crops during at least one season of the year.

Induna

The Zulu words '*induna*' (singular) and '*izinduna*' (plural) refer to the chief's officers responsible for governing the various wards under the chief's jurisdiction. These Zulu words are used because they refer to both male and female officers, therefore avoiding the need to change gender from headman to headwoman when referring to the female *induna*.

Land Governance

In this study, land governance concerns land access and control. It refers to the rules, processes, and institutions through which "decisions are made about the use of and control over land, the manner in which the decisions are implemented and enforced, and the way that competing interests in land are managed" (Palmer, Friscska & Wehrmann, 2009:1).

Natural Resource

According to Zimmerman (1951:7), resource "does not refer to a thing or substance but to a function which a thing or substance may perform". From this perspective, natural resources become resources because they are perceived by people as having a utility or anthropocentric value.

Natural Resource Collection

Natural resource collection refers to the gathering of all the things that occur naturally within the environment and which the inhabitants regard as resources, i.e. firewood, medicinal plants, etc.

Residential Land Use

Residential land use refers to land that has had a dwelling erected upon it for human habitation.

Stock Grazing Land Use

Stock grazing land refers to the land that is used as pasture for domestic livestock.

Trustee

A trustee is a member of the board (Mvokweni Community Trust Board) that is given administration control of land property in trust, as per the *Trust Property Control Act (1988)*.

-Chapter 1: Introduction-

1.1 Introduction

The background of the thesis and the research problem is presented in this chapter. This is followed by a presentation of the research aim, objectives, and questions. The area of study is described, and the chapter concludes with a presentation of the research thesis' structure.

1.2 Background

Land governance is a politically charged and emotionally laden concept (Palmer et al., 2009; Sikor & Lund, 2009). This is particularly evident in post-colonial countries with grossly inequitable land ownership patterns and fragmented institutions of land governance (Mengisteab, 2009). These countries lack viable and effective institutions of governance that enjoy popular legitimacy (Englebert, 2000). The often conflicting roles of the various institutions of land governance and their contestations for land control authority means that the governance processes of the post-colony are infused with tensions. Hence, the key challenge for most African post-colonial countries is how best to reconcile state institutions with the multitude of local customary governance institutions, with their attendant territorial claims and pretensions at sovereignty (Comaroff & Comaroff, 2005). The limited viability of the post-colonial states' institutions is most evident when it comes to the issues of land governance, because land governance is where state institutions are in direct confrontation with customary institutions of governance. As a result, the land related institutional landscape of most post-colonial states is fragmented and contradictory (Williams, 2010; Sikor & Lund, 2009; Oomen, 2005).

Like most post-colonial¹ countries, the South African post-Apartheid state is also characterised by a multiplicity of conflicting and contradictory governance institutions (Beal & Ngonyama, 2009; Mengisteab, 2008; Mamdani, 1996; Gyeke, 1997; Englebert, 2000). On one side there are centripetal institutions of the state, and on another side there are customary

¹ Apartheid South Africa has been described as a colony of a special type, with a similarity between the occupational forces (see for example Hudson, 1986; Anderson, 1983; Fanon, 1963).

institutions with centrifugal tendencies² (Oomen, 1999). Both the state and customary institutions tend to rationalise their *raison d'être* in terms of territorial space, and land, by virtue of its close association with territoriality, becomes the main avenue for these institutions to contest and compete for authority (Sikor & Lund, 2009).

Thus, the South African post-Apartheid state is faced with the enormous task of transforming the deeply rooted customary institutions that predate the establishment of both colonial and post-colonial democratic governance (Williams, 2010). Accordingly, the post-Apartheid state is engaged in several attempts to reform customary land tenure, and to reconcile customary practice with democratic values. The state's reform agenda, informed by, *inter alia*, the need to devolve some of the state's responsibilities to local communities, has introduced several legislative measures. These include the communal property associations (CPA) (*Communal Property Association Act, 1996*), community trusts (CT), and the partial democratisation of traditional councils (TC). The first two measures advocated the establishment of statutory communal-democratic landholding institutions as the vehicles for local communities to own and administer land. This has had several shortfalls. Firstly, the concept of community has been shown to be highly problematic (see Chapter 3 for further discussion). Secondly, although these communal-democratic institutions enjoy democratic accountability, they lack the authority required to govern land effectively. Conversely, the customary politico-legal institutions have the authority to govern the land, but despite their partial democratisation, they lack democratic accountability (James, 2007).

This thesis examines this confrontation between the post-Apartheid state and African customary institutions of governance regarding the politics of land access and control. The politics of resource access and control are at the core of the post-colonial state formation and nation-building projects (Sikor & Lund, 2009); they are part of the development challenge facing Africa (Mengisteab, 2009). The fact that these countries have not succeeded in resolving the issues of resource governance, and crucially land governance, is one of the major contributing factors as to why they have not been able to meet most of their developmental challenges (North, 1990; Acemoglu & Robinson, 2012). The pushes and pulls of the centripetal institutions of the state and centrifugal customary institutions (Oomen,

² Oomen (1999), drawing from Cameorff (1996), identifies the key difference between centripetal and centrifugal institutions as the tendency of the former to be disintegrative, and the latter to be integrative. Therefore, whilst centripetal institutions foster national unity, territorial integrity, and a constructivist approach to identity, the centrifugal institutions have strains of ethno-nationalism, that is, the promotion of an identity based on local ethnic ties, rather than the 'nation' as fostered by the nation-state.

1999) have led to the creation of a highly contested state with multiple polities (Williams, 2010), manifesting the inherent ambiguities and contradictions of the post-colonial state (Fanon, 1965).

The main assumption of this thesis is that central to the issues of land access and control in post-Apartheid South Africa, are the modern state institutions and the traditional African institutions that compete for authority to grant land tenure rights. This is coupled with the responses of the people as they struggle to access those rights. However, authority is not simply a prerequisite for the granting of these rights; successful granting of rights is also an avenue for building authority. That is why the process of tenure rights recognition is not merely a technical issue, it is also a political question, and a question of governance, and as such, cannot be divorced from the issues of state formation and nation-building (Sikor & Lund, 2009).

In this thesis, land governance is examined mainly from the perspectives of the rural people living in a traditional authority area. Perspectives of the individuals who hold official positions within the various institutions of land governance are also included to provide a balanced view of land governance. These institutions are the Gumbi chieftaincy, a politico-legal institution; the Mvokweni Community Trust (hereafter referred to as the Trust), a landholding entity; the Department of Land Reform and Rural Development; and the uPhongolo Local Municipality. Both the Department of Land Reform and Rural Development and the uPhongolo Local Municipality are state institutions. By exploring the dynamics of governance in post-Apartheid South Africa, this thesis will illuminate how the specificities of local history (Peters, 1994) shape the current realities and give rise to the disjuncture between indigenous and foreign institutions.

To collect the data for this thesis, the Gumbi Traditional Authority area in northern KwaZulu-Natal, South Africa, was selected as a case study. This community successfully claimed about 26 000 hectares of farm land under the Land Restitution Programme. This community is unique in that land is held by a community trust, the Mvokweni Community Trust, which was established in 2005 under the auspices of the state. In the same year a traditional authority (chieftaincy) was re-introduced with jurisdiction over the same area, and this has given rise to certain tensions between these institutions, which are the Gumbi chieftaincy, the state, and the Trust. Accordingly, this thesis specifically examines the relationship among the chieftaincy, the post-Apartheid state, and the Mvokweni Community Trust.

1.3 Problem Statement

The South African post-Apartheid state's attempts to reform customary governance and land tenure have generated much controversy and debate. The state's policy initiatives have been contested by various interest groups, including civil society organisations and chiefs (Law, Race and Gender Research Unit, 2010; Oomen, 2005). These groups are divided on the role that customary rule should play in governance in a democratic society. Chiefs consider themselves as custodians of customary practice and argue that their role in governing the rural population is paramount, and that it should be enshrined in the constitution. Several civil society organisations, such as the Alliance for Rural Democracy, are opposed to this. They argue that chiefly rule is incongruous with democratic and human rights values (Mamdani, 1996). As this debate rages on and state policy proposals oscillate between pro- and anti-chiefly power, the perspectives of the intended beneficiaries have rarely been included. It is not clear how people living under the jurisdiction of customary institutions view confrontation between the state and customary institutions over land governance, and the effect this has on their tenure rights.

Three issues are evident in this context and require further investigation. Firstly, there is a need to understand the specificities of local history that gives rise to contemporary institutional tensions characterised by the concurrent existence of both state and non-state institutions of governance. Secondly, there is a need to understand the dynamics between these institutions, and the relationship between the residents and these institutions. Lastly, it is necessary to examine the outcome that the concomitant existence of these institutions has on land governance and land tenure from the perspective of the intended beneficiaries, i.e. the households, which are the study unit in this thesis.

1.3 Research Aim and Objectives

The main aim of this study was to investigate the tensions that arise from the conflicting roles of the various land governance institutions, their contestations for land governance authority, and the effect this has on land tenure rights. This was examined from the perspective of the Gumbi people and officials of three institutions, namely the Gumbi chieftaincy, the state, and the Trust.

The objectives are as follows:

1. to identify the institutions that households consider to play key roles in land governance and to examine how these roles give rise to tensions;
2. to analyse the levels of land governance authority held by the various institutions and examine how their contestation for land governance authority leads to tensions;
3. to examine the relationships between these institutions as they compete and/or cooperate to produce authority and broadcast their power; and
4. to examine the levels of satisfaction between households regarding land governance outcomes, including tenure rights, which are constituted through these tensions.

1.4 Research Questions

The main research question seeks to determine what tensions arise from the conflicting roles and contestations for land governance authority between various institutions, and then to understand what effect these have on land access rights. In order to address this, the following sub-questions are posed:

1. Which institutions do households consider to play key roles in land governance, and how do these roles give rise to tensions?
2. What are the levels of authority held by the different institutions, as identified by the households, and how does their contestation for authority lead to tensions?
3. How do these land governance institutions relate to each other, and how do they manage the inherent tensions as they compete and/or cooperate to produce authority and broadcast their power?
4. What are the households' perceptions of the outcomes of land governance, namely tenure rights, as constituted through these tensions?

1.5 Area of Study

The area selected for this study was the Gumbi Traditional Authority area in northern KwaZulu-Natal, South Africa (see Figure 1 below). Occupying 94 361 km² of the country, KwaZulu-Natal is the seventh largest of the nine South African provinces. It is also the second most populated province in the country, with a population of about 10 267 300. Forty four percent (44%) of the population in KwaZulu-Natal lives under the jurisdiction of chiefs (Statistics South Africa, 2012a). The majority of the households living under chiefs are very poor (Statistics South Africa, 2012b), particularly the female-headed households (Statistics South Africa, 2012b). Only a few households produce agricultural commodities for sale, instead the majority of women in these areas are involved in subsistence food production and only sell excess produce because they lack appropriate storage facilities and skills to preserve food. Thus, households often pursue more non-agricultural activities to earn cash income. Sources of income often include agriculture, rural migrant remittances, wage employment, informal trading, state pensions, and welfare grants (Mtshali, 2002).



Figure 1: Map showing the location of KwaZulu-Natal (shaded area) in South Africa (Wikipedia Commons, 2011)

Most resistance of the post-Apartheid state policies towards traditional leadership emanated from KwaZulu-Natal. Prior to the first democratic elections in 1994, there were talks of secessionism in KwaZulu-Natal (Griffiths, 1995). Thus, this province presents an interesting case of resistance and accommodation of post-Apartheid politics by the chiefs.

The land that is currently occupied by the Gumbi community was originally obtained in 1884 by the Gumbi lineage as a reward for their support of Dinuzulu kaCetshwayo during the Zulu civil war between the Mandlakazi and uSuthu factions (Nzuza, 2006). This happened not long after the Zulu nation had lost its sovereignty to the British imperial government. The Gumbi people were forcefully removed from this land, firstly by the Union government beginning around 1913 under the 1913 *Natives Land Act (1913)*. The removals intensified between 1950 and 1980 under the Apartheid government. Community members were therefore scattered all over KwaZulu-Natal and only a few remained on their land. The chief had to also move and he stayed in a nearby missionary station. The chieftaincy was consequently lost (Nzuza, 2006).

The Gumbi community was given the title deed of land ownership in 2005 with the Trust as the title-holder. The Trust currently represents about 1 200 members of the Gumbi people. The Gumbi chieftaincy was reinstated in 2005 and the current chief was inaugurated in 2010. The chieftaincy operates under the *Black Administration Act, (1927)* and the *Traditional Leadership and Governance Framework Act, (2003)*, which recognises the authority of the chieftaincy to administer land as per the prescripts of customary law. This *Black Administration Act, (1927)* recognises the juristic powers of the chieftaincy to administer justice in the area for certain criminal and civil offences. Accordingly, the study area was selected purposefully based on its unique circumstances and history (Yin, 2009).

1.6 Structure of the Thesis

Chapter 2 of this thesis contains an appraisal of the literature on customary land governance in the context of KwaZulu-Natal province. The contestation for land control authority between central rulers and chiefs is traced from pre-colonial times to the present. The literature on land governance, power, and authority is also discussed.

Chapter 3 presents the theoretical framework that guided the collection and analysis of data for this thesis. The methodology used in the collection and analysis of data is also discussed. The findings of the thesis are presented in Chapters 4, 5, and 6. The focus in Chapter 4 is on the assessment of the roles and authority of the various key land governance institutions, and how these give rise to institutional tensions. In Chapter 5 the focus is on the relationships between these institutions in terms of how they compete and cooperate in order to achieve land governance goals and build their authority in the process. The findings of the participants'

perceptions of the outcomes of land governance are discussed in Chapter 6. Chapter 7 summarises and concludes the thesis.

1.7 Conclusion

In this chapter, the background information that informs this thesis has been presented. It has shown how the post-Apartheid state has attempted to reform customary land governance and tenure rights by introducing several legislative measures. It has been shown how, as a result of these measures, tensions have emerged between the various institutions involved in land governance, particularly between the post-Apartheid state and customary institutions. Therefore, the thesis addresses these tensions and their outcomes.

-Chapter 2: Literature Review-

2.1 Introduction

This chapter discusses the literature pertaining to the study. The chapter is divided into two sections. The first section focuses on the historical processes that inform the current problems of land governance in the area of study. The key argument presented in this section is that the current crisis concerning land access and control in South Africa should be traced back to historical periods much earlier than the infamous year of 1913 (Walker, 2008; James, 2001; Richard & Weiner, 1997). This is not to suggest that 1913 does not serve as an important milestone in the history of South Africa. On the contrary, 1913 presents an important caesura in South African history, because this was the year during which the Union Government of South Africa enacted the *Natives Land Act (1913)*. This Act stripped black people³ of their land rights across much of the country. The Act introduced spatial segregation of races and ethnic groups in South Africa, and limited land ownership by black people to only 13% of the country. Rather, this discussion seeks to show that the historical processes that shape contemporary confrontations between chiefs and the post-Apartheid state have their origins in affairs and events prior to 1913. The confrontation between central rulers and local chiefs has a much longer and deeper history in some parts of the country, such as the present day KwaZulu-Natal province. Accordingly, this section will demonstrate how the specificities of local history (Peters, 1994) have shaped the current reality of land governance and confrontation in post-Apartheid South Africa. An argument will be presented to show that the competition and accommodation between local chiefs and central rulers in the politics of resource control has a much longer history in KwaZulu-Natal than was previously thought. The current problems are in fact a continuation of this ancient struggle between chiefdoms and central rulers, a struggle in which chiefs strive to contain drastic changes that erode their power over land tenure and rural people, whilst central rulers attempt to weaken or strengthen their role, based on their interests at the time.

In the second section of this chapter, the literature that establishes the link between governance and resource (land) access is discussed. This discussion includes the description of the key concepts of power, authority, institutions, organisations, and rights. This is because

³ In South Africa, 'black people' is a generic term used to refer to black Africans, Coloureds, and Indians. This was the category of people that were prevented from owning land in most sections of the country by the Apartheid regime (*Restitution of land Rights, Act, 1994*).

these concepts are fundamental in understanding the institutional interactions that are investigated in this thesis. This will be followed by a discussion of the literature on land governance outcomes as they relate to this thesis, concluding this chapter.

2.2 Land, Chiefdoms, and Central Authorities in KwaZulu-Natal

2.2.1 Pre-Colonial South-Eastern Bantu Political Organisation and Land Rights

There is a close link between political organisation (governance) and tenure rights (Palmer et al., 2009). As will be demonstrated in this sub-section, African customary tenure rights of the south-eastern Bantu were closely tied to their forms of socio-political organisation. These Iron Age people migrated to Southern Africa approximately 2000 years ago. They practiced extensive subsistence agriculture and as a result, environmental aspects such as rainfall patterns, topography, soil fertility, and the availability of water had a significant influence on their political economy (Hogendorn & Gemery, 1991; Hall, 1987).

The homestead was the basic economic unit and was essentially self-sufficient. Political organisation was largely decentralised due to the independent nature and self sufficiency of the homestead. The homestead constituted what has been termed the 'house', by which is meant both the physical homestead, laid out according to enduring conventions, and also the social group associated with it (Kuper, 1993:472). Thus, the house served as a residential site, a base for crucial kinship and domestic institutions, and an economic unit. Members of the house could live in separate homesteads, but were united through a shared grandfather or great grandfather, the head being the heir of the *indlunkulu* (Great house). These houses were then organised under hereditary chiefdoms of various geographical and population sizes. The dominant house constituted the chieftaincy. In certain instances, paramountcies⁴ existed, but these seemed to have had nominal authority over the chiefdoms (Guy, 1994, Laband 1995). Kinship ties, as represented by the clan, seemed not to have been a factor in economic life and political organisation within Bantu society, but it does seem to have had relevance in reproduction by defining marriage through exogamy⁵ (Hammond-Tooke, 1991). Therefore, the clan had no status as a landholding corporation, this was the role of the homestead heads

⁴ A paramountcy is a constellation of chiefdoms under the control of a paramount chief (Guy, 1994).

⁵ Exogamy is a social arrangement where marriage is allowed only outside of a social group (Ensminger & Knight, 1997; Livingstone, 1969).

(*abamnumzane*) who, as senior male agnates,⁶ accessed land, not only by birth but also through their political allegiance to the chief.

Chiefdoms controlled access to land through chiefs who had administrative title to the land, meaning that their role on land matters was administrative. Members of a chieftaincy had usufructuary⁷ rights over the land. To gain access, individual families had to acknowledge the over-lordship of the chief who had juristic control over the land. This was called *ukukhonza*, meaning to pay tribute or honour. Land was allocated to the head of the house who held these rights on behalf of the members of house. These rights included rights of exclusive use of the residential land and cropping and shared use of communal grazing lands and resources. The descendants of the allottee inherited these rights to the land, but this was conditional on their continued recognition of the chiefly authority. Land allocated to the individual for cropping and residential purposes was reverted back to the administrative control of the chief if that individual left the area under the chief's jurisdiction. The individual also had no further rights to access communally used grazing lands and other resources such as forests, water, and wildlife (Richard & Weiner, 1997; Guy, 1994; Kuper, 1993; Wright & Hamilton, 1989; Webb & Wright, 1987; Hammond-Tooke, 1985; Colson, 1953). Land access was thus linked to political allegiance to the chieftaincy, rather than membership in kinship. Moreover, the 'subjects' who *khonza* to the chief, displayed not only their political allegiance and loyalty but were also developing a spiritual bond with the chief and his lineage. Hence, the chief's ancestors were the ancestors of the chiefdom (Dlamini, 2005).

As du Plessis (2011) notes, these rights have been wrongly classified as communal. It is generally assumed that most African communities were communalistic in their approach to land ownership (Richards, 2002), and thus, land belonged to some abstract entity called the community. Unfortunately, this is a gross misunderstanding of African communities by Western anthropologists and colonial officials (Chanock, 1991). Describing these rights as communal is a gross simplification. A better description has been provided by Okoth-Ogendo (2008) and Benett (2004), who observe that these rights were nuanced and layered. They were rights of possession and use, rather than outright ownership as understood under common law, which emphasises exclusion. As described above, south-eastern Bantu land

⁶ Agnate refers to the line of descent (Ingold, 1994). In this case it refers to those of the male descent line.

⁷ These are rights of use rather than ownership (Mostert, Pope & van Wyk, 2010).

rights were house incorporative rights in that they were held by the house represented by a senior male agnate. In this scenario, everybody was a minor to the senior male agnate, as long as he was alive. Even a married son who had not moved to set up his own household was considered a minor. Nhlapho (2005) has argued that this arrangement was identical to the situation in classical Roman law, where the paterfamilias was the only true person in law, with even married sons remaining in his power. However, the senior male agnates were not the only ones who wielded power within the household; aunts and grandmothers also exercised great power and influence.⁸

This was the pattern of social organisation that lasted until about the middle of the 18th century. Changes to this social structure began with the consolidation of chiefdoms in what is now KwaZulu-Natal, which occurred as a result of declining agricultural productivity and population increase. Chiefdoms competed for space and resources; many destroyed, reconstituted and consolidated to form new larger polities. It was out of these social upheavals that the Zulu kingdom was to emerge in the 19th century. This kingdom consolidated the chiefdoms of KwaZulu-Natal into what was perhaps the first state formation in Southern Africa (Deflem, 1999; Guy, 1994; 1980).

2.2.2 The Zulu Polity

Guy (1994; 1980) has argued convincingly that one of the key factors in the emergence of the Zulu kingdom was the need to alter social relations to respond to the declining productivity of the region. This was a result of environmental problems caused by the population increase. The Zulu polity was able to meet this environmental challenge by controlling the rate of production and reproduction within the Zulu society through delayed marriages. In Zulu society marriage was linked with the creation of new production communities, therefore delayed marriages lead to a reduction in the rate of population increase, and as a consequence minimised environmental impact.

The integration of chiefdoms in KwaZulu-Natal introduced a new institution in South Africa, namely the state, which integrated two social systems. From below, there was social power based on production from the homesteads, which continued to be the centres of reproduction and production within the kingdom. From above, there was state power based on the extraction of surplus in the form of labour and tribute. Therefore, the homestead and the

⁸ Under Zulu kings, women of royal blood were in charge of most of the king's homestead (Guy, 1994).

social strength of the house provided the basis of material strength for the Zulu kingdom, whereas the state identified which individuals and groups would achieve status and power within the kingdom. The fortunes of chiefs and commoners were no longer simply tied to their respective chieftaincies, but increasingly to the state. Through state power, chiefs could gain more status and commoners could access land and cattle. For instance, members of inferior houses (*ikhohlwa*) within the chiefly house were regularly supported by Zulu kings in order to lay claim to that chieftaincy. Several new chieftaincies were also established and given land as a result of royal favor (Laband, 1995; Guy, 1994; Kuper, 1993). The Gumbi chieftaincy was established in this manner by Dinizulu, son and heir of King Cetshwayo, five years after the Zulu kingdom had lost its sovereignty to the British and much of its land to the Boer republics (Nxasana, 2012).

In the Zulu state, land continued to be administered within the chieftaincy and the powers to allocate land or to rescind land rights remained with the chieftaincies. However, two layers of administration were introduced. One form of administration was the institutionalisation of local headman into an appointed office, serving under a hereditary chief (*inkosi*). The local headman was responsible for the allocation of land. Chiefs served under a second layer, *izikhulu* (the great ones), who were men of importance appointed by the king, and together with the king they constituted the highest council of state (*ibandla*). The *izikhulu* consisted mainly of the representatives from the dominant houses of the pre-Zulu state-formation chiefdoms. However, this was not the only factor considered in one's elevation to the role of *isikhulu*. There were for instance *izikhulu*, who were not from these dominant houses, and representatives of dominant houses who were not *izikhulu* (Laband 1995; Guy, 1994; Kuper, 1993). Thus, the Zulu state made attempts to weaken political loyalty based on local ties (Deflem, 1999). Although the Zulu state was essentially organised along the extended familiar lines of the house and introduced minimal disturbances on the socio-economic life of the homestead, the tensions resulting from the centripetal tendencies of the state and centrifugal tendencies of traditional chiefly authority were to persist well into the destruction of the Zulu kingdom in 1879 (Laband, 1992).

2.2.3 The British and the Trekkers

The arrival of the white people in the 19th century introduced yet more changes to land control. These foreigners had a different concept of property rights that had a high degree of

individualisation. Coming from proto-industrial societies, they had a different land-use motive, profit instead of mere subsistence (Thompson, 2001; Ballard, 1989).

The first permanent white settlement in South East Africa was established in Port-Natal (Durban) and was essentially a trading post run by a handful of British expatriates. At first the traders were simply regarded as 'client-chiefs' by the Zulu kings and were expected to render services to the Zulu state like other tributary chiefs within the Zulu influence (Ballard, 1989). The traders adapted to local life with gusto, married local women, and presided over the expanding homesteads in ways similar to that of the Zulu chiefs (Laband, 1995). This soon changed with the arrival of the Trekkers in 1837. The Trekkers were a group of people of Dutch and French descent attempting to escape British colonial rule in the Cape colony by moving further into the interior. They wanted fertile land, and Zululand seemed to have plenty (Laband, 1995). Thus, a clash with the Zulu polity was inevitable. The resulting war between the Zulu and the Trekkers, with the subsequent defeat of the former, alarmed the British colonial government. The British soon annexed Port-Natal and the surrounding territory in 1844. With the protection of the British crown, more white people migrated to the area, now called the Natal Colony. At the same time, a significant number of black people who had been unsettled by the wars of conquest of the Zulu polity, were returning to their land within the colony. This proved to be a problem for the white people who complained of black squatters on their land. The British solution was to segregate black people from white people. As a result, over 80 000 black people were moved into special reserves, which accounted for about 517.998 km² out of a total area of 44 029.798 km². The reserves were created for them and they were governed according to 'native' customary law. The rest of the area was demarcated for white settlement and farms (Brookes, 1927). This was the birth of the policy of Apartheid that was to be implemented by the Afrikaners (as the Trekkers were later called) (Ballard, 1985).

The Zulu state was defeated by the British imperial government in 1879 and annexed in 1887. This was soon followed by the introduction of the Natal policy of segregation; moving black people to confined areas less suitable for agriculture, and giving the rest to the land-hungry white settlers (Guy, 1994). Whilst the traditional authority of chiefs regarding labour was eroded as young men went into white areas looking for employment to pay colonial taxes, the chiefs' authority over land was slightly adjusted. Through the policy of indirect rule, the British found chiefs to be convenient allies in governing the black population (Cousins, 2010;

Thompson, 2001), because the forces of colonialism were weak in Zululand and Natal due to colonial governments' desire not to spend too much administering the new colony and as a result they had to come to terms with existing pre-colonial governance structures (Marks, 1978).

In the aftermath of the Anglo-Boer war in 1910, the South African British colonies (Cape Colony, Natal including Zululand) were united with the Boer republics (republics founded by Trekkers, i.e. Transvaal and Orange Free State) to form the Union of South Africa. One of the key issues that led to unification was the need to come up with a unified policy to deal with the so called 'black problem'. The *Natives Land Act, 1913*, limited land ownership by black people. While blacks constituted 70% of the population, they now only had possession of 13% of the land. Black people who worked and resided in areas outside of the demarcated 13%, could only live there as squatters (Thompson, 2001; Christopher, 1995). This policy, limiting land ownership by black people, was extended and intensified after 1948 when the National Party came to power. Through its policy of Apartheid (i.e. apartness), the National Party government sought to strip all black people of their citizenship and to create small states for them based on their pre-colonial identity, whether that be real or invented. Scores of black people were removed from areas designated for whites and dumped into remote townships and homelands where they still could not own land, unless permitted by a homeland government to do so (Christopher, 1995). Originally Apartheid was essentially a land policy motivated by the need to limit land access to black people.

In the homelands, most people fell under the jurisdiction of customary structures. The chiefs' role in land matters was retained and strengthened and they now operated under the supervision of a magistrate. However, the chiefs found their role as champions of their communities increasingly compromised and negotiating the interests of both the Apartheid state and their people proved challenging. For instance, a chief who displeased government officials could be removed, and a chief who blindly implemented unpalatable government policies risked being ignored by community members and completely losing his authority within his community (Williams, 2010).

As the anti-Apartheid struggle intensified in the late 1970s, chiefs became one of the key targets of the African National Congress (ANC) anti-Apartheid struggle. The ANC, influenced by Marxist-Leninism, regarded chiefs as similar to the landholding lords of feudal Europe. Therefore, the liberation of rural 'serfs' from the 'tyrannical' control of chiefs was

seen by the ANC as urgent and necessary (James, 2007; Koelble, 2005; Ntsebenza, 2005; 2009; Mamdani, 1996). International pressure and internal civil activism made Apartheid increasingly difficult to maintain; change had to be initiated. Eventually in 1990, political prisoners were released and liberation movements were unbanned. Multi-party negotiations were held to chart the future of a non-racist democratic South Africa. Although the traditional leaders had direct representation in these negotiations, their interests were also strongly supported by the KwaZulu-Natal-based Inkatha Freedom Party (IFP), who regarded as paramount the interests of traditional leaders, including the Zulu monarch. Moreover, the ANC-aligned Congress of Traditional Leaders of South Africa (CONTRALESAs) also drove the interests of traditional leaders within the ANC. Thus, both the IFP and CONTRALESAs, although ideologically irreconcilable, managed to find common ground in defending the “institution, status and role” of traditional leadership (Oomen, 2005). Accordingly, traditional leaders were ensured a future in post-Apartheid South Africa and were about to give rise to an institutional dichotomy in rural governance.

2.2.4 Post-Apartheid Reforms and the Rise of Institutional Dichotomy

Many political activists had hoped that with the advent of democratic rule in South Africa, the land reform programme would weaken the control of land in rural areas by traditional structures and perhaps even eradicate the institution altogether (Williams, 2010; James, 2007; Ntsebenza, 2005; Oomen, 2005). The persistence of chieftaincy well into post-Apartheid South Africa was both unexpected and discouraging to those who hoped for a liberal democratic state and those who wanted a socialist alternative; both camps considered traditional authority an anomaly in what could otherwise be a liberalist haven or socialist utopia. In the meantime, traditional rulers, a species of local authority (Bennet, 2004), seemed poised to continue playing an influential role in land administration, thus demonstrating a strong link between what has been termed ‘communal tenure’ and ‘traditional leadership’.

The persistence of this link between the chieftaincy and rural land tenure is perhaps one of the clearest manifestations of the structural disconnect between formal institutions transplanted from outside and indigenous institutions born of ‘traditional’ African culture (Comaroff, 2004; Englebert, 2000; Gyeke, 1997; Mamdani, 1996). During Apartheid, these institutions were either accepted as part of the governance landscape under the grand Apartheid design of separate development, or resisted as attempts to entrench ethnic animosity and racial exclusion. Accordingly, they were not considered part of South Africa,

but as regimes to govern black people who were conveniently being classified as non-South Africans. Therefore, the institutional dichotomy was never a real issue for the state, but this is not the case with the black dominated post-Apartheid state (Comaroff, 2004).

Thus, the post-Apartheid state faces the enormous task of transforming the deeply rooted societal (Indigenous) institutions that, as argued above, predate the establishment of the colonial and democratic governance (Williams, 2010). This has created a fragmented state with multiple polities (Williams, 2010). Moreover, these polities contradict and at the same time complement the state (Williams, 2010; James, 2007; Von Lieres, 2005). In the case of KwaZulu-Natal, this contradiction is not new; as previously mentioned, the pre-colonial Zulu polity grappled with the same problems in the late 17th century as powerful regional chiefs resisted the centre. Therefore, instead of viewing customary land tenure as communal, it should instead be understood as a species of localisation, a creature born of centrifugal tendencies (Bennet, 2004; Mafeje, 1971) that finds resonance with indigenous rights movements, calls for devolution and decentralisation of state responsibilities and the recent return of tradition. It forms part of the politics that has little allegiance to the “liberal democratic tradition” (Von Lieres, 2005:22); and is a manifestation of struggle between the “constitution and things African” (Comaroff, 2004:30).

In part, this localisation is propelled by the vacuum created by the reluctance or the incapacity of the South African state to take over its ‘third party’ role in the enforcement of land tenure rights in rural areas (Cousins & Hornby, 2001; Englebort, 2000; North & Weingast, 1989). Instead, the post-Apartheid state has succumbed to various influences, from the rosy memories of communal ownership of land in pre-colonial African societies to the panacea of devolution and decentralisation. As a result, the state has abdicated its land governance responsibilities in rural areas in favour of non-state local institutions. Although the communal-democratic institutions are sanctioned by the state, they are not of the state; they are simply a different species of local authority (James, 2007). It is not clear whether or not they assist the state in its state formation and nation-building projects.

2.3 Governance and Resource Access

What is the link between governance and natural resource access? Anthropologists have noted that the advent of sedentary agricultures in human societies from 8500 BCE correlated with the introduction of complex institutions of governance and marked inequalities in

resource accumulation and consumption (Boix, 2010). Whether these governance institutions were the initial causes of inequality is not clear, but what is clear is that governance institutions play a critical role in shaping the distribution of resources within society (Acemoglu, Johnson & Robinson, 2001). It is generally the governance institutions that have the capacity to improve access to resources for the less advantaged and therefore, political institutions play a crucial mediating role in facilitating resource access for the poor (Ribot & Peluso, 2003; Mehta, Leach & Scoones, 2001; Leach, Mearns & Scoones, 1999).

Ribot and Peluso (2003:154) define access as the ability to benefit from natural resources. This refers to the capacity or the “bundle of powers” that a person can draw from in order to benefit from natural resources. The authors distinguish between access and property, arguing that access concerns ‘ability’, while property is associated with ‘rights’. Ability, they argue, is akin to power. Therefore, in theorising access, Ribot and Peluso locate natural resource access within the ambit of political-economy. They consider resource access to be the principal driver of social action that is aimed at controlling access to resources or maintaining that access. Resource access control, they state, concerns the ability to facilitate others’ access, whilst maintenance of access is about the expenditure of resources or powers to keep a particular sort of resource access open. They further propose that both resource access control and maintenance are social positions that briefly coalesce around the ways of accessing resources, as they are essential in forming relations of resource appropriation, management, or use. These social positions of resource access, control, and maintenance are given their concrete form through the rights to resources. Rights to resources become legitimate claims to benefit from resources. Therefore, these claims are tied to powers that grant and protect them. As Comaroff and Comaroff (2005) note, it is political power that gives rise to rights, and not the other way around. Thus, it is governance regimes that produce the rights to access resources. Hence, governance becomes a contested terrain as institutions compete for the power and authority to produce, formalise, and protect resource access rights (Anseeuw & Alden, 2010; Sikor & Lund, 2009).

Thus, governance speaks to the issues of inclusion-exclusion. Through governance processes, it is determined who can and cannot benefit from certain resources, and under what conditions they can or cannot do so. Those who are allowed to benefit are the ‘included ones’ (*umphakathi*), and those who are not allowed to benefit are the ‘excluded ones’. Therefore, people engage in various strategies to change their status from the excluded to the included.

The strategies are many and varied and may entail outright questioning of the authority of those doing the inclusion-exclusion (Holden, 2006). Therefore, to be able to control and manage these processes of inclusion and exclusions requires normalisation and routinisation (Breiner, 2012; Foucault, 2009). It calls for the production of legitimacy (Gordon, 2009). That is, people should accept the decisions of inclusion-exclusions and also accept the decision-maker as a legitimate power to facilitate this. In line with the resource access theory described above, the concepts of power, authority, and institutions are discussed further hereunder.

2.3.1 Power and Authority

While many scholars have sought to define power and how it operates, (see for instance Clegg & Haugaard, 2009:1-5; Ribbot & Peluso, 2009; Smith, 2003:108; Barzel, 2002:18; Lukes, 1986:3; Weber 1978:53), the common concern focuses on one's ability or capacity to do something and in the presence of or with others. In this study, power is defined as the ability to command and mobilise social and/or material resources to achieve particular ends in the presence of others (Allen, 2003; Hawley, 1999). Therefore, power is understood to be both social and relational. As Allen (2003) argues, the possession of power can only be recognised in its application to secure certain outcomes. Therefore, power is never absolute, permanent, all-pervading, nor possessed as a thing, rather, it is context- and time-specific. Furthermore, there is an inherent element of competition in this conception of power, an element of struggle and contestation for resources as both means and ends in human affairs (Clegg & Haugaard, 2009).

Such a conceptualisation of power underpins resource-centred theories of social dominance proposed by human development specialists. Hawley (1999) argues that social dominance is a consequence of differential ability to procure resources in the presence of others. This dominance is achieved through various resource acquisition strategies that could be pro-social (persuasion, cooperation, helping) or coercive (aggression, insults, and threats). According to this logic, social domination is not simply given but has to be acquired and maintained in ways similar to acquiring and maintaining power. Thus, power is a consequence of resource acquisition, and power could be converted further into acquiring more resources (Hawley, 1999). That is, those who control material resources also tend to control social resources. Hence, whilst political institutions may allocate *de jure* political power, groups who dominate the economy typically possess greater *de facto* political power

(Acemoglu et al., 2005). Power is ‘converted’ into authority when the institution that holds power is considered legitimate and its actions are accepted as right and proper by those who are expected to obey (Vollaard, 2002; Smith, 2003; Williams, 1996). As such, in this context power and authority are always part of wider institutional and structural processes and therefore can only be analysed in the context of institutions and the practices of organisations (Nuijten, 2005).

This thesis investigates a particular kind of authority, namely land control authority. That is, the “practices that fix or consolidate forms of access, claiming, and exclusion for some time” (Peluso & Lund, 2011:668) and which are accepted by the community. Thus, in this thesis the holder of land control authority is the institution that is recognised through the general consent of the community to have the de facto and de jure control over the land.

The institutions that were evaluated in this thesis were the household, the Gumbi chieftaincy, the post-Apartheid state, the Mvokweni Community Trust, and the Gumbi lineage. The concept of institutions and how they link to land rights is discussed below.

2.3.2 Institutions, Organisations, and Rights

The term ‘institution’ is one of those concepts that defy clear definition. This study will adopt a resource-centred view of institutions, and define them as enduring forms of social organisation with the implicit goal of accessing resources, i.e. acquiring, allocating, and utilising resources (Nuijten, 2005). This perspective positions resource access at the very heart of social behaviour and institutionalisation, one that recognises that survival, growth, and development of an individual are conditional upon access to social and material resources (Ricklefs, 1979; Hawley, 1999; Miller, 2000). Institutions can thus enable or constrain individuals from benefiting from resources. While institutions are by their very nature persistent, their persistence is not a given, but an outcome of their continued or perceived relevance in accessing resources. The implication of this is that institutions can only be identified ex post facto, that is, after their perseverance has been observed. The question of how long a social organising practice should last before it is accepted as an institution is not easy to answer. For the purpose of this study, Gyeke’s (1997:221) description of the persistence of tradition is used. He states that “a tradition is any cultural product that was created or pursued by past generations and that, having been accepted and preserved, in whole or in part, by successive generations, has been maintained to the present”. In this

definition, a tradition only has to survive one generation for it to be identified as a tradition. Similarly, a social organising practice (including tradition) has to survive and be adopted by the next generation for it to be accepted as an enduring form of social organising, that is, as an institution. Thus, institutions and organisations are intimately linked. Institutions enable the formation of organisations, whilst organisations may give rise to new institutions (Williamson, 1993). Although organisations do not have to be enduring, their constitution is an outcome of the prevailing institutional climate. At the same time, the endurance of institutions is reliant on organisations (Williamson, 2000; 1996). As Wolf (1990:580) argues:

Organization is key, because it sets up relationships among people through allocation and control of resources and rewards. It draws on tactical power to monopolize or share out liens and claims, to channel action into certain pathways while interdicting the flow of action into others. Some things become possible and likely; others are rendered unlikely. At the same time, organization is always at risk. Since power balances always shift and change, its work is never done; it operates against entropy (...). Even the most successful organization never goes unchallenged. The enactment of power always creates friction-disgruntlement, foot-dragging, escapism, sabotage, protest or out-right resistance....

Therefore, it is organisations that actualise the institutional imperatives of inclusion-exclusion in resource access. However, organisations are not outcomes but are a difficult and conflict-ridden process. They are temporal crystallisation of collective interests of inclusion-exclusion (Holden, 2006); they are attempts at routinisation and normalisation of power (Breiner, 2012; Foucault, 2009). Thus, the ability to exclude is a good indicator of organisational power. In the same sense as Comaroff and Comaroff's (2005) argument that power gives rise to rights, organisations as temporal crystallisations of collective power give rise to rights; this means that rights exist only within a social context. They are anchored in collectives (Gyeke, 1997).

Moreover, rights exist as part of the person who bears certain rights within the social or organisational context. Therefore, the rights constitute the identity of that particular person as a bearer of certain rights (Joppke, 2007). For instance, in traditional south-eastern Bantu society individuals had different rights based on age and gender. These rights gave rise to social status and consequently determined access to resources (Berry, 1989). These rights, identities, and social statuses were protected and actualised by the various organisations from the household to the chieftaincy (Guy, 1994).

By nature, rights are highly contested, and as a result the institutions that give meaning to rights tend to be highly political, if not outright political institutions (Sikor & Lund, 2009). Therefore, people rely on these social organisations for the protection of their rights. The

most vulnerable tend to rely mostly on the familiar institutions, such as customary institutions (Nhlapo, 2005; South African Law Commission, 1998; Bekker, 1989; Berry, 1989). These rights protection organisations do not necessarily need to be local, although local organisations have an advantage, they can also be central authorities given the right context (Barzel, 2002; Nozick, 1974). These rights protection organisations become the collective embodiment of the rights of the individual members of these organisations (Nozick, 1974). As such, the distinction between individual and communal rights creates a false dichotomy. Individuals have individual rights even within these collectives, and they are part of these collectives precisely because it is the function of the collectives to collectively protect and articulate individual rights. Since no society is fully inclusive (Joppke, 2007), it follows that there would be individuals who feel that their individual rights are not adequately protected by the society-wide institutions. These individuals will seek or form communities that are able to better protect and express these rights, hence the formation of separate communal groups, even in the modern world, since they want to exercise the kind of rights that will not be permitted in society. Minorities may feel that their rights are better protected under their ethnic or kinship organisations, rather than by the state (Lin, 2001). Therefore, what is at issue is the level at which individual rights should be embodied, articulated, and protected, and whether this should be the function of the local or central institutions, and whether it should be the role of the state or non-state actors (Joppke, 2007).

The following section discusses the key institutions analysed in this thesis, namely the customary institutions (the chieftaincy and the Gumbi lineage), the state, a communal-democratic landholding institution (Mvokweni Community Trust), and the households.

2.3.3 Customary Governance Institutions/Organisations

In order to understand how customary institutions operate within the society examined in this thesis, the concept of custom needs to be discussed. Here, custom is concerned with forms of social organising practices that are considered as indigenous to Africa (Nhlapo, 2005; Gyeke, 1997). These are practices that are rooted in African history and are accepted social practice. As described in Chapter 2, chiefdoms are among such systems of organisation that characterise south-eastern Bantu society. It is these institutions that embody and are embedded in African customary law and practice (Megisteab, 2008; Nhlapo, 2005). Therefore, the question of whether customary law can exist without the chiefs as the custodians of customary law can be answered by investigating the nature of legitimacy of the

two institutions. That is, by investigating the association between customary law and the chieftaincies to find out whether the legitimacy of customary law rests with the chieftaincies and/or vice versa. Thus, the concept of customary institutions of governance in this thesis refers to both the chieftaincy and customary law.

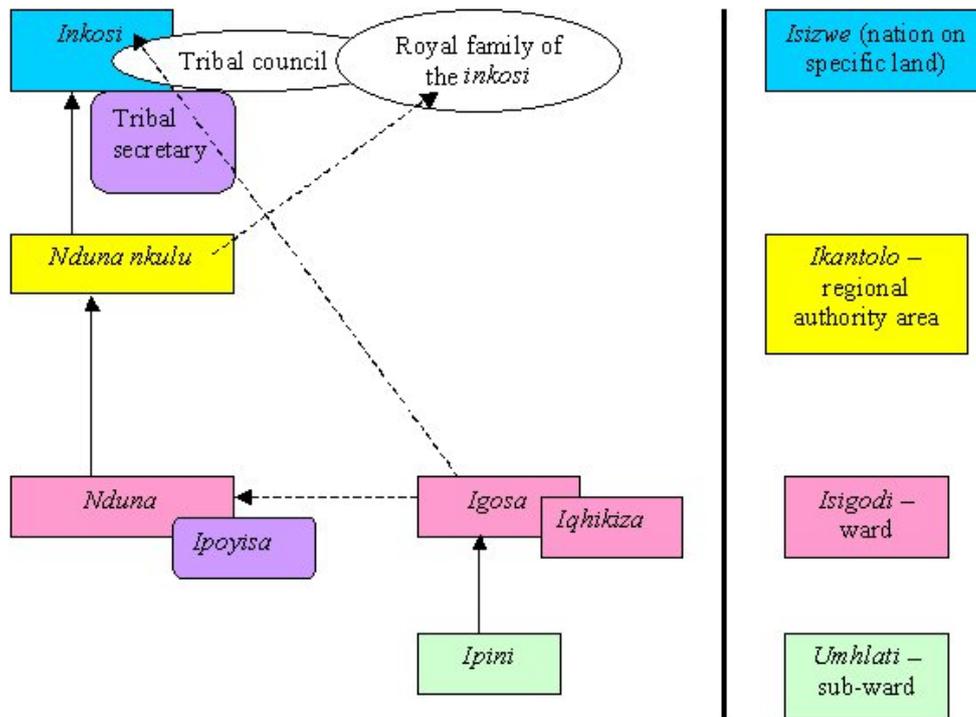


Figure 2: A graphic representation of the structure of the chieftaincy (Rauri & Hornby, 2004)

Figure 2 above presents the composition of the chieftaincy, which is described in this thesis as “fragile negotiated institutions” (Wolf, 1990:592) that strive to secure internal hegemony whilst also competing with rivals from the outside. Therefore, chieftaincies employ various socio-economic and political strategies to achieve these ends. The appropriation of land, and the articulation and protection of customary law are among such strategies. The Gumbi chieftaincy is comprised of the chief (*inkosi*) who is the head of the chieftaincy, the tribal council, the royal family, the *Ndunankulu* (senior headman), and the *izinduna*. The solid arrows in Figure 2 indicate the official accountability relationships, and the broken arrows indicate informal accountability relationships. For example *Ndunankulu* officially reports to

the chief (*Inkosi*), but he is also unofficially expected to report to the royal family. In terms of institutional practices, the Gumbi lineage is also a significant customary institution since it is closely associated with the chieftaincy and can exercise some influence over the sitting chief, even though it has no formal involvement in the day-to-day governance of the area (Guy, 1994). In the context of this thesis, lineage refers to those who regard themselves as members of the Gumbi lineage. In popular convention, this refers to the people who bear the surname (clan name) Gumbi (Guy, 1994). Generally this person might not be immediately related to the chief, but will still identify with the chieftaincy. The inner circle of this lineage will be members of the house. These are people who are closely related to the chief (*inkosi*), and at least share a great grandfather with him (Hammond-Tooke, 1985). They are identified in the *Traditional Governance and Leadership Framework Act (2003)* as the royal family (see Figure 2 above). This core group is responsible for identifying the individual to assume the chieftaincy when it becomes vacant and follows the precepts of customary law. This leads to the issue of customary law.

The South African Constitutional Court described customary law as “an acknowledgement of the rules that are adapted to fit in with changed circumstances” (*Bhe v Magistrate* [2005] BCLR 1). Customary law is a living law. However, it is characterised by diversity, vagueness, and flexibility, and thus is constantly changing in sometimes obvious but usually subtle ways (Nhlapho, 2005). The customs upon which customary law is constituted also varies from community to community (Elias, 1956). This aspect of customary law clearly demonstrates its relationship to local power, and its susceptibility to dynamisms of local power relations and to local shifts in values, attitudes, and practices.

What the above discussion has clarified is that there is a strong connection between customary law and chieftaincies. Chieftaincies operate under the precepts of customary law, and are its main articulators and promoters. Given the non-indigenous nature of the post-Apartheid state, and given the deliberate cultural and racial divisions fostered by Apartheid (see sub-section on the state below), customary institutions are rendered as non-state institutions. They do not form the foundation of the state as is generally the case with European states where states were rooted in the customs of the people and are the outcomes of the negotiation of rule (Fukuyama, 2012; 2005; Hehir & Robinson, 2007).

2.3.4 The State

What is a state? Gailey (1987) has argued that States do not exist as fixed, fully constructed entities. On the contrary, a state's existence is in constant flux and consequently never reaches a clearly observable final end. For this reason, the state must be viewed as a process, characterised by state-making processes that are often conflicting and contradictory (Bright & Harding 1984). It is perhaps this assumption of some finality in the state-making process that has led to an increasing number of scholars proposing that the role of the state in the governing of society has become increasingly reduced. They argue that non-state actors are increasingly asserting themselves and assuming many of the functions that were traditionally the preserve of the state. States have been 'hollowed out' or decentred by forces of globalisation and localisation (Salmon, 2002; Stoker, 1998; Rhodes, 1996).

There are many problems with this line of argument. Firstly, states have always attempted to increase their control over society rather than relinquish it voluntarily (Bell & Hindmoor, 2009). Secondly, 'corporatist' power-sharing arrangements between governments and peak associations have always been a feature of the governance landscapes, going as far back as medieval times (Fukuyama, 2011; Clark, 2006). State formation involved the encroachment of state power to permeate every aspect of the life of an individual within the state territory. Even today, in spite of the arguments that propose that the state has been decentred, it remains the central player in both global and local affairs. States are still the only legitimately recognised territorial organisations through which societies are able to conduct their affairs on a global scale. States are also the only organisations expected to serve the interests of all under their territorial jurisdiction. Even when states have ceded some authority to non-state actors, they always retain the authority to change governance arrangements (Bell & Hindmoor, 2009).

Completely decentred States are seen in regions of the world where this relationship of governance and state authority is haphazard, and these states are usually former colonies. In sub-Saharan Africa for instance, many countries lack the capacity to assert their authority across their state boundaries, and as a result their role in local governance is usually limited to urban centres close to the capital (Fukuyama, 2004; Englebert, 2000; Herbst, 2000). These are the countries that are also characterised by political instability, low economic growth, and incessant poverty. This demonstrates that when the polity is politically fragmented, trouble

ensues. Governance by non-state actors is only feasible when the state, the highest form of organisation within a polity, is able to play a meta-governance role and retains the final authority to intervene and change governance arrangements when necessary (Bell & Hindmoor, 2009).

Although there is a clear distinction between the state and government (Bell & Hindmoor, 2009; Nozick, 1974; Willoughby, 1936), for the purposes of this study the two will be used interchangeably. State is an abstract concept that is not easy to define, unlike the concept of government, which refers to the organisation that exerts centralised control over a state (Bealey, 1999). Although government is only a part of the state, it plays a crucial part. As Fukuyama (2005) argues, state-building consists of creating new government institutions and/or strengthening existing ones. Without effective government institutions, the state is severely weakened. Also, as Willoughby (1936:81) points out, “By the term government is designated the organization of the State machinery through which its purposes are formulated and executed”. Government is therefore the main agent and the most visible representative of the state; it gives concrete form to the state. It is for this reason that most studies of the state use the governing regimes as the unit of analysis (Boone, 2007).

2.3.5 The Household

It was argued in the previous section (2.2) that the household held rights to land in traditional south-eastern Bantu society (Guy, 1994; Hammond-Tooke, 1985). From this perspective the household was a corporate unit that held rights on behalf of its members. However, defining what a household is has proved to be very difficult (Wilk, 1991). In this thesis the household is defined as “all members, related or non-related, who live in the same residence” (Smeending & Weinberg, 2001:2), and “includes both the physical homestead and the social group associated with it” (Kuper, 1993:472). Thus, the household is a basic social institution in which the immediate material needs of most individuals are met (Schmink, 1984). In most developing societies this is at the household level since this is where livelihood strategies are usually coordinated (United Nations, 2008; Grosh & Glewwe, 2000; Ellis, 1998).

In this thesis the household head is defined as the person who self-identifies as household head, and is regarded as such by the members of the household (United Nations, 2008; Varley, 1996; O’Laughlin, 1996). Therefore, the interest was on the de facto head rather than

the de jure head who might be spending most of their time away from the household as migrant labour (O'Laughlin, 1996).

2.3.6 The Community

Much of the literature on resource management is characterised by the assumptions of the existence of a 'community' that owns the land and other resources. This community is then expected to act in unison in the pursuit of collective goals (Nuijten, 2005). This assumption is grossly misleading because the question of who exactly is part of this community is problematic. Communities are not homogeneous groups with the same interests. There are diverse stakeholders, institutions, and interest groups within a community, and therefore, the term 'community' should be used with caution (Rechlin, et al., 2008). For a group of people to be called a community there needs to be some form of uniformity, and therefore, the key question is concerned with how this uniformity is replicated, how the collective "ensures that the diverse cognitions of adults and children, males and females ... articulate to form the equivalence structures that are the substance of social life?" This is the problem of "the organization of diversity" (Wallace, 1970:110). The Zulu word for community, '*umphakathi*', offers a better conceptualisation of community. *Umpakathi* from the root word '*phakathi*' meaning inside, literally means 'those on the inside'. In this sense then, community designates those who are regarded as part of the collectives in contrast to those who are not. Thus, community serves as a mechanism of resource inclusion-exclusion. Whereas members of the community - those on the inside - have legitimate claims to community resources, non-community members - those on the outside - lack these legitimate claims. However, to articulate and facilitate these inclusion-exclusion mechanisms, community has to assume a certain crystallisation, a form of organisation (Wolf, 1990). What type of organisation is constituted is an open question, and in this particular case it will be addressed in Chapter 4. The next sub-section discusses land governance outcomes.

2.3.7 Land Governance Outcomes: Tenure Rights and Land Access

In this thesis land governance outcomes concern the consequences of governance in terms of how they affect land access and use, because land governance, like any other governance activity, has particular outcomes, whether they are intended or not. Unintended outcomes may include the marginalisation of the poor and increased landlessness (Aliber, 2001). Governance outcomes could also have positive, negative, or neutral consequences. Positive

consequences include secure land access and optimum land use. Negative outcomes include unsecure tenure and unnecessary land restrictions. In effect, neutral outcomes maintain the status quo (De Satgé, Kleinbooi & Tanner, 2011; Palmer et al., 2009).

Studies carried out on customary/communal land tenure in South Africa (Du Plessis, 2011; Cousins, 2010; Rauri & Hornby 2004; Bennet, 2004; Adams, Cousins & Manona 2000; Sjaastad & Bromley, 1997), have rarely addressed land governance outcomes from the perspectives of the *izakhamizi* (literally meaning home builders, but used in everyday language in reference to households with citizenship rights), who are the intended beneficiaries of land access. As a result, there is a lack of literature that addresses the assessment of land rights by the rural people living under the jurisdiction of chiefs.

Much of the literature discusses the land governance outcomes from an economic and/or political viewpoint. Tenure rights are seen as enhancing the political economy of the country and tenure security is viewed from a techno-centric perspective (Borras & Franco, 2010; Cousins, 2005; Sjaastad & Bromley, 1997). However, this view often ignores land tenure conditions that exist outside of formally recognised and state-sanctioned tenure arrangements. As a result, policy initiatives tend to introduce tenure systems that fail to enhance and protect tenure rights of the rural people, and consequently end in failure (Sjaastad & Bromley, 1997).

2.8 Conclusion

In this chapter the roots of South African chiefdoms were traced from pre-colonial times. It was demonstrated that the current issues over land control and access rights in the northern KwaZulu-Natal have roots in the pre-colonial times. The competition over the rights to control land access between centrifugal rulers and the centripetal local rulers has a long history in this region. This disputes the views put forth by Ntesbenza (2005) and Mmdani (1996), who have argued that the forces of colonialism were solely responsible for the contemporary character of the chieftaincies in South Africa. Whereas this view might be justifiable for certain chieftaincies, it is not generally applicable. The persistence of the chiefly power is only partly due to colonial and Apartheid policies. It is mainly due to the character and the history of this institution and its rootedness in the pre-colonial past.

The link between governance and land access was also established. The discussion focused on the concepts of power, authority and institutions and how these relate to the concept of

land governance. Key institutions that are analysed in this thesis were also discussed. The chapter concluded with a discussion of land governance outcomes.

The next chapter will discuss the theoretical framework that guided the data collection and analysis for this thesis. The chapter will also discuss the research methodology that was used in the collection and analysis of the data.

-Chapter 3: Theoretical Framework and Methodology-

3.1 Introduction

This chapter is divided into two sections. In the first section, the theoretical framework that was used to guide data collection and analysis of the thesis will be discussed. In the second section, the research methodology that was adopted for this study will be presented.

3.2 Theoretical Framework: Resource Access and Governance Theory

Why resource access and governance theory? The previous chapter has established that there is a close link between resource access – the ability to benefit from resources (Ribot & Peluso, 2003) – and governance, meaning systems of political control. In the context of this thesis, land is the resource in question. Thus, land governance refers to the legal and institutional arrangements through which decisions about land access and land use are taken, and the processes by which those decisions are enacted (Palmer et al., 2009). In other words, land governance is about determining who can benefit from the land, and in what manner. It is those people and institutions with political power that control resource access, while others must maintain their access through those who have this control (Ribot & Peluso, 2003). This control becomes a factor in the production and maintenance of political authority (Sikor & Lund, 2009). This is because institutions generally prefer to have their role and power to control resources accepted as legitimate. When an institution is able to achieve this legitimacy, it is then said to have the authority (Hawley, 1999), because resources are not only the end result in the competition for authority, but are also the means in the production of authority. Hence, resource (land) control is highly contested (Anseeuw & Alden, 2010; Clegg & Haugaard, 2009). Various strategies are deployed in order to gain control over resources. These may include claims of “property, territory and sovereignty” (Kohn & McBride, 2011:100). These claims are contested and legitimised through governance processes.

Governance is made possible through the exercise of authority, that is, the deployment of legitimate power. This is the power that is accepted by the intended beneficiaries. This acceptance rests on the expectations of community members about the institutions concerned. These could be normative or predictive expectations. Normative expectations concerned the

arguments in favour of the authority based on what the authority-bearing institution “ought to” do (Papzycka, 1999:632). Normative expectations have a “world-to-mind fit”;⁹ that is, if the outcome of an action does not conform to the values and expectation of a person, the person will attempt to change the current reality of the world so that conforms with his/her expectations, rather than change the expectation (Wallace, 1994). This concerns the value orientation of the community members and how it gives rise to authority. As Dahl (1999) and Almond and Verba (1963) argue, institutions are entrenched in the society’s value

Predictive expectations on the other hand are the expectations based on the actual performance of the institution, that is the particular outcomes of governance action that may positively or negatively affect the intended beneficiaries of governance, the citizens (*Izakhamuzi*) (de Satgé et al., 2011). Predictive expectations have a “world-to-mind fit” (Papzycka, 1999:632). This means that if the expectations of a person do not fit in with the outcome, then the person has to change their expectations so that they can fit in with the reality of the world (Papzycka, 1999). This is in contrast to normative expectations, which have a mind-to-world fit, meaning that the individual will expect the world to change and fit in with his/her expectations. These could be said to be the expectations that are created through the performance of the concerned institution (Clegg & Hauggard, 2009; Allen, 2003; Hawley, 1999).

The theory of resource access and governance enables the analysis of land governance as an instrument of authority attributed by the citizens to a governing institution. It also enables the analyses of land governance outcomes from the perspective of the intended beneficiaries of governance action, as well as the institutions that compete and/or cooperate to provide this governance service. Inherent in this analysis is the issue of the tensions resulting from the conflicting roles of the various institutions involved in land governance, and their competition for authority to control land.

⁹ Although the mind-to-world fit concept used by Wallace (1994) can be traced back to Platts (1979), its contemporary understanding is attributed Smith (1987: 54) who argued that:

...for the difference between beliefs and desires in terms of direction of fit comes down to a difference between the counterfactual dependence of a belief and a desire that p, on a perception that not p: roughly, a belief that p is a state that tends to go out of existence in the presence of a perception that not p, whereas a desire that p is a state that tends to endure, disposing a subject in that state to bring it about that p. Thus, we may say, attributions of beliefs and desires require that different kinds of counterfactuals are true of the subjects to whom they are attributed. We may say that this is what a difference in their direction of fit is.

3.2.1 Land Governance Authority

In this thesis, authority was investigated by first considering the household heads' evaluation of the role of the different institutions in land governance. Secondly, it involved the household heads' assessment of the levels of authority held by the different institutions over land governance functions, such as land allocation, land-related dispute resolution, and the control of the various types of land use (residential, cropping, stock grazing, collection of natural resources, and community conservation area). This was measured on a five-point Likert-type scale. To score the level of institutional role, participants had to indicate their evaluation from a continuum of 'unimportant' on the lowest side of the scale, to 'critical' being the highest possible score. To score authority, participants had to evaluate the statement that the institution has authority to perform certain land governance, either by agreeing or disagreeing with the statement on a continuum of 'strongly disagree' being a negative score, to 'strongly agree', which was a positive score.

3.2.2 Land Governance Outcomes

In this thesis, the concept of land governance outcomes is used to refer to the experience of land governance by the households who are the intended beneficiaries of land access. This was investigated via two constructs, namely that of land governance process integrity (LGPI) and tenure rights satisfaction.

LGPI refers to the participants' assessment of the decision-making processes, that is, the procedures employed to produce the governance outcome (Smith, 2006; Hibbing & Alford, 2004; Leach et al., 2003). This was assessed in terms of fairness, accountability, transparency, and lack of corruption. In comparison, tenure rights perception refers to the participants' satisfaction levels with the articulation of their rights to land. This was assessed using six dimensions, namely access, tenure security, land use management, dispute resolution, and institutional climate (Deininger, Augustinus, Enemark & Munro-Faure, 2010; Ribbot & Peluso, 2009; Palmer et al., 2009; Tisdell, 1997; Demestez, 1967).

The demographic variables (Independent variables) of gender, age, and socio economic status are also expected to affect the participants' evaluation of the institutions of land governance and their perception of land governance outcomes.

3.2.3 Demographic Variables

It is assumed that resource access is also influenced by the demographic variables of the population concerned. This includes gender, age, and socio economic status. The first demographic variable that was measured was gender, which has been shown to have a profound influence on the use of natural resources (Valdiva & Gilles, 2001; Oberhauser, 1998; Radcliffe, 1986). For example, it has been demonstrated that women tend to be the main group that relies heavily on natural resources for their household livelihood.

The second variable was age. Studies by Oomen (2005) and Williams (2010) have established a correlation between age and support for traditional institutions. Moreover, the negotiations of rights to land are usually handled by senior male agnates in traditional Zulu society, and these are the bearers of these land rights (Nhlapho, 2005; Guy, 1994).

The third variable that was measured was total annual household income. The link between total annual household income and land-use is well established (Melmed-Sanjak & Lastarria-Cornhiel, 1998; Barrett, Reardon & Webb, 2001). Should income be a significant source of livelihood for rural households, it can be expected that they would be less reliant on land for their livelihoods. In turn this should be expected to influence their land use patterns, property, and consequently their assessment of institutional authority and rights to land.

The highest education level achieved by the research participant was the last demographic variable measured. Education is correlated with income, but also with better access to information (*United Nations*, 2012). In studies of legitimacy of traditional institutions, it has been demonstrated that higher education levels correlate negatively with support for traditional institutions of land governance (Oomen, 2005; Williams, 2010).

Having discussed the theoretical framework and the key concepts that guided data-collection and analyses for this thesis, the following sub-section will discuss the methodology that was used to collect the data.

3.3 Methodology

A mixed method research approach (Triangulation) was adopted for this thesis to improve the credibility and validity of the results. (Teddlie & Tashakori, 2009). Data collection techniques included both quantitative and qualitative methods. This included the use of

primary data sources, including surveys, in-depth interviews, researcher field notes, official documents, and newspaper articles.

3.3.1 Data Collection

Primary data for this thesis was collected through a survey, in-depth interviews, and field notes. These “multiple investigative tools” (de Lisle, 2011:89) enabled both breadth and depth in the understanding of land governance and corroboration of the findings.

3.3.1.1 Survey

Survey participants were selected from a population of household heads within the Gumbi Traditional Authority area. For the purposes of this thesis, the household head was defined according to the United Nations definition, that is, a household head is “that person in the household who is acknowledged as such by other members” (United Nations, 1998:67). The uPhongola Local Municipality Integrated Development Plan (IDP) for 2011 to 2012 estimated that there are approximately 1 000 households in the Gumbi Traditional Authority area. A sample size of 61 individual household heads, that is, 6% of the population was drawn from this population. This was an appropriate sample size, given the number of respondents who agreed to participate and given the time constraints of undertaking a master’s thesis.

The criteria for selecting the participants included that the participant (1) lived within the Gumbi Traditional Authority area; (2) was a household head, and (3) was aged over 18 years. Participants were selected through a simple random sample (SRS) drawn from the list of households within the Gumbi area (Marsden & Wright, 2010). With the consent of the Gumbi Traditional Council and the Mvokweni Community Trust, a list was compiled based on information provided by the traditional council (councillors and *izinduna*). Using a table of random numbers, the households were selected from each setting until a minimum of 61 people was obtained; one person was selected per household. The surveys were conducted in the selected participants’ homes. Many of the participants (37) filled in the forms independently, whilst the rest of the participants (24) needed the assistance of the researcher, due to illiteracy. In order to ensure that the opinion of those needing assistance was recorded accurately, the researcher read out the questions and faithfully recorded the participants’ responses.

The survey questionnaire was divided into two main sections: a demographic section and a set of survey questions. The demographic section facilitated the collection of participants' age, gender, highest education levels, total annual household income, and whether they are members of the Mvokweni Community Trust and Gumbi lineage. The survey questions had two aims. Firstly, it was used to identify the key institutions within that area that are considered to play key roles in land governance, and to determine how much authority these institutions hold. This was measured in terms of the participants' assessment of the role of the various institutions in land governance, and the evaluation of the level of authority held by the different institutions to allocate land, resolve land-related disputes, and control land use. The participants were also asked to explain the reasons for their responses in the survey questionnaire. The second aim of the survey was to evaluate the level of satisfaction with current land tenure rights. This was measured in terms of satisfaction with tenure security, land access rights, land use management, and dispute resolution. The questions were structured using a five-point Likert-type scale (see Appendix 1). The survey responses were used to inform the questions in the in-depth interviews that were conducted for this study. The interviews are described below.

3.3.1.2 In-depth Interviews

In-depth interviews were conducted to yield further information on some of the issues that emerged from the survey (Minichiello, Aroni & Hays, 2008). Four groups of participants participated in the interviews. The first group consisted of four participants who were purposefully selected from those who had completed the survey. Two participants were household heads and also members of the Trust, and another two participants were non-members. The in-depth interview was conducted in order to get the perspectives on land governance from the individuals associated with these different groupings. The second group included informants from the institutions involved in land governance, namely, the Gumbi Traditional Council, the Trust, the local municipality, and the Department of Land Affairs. A total of eight individuals interviewed.

Participants who took part in the survey were asked to indicate their interest in further participation in interviews. Those who indicated interest were later approached for participation in the in-depth interviews based on whether or not they met the project criteria (that is being a member of key institutions i.e. the Gumbi chieftaincy or the Trust). Interviews

were also conducted with the officials of the key institutions (the Gumbi chieftaincy, the Trust and the South African government). The interview questions were aimed at further exploring the relationships between the various institutions involved in land governance, as identified in the survey and the experiences of the participants in their attempts to access land.

The aim of these interviews with the informants from the community and key institutions was to obtain a more in-depth understanding of the key roles of these institutions and their relationships from the perspective of the officials involved in the land issues of the area.

3.3.1.3 Researcher Field Notes

The researcher took notes during the eight in-depth interviews conducted with the participants from the community and key institutions (Wolfinger, 2002). Notes were also taken during and after the four community meetings that the researcher was invited to by both the local municipal councillor and a headman.

3.3.1.4 Official Documents

Documents such as the Mvokweni Community Trust deed, Government policy documents, and newspaper articles were also analysed. These documents helped to indicate the policy intentions of both the government and the Trust regarding landholding and governance. This illuminated some of the sources of the institutional tensions that exist in the area.

3.3.3 Data Analysis

Quantitative data from the survey was analysed using the Statistical Package for Social Sciences, commonly referred to as SPSS (Pearson, 2010; Field, 2009). The analysis involved two stages. The first stage concerned the generation and analysis of descriptive statistics, which was performed for three reasons. Firstly, it sought to obtain the demographics of the sample, such as the number of males versus female participants, their age categories, income, and the number of participants who are members of the Mvokweni Community Trust.

The second reason was to obtain the distribution frequencies of the participants' responses to the survey questions, such as the number of participants who agreed with the statement that the government has the authority to allocate land in the Gumbi area. From this, it was able to

assess the institutions that participants regard as playing key roles in land governance in the area and the level of authority they hold. The participants' levels of satisfaction with the tenure rights could also be assessed from this analysis.

The third and the last reason for the descriptive analysis was to check whether or not the data met the parameters of normality for further inferential analysis. This was performed because some inferential analyses that are used, such as crosstabs, have in-built assumptions about the nature of the data (Field, 2009). The first assumption is that the data is normally distributed, that is the mean of all the independently drawn random variables from the same distribution is distributed approximately normally, irrespective of the form of the original distribution. Secondly, they assume that the data has homogeneity of variance. The last assumption is that the data has independent errors. Therefore, the data that meets the parameters of normality assume that the obtained difference in the sample mean is likely to arise when the populations have the same means. This means that the differences between groups or categories that are observed in the analysis of the sample reflect the actual differences in the population that is sampled, and are not a mere statistical fluke. Therefore, the quantitative data from the survey was tested to see if it meets the parameters of normality using the Kolomogorov-Smirnonov and Leven test of Homogeneity (Field, 2009) (see Appendix 5), and it was found that it does not meet the assumptions of normal distribution and homogeneity of variance.

As a result of the above, the second stage of the survey data analysis, which was to conduct inferential analysis, involved the use of non-parametric statistics. Inferential statistical analysis was conducted for two reasons. The first reason was to test the effect that the demographic variables have on the survey responses of the participants, such as the effect of gender on the participants' assessment of the authority of the various intuitions. The second reason was to test relationships between two continuous variables, such as the effect that the participants' perception of land ownership has on their evaluation of the level of authority held by the different institutions.

The non-parametric statistics that were used included the Mann-Whitney U^{10} test (Wilcoxon, 1945), Kruskal and Wallis (1952) and the Spearman's rank correlation coefficient (Spearman's rho) (Spearman, 1904). The Mann-Whitney U test is used when testing whether the differences in participants' responses between two categories (e.g. male and female) are as a result of random chance, or are the result of actual differences between

¹⁰ As a statistic notation convention, the U in Mann-Whitney U is italicised (Field, 2009)

the two groups.¹¹ Therefore, this test was used to test the effect that gender has on participants' responses in the survey questionnaire. Thus, the results of the Mann-Whitney *U* test analysis informed the thesis as to whether males and females evaluate the role, authority, and land ownership status of the various institutions differently or not. From this it could be ascertained whether or not gender has any effect on how a resident of the Gumbi area is treated by the authority-bearing institutions.

The Kruskal-Wallis test (Kruskal & Wallis, 1952) is similar to the Mann-Whitney *U* test described above, with the key difference being that the former is used when more than two categories are tested. Thus, this test was used to test the effect of age (nine categories), total annual household income (nine categories), and education level (five categories). From the Kruskal-Wallis test it emerged whether these variables (age, total annual household income, and education level) had any influence on the participants' responses. However, since both the Mann-Whitney *U* and Kruskal-Wallis tests do not give an indication of the direction of the difference, box plots and stacked bar charts were also used to compare distributions between several groups or sets of data. Box plots were selected because they use the median and therefore are suitable for use in non-parametric data. Stacked bar charts were selected because of their use of frequencies. The problem of non-normality of the data was thus avoided.

The last non-parametric inferential statistic test conducted was the Spearman's rho. This test, unlike the Mann-Whitney *U* and the Kruskal-Wallis tests, does not test the effect of categories on participants' responses, but rather it tests the effect that one variable has on another variable (statistical dependence). That is, if one variable (independent variable) increases or decreases does the other variable (dependent variable) follow suit (correlate)? Spearman's rho was used to test the association between the participants' evaluations of the authority of one institution and that of another institution. In this way, the test gave a sense of the relationship between these authority-bearing institutions from the perspectives of the household heads. This test was also used to give an indication of the strength of association between land and authority.

Qualitative data from the survey, in-depth interviews, and the researcher's field notes were analysed using the thematic analysis approach (Yin, 2009). The survey and interview

¹¹ This is of course a gross simplification of the test statistic. Nonetheless, it captures the essence of the test as used in the analysis in this thesis.

questions guided the development of the themes. However, rather than using pre-conceived themes, the researcher read the survey responses (where participants were asked to explain further), interview transcripts, and field notes, and searched for themes that re-occurred in the data. The themes were then used to classify and interpret all the statements that emerged from the data. These were then compared and contrasted to establish similarities and differences between the data groups, and examined interrelationships between different parts of the data (Mathew & Huberman, 1994). Where quoted material from the interviews is used, attempts have been made to retain the expressions inherent in Zulu language.

3.4 Ethics

Ethics clearance was obtained from Monash University's Standing Committee on Ethics in Research Involving Humans (SCERH) (see Appendix 2). Participants' names were not recorded to ensure their privacy and numerical values were used in the survey and pseudonyms in the case studies. Participants were informed that they were free to withdraw at any time from the study and they were asked to sign a clearance form to ensure that they understood the purpose of the study (see Appendix 3). The researcher is fully fluent in the participants' language (Zulu), which ensured clear communication between researcher and participants, and helped to ensure that participants who were illiterate understood their rights in terms of the study and its purposes.

3.5 Conclusion

In this chapter, land access governance and access theory was presented as the theoretical framework that guided the collection and analyses of the data for this thesis. Land was theorised as both an economic resource and as an asset in the production of authority. It was demonstrated that land governance, by virtue of the land's status as an economic and political asset, is a highly contested terrain. It is through land governance mechanisms that people are guaranteed access to the land, or are excluded from it. It is also through land governance that institutions are able to entrench their authority as they compete and/or cooperate for recognition as the legitimate controllers of land access. Thus, land governance is a contested avenue in the politics of land access and control.

The chapter discussed how a case study research approach was the appropriate approach for this kind of study and also described how data was collected using mixed methods. Data

analyses methods were presented. In the next chapters, the results and analysis of the case study will be presented and discussed.

-Chapter 4: Institutional Role and Authority in Land Governance-

4.1 Introduction

This chapter presents the findings of this thesis regarding the role and authority of the key institutions that are involved in land governance (objectives 1 and 2 of the study). Institutional roles and their level of importance in land governance were identified from the perspective of the household heads and officials within these institutions. In addition, household heads were also asked to define and locate authority within their communities. They were asked who, in their opinion, has the authority for the allocation of land, the authority to resolve land-related dispute resolution, and lastly the authority to control various land use types, namely residential, cropping, stock grazing, natural resource collection, and the community conservation area.

The results and analysis for each institution will be presented separately. Each section will comprise a description of the basic features of each institution, followed by a discussion of institutional role and authority. The household is the first institution to be discussed, followed by a discussion of the Gumbi chieftaincy, the post-Apartheid state, the Trust, and lastly, the Gumbi Lineage. Data analysis methods will not be discussed in detail since they have been presented in the previous chapter.

4.2 The Households

Although households have their own internal dynamics in terms of internally accessing and distributing household resources (Haddad, Hoddinott & Alderman, 1997), these intra-household dynamics are beyond the scope of this study, which is limited due to time and resource constraints. What is of interest here is the examination of the role these basic resource access and control intuitions play in the wider community politics of land access and control.

The Gumbi area has approximately 1 000 households (uPhongolo Local Municipality, 2011), the smallest population under traditional authority in the uPhongolo Local Municipality. Sixty four percent (64%) of the surveyed households are headed by males and 36% by women. The majority of the surveyed women household heads are senior women over the age of 50 years old. These women have the role of grandmothers, analogous to the women

who wielded great power within the household in pre-colonial times (Nhlapho, 2005; Webster, 1991). Like their male counterparts, these women are the holders of their household land rights (Nxasana. *Interview*. 01 March 2012). The median age for the household head is 53 years old (see Figure 3 below). The oldest household head is over 63 years and the youngest is 23 years old. Therefore, the household heads are generally old, and fall under the age bracket that has been identified as being the main support base for customary authority, which is male over the age of 50 (Williams, 2010; Oomen, 2005).

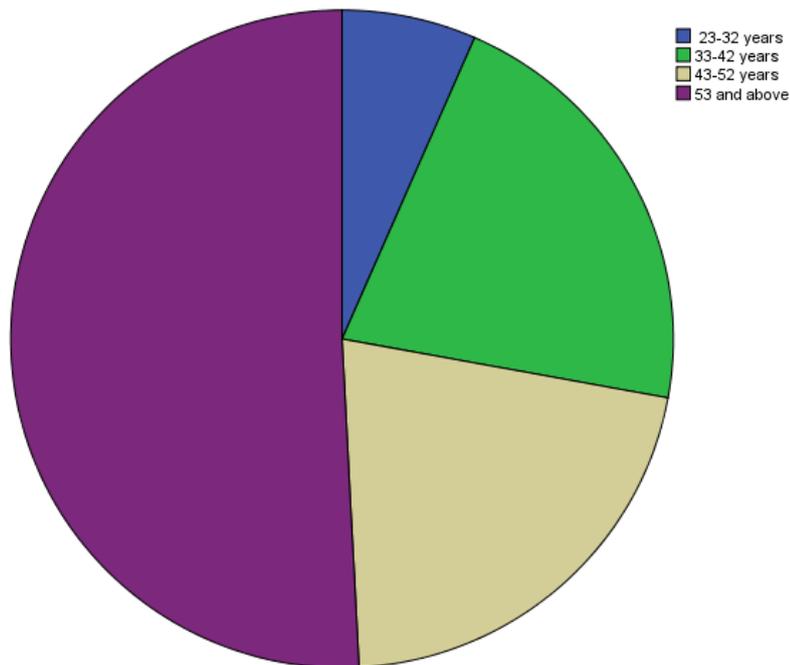


Figure 3: Pie chart showing the age distribution of participants

The surveyed households were generally poor with an annual median income of approximately less than R20 000 (\$ 6.80 a day). The household median size was nine people per household. The majority of the households (49%) received their main income from the state through the pension system, that is, old age, child support, or disability grants. Only 20% of households obtained their main income from employment, whether that be through formal and informal work. Fifty three (53%) of the households were headed by individuals with some primary education, and 39% were headed by people with no education at all. Less than 2% of participants had completed Grade 12, the highest school-leaving certificate. The socio-economic demographics of the Gumbi area are characteristic of South African farm labour tenants, rather than traditional rural communities under the control of chiefs (Marcus, 1996). That is because until approximately 2005, the majority of these households had been living on white-owned farms. It is these farms that were later claimed by the Gumbi people

(Mahlakazane. *Interview*. 10 March 2012). Moreover, this low socio-economic status also indicates possible support for traditional institutions (Williams, 2010) rather than formalised and state bureaucratic institutions.

The majority of the household heads (80%) were born in the area, and 70% have lived permanently in the area their entire lives. These are people with deep roots in the area. The oldest household heads such as 78-year-old *induna* Nxasana, who is a close relative of the chief, were in the area during the forced removals in the 1950s. He witnessed his cousin (the late chief) lose the chieftaincy. Like many of his contemporaries who had refused to leave the area, Nxasana was forced to live as a farm labourer and tenant (Nxasana. *Interview*. 01 March 2012). This category of household heads was deeply scarred by the land dispossessions and forced labour and tenancy.

Only a few households (10%) have come to live in the Gumbi area during the last seven years after land rights were restored. Some households came as a result of their membership of the Trust. These households constitute the 48% of the household heads that are members of the Trust. The majority of the recent arrivals came as a result of the *ukukhonza* custom, that is, they obtained permission from the chieftaincy to settle in the area. These households are part of the 52% of the households that are not members of the landholding Trust.

Residential land use is the most valued form of land use (100%), followed by cropping (98%), stock grazing (93%), and natural resource collection (firewood, traditional medicines, thatch grass, etc.) (87%). Land use still follows the traditional land use pattern as described in Chapter 2. However, some participants are also engaged in growing cash crops, such as sugar cane, which they sell to the refinery in the nearest uPhongolo town (Zulu. *Interview*. 20 March 2012).

4.2.1 Role and Authority in Land Governance

Individuals within the households are the intended beneficiaries of the land governance activities (*Restitution of Land Rights Act, 1994*). That is, the institutions that provide land governance services claim to provide them on behalf of the households (Nxasana. *Interview*. 01 March 2012; Zimukile. *Interview*. 13 March 2012; Silwane. *Interview*. 03 March 2012).

Overall, 87% of the participants rated the role of the households in land governance as important (see Figure 4 below). All the scores from ‘slightly important’ to ‘critical’ have

been combined and contrasted with the score for ‘unimportant’). This was the highest score after the chieftaincy (see next section). Although the participants expect the chieftaincy to play a far more important role because “it is their job”, they also expect the household to be involved. This is because “at the end this is done for us” (Zulu. *Interview*. 20 March 2012).

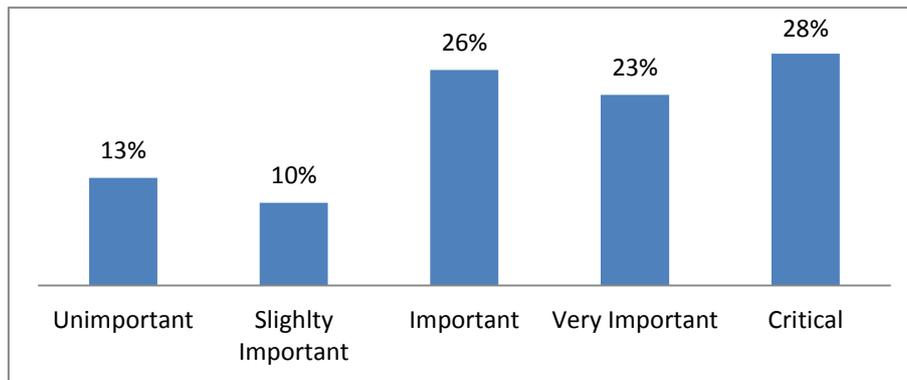


Figure 4: Bar chart showing participants' rating of the role of households in land governance

Therefore, there is an understanding that because households should be the ultimate beneficiaries of land governance, they should play a role in how land is governed. This household role in land governance was identified as participation in decision-making. Household heads participate in land governance decision-making through local ward meetings chaired by the local *induna*. Only important meetings (*imbizo*) are called by the chief and all households are expected to send a representative. In these meetings, households as represented by household heads, or their appointed representatives, are able to contribute towards key decisions that affect them. However, these decisions do not include the land governance functions that are associated with the chieftaincy, such as land allocation and land-related dispute resolution. An overwhelming majority of the participants held the view that individual households have neither the authority nor right in these matters (90% and 95% respectively). Therefore, these functions are considered the preserve of the chieftaincy.

In terms of household authority to control land use, participants rated the authority to control residential land use in cropping at 35%, stock grazing land at 31%, natural resources at 36%, and community conservation area at 21% (see Figure 5 below). This evaluation of household authority indicates that the households are regarded by participants as having very little authority to control land use.

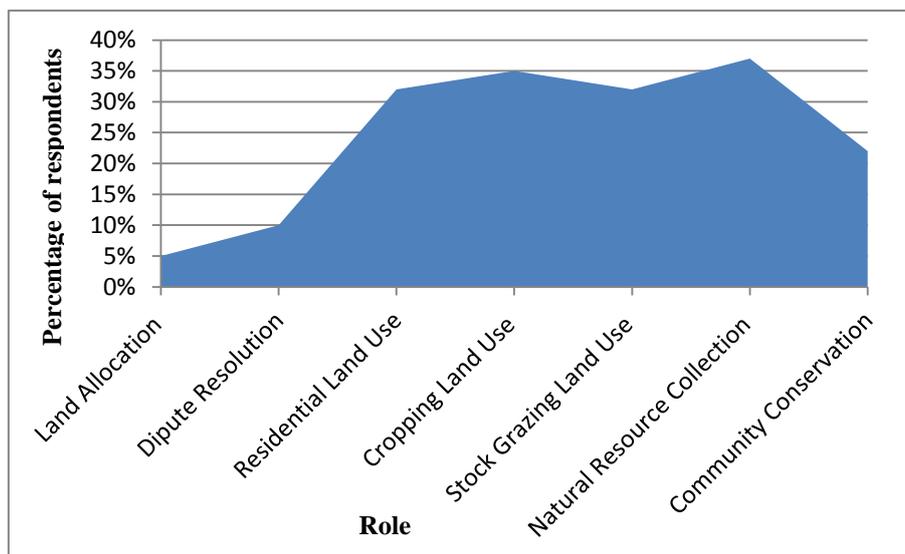


Figure 5: Chart showing participants’ agreements with the statement that households have land control authority

When probed further, it emerged that there was some concern that if households were to control land use individually, this power will be used to the disadvantage of other households. For example, Mthembu (*Interview*. 20 March 2012) stated, “No single household should have control over the land. This is our collective property and the chief is the one who has been entrusted with its upkeep”. In this context the participants interpreted household authority to control land use as meaning that authority would be exercised individually. Thus, this removes land control from the preferable collective methods as exercised by the chieftaincy, to the less preferable forms of land control by individual households. This, it was argued by participants such as Zulu (*Interview*. 2012), might give other households unfair power and an advantage over others. These households might then exclude others from accessing resources.

This also confirms the view that under customary law, land as an immovable property is never owned, nor controlled individually (du Plessis, 2011; Okoth-Ogendo, 2008; Bennet, 2004). The slight increase in the scoring of land use types, such as cropping (35%) and natural resource collection (36%), may indicate that the participants were scoring household control over the actual movable property attached to these land uses (crops and natural resources), that is ownership of use of harvested resources rather than the land itself. Under customary law, movable property can be owned individually.

A Spearman’s rho correlation analysis (see Appendix 6) revealed that land control authority is positively associated with land ownership. That is, the perception of who owns the land correlates with the perception of who controls it. Thus, land ownership is seen as a prerequisite for land control. In this case, since households are not perceived as owners of the

land, they therefore do not possess the rights to control its use. Therefore, as argued above, the main household role in land governance is restricted to participation, which may also include the participation in how the land is controlled.

4.2.2 Demographics

Gender had no effect on the participants' attitudes towards the role and authority of individual households in land governance (Appendix 6). The capacity to control household land use and to participate in communal gatherings, where other land issues are discussed, is the same for both genders. Community meetings are generally attended by women and only a few men attend, possibly due to the men's migrant labour existence (Nxasana. *Interview*. 01 March 2012; Radcliffe, 1986). Women are actively encouraged to make their views known during these meetings. Nhlapho (2005) has observed that some traditional authorities tend to overcompensate in their encouragement of women participation as an attempt to offset criticism that these institutions are patriarchal and dismissive of women's input. However, as this researcher observed, women attending these meetings tended to avoid public discussion, instead they spent most of the time talking to each other.¹² In one meeting, the *Induna* had to force the women to present their views by declaring that the meeting would not continue until the women had spoken.¹³ Participants in community meetings tended to be a few old males with a significant number of women. These are the people who would feel part of many of the community decisions under deliberation. However, this does not mean that gender discrimination has subsided and that old age patriarchal attitudes have simply vanished, nor does it give any indication about gender relations within the household. It simply indicates that over wider community issues, women do have the opportunity to speak. This has been achieved through government programmes (Nhlapho, 2005), but may also indicate that since women dominate these meetings, *izinduna* have found it convenient to incorporate the women's views as a means to legitimise the *induna's* decisions.

Annual household income had an effect on the assessment of the role of the individual households in land governance. Those who earn a total annual income of less than R20 000

¹² Community meeting held Nhlambamanzi ward in KwaGumbi on 29 February 2012.

¹³ The researcher enquired from one of the female attendees whether this was not to his benefit, and she stated that this particular *induna* always ensured their inclusion. However, she did not see the need since men tended "to spend a lot of time arguing about meaningless things instead of addressing the bigger issues facing the community". Therefore, the women kept quiet because they saw no point in these arguments (Zulu. *Interview*. 20 March 2012). However, it is possible that women are exercising self-restraint, a kind of self-censorship, after years of being put down for speaking publicly (Williams, 2010).

were more likely to assess the role of the household as important. This could be because those of lower socio-economic status are the ones who participated in local meetings where many issues, including those pertaining to land, are discussed. Nxasana (*Interview*. 01 March 2012) confirmed this view, “Only women and pensioners come to these meetings. The youth ... they never come to meetings. They only come when they hear that we will be discussing employment”.

4.3 The Gumbi Chieftaincy

The Gumbi chief and those closest to him were at the forefront of lodging the land claims against the state, which sought to have several farms in the area returned to the Gumbi people. However, this was complicated by the fact that some of the farms had already been purchased by the state and their ownership given to some community members as per the *Land Reform (Labour Tenants Act), Act, 1996*. The people had then constituted themselves into several community trusts. Whilst the Mvokweni Community Trust had the backing of the Gumbi royal family, other landholding community trusts did not (Mahlakazane. *Interview*. 10 March 2012). Therefore, right from the beginning of the land claim process, there was some competition about the ownership of some of the pieces of land in the Gumbi area. This competition continues to this day and the issue of these pieces of land has not been resolved. Nonetheless, the chieftaincy continues to operate in all these areas.

4.3.1 Role and Authority in Land Governance

This section discusses the participants’ assessment of the role and authority of the chieftaincy in land governance. The section will first present the results of how the role authority of the chieftaincy was scored by participants and the different roles of the chieftaincy as identified by participants. The remainder of the section will then discuss the participants’ evaluation of the Gumbi chieftaincy’s authority and reasons behind the participants’ opinions about the role and authority of the Gumbi chieftaincy.

To evaluate the role of the chieftaincy in land governance, participants were asked to rate its role from ‘unimportant’ to ‘critical’. As indicated in Figure 6 below, 77% of the participants indicated that the Gumbi chieftaincy plays a ‘critical’ role in land governance in the area. 12% regarded the role of the Gumbi chieftaincy as ‘very important’, 8% ranked it as ‘important’, and 3% indicated that it is ‘slightly important’. None of the participants regarded

the role of the chieftaincy as ‘unimportant’. The results indicate that the Gumbi chieftaincy is regarded by all participants (100%) as playing some role in land governance, with the majority considering this role as ‘critical’.

Participants were also asked to state which of the land governance roles they regard as being within the authority of the chieftaincy. They identified land allocation, dispute resolution, and land use control as the chieftaincy’s key roles.

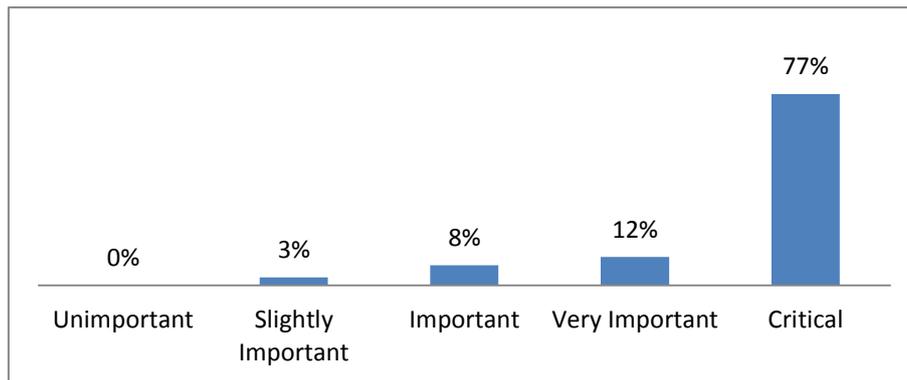


Figure 6: Bar chart showing rating of the chieftaincy’s role in land governance

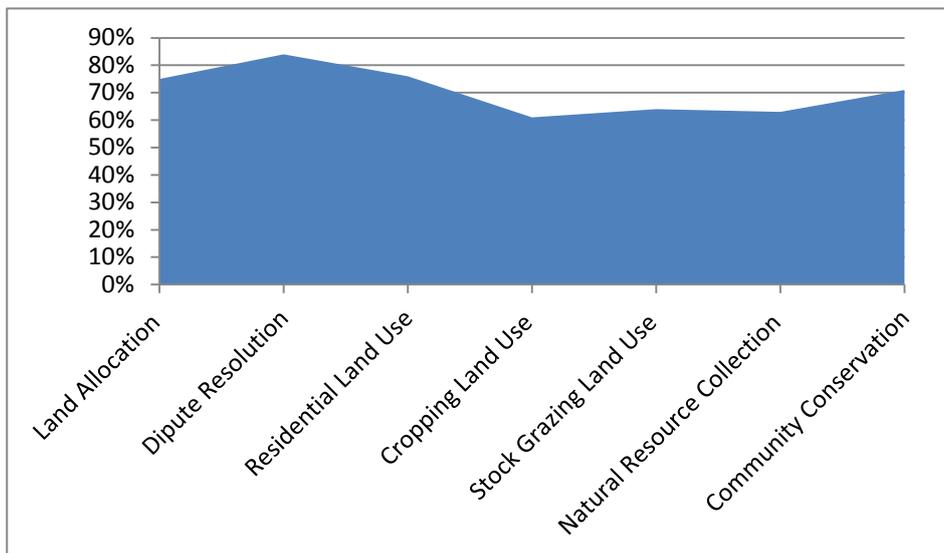


Figure 7: Chart showing the chieftaincy’s land control authority

The results of the participants’ rating of the land control authority of the chieftaincy is indicated in Figure 7 above. The authority of the chieftaincy in land allocation was rated at 74%, with a large section of the participants (70%) in strong agreement with the statement that the chieftaincy has the authority to allocate land. However, 20% of the participants were in strong disagreement with the statement indicating that the role of the chieftaincy as a land

allocator is not uncontested. Fifty eight percent (58%) of participants also agreed that those who are granted permission by the chief have full rights to use the land (refer to Appendix 4). From the perspective of a significant majority of the participants (74%), this indicates that the chieftaincy does possess the authority to allocate land. Therefore, those who have been allocated land by the chieftaincy are seen by some participants (58%) as having full land rights. Land rights granted by the chief are granted under customary law (see chapter 6 on land rights). Therefore, people are able to access the land through the *ukukhonza* custom (Alcolck & Hornby, 2004; Richard & Weiner, 1997; Guy, 1994; Kuper, 1993; Wright & Hamilton, 1989; Webb & Wright, 1987; Hammond-Tooke, 1985; Colson, 1953; White, 1953), which is still regarded as the main legitimate method to access land (Nxasana. *Interview*. 01 March 2012; Zulu. *Interview*. 20 March 2012).

The chieftaincy's authority to resolve land-related disputes revealed the highest score of agreement (84%), as indicated in Figure 7 above. This confirms the view that participants consider dispute resolution to be a key responsibility of the chieftaincy (Williams, 2010; Oomen, 2005). This is one function of the chieftaincy that is valued the most by the people under chiefly authority. Dispute resolution will be discussed further in Chapter 6.

When it comes to the authority of the chieftaincy to control residential land use, 76% of the participants agreed with the statement that the chieftaincy has the authority to control this form of land use. Residential land use was regarded by an overwhelming majority of participants (99%) as an important form of land use (see Appendix 4).

In scoring the authority of the chieftaincy to control cropping land use there was a slight but noticeable divergence of opinion. 59% of the participants agreed with the statement, whereas 38% disagreed (refer to Figure 7 above). Therefore, the chieftaincy might not be exercising hegemonic control over cropping land use control. Cropping land use was scored by 75% of the participants as an important form of land use (see Appendix 4). This could be because crops are regarded as movable property and, as such, give rise to individual household use and control, unlike immovable property, which cannot be controlled within an individual household under customary law (Okoth-Ogendo, 2008; Bennet, 2004).

As indicated in Figure 7, 62% of those who participated in the survey agreed that the Gumbi chieftaincy had the authority to control grazing rights. The nature of this type of land use means that no individual household is able to exercise control over this particular section of land. In the Gumbi area there is no single piece of land that is specifically set aside for stock

grazing. All open spaces, including cropping areas during the fallow season, can be used to graze stock. Hence, the chieftaincy, as a central institution in the community, is expected to regulate access to the open spaces for livestock grazing purposes (Nxasane. *Interview*.01 March 2012). 65% of the participants regarded the stock grazing land use as an important form of land use (refer to Appendix 4).

59% of the participants regarded the chieftaincy as having the authority to control the collection of natural resources (refer to Figure 7). This was not a highly valued form of land use; only 34% of the participants regarded natural resource collection as important. There is also no single piece of land set aside for this activity, rather, it is recognised that resources can be collected from anywhere so long as it is not inside residential property. However, once the natural resources are collected they become the property of the collector, and the rules of first possession apply (Lueck, 1995). Thus, the chieftaincy is regarded as exercising limited control over these resources once collected and possessed by the collector.

When it comes to the control of the community conservation area, there was a high percentage of respondents (66%) who agreed that the chieftaincy has the authority to control this type of land use (see Figure 7). The community conservation area (Somkhanda Game Reserve) is a key community asset generating over R3 000 000 per annum (\$305 265) (Zimukile. *Interview*.13 March 2012). However, less than 20% of the participants rated the community conservation area as an important and useful form of land use, despite the high revenue it generates (refer to Appendix 4). This is because there is no link between this income and community beneficiation. Rather, this activity is viewed as a waste of valuable land. Mthembu (*Interview*. 20 March 2012) suggests “we get nothing from the reserve. We could use that land to plant our crops rather than waste it and give it to animals”.

There are several implications of this divergence of views in the scoring of the authority of the chieftaincy and the slightly different scores over various land use types and land governance functions. The key implication is that authority is indeed context-specific (Allen, 2003). In this case, the level of authority that is accepted by participants is specific to the land use type and the function that is performed. Dispute resolution as a role and function of the chieftaincy is highly valued by participants, and this is followed by the control of residential land.

What are the sources of chieftaincy authority and how is this authority produced? These questions are the subject of the following discussion.

4.3.2 Sources of Authority

During the survey and the in-depth interviews participants were asked to explain their reasons for agreeing or disagreeing with the statements on chieftaincy land governance authority. Seven themes emerged from their responses: Father and Head of the Community; Ultimate Owner and Custodian of the Land Community Assets; Primordial Rights; Anti-Apartheid Struggles; Proximity and Local Knowledge; Responsiveness and Light Burden; and Arguments, Threats and Patronage. These themes were further grouped into two, that is normative expectations (see Table 1 below) and predictive (descriptive) expectations (Papzycka, 1999).

4.3.2.1 Normative Expectations

The normative expectations concerned the arguments in favour of the authority of the chieftaincy based on what the chieftaincy “ought to” do (Papzycka, 1999:632). This looked at the participants’ value orientation and how it gives rise to authority. As Dahl (1999) and Almond and Verba (1963) argue, institutions are entrenched in the society’s value orientation. That is, the individual’s orientations legitimate institutions, and indirectly shape them. Thus, this concerned the evaluation of the role and authority of the chieftaincy as informed by participants values, meaning what participants think ought to happen. Table 1 below illustrates some of the ways in which participants expressed these ideas.

Table 1: Normative expectations themes of chieftaincy role and authority

Theme	Statements
Father and Head of the Community	“the chief is the head of the community” “the chief is our father”
Ultimate Owner and Custodian of the Land and Community Assets	“the land belongs to the chief” “The rights to land were restored to the chief” “He must manage community assets on our behalf”
Primordial Right	“we have always lived under chiefs”

Father and Head of the Community

As reaffirmed by later interviews, the results indicate that many of the participants regard the chief as the head of the community. In discussing the role of the chieftaincy, many of the participants drew on the powerful metaphor of ‘father’ to describe community relations with

the chief. Framed in this way, the chief is expected to administer the land on behalf of the community members (Nxasana. *Interview*. 01 March 2012). This confirms the views expressed by Nhlapho (2005) and Bennet (2004). Bennet has argued that under customary law, the chief, as the head of the community, has the power to control the allocation and use of land, and members of his community have the right to benefit from the land allocated for their use.

This is also how chiefs were viewed in pre-colonial times, that is, as the extension of the domestic household organised along patriarchal lines where the senior male agnate was the head of the household and controlled the allocation and use of household resources for the benefit of household members (Nhlapho, 2005, Guy, 1994; Kuper, 1983; Hammond-Tooke, 1985). Therefore, there is some continuity from pre-colonial times to the present regarding the normative expectations of the chieftaincy as the community head.

Ultimate Owner and Custodian of the Land and Community Assets under Primordial Rights

Survey results showed that an overwhelming majority of the participants (90%) consider that the chieftaincy is the ultimate owner of Gumbi land (refer to Appendix 4). This enables the chieftaincy to exercise de jure and de facto political authority above any other institution in the Gumbi area (including the state) because it is, regarded, inter alia, as the *ultimate* landowner. That is, the chieftaincy claims a total prior right to all land within its borders. The Gumbi chieftaincy, similar to other chieftaincies in South Africa, has no official land ownership status, but operates as if it does, and is recognised as such by household heads and, significantly, state agencies. As a local councillor proclaimed in one of his constituency meetings discussing free housing, ¹⁴ “...even Msholozzi¹⁵ stated that we as municipalities have no land. The land belongs to chiefs”.

Many of the household heads and even some state officials echoed these sentiments. Flouting state officialdom that stipulates that the Trust is the de jure landholding entity, the chieftaincy is regarded as the de facto landowner. Household heads and state officials regard the chieftaincy as the ultimate owner by historical precedent and customary right, and its foundations of power lie in the fact that it is expected to exist in principle by the people

¹⁴ The meeting was held on the 1st of March 2012 in Hlambamanzi ward in kwaGumbi.

¹⁵ Msholozzi is President Jacob Zuma’s clan name. His sympathy and support for traditional authority is well known in South Africa (Booyesen, 2011).

(Williams, 2010). This is a primordial right that has survived pre-colonial Zulu state-building, colonialism, and Apartheid; as one elderly man, Zungu (*Interview*. 03 March 2012), who is also an *induna* (see Appendix 7) claimed, “Chiefs have been here since the beginning and will be here until the end”. Thus, the pre-colonial past is a rich reservoir from which the chieftaincy draws to gain acceptance. Claims of a pre-colonial existence imbue the chieftaincy with legitimacy. It is also significant that neither the right of the chieftaincy to exist nor its ultimate land ownership status was questioned by the participants; this suggests that both these rights are bundled together. The chieftaincy exists as a landowner and without land it has no status.

In order to further cement its legitimacy, the chieftaincy portrays itself as the carrier of historical progress in communion with the ancestral spirits. As Gyeke (1997) argues, all institutions are grounded in past experience and hopes for future expectations. The land, with ancestral graves of Gumbi patriarchs, is a crucial component of this narrative.¹⁶ The fact that the chieftaincy and its metaphysical claims have not been subjected to criticism that renounces the traditional system entirely, speaks volumes about the success attained by chiefs in presenting themselves as the embodiments of an ‘authentic’ Africa.

4.3.2.2 Predictive Expectations

Predictive expectations are the expectations based on the actual performance of the chieftaincy (Papzycka, 1999:632). Both Williams (2010) and Oomen (2005) have argued that performance is another source of legitimacy for the South African chiefs. Therefore, this concerns the evaluation of the chieftaincy role and authority as informed by its actual performance. Ways in which these ideas were expressed are outlined in Table 2 below, and each theme is discussed in the following sections.

Anti-colonial and Anti-Apartheid Struggles

One of the main arguments against South African chieftaincies is their collaboration with the colonial Apartheid regimes of South Africa (Ntsebenza, 2005; Ntsebenza & Hendricks, 2000). However, the Gumbi chieftaincy cannot be accused of collaborating with the Apartheid

¹⁶ The community holds an annual commemoration to commemorate the Gumbi ancestors (Nxasana, *Interview*.01 March 2012).

regimes, as this chieftaincy was dissolved immediately after Apartheid was introduced because of the then chief's refusal to be relocated to another area with his people. This chief's refusal to collaborate with the Apartheid regime in transplanting his people and his chieftaincy to a different geographical area strengthens a non-collaboration claim. As Nxasana (*Interview*. 01 March 2012) argued: "My brother¹⁷ fought the Boers¹⁸ and he lost". This was verified by a survey participant who stated that "the chief and his father struggled for this land". These struggles of the previous chief are also compared favourably with the struggles of the anti-colonial and anti-Apartheid chiefs. Silwane (*Interview*. 01 March 2012) argued, "chiefs like Bambatha¹⁹ led the anti-imperial revolution and Chief Luthuli was the last ANC president before it was banned by the Apartheid government".

Table 2: Predictive expectations of chieftaincy role and authority

Theme	Statement
Anti-Apartheid Struggles	"The chief and his father struggled for this land"
Proximity and Local Knowledge	"the chief knows the area better than the government" "the chief is here among us, he knows us and the land better" "the chief is the one who knows the extent of the land and its issues well" "The chief is the one who is closest to us"
Responsiveness and Light Burden	"the chief is able to help us" "I get what I need from the chief" "Under the chief we don't get much, we don't pay much either"
Arguments, Threats and Patronage.	"We don't dare challenge the chief"

Therefore, the Gumbi chieftaincy has successfully exploited both the pre-colonial past by tracing its roots from there, and the anti-colonial anti-Apartheid struggles by claiming to have been party to it. Thus, the narrative of past struggles is an essential building block of Gumbi chiefly power. It is as if the chieftaincy has been granted reverential status through its involvement in these struggles that has only been strengthened over time.

¹⁷ In Zulu culture, paternal cousins are also referred to as brothers.

¹⁸ 'Boer' meaning farmer in Afrikaans was how the Afrikaners referred to themselves before adopting the term 'Afrikaners' (Africans).

¹⁹ Bambatha led the revolution in 1906 against the imposition of the poll tax by the British (Stuart, 1913).

Proximity and Local Knowledge

The successes of the chieftaincy can also be explained by its proximity to community members. This does not only concern absolute physical space, but more specifically proximity via a ‘psychological space’. This concerns the social proximity to the people enjoyed by the institution. There is a sense that one can simply go and knock on the headman’s door to have one’s problems resolved, for as Mrs Zulu (*Interview*. 20 March 2012) states “Even if I wanted to make my problems known to the government, I do not know where to find it”. As Mthembu (*Interview*. 20 March 2012) states, the chief and his officials know most of the people in the Gumbi area on a first name basis. The rule of the chief is direct and personal (Williams, 2010) and one is able to go to the chief or one of his official’s residences to have problems resolved. This finding is collaborated by Bennet (2004) and Bekker (1989) who argue that chiefs are far more accessible to the local people than government institutions.

There is also a perception that the chieftaincy understands local problems better because of its social proximity to the people. The *izinduna* live within the community in their respective wards, and some wards have no more than ten households (Zulu. *Interview*. 20 March 2012), and therefore they are knowledgeable on all local issues. This gives the chieftaincy a certain edge over its main competitors for local authority, which are the state and the Mvokweni Community Trust. Although the Trust, like the chieftaincy, is also a local institution, it lacks the organisational capacity of the chieftaincy, and as a consequence it lacks local “presence”. The state on the other hand, has the organisational capacity but is disadvantaged by its lack of “social proximity” and “physical presence or tangibility”.

Responsiveness and Light Burden

Some participants argued that the chieftaincy was able to assist them with their problems. One particular participant who received a land grant as a result of the *ukukhonza* custom was particularly appreciative of the chieftaincy’s ability to resolve matters in a responsive manner (Zulu. *Interview*. 20 March 2012). This positive response was also concerned development. Development has become a panacea in South Africa for all problems. Although the chief is not expected to be directly responsible for development, his somewhat minimal role in development projects is enough to boost his legitimacy (Williams, 2010). Hence, the chief’s education level (a Master’s degree) is valued, because this training suggests he is in a position

to enhance the community's socio-economic development. There is a sense that the chief is able to use his education and the influence of his office to secure the development needs of the community, as demonstrated by Zulu (*Interview*. 20 March 2012) who argued "our chief is highly educated, so understands these things [development processes] and therefore he is able to fight for the community". It is for this reason that the chieftaincy has learnt to lay claims to the development successes of both the Trust and the state, whilst managing to untangle itself from their failures. However, as will be discussed more in the next chapter, the Trust seems to understand and to accept this role of deflecting criticism directed at the chief. As Zimukile (*Interview*.13 March 2012) states "...as his people, we are here to protect him (the chief) from criticism. We are like a shield that deflects wanton criticism away from the chieftaincy, but now he wants to be personally involved in everything. How can we protect him then?"

The chieftaincy also places few economic burdens on the residents. As Mthembu (*Interview*. 20 March 2012) explains, "Under the chief we don't get much, we don't pay much either". There is a persistent fear that if the local municipality were to take over land administration, people will be forced to pay rates similar to those paid in the cities, which, they argue, they cannot afford. Zulu (*Interview*. 20 March 2012) explains: "...at least under chiefs one is able to live and have your own home even though you are poor and have no money". However, the ascendancy of the chieftaincy as the ultimate land owner and legitimate controller should not be taken for granted. It is not enough to simply state that this is achieved through tradition; tradition must also be cultivated. This is the topic of the next thematic discussion.

Arguments, Threats, and Patronage

Tradition is maintained and sustained by arguments that seek to support these practices. In other words, present generations must be convinced about the value of continuing to uphold traditions of the role of the chieftaincy in land governance. However, the chieftaincy is adept at deploying rhetorical instruments to underpin its claims to power. It cultivates legitimacy and maintains control through arguments, threats, and patronage. As one Mvokweni Community Trust trustee stated: "People are very sensitive here. When the chief complains that he is no longer acknowledged²⁰ in the community, things go awry" (Mahlakazana.

²⁰ The Zulu words used were "*abasangazi nokuthi ngiyini*", literally translated as "they no longer even know what I am". However, the meaning has connotations of grave disrespect and lack proper acknowledgement of the chief's position, and consequently his authority.

Interview. 10 March 2012). This is enough, as Mahlakazana further stated, to rouse “even grandmothers to accuse the Trust of contesting the chief’s authority” and that they “know no chief from Mahlakazana”. In Zulu culture, surnames are also clan names. Indeed, the Mahlakazana clan does not have a chief. Therefore, the grandmothers question Mahlakazana’s royal pretensions. Contesting the chief’s authority is of course an unthinkable sacrilege.²¹ Even state officials are forced to tread carefully, lest they be accused of usurping the chief’s authority and, as a result, are refused further rights to interact with the community.²² Any criticism of the chieftaincy is soon turned into a questioning of the chief’s right to rule, considered an anathema by community members. To further eliminate unwelcome interference with the chieftaincy’s prerogative rights to control land and community affairs, the chief has retained the right to decide on land matters by invoking his father’s suffering and struggle under the Apartheid regime. As Zimukile (*Interview*. 13 March 2012) explained:

We are surprised by your presence here because the chief declared at a community meeting that no one else, except him, has the right to discuss issues pertaining to the Gumbi land. He said that his father suffered dearly for this land.

Therefore, the chief is able to claim the final say on how the land is governed by right of ‘struggle’. The suffering of the previous chief and his lifelong struggle to have both the land and the chieftaincy returned are used by his son, the current chief, as tools to buttress his authority. This argument is also favoured by post-Apartheid South African politicians, where those who claim to have struggled and suffered the most, or are closely related to those who have the mantle of struggle, claim the right to benefit from state resources, and also to decide on how they are distributed (Johnson, 2010; Dibete, 2008). Unfortunately, this has become a popular strategy to gain credentials in post-Apartheid politics, and the chieftaincy has also been quick to exploit it, belying the notion that chieftaincies are slow to adapt. Thus, through these arguments and strategies, the chieftaincy is able to gain the sympathy of the people and silence critics. Although the actions of the chieftaincy might be questioned, the traditional right this position holds and its claim to power are beyond reproach. One trustee,

²¹ A trustee, who appears to be the chief’s main gadfly, narrated how the chief accused him of having been a supporter of the chief’s brother who was contesting the chief’s assumption to the chieftaincy. After this, he claims, he lost the sympathy of the majority of the people (Mahlakazana. *Interview*. 10 March 2012).

²² In one of the restituted farms, a specific number of residents on the beneficiary list were to settle there as stipulated by the state. This limit was ignored by the chieftaincy and members of the Gumbi royal family stated openly that the ‘people’ cannot set limits for the Chief.

Mahlakazana (*Interview*. 10 March 2012),²³ who is openly opposed to most of the activities of the chieftaincy, clarified this point, saying “We are not against the chieftaincy; we are only trying to speak the truth”. Zimukile (*Interview*. 13 March 2012) concurred, “You have to be careful that you are not seen as challenging the chief’s authority”. Therefore, the trustees are trying very hard to clarify that they are not against the chieftaincy, because if they are seen to be contesting the chief’s authority, they find themselves shunned by the community and unable to operate. The relationship between the chieftaincy and the Trust will be discussed in detail in Chapter 5.

Furthermore, it appears that in the Gumbi area there is a fearful atmosphere, where people are afraid to speak openly and criticise the chieftaincy. It appeared to this researcher that in certain wards where people seemed to be strongly supportive of the chief, people spoke freely, whereas in other wards some people refused to speak to the researcher, stating that they feared spies would report them to the chief. This was confirmed by some community members, such as Mahlakazane (*Interview*. 10 March 2012) who explained, “Here at Gumbi area we do not have freedom of speech”. Controlling the flow of information is of course a long established social control tool (Ragnedda, 2011). There is fear that what people say will be reported to the chief, therefore even in the meetings of the trustees, it is not safe to have open discussions for fear that some trustees will report what has been said to the chief. In community meetings people tend to speak only when they have something positive to say about the chief. They have all become the “chief’s praise-singers”²⁴ (Mahlakazana. *Interview*. 10 March 2012). Overt criticism of the chieftaincy is interpreted as a challenge to the chief, and as one survey participant stated “We don’t dare challenge the chief”. This at first seems surprising. Although the chief possesses some judicial powers, he has no formal force to back up his threats and enforce his sanctions. However, a simple rebuke from him is enough to dishearten and silence many. It seems that the chieftaincy is able to achieve this through its role as the controller of resource access. As demonstrated in the analysis of the data, the chieftaincy determines who can benefit from the land in the area. Earning the displeasure of the chief can reduce one’s chances of benefiting fully from the land.

²³ At a ward meeting where the researcher was introduced to the community, the trustee spoke openly and criticised the chieftaincy. He stated that although he knows that what he said will be relayed verbatim to the chief, he no longer has any fear.

²⁴ In pre-colonial times chiefs and kings had praise-singers who recited their achievements and failures before every ceremony. However, every Zulu man had his own praises which were known to his peers (Chidester, Kwanda, Petty, Tobler & Wratten, 1997).

On the whole, the role of the chieftaincy and its authority over land issues remains unchallenged. Land has served as a crucial instrument in the production of chiefly authority. What remains to be explored is the effect that demographic variables have on the participants' assessment of the role and authority of the chieftaincy.

4.3.3 Demographic Variables

The effect of demographic variables (such as gender, age, and socio-economic status) on the participants' evaluation of institutional roles and the level of authority was tested using the Mann-Whitney *U* test. The test (see Appendix 6) revealed that gender has no statistically significant effect on the participants' evaluation of the role of Gumbi chieftaincy in land governance and on its level of authority.²⁵ The key implication of this finding is that gender relationships may have undergone some changes in this area. Although women tend to sit quietly in meetings and talk to each other most of the time, there were attempts by community leaders to engage them and to encourage their participation. However, women make up the majority of those attending community meetings, and on the few occasions where they participated, they made their points assertively and often carried the meeting.²⁶ The change observed in public meetings may not be reflecting a change within the domestic household. Most of the women who attended the meetings were either considered to be the heads of their households, because they longer had husbands, or their husbands spent most of the time away as migrant labourers.²⁷ It is also notable that the Gumbi chieftaincy has a female *induna*, something that is rare.²⁸ This could be an indication of the genuine concessions that the chieftaincy is making to find continued relevance with the new post-Apartheid dispensation. Nhlapho (2005) has noted that traditional leadership has developed a tendency to pay special attention to women's participation in community affairs, motivated perhaps by the need to circumvent the accusations of patriarchy, which are strongly associated with these institutions. The above discussion indicates that the Gumbi chieftaincy, in its on-going struggles to find relevance with the households and the state, has recognised the need to revise its ideas in terms of gender relations and has seen the need to include women in leadership positions and in decision-making.

²⁵ This must be understood in the context of the fact that non-parametric tests have limited power to reveal some of the relationships (Field, 2009).

²⁶ Field notes (29 February 2012).

²⁷ Field notes (29 February 2012).

²⁸ The area has a total of five *izinduna*. Therefore, one female *induna* constitutes 20% of the *induna* population in the area. This is a significant undertaking relative to other traditional authority areas.

The Kruskal-Wallis test showed that age has no effect on the participants' assessment of the role and authority of the chieftaincy. The age groups that were tested were 23 to 32 years, 33 to 42 years, 43 to 52 years, and 53 years and above. The fact that all these age groups evaluated the role of the chieftaincy and its authority equally, may imply that all these age groups regard the chieftaincy as a legitimate institution.

The demographic variables that measure socio-economic status (total household income and highest education level) were also shown by the Kruskal-Wallis test to have no effect on participants' assessment of the chieftaincy role and authority (see Appendix 6). Thus, the role of the socio-economic status in influencing participant' assessment of chiefly authority (Williams, 2010; Oomen, 2005) was not established in this study. It is difficult to establish whether this finding is an accurate reflection of the actual situation in the community or is due to the fact that non-parametric tests (in the case the Kruskal-Wallis test), unlike parametric tests, are less effective in identifying effect. These tests tend to miss minute differences in data sets (Field, 2009). So, if the socio-economic variables have an effect on participants' assessment of chiefly authority and role, it is likely that this effect was too small for the Kruskal-Wallis to reveal.

The chieftaincy is the key institution that exercises full and effective control over the land. It is the level at which community 'land sovereignty' is exercised (Kohn & McBride, 2011; Hofbauer, 2009; Engerman & Metzger. 2003; Shrijvr, 1997). Borrás and Franco (2012) propose that land sovereignty suggests and captures a sense of belonging, where land is viewed as a resource, territory, and landscape. In this context, the Gumbi chieftaincy, as part of the people's identity, is also a bearer of households' sovereign rights over the land.

The following section examines the broader context in which role and authority of the Gumbi chieftaincy operates, that is the post-Apartheid state.

4.4 The Post-Apartheid State

The South African post-Apartheid state is described in its constitution as "one, sovereign, democratic state" (*Constitution of the Republic of South Africa*, 1996). The 'oneness' is indicative of the governing party's "euro-nationalism ideology", a commitment to the post-ethnic universalism that aims at "national unity, territorial integrity, and a constructivist approach to identify" (Oomen, 1987, 99). This was in opposition towards the ethno-nationalism of the opposing IFP and Afrikaner right wing groups, which advocated for the

protection of their cultural rights and identity. This commitment of the governing party, although somewhat severely compromised in the CODESA negotiations for a new South Africa, remains a significant strain in the post-Apartheid commitments to a multiculturalism that seeks to accommodate diversity in a society of equal citizens. Hence, the constitution also recognises cultural pluralism and, as an unintended consequence, promotes group-based rights (Oomen, 1999; Comaroff & Comaroff, 2005), a recognition also made explicit in the country's motto on the coat of arms "*!ke e: ǀxarra ǁke*" literally meaning 'diverse people unite' (*South African Government Information*, 2000).

The governing party, the ANC, is trying to subject this ethnic diversity to the overriding constitutional principles of nation-building and the entrenchment of democratic values. Although the party has managed to increase its hegemony over South Africa and spread its values across society, there remains some resistance, some evident within the party itself (Booyesen, 2011). The constitution in particular has come under increasing vilification in the recent years from disparate groups, including those who are concerned that it is slowing down the country's transformation, and those who see it as too Euro-centrist (Msomi, 2012; Nhlapho, 2005). For example, Nhlapho (2008) has commented on the tensions that arise from the overriding post-Apartheid state's Western-inspired notion of retributive justice and the traditional African concept of restorative justice. By implication, this criticism of the constitution vitiates the very soul of the post-Apartheid state. Thus, the state's soul is increasingly seen as an alien imposition tainted with foreign values and compromises (Comaroff & Comaroff 2005). Therefore, the post-Apartheid state is a highly contested entity, and many of its actions should be understood in this light.

Among the first legislation enacted by the new post-Apartheid government was the *Restitution of Land Rights Act (1994)*. The Act provided for the restitution of land rights for people who were dispossessed of their land by the racially motivated laws of the past. The Act also makes recognition of community rights, defining community as "any group of persons whose rights in land are derived from shared rules determining access to land held in common by such group, and includes part of any such group" (*Restitution of Land Rights Act, 1994:1*). Therefore, the government made a specific recognition of groups-based rights to land. The claimant communities were encouraged to organise themselves into community trusts and later into CPAs as landholding entities.

4.4.1 Role and Authority in Land Governance

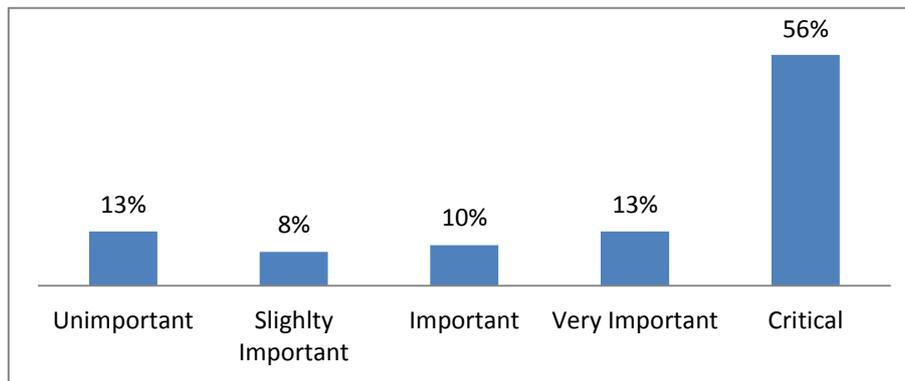


Figure 8: Bar chart showing participants' ratings of government's role in land governance

A significant number of the participants (56%) rated the government as playing a critical role in land governance in the area (see Figure 8 above). 13% rated the role of the government as 'very important', 10% as 'important' and 8% as 'slightly important'. Only 13% of the participants regarded the role of the government as 'unimportant'. Overall, the government was rated by the majority of the participants (87%) as playing some role in land governance. This corresponds to the assessment of the household role in land governance.

Participants were also asked to state their opinions on role of the government in land governance in the area. Three themes emerged from their responses, namely land restitution, development, and meta-governance role. Some of the statements by participants regarding the role of the government in land governance are presented in Table 3 below.

Table 3: Themes and some of the supporting statements on the role of the government in land governance

Theme	Statements
Land restitution	<p>"the government is responsible for returning the land to people"</p> <p>"the government must return all the land that was stolen"</p>
Development	<p>"they must bring development in our area"</p> <p>"we need roads, schools, and clinics. This the government must do"</p> <p>"The government has absolutely nothing to do with governing land in people's areas, but must only bring development"</p>
Meta-governance	<p>"the government must watch over the</p>

	<p>chief to make sure that he does well”</p> <p>“the government has abandoned us, it (the government) needs to pay close attention, to make sure that our rights are implemented”</p> <p>“The government puts in place the policies under which the chief operates. He is also bound by the constitution”</p>
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These roles do not include the day-to-day governance of the land that was identified by participants as the responsibility of the chieftaincy. Rather, the government’s role in land restitution is in recognition of the fact that without government policies, the land would have remained in possession of the white farmers and not the community as Nxasana (*Interview*. 01 March 2012), a Gumbi lineage member argues, “the government helped us to get our land back, but this is our land, it bears our name. The government can help us to ensure that we do not lose it again, but it is up to us to keep it and tend to it well. The government must support us in this”.

Development is recognised as a crucial role of the government. This confirms the findings by Williams (2010) that development tends to be associated more with government than traditional institutions. Whereas traditional institutions are expected to promote community unity and order and to allocate and protect people’s access to land, the government is expected to provide services such as water, electricity, and schools.

A small number of participants also expect the government to fulfil a meta-governance role. Meta-governance is concerned with setting up the framework conditions necessary for proper governance and monitoring to take place (Bell & Hindmoor, 2009). In Chapter 2, it was noted that one of the key challenges facing customary institutions is their lack of accountability. This is confirmed by the findings of this thesis (see Chapter 6). Therefore, the participants see the government as the institution that can ensure this accountability. Mahlakazane (*Interview*. 10 March 2012) was emphatic that the government must “call the chief into order. He cannot just do as he pleases”.

It is notable that when asked to state the roles of the government on land governance, no participants mentioned the key functions that are identified as responsibilities of the chieftaincy, such as land allocation and dispute resolutions. Participants see a clear demarcation between the responsibilities of these institutions. Whilst the chieftaincy is involved in day-to-day land issues, the government is only expected to play a limited role in

the area, limited to functions such as initiating development projects and setting up the frameworks under which the chieftaincy operates.

Figure 9 below presents the participants' rating of the government authority to allocate land, resolve disputes, and control the various forms of land use, which include residential, cropping, livestock grazing, natural resource collection, and community conservation. As Figure 9 indicates, when the participants were asked to rate the levels of authority of the government over land allocation, there was a considerable divergence of opinion. Half the participants considered the government as having some authority to allocate land. This could be in recognition of the government's initial role in the restitution of the land, as noted above.

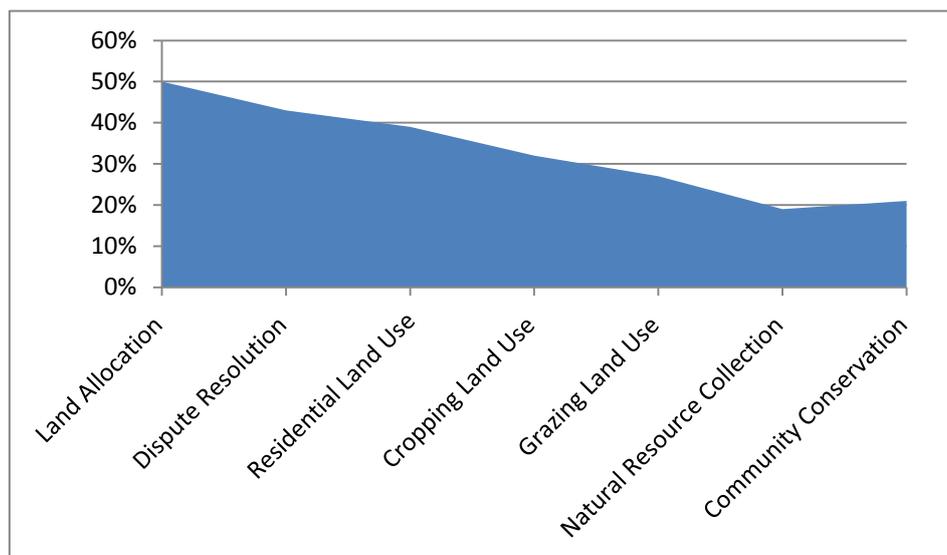


Figure 9: Chart showing the government's land control authority

However, the rating of the government authority to resolve land-related disputes was clear; the majority of the participants (58%) were of the view that the government has no authority to resolve land-related disputes. Similarly, the government also received low scores when it came to recognition that it had the authority to control residential land use (39%), cropping land use (31%), stock grazing land use (26%), collection of natural resources (18%), and community conservation area (30%) (see Figure 9 above).

Since none of the participants identified land use control as the responsibility of the government, it is not surprising that the participants gave the government a low rating when assessing government authority over land use control. Participants were then asked to provide reasons why they regarded the government as having less authority to control land use. The following themes emerged:

Table 4: Government’s limited authority in land governance

Theme	Statements
It’s the role of the chieftaincy	“The government is not involved, this is the chief’s job”
Development and Service Delivery	“The government brings development”
Land Restitution	“they are responsible for returning the land to the people”
Procedure	“it’s part of the procedure, the government must play a role” “well we are not permitted to go to the government to have out issues resolved”
Distant and Inaccessible	“the government is far and is reluctant to come here”

Participants argued that controlling how the Gumbi land is used is the responsibility of the chieftaincy. Nxasana (*Interview*. 01 March 2012) argued, “the government has no business telling the community how it should use its property, we are capable of doing that on our own”. Therefore, the role of the government is limited to restoring land rights to people who were dispossessed, and also for bringing in development and services such as electricity and water. It is in the context of land restitution that the government is expected to be involved. Participants recognise that the government commands massive resources and its officials “know the procedures involved in land restoration” (Zulu. *Interview*. 20 March 2012).

However, to those who felt that the government should be much more involved in land governance, particularly to “watch over the chief”, the government is perceived to be distant and inaccessible (Mahlakazana. *Interview*. 10 March 2012). This distance and inaccessibility is not only concerned with the fact that there are no government offices in the area, it is also concerned with fact the government is also socially distant. For example, when dealing with the state bureaucracy, there is a sense of bewilderment due to its complicated procedures (Mthembu. *Interview*. 10 March 2012). As Nhlapho (2005) notes, even for a well-educated person, the functioning of the state machinery can at times appear mysterious and

intimidating. As the findings of this research project also demonstrate, this is more so for people of low education and low socio-economic status. To them, the state is not only mysterious and intimidating, it is completely alien. Hence the significance of participants noting that the chief is an educated person, for his education provides him with the ability to comprehend the complexity of the state, and thus the ability to access the corridors of an otherwise daunting government so as to “bring development into the area” (Zulu. *Interview*. 20 March 2012). This brings to the fore the complicated relationship between the chieftaincy and the state. This will be discussed in detail in Chapter 5.

4.5 The Mvokweni Community Trust (the Trust)

The Trust currently has 700 beneficiaries, who are the people or the descendants of the people who were dispossessed of their land by the previous governments (*Restitution of Land Rights, 1994*). The Trust is headed by a committee of 13 members (trustees). Forty eight percent (48%) of the participants indicated that they were members of the Mvokweni Community Trust and 52% indicated they were not. Hence, the majority of the participants in this research were not members of the Trust. The Mvokweni Community Trust is governed by common law and the *Trust Property Control Act No 57 of 1988*. The Trust was established as a vehicle to hold the land that was returned to the Gumbi people for the benefit of the members, the Trust’s beneficiaries (Mvokweni Community Trust, 2005). The chief is the founding member of the Trust and although he has no voting powers, he is expected to attend all its meetings (Mvokweni Community Trust, 2005).

While the Mvokweni Community Trust is the largest and the most visible landholding trust, is not the only trust in the area. There are several other trusts that were established before it, and they own some of the former farms under the land redistribution processes (*Land Reform (Labour Tenants) Act, 1996*). Members of these trusts are mostly former farm tenants. However, the presence of these different trusts does not mean that individuals have membership in one trust only. Some of the participants in this research hold dual membership in the Mvokweni Community Trust and one of these other trusts. Although these trusts complicate the landholding picture in the Gumbi area, they will not be discussed, since they have very little influence on how land in the Gumbi area is governed. They are in a sense ‘silent Trusts’. Therefore, the focus of the discussion will be on the Mvokweni Community Trust.

4.5.1 Role in Land Governance

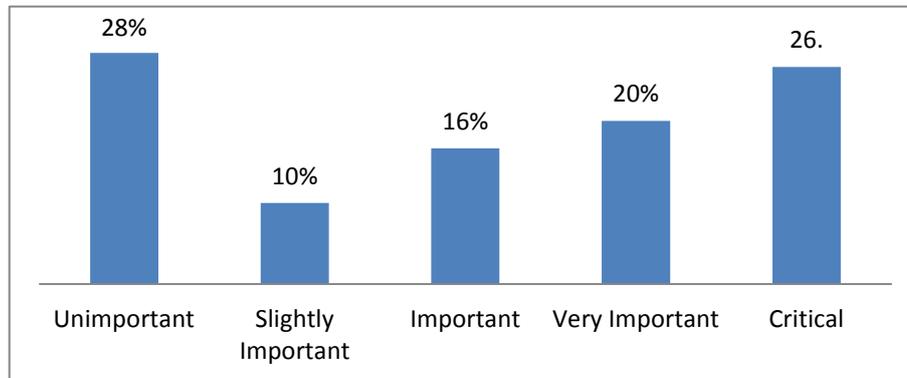


Figure 10: Bar chart showing the rating of the Trust's role in land governance

Figure 10 shows that 72% of participants regarded the role of the Trust in land governance as 'important'. Although the trustees were clear about what their role should be in land governance, the interviews and survey results showed that the household heads were not. For example, the trustees explained that the main roles of the Mvokweni Community Trust are to manage community assets and to take care of community development and welfare needs, such as community infrastructure and settlement. Attached to this is the responsibility to communicate with relevant government departments to provide electricity and water.

Trustees also identified the Trust as responsible for land use planning, that is, the Trust must decide on the zoning of different land uses, such as settlement, farming, and biodiversity conservation. The *izinduna* are then responsible for allocating the pieces of land to people as per the rules laid down by the Trust. This last responsibility brings the Trust into direct confrontation with the chieftaincy, and the outcomes of this will be discussed in detail in Chapter 5.

Participants were confused about the Trust's role in land governance. Many simply stated that they did not know what role the Trust serves in the community other than "assisting the chief to get the land back" (Zulu. *Interview*. 03March.2012). However, participants were clear on its authority. For example, only 36% of the participants regarded the Mvokweni Community Trust as having the authority to allocate land (see Figure 11 below).

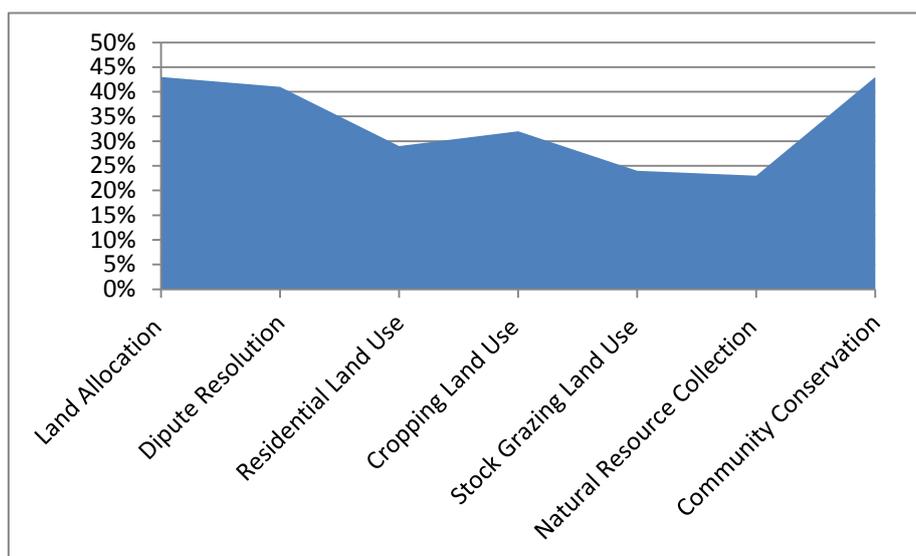


Figure 11: Chart showing the Trust's land control authority

It is this role that places the Trust in confrontation with that of the chieftaincy. For example, one of the farms was purchased by the government for the benefit of 20 families. The local *induna* decided to settle more people on the farm than the government originally agreed to. The Trust then renegotiated with the government so facilitate this increase, which led to an agreement with the government to add 19 more households. However, the *induna* simply ignored this limit and continued to settle more people. The royal family also intervened and, according to one participant interviewed, they "...brought in politics and argued that limits must not be set for the chief. They told the government officials that they do not want the ANC in this area. The officials simply left and ignored our later pleas for intervention" (Mahlakazane. *Interview*. 10 March, 2012).

Two issues emerge from this statement. The first issue is that of politics. As Williams (2010) found, in traditional communities politics is understood to mean political party politics, characterised by conflict and violence, and hence it is mostly viewed as having a negative impact on the community. The second issue is the effect that these political party politics have on the community. Until recently the majority of chiefs in KwaZulu-Natal were pro-IFP, the Zulu-based ethno-nationalist party that continues to champion the issues of traditional leadership (Comaroff & Comaroff, 2005). IFP aligned chiefs have often used their influence to constrain the activities of the ANC in their areas, which was for a long time seen as anti-traditionalist (Williams, 2010). Although the political affiliation of the Gumbi chief is not known, community members believe that members of the royal family are using anti-ANC politics to block interventions made by the state. Similarly, participants regarded the

Trust as having no authority to resolve land-related disputes (69%), rather the resolution of disputes is strongly associated with the chieftaincy.

The Trust received low scores on land control authority on most of the land use types. As can be observed in Figure 11 above, just under one-third of the participants (28%) regarded the Trust as having the authority to control residential land use. Similar responses are found regarding specific land use functions, with 31% of the participants regarding the Trust as having the authority to control cropping land use; 22% as having authority to control stock grazing land use, and 21% as having the authority to control natural resource collection (see Figure 11 above). The only land use type on which the Trust received a high score was in terms of control of the community conservation area (the Somkhanda Game Reserve) with a total score of 41%, indicating that the Trust is closely associated with the game reserve. Until early 2010 the Trust had been able to exercise effective authority over the community conservation area and was also responsible for the nomination of members of the Somkhanda Game Reserve Board, which is responsible for the management of the reserve. The Trust also facilitated the employment of community members in the reserve. This role has changed with the election of a new trustees committee, and the trustees are now prevented by the chieftaincy from fulfilling these roles. However, community members still view the Trust as exercising control over access to employment in the reserve (Mthembu. *Interview*. 20 March 2012). Nonetheless, even in this type of land use, the authority of the Trust is still contested. Some of the *izinduna* argue that the Trust has no place interfering in the management of the reserve. The argument is that the Trust keeps on contradicting the chief's goals regarding the reserve. The participants did not make these goals clear to the researcher. Moreover, there is the argument that under the control of Trust, the reserve has done "absolutely nothing for the community" (Nxasana. *Interview*). The *iziduna* would prefer the chief to be directly in charge of the reserve, and this might also allow the *iziduna* to have influence over the reserve. *Induna Zungu* (*Interview*. 03 March 2012) argues, "Our chief is educated, they should let him be in charge of the game reserve". According to the *izinduna*, the utility of the Trust beyond the land claim is questionable at best. This will be discussed further in Chapter 5.

4.5.2 Land Ownership

The official status of the Trust is that it is the de jure landholding entity, which it holds on behalf of its 700 members. According to the trustees, people know that the land belongs to the Trust and “that is why they came in numbers to vote for the new trustees committee” (Mahlakazana. *Interview*. 10 March 2012). The trustees reason that people have since shied away from the activities of the Trust because there is “a lot of fear that if they involve themselves with the Trust they will be reported to the chief” (Zimukile. *Interview*. 13 March 2012).

This view of the Trust as a landholding entity is not shared by the household heads. Only 40% of the participants indicated that Trust was the landowner. A significant number (30%) were neutral on this question, and the remaining 30% stated that the Trust is not the landowner (refer to Appendix 2). Such responses are due to the following. Firstly, only 48% of the participants are members of the Trust; the remaining 52% who are not part of the Trust regard the Trust with some suspicion (Zulu. *Interview*. 20 March 2012). Secondly, some participants see the Trust as simply an instrument to have land returned. After the land is restored to community members, the value of the Trust is not clear (Nxasana. *Interview*. 01 March 2012).

4.6 The Gumbi Lineage

The majority of participants (67%) regarded themselves as members of the Gumbi lineage, whereas 32.8% identified themselves as not belonging to the lineage. The Gumbi lineage is not a formal structure, rather it is recognition of kinship ties. However, there are some advantages to be enjoyed the closer one is to the chief, as demonstrated by the influence of the members of the royal house discussed in section 4.5. Despite the fact that the lineage has no official role in land governance, 80% of the participants rated its role as ‘important’ (Figure 12 below). However, the role that the lineage is supposed to play is not clear beyond the statement that the “chief must consult us when making important decisions” (Nxasana. *Interview*. 01 March 2012). Only 39% of participants thought that the lineage had the authority to allocate land, and a similar number also thought that the lineage has the authority to resolve disputes (see Figure 13 below).

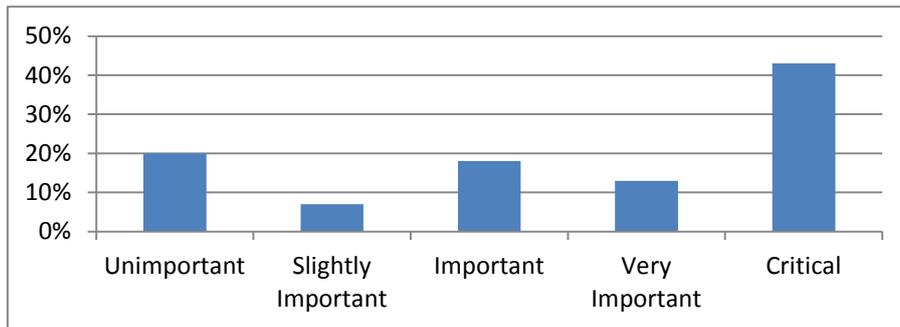


Figure 12: Bar chart showing the rating of Gumbi lineage role in land governance

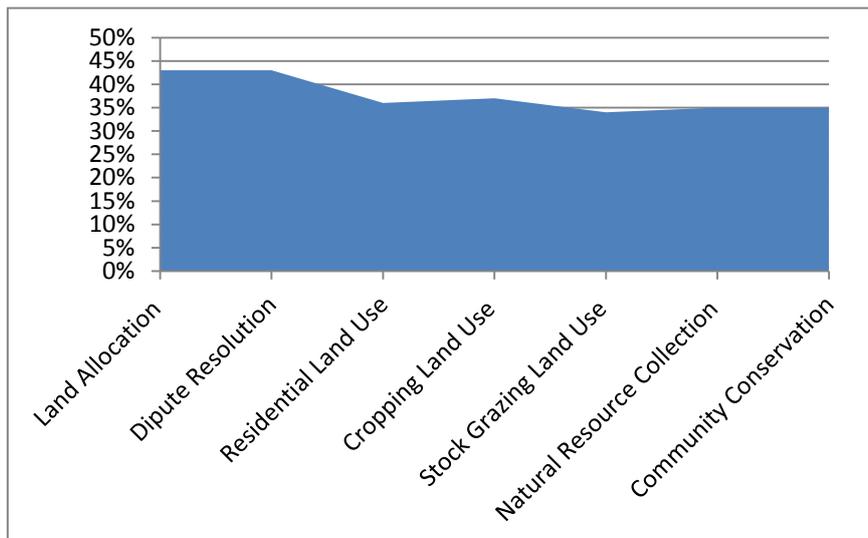


Figure 13: Chart showing Gumbi lineage land control authority

On the land control authority, the lineage also received low scores, that is, the authority to control residential land use in terms of lineage was rated at 35%, cropping at 36%, stock grazing, natural resource collection, and community conservation area at 33%. Therefore, the lineage is recognised as having no authority, nor is it considered to have a role in land governance. In this way, the Gumbi chieftaincy operates in the same manner as pre-colonial chiefdoms where kinship ties had little effect on land access and control (Guy, 1994; Kuper, 1993).

The assessment of the authority of the Gumbi lineage was influenced by the gender and socio-economic status (employment status) of the participants (see Appendix 6). Females and the unemployed, in comparison to males, tended to score the lineage as possessing more authority. Participants who are in full time employment tended to regard the lineage as having less authority. This indicates that the household heads who are more vulnerable (females and low socio economic status) tended to associate more closely with the lineage. It was argued in the theoretical framework that vulnerable people such as minorities may prefer

ethnic or kinship ties in the protection of their rights (Lin, 2001), and would also rely mostly on the familiar institutions (Nhlapho, 2005; South African Law Commission, 1999; Bekker, 1989; Berry, 1989). Therefore, vulnerable members may find better protection of their access rights from their relatives with a little bit more power (Mthembu. *Interview*. 20 March 2012). Thus, although lineage ties have no strong effect on how the land is governed, it seems that they play some role as patronage networks. Thus, the Gumbi lineage membership provides some refuge for the most vulnerable members of the lineage.

4.7 The Community

The community was described in Chapter 2 as a mechanism of resource inclusion-exclusion. It designates people who are members of *umphakathi* - those on the inside - who are permitted to access communal resources. The concept of community in the Gumbi area was found to position individuals in different socio-organisational levels that are linked to spatial scales (Smith, 2003; Berry 1989). For example, at a lower socio-spatial scale, participants used community to refer to households under the jurisdiction of one *induna* ward. Members of this type of community have closer and more intimate bonds. Therefore, there are the Candover, Coatlands, Nhlambamazi, and KwaZandla communities. These communities then constellate on a larger scale to make up the broader Gumbi community, which essentially, is simply the Gumbi chiefdom under the juristic control of the chief. This arrangement confirms the view in terms of a socio-political entity; a community is not a mere spontaneous organisation of individuals or an “emergent” property that suddenly emerges as if by magic (Rechlin et al., 2008; Wolf, 1990; Wallace 1970). A socio-political community exists as long as it has rules and leadership that make and implement these rules (Wolf, 1990; Wallace, 1970). A long-lasting community has the backing of authority that mobilises resources to achieve communal goals (Morselli & Passini, 2011; Passini & Morselli, 2009; Cialdini, 1984).

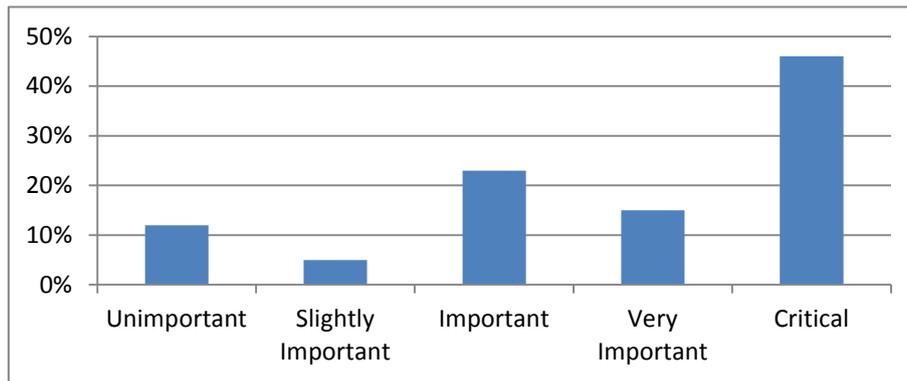


Figure 14: Bar chart showing the rating of community role in land governance

On the role of the community in land governance, 88% of the participants (see Figure 14 above) rated the role of the community as ‘important’, the second highest score after the chieftaincy. The community is also the only institution that received significant scoring on one of the land governance functions identified by participants as the preserve of the chieftaincy, that is, 53% of participants agreed that the community has the authority to allocate land (see Figure 15 below).

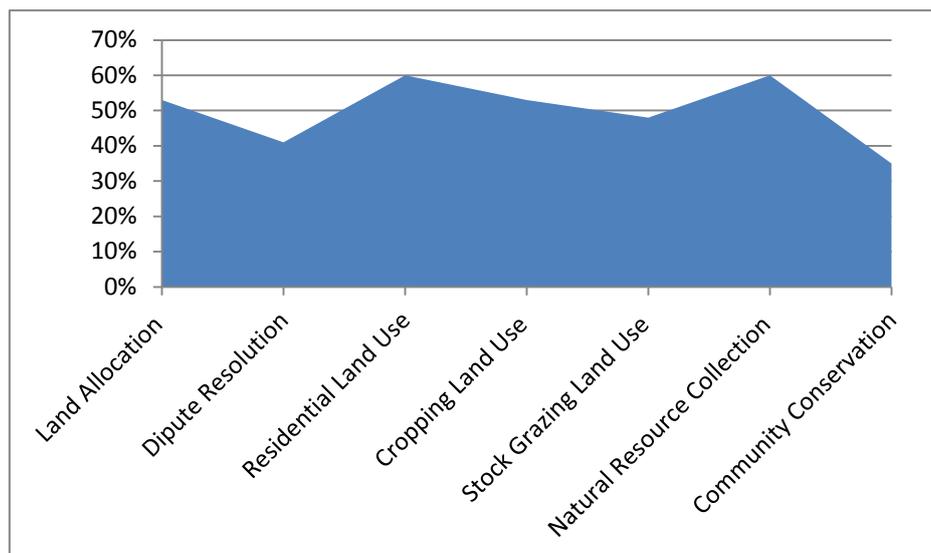


Figure 15: Chart showing community land control authority

However, 53% of the participants indicated that the community does not have this authority to resolve land-related disputes, (see Figure 15 above). Hence, while land allocation is seen as a communal process, dispute resolution is not. Perhaps this is in recognition of the fact that disputes are better resolved when the final decisions rest with an impartial third party, which in this case is the chieftaincy.

The community is also perceived as having some authority to control land use. For example, 59% participants saw the community as having a role in decisions about the residential land

use, 56% in decisions about cropping land use, 53% at controlling grazing land use, and 50% at controlling natural resource collection (see Figure 15 above). Participants scored it at 59% on residential land use authority, 56% at cropping land use, 53% at controlling grazing land use, and 50% at controlling natural resource collection. This follows the pattern of scoring the authority of the chieftaincy, except in terms of control of the community conservation area, where the community was scored at 33%. The similar pattern of scoring between the community and the chieftaincy confirms the view that the chieftaincy is seen as the embodiment of the community (see section 4.3 above in this chapter). The one difference in scoring may be due to the fact that some community members do not see the need for the community conservation area. They think that this land could be better used than “given to [wild] animals” (Zulu. *Interview*. 20 March 2012). Hence, even though the chief is in control of the community conservation area, he is not recognised by participants as doing so on behalf of the community that is opposed to conservation (Nxasana. *Interview*. 01 March 2012).

4.8 Conclusion

The chapter identified the key institutions that play some role in land governance in the Gumbi area. Ranked in the order of importance of their role these institutions are the Gumbi chieftaincy, the community, households, the state, the Gumbi lineage, and the Trust. The same order of ranking also describes the levels of authority held by these institutions. In this sense role and authority in land governance are intertwined. However, as the data makes clear, no one institution has exclusive authority over the land. Authority is a property that is distributed, albeit unequally, over diverse institutions from the chieftaincy to the Trust. As Williams (1996) argues, individuals are more than capable of recognising and adhering to different sets of rules while simultaneously pursuing varying elements of collective life. What is more, they are also capable of shifting their loyalty and searching for alternative means of authority as circumstances change. Therefore, individuals ‘shop’ around for authority-bearing institutions that best serve their interest. They often draw on and invest in a variety of institutions so as to defend or access resources now or in the future (Metha et al., 2001). For example, the Mvokweni Community Trust received the lowest scores in all other variables except the one measuring authority over the community game reserve. In this instance the Trust was rated only second to the chieftaincy (41%). As discussed in this chapter, this perception arises out of the relationship between the Trust and the Board managing the game

reserve, which is constituted of individuals elected by the trustees who then report to the Trust (Mvokweni Community Trust, 2005).

The centrality of the Gumbi chieftaincy in land governance is evident from the survey and interview data. This institution is the de facto ultimate proprietor and controller of the land and community assets. It is seen as the embodiment of community ethos. The chief is the head of the community and as its protector. It is the bearer of households land sovereignty rights (Kohn & McBride, 2011; Hofbauer, 2009; Engerman & Metzger, 2003; Shriv, 1997).

Nonetheless, each of these institutions serve as gatekeepers to resource access, not only for the people that they exercise jurisdiction over, but also for the people that are excluded from accessing these resources by virtue of their being non-members or intended beneficiaries. These institutions of governance delimitate who belongs and therefore who can benefit from the resources, and it is these processes of resource access via definitions of inclusion-exclusion that define these institutions and lay the foundations for the generation of their authority.

The implication is that these processes of inclusion/exclusion matter the most when resources are collectively owned and/or used. In this setting, there is a stronger need to demarcate clearly who is 'in' and who is 'out'. These institutions exist to perform this function. By delimiting and protecting property rights they determine who can benefit from resources, and the manner of that beneficiation.

The nexus of resource governance is the formalisation of the inclusion/exclusion processes (O' Reilly, 2008). Therefore, there is the question of how the different institutions engage in the inclusion-exclusion processes as they compete and/ or cooperate with other institutions for the loyalty of the people and how this affects land rights. This is the topic of the next chapter, which looks at the relationships between these institutions.

-Chapter 5: Institutional Dynamics in Land Governance-

5.1 Introduction

The second part of the results and analysis of this case study are discussed in this chapter. The focus in this chapter is on objective 3 of the thesis, that is the relationship among the key institutions involved in land governance in the Gumbi area, that is, the Gumbi chieftaincy, the post-Apartheid state, the Mvokweni Community Trust, the Gumbi lineage, and the individual households. The discussion addresses the question of how these institutions compete and cooperate in order to build and maintain their authority. Therefore, this involves their attempts at utilising the land for the creation of political capital, sometimes at the expense of other competing institutions, and at times through cooperating with them. It also looks at how these competitive and cooperative processes play out.

5.2 The Gumbi Chieftaincy and the Post-Apartheid State

One of the momentous undertakings of the post-Apartheid state was the establishment of the “wall to wall” municipalities that cover the whole of South African territory. This was a constitutional imperative (*Constitution of the Republic of South Africa, 1996*). The *White Paper on Local Government (1998:12)* notes that the Apartheid regime created Bantustans that gave traditional leaders “powers over land allocation and development matters in areas with communally owned land”. The white paper envisaged an establishment of Developmental Local Government (DLG). DLG is described as “local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives” (*White Paper on Local Government, 1998:16*). Thus, Local municipalities are tasked with the responsibilities of maximising socio-economic development and democratising development.

However, this is complicated by the fact that the South African constitution also acknowledges the institution of traditional leadership. Furthermore, since then the government has enacted legislation that recognises some of the powers that traditional leaders exercise over their jurisdiction. Despite this constitutional recognition and attendant legislation, chiefs have no constitutionally guaranteed role in local government. This has complicated the local governance institutional landscape, for Gumbi chieftaincy, by virtue of

its existence, becomes the main competitor to the post-Apartheid state in the competition for the control of land access in the Gumbi area.

The relationship between the local councillor and the chieftaincy seems to reflect this fractured nature between traditional leadership and local governance. The chieftaincy reveres its role as a gatekeeper to land access and guards it closely (Mdluli. *Interview*. 21 March 2012). For instance, the councillor cannot call community meetings in his own right. The councillor must first obtain permission from the local *induna* in order to be able to hold community meetings. In fact, any outsider who wants to interact with the community cannot do so without authorisation from the *induna*. Even government officials have to participate in the same procedure to gain access to the community. A comment by Silwane (*Interview*. 03 March 2012), a government official, is most revealing when he explains that “perhaps we (the government) need the chief more than he needs us to ensure that we are able to serve people in that area”. Therefore, access to the community is dependent on the chief’s authorisation, because without it people might not even attend meetings. Thus, the chieftaincy is the main conduit to the external world; it determines the kind of internal-external interactions that can take place in the community.

The failure of the government officials to resolve many of the issues between the Trust and the chieftaincy are also indicative of the power of the chieftaincy in the area. The officials understand that if they try to force issues and are thus denied access rights to the community, they will have no recourse, since people have “a tendency to listen to the chief and never come to meetings when they know that chief is against them” (Silwane. *Interview*. 03 March 2012).

It also seems that a paradoxical relationship exists between the performance of the democratic state and that of customary systems. In the eyes of the rural poor, failures of the customary governance systems reflect poorly on the democratic state, whilst the failures of the democratic state strengthen customary systems. The chieftaincy takes full advantage of any state failures; this includes instances when the state fails to deliver on its promises, or pursues policies that are regarded by the community as anathema to African traditional values, and when politicians and officials are embroiled in corruption scandals, the chief’s supporters use this as evidence of the alien and distant nature of the state. *Induna* Nxasana (*Interview*. 01 March 2012), who is closely related to the chief, stated:

... we also do not fully trust the government. Here we discuss things openly but with the government you only here from the radio that such and such law has been passed. Really, what is this nonsense about man marrying each other? I rather soon die than see my son married to another man.

Thus, the chieftaincy is presented as a bulwark against alien and corrosive influences and a safe haven for the generally conservative rural people (Mbeki, 1964). It is marketed as an institution that has played critical roles in the people's struggles in pre-colonial times, colonial/Apartheid times, and the present, and in doing so, the chieftaincy positions itself as the sole defender of rural people's rights to land.

Moreover, unlike the state, the chieftaincy does not require physical trappings of power such as infrastructure and symbols to broadcast its authority. Rather, the chieftaincy is embedded within long-held social relations. It is a simple governance structure that can function without a formal bureaucracy and places no direct financial burdens on its subjects. There is a sense that one can simply go and *khuleka* (call) at the gate of the *induna* to have their issues addressed, instead of travelling to distant offices "to be faced with unsympathetic bureaucrats and forced to fill in a bewildering variety of complicated forms" (Mthembu. *Interview*. 20 March 2012). Hence, whilst the state is alien and distant, the chieftaincy is authentic and present. As Zulu (*Interview*. 20 March 2012) argues: "even if I wanted to take make my problems known to the government, I do not know where to find it". The chief and his officials know most of the people in the area on a first name basis (Mthembu. *Interview*. 20 March 2012). Thus, the rule of the chief is direct and personal. As discussed in detail in Chapter 4, the proximity of the chieftaincy to the people and its local knowledge enables the chieftaincy to out-compete the post-Apartheid state in the battle for the soul of the community.

However, the battle for the soul of the community is not simply a local battle, it also operates on a much larger spatial scale. Although this confrontation between the state and the Gumbi chieftaincy is given concrete expression at the local level, it is the continuation of the battle for the very nature of the post-Apartheid state. The confrontation is a battle for what should constitute the polity, citizenship, and rights (Comaroff and Comaroff, 2004). Fanon (1967) long noted the inherent conflict between the state elites, centred on the capital, and the local elites of the countryside who represented the peasantry. This struggle was evident since the beginning of the colonial project. In present day KwaZulu-Natal province, this struggle is symbolised by the divisions between the *amaKholwa* (Christian converts) and the *amaQaba* sections. Whilst the *amaKholwa* attempted to assimilate into the white settler community,

amaQaba simply wanted to be left alone to pursue their goals and live their lives according to ancient customs (Cope, 1990; 1993). However, there was something of a schizophrenic outlook developing within the *amaKholwa* people. The hostility of the white settler community towards them caused them to reassess their position in society; they looked back with nostalgia at the majesty of pre-colonial ancient kingdoms (Cope, 1993).

The ambivalent nature of the post-Apartheid state towards traditional leadership mimics this colonial schizophrenic outlook of the *amaKholwa* people. At one time, traditional leaders are seen as anathema to constitutional democracy and as impediment to full citizenship of their ‘subjects’, at another time they are seen as resources that should be mobilised to promote the constitution and socio-economic development (James, 2007; Koeble & Lipuma, 2005).

This state of affairs is also evident today in the divisions between those who see traditional leadership as legitimate institutions and those who see them as an “embarrassment” (Ramphela, 2013). According to Oomen (2000:11) the debate about traditional leaders and democracy is “cast in dichotomies: African and western, rural and urban, modern and traditional”. This framing of the debate in traditional leadership has led to a trivialisation or romanticisation of traditional authority. The “idealists” who trivialise the traditional leadership give high regard to the principles of accountable, democratic government, and see no governmental role for traditional leaders. However, the reality is much more complicated. The Gumbi chieftaincy enjoys popular legitimacy among the Gumbi people; to them it is a preferred governance structure. As Zimukile (*Interview*. 13 March 2012) states:

... bringing the land back without the reinstatement of our chieftaincy would have been unthinkable. The chieftaincy is part of us. There are things at which it is better at doing than the government.

This statement makes two points clear. One is that the chieftaincy is part of the people’s local identity. As was common in the area, people would refer to themselves as *isizwe*²⁹ *sakwaGumbi*,³⁰ that is, they are members of the Gumbi community as represented by the Gumbi chieftaincy. There is a stronger sense of identity with the chieftaincy than with perhaps the post-Apartheid state, at least within the local politics of resource access. This identity is mobilised in attempts to exclude those who are seen as not belonging to the *isizwe saKwaGumbi*. This was expressed in an interview with Mhlakazana (*Interview*. 10 March

²⁹ *Isizwe* is from the root word *izwe* meaning land or country is used to mean nation. It alludes to the close association between land and nationhood.

³⁰ Field Notes 31 March 2012.

2012) who complained of people not living in the area and of other people who have been permitted to graze their cattle in the Gumbi land without actually residing in the area being included into the Gumbi Traditional Council. For people like Mahlakazana, those not residing in the area are not seen as members of the Gumbi community. In a similar way, state officials, because they also do not reside in the area, are also excluded from the common bonds of belonging to the *isizwe sakwaGumbi*, and perhaps even more than this, these individuals represent the demands and aspirations of a foreign institution.

Chapter 4 discussed how the inaccessibility of the state prevents many people from regular interaction with state processes. In a sense, the state is unable to broadcast its power in the Gumbi area and therefore depends on the cooperation of the chieftaincy to deliver some of its services, such as welfare. Many households rely on these services for their livelihoods (as discussed Chapter 4). Thus, the relationship between the state and the chieftaincy is full of such ambiguities, resulting in a relationship of competition and cooperation.

5.3 The Gumbi Chieftaincy and the Mvokweni Community Trust

The relationship between the Mvokweni Community Trust and the Gumbi chieftaincy is also fraught with problems. The Trust lacks an independent existence from the chieftaincy; it is wholly reliant on the power of the chieftaincy in order to operate and its legitimacy is not derived from government legislation and its democratic character as expected, but from the chieftaincy. As revealed by trustees in the interviews, after a few months in office, the new trustees committee found itself in direct conflict with the chief. The conflict between the trustees and the chief started over the issue of the employment of people for the invasive alien plant clearing project.³¹ The project manager, a government employee, got into conflict with the chief and he (project manager) decided that from that point on that he wanted to work with the trustees. The chief had given the trustees the impression that he accepted that it was better for the project manager to deal with the trustees, but his later actions soon disabused them of this notion as the chief simply ignored the Trust altogether. For instance, the chief had promised that within two months of the inauguration of the new trustees committee, (that was in October, 2012), he was to introduce the committee to the community and also to have the new trustees registered as per the *Trust Property Control Act (1998)* regulations.

³¹ There are allegations that the chief wanted to have members of his family employed in the project. According to government policies, only the poorest members of the community should be employed (Expanded Public Works Programme, 2004). It is claimed that the chief's sisters and brothers wanted to be the contractors (Zimukile, *Interview*. 13 March 2012).

Although there is no government policy that requires the chief to be responsible for registering the trustees, this seems to be the local convention. According to government policies, community landholding Trusts derive their mandate and authority from the beneficiaries and not traditional leaders (Silwane. *Interview*. 03 March 2012). Nonetheless, the new trustees expect the chief to have them registered, and since they have not been registered, they have no legal status. When asked why they have not pursued their registration on their own, the response of one of the trustees was: “I guess the lack of the chief’s support just leaves us frozen, we cannot even think what to do, but sit quietly and wait for the chief to turn around” (Mahlakazana. *Interview*. 10 March 2012). Thus, the withdrawal of the chief’s consent has left the trustees “paralysed” and unable to operate (Zimukile. *Interview*. 13 March 2012). As Mahlakazana (*Interview*. 10 March 2012) remarked, “traditional leadership has a lot of power here. It is able to upset the plans of the Trust”.

The trustees also allege that another reason for this animosity is the fact the new trustees had initiated an investigation into the operations of the previous trustees. They allege that there was a lot of corruption then, with 95% of the previous trustees being members of the Gumbi royal family and all of whom had purchased new cars during their tenure. “The previous trustees committee was simply a family affair” (Mhlakazana. *Interview*. 10 March 2012).

The three trustees interviewed seemed to have differing opinions about the main source of the problem. One trustee, who is also a member of the Gumbi royal family, blamed the chief’s siblings and other members of the royal family for this state of affairs (Mandlanzi. *Interview*. 01 February. 2012). She argued that they continuously abuse the chief’s trust and have misled him on many occasions. She stated that:

You have to understand that the chief is a mild mannered and down to earth person. He trusts his siblings a lot, just as any other person would. But they are abusing this. They want him to intervene on their behalf all the time. They tell him not to forget how they all suffered when they were removed from the land and their father lost the chieftaincy and had to survive on hand-outs.

Another trustee, perhaps due to his lack of ‘inside’ information to the affairs of the royal family, directly blamed the chief. He argued that:

All the problems emanate directly from the chief. Perhaps he is comparing himself with the Bafokeng Royalty³². He wants all the wealth for himself. The chief is the chief because of the people. His responsibility is to watch over this wealth for the benefit of people (Mahlakazane. *Interview*. 10 March 2012).

³² The Bafokeng king is the richest monarch in South Africa due to platinum deposits in the Bafokeng area.

Whatever the source of the problems, the animosity between the chief and the trustees has become quite toxic and has affected relations between community members. The chief did not even need to formally declare that there was animosity between him and the Trust, yet this has been communicated to community members who now avoid meeting the trustees as much as possible. When asked why she did not take her problems to the Trust, Zulu (*Interview*. 20 March 2012) answered, “why would I go to those people? Aren’t they fighting the chief?”

Even the *izinduna* seem to have jumped at the opportunity to profit from this animosity by strengthening their power over land allocation at the expense of the trustees. Mandlanzi (*Interview*. 01 February 2012) states:

Traditional councillors do not understand the role of the Mvokweni Community Trust in land allocation. The only thing that a headman knows is that these are his people because he knows that he has the ear of the chief, unlike the trustees. The chief listens to them (headmen) and not us.

The *Izinduna* and traditional councillors have used this animosity between the chief and the trustees to drive the wedge between the chief and the trustees even deeper. This is because they particularly resent the trustees’ pretensions at land allocation authority. As stated in the previous chapter (Chapter 4), land allocation is one of the key functions of the chieftaincy, yet the chief himself does not allocate land, this is the preserve of his officials, the *izinduna*.³³ Therefore, both headman and traditional councillors take every opportunity to undermine the trustees and present them as hostile to the chieftaincy. *Induna Zungu* (*Interview*. 03 March 2012) states:

They (the trustees) disrespect³⁴ the chief. They do as they please and when they get into trouble, they come back to the chief to ask for help. This whole thing is a waste. We do not need these people.

The attempts by the government to resolve this have come to nought. When one official was asked why the government does not intervene decisively in the matter, Silwane’s (*Interview*. 03 March 2012) response was that the real problem was that the people themselves have great

³³ Although not reliably established, it is possible that there is some financial gain for the headmen in allocating land in the area. In many traditional areas, individuals who want land are required to pay sometimes up to R1000. Although this is not a formal requirement, it is widely practiced and may be the one of sources of income for headmen, since they currently do not get any remuneration for their services.

³⁴ The Zulu words used were “*abayazi nokuthi iyini inkosi*” literally translated as “they do not even know what the chief is”. However, the meaning has connotations of grave disrespect and lack proper acknowledgement of the chief.

respect for the chief and as a result he commands the de facto final authority in the area. Silwane further argued that,

... his (the chief's) strategy to tell people that he is being unacknowledged is very effective. People sympathise with him. So if we can go there and call a community meeting without his blessing, no one will come. No solution will therefore work without his buy in.

The Trust needs the chieftaincy to operate, for as Mahlakazana (*Interview*. 10 March 2012) states “the chief’s refusal to participate in the activities of the Trust has impaired us. Though it is not compulsory for him to attend our meetings, we need him, his withdrawal has really impaired us”.

Moreover, the chieftaincy is accomplished at claiming the success of the Mvokweni Community Trust and the Local Municipality, whilst distancing itself from their failures. The chief himself is a founding member of the Trust, and although he has no voting rights, he is expected to attend all the meetings of the Trust. Yet, from the perspective of some of the participants, the chief has nothing to do with the Trust. In a strategy reminiscent of KwaZulu-Natal chiefs reported by Williams (2010), who pretended to be surprised by some of the decisions of the Transitional Local Council (TLC), which although taken in their presence and participation, denied any knowledge of them when confronted by community members, the Gumbi chief also reportedly denies any knowledge of controversial decisions the Trust made (Mahlakazana. *Interview*. 10 March 2012).

The legitimacy of the Mvokweni Community Trust is further dented by the fact that it only represents a section of the community and some of its members do not even reside within the community. Mahlakazana (*Interview*. 10 March 2012) states, “You have these people driving several kilometres to come here and decide on our issues”. The Trust was particularly resented by the people who do not belong to either the Trust or the Gumbi lineage. These participants (43%) do not belong to any of the local ‘corporate’ structures and they see both the Mvokweni Community Trust and the Gumbi lineage providing unfair advantages to its members. As Mthembu (*Interview*. 20 March 2012) states, “if you are not a Gumbi or belong to the Trust, you do not [going to] get anything”. Mahlakazana (*Interview*. 10 March 2012), a member of the Mvokweni Community Trust and a trustee but not a Gumbi lineage member, also expressed resentment towards members of both the lineage and the Trust who do not reside in the area:

You have these people driving several kilometres to come here and decide on our issues. They live in cities and some under different chiefs and yet they come here and take our resources

away with them. We have seen them abusing game reserve property (Somkhanda Game Reserve). We are the new trustees yet we do not even know how the game reserve funds are spent and by whom. These people are misleading the chief. Nothing can work well where there is nepotism.

A Gumbi lineage member, Nxasana (*Interview*. 01March 2012), while resenting the fact that some members of the lineage and the Trust not residing in the area have some decision-making authority, expressed an understanding that the Trust was only formed as a convenient way to have land returned. He argued that “without the Trust, the government would probably have not given us our land back”. Therefore, to some members of the community the Mvokweni Community Trust was only formed to meet government requirements for the land restitution process. Now that ownership of much of the land has been restored to the Gumbi’s, they see no further utility of the Trust.

The relationship between the Trust and the lineage is also highly ambiguous. For instance although a large section of Gumbi lineage members also tended to be members of the Trust, they also displayed some degree of resentment towards the Trust, which resentment seems to be motivated by the perception that the Trust is usurping the chief’s power to control land.

What this discussion makes clear is the fact that the Mvokweni Community Trust derives its mandate, not from the community/beneficiaries and legislation as expected, but from the chieftaincy. When the chieftaincy withdraws its support, it falters. This is aggravated by the fact that the Trust does not get support from the state. The state itself is not clear about its relationship with the chieftaincy, and therefore could not clarify what the relationship between the Trust and the chieftaincy should be.

5.4 The Chieftaincy and the Household

The relationship between the chieftaincy and the household demonstrated a continuity of the pre-colonial relationship between the chieftaincies and the *abamnunzane*, the senior male agnates (see Chapter 2). This was a relationship based on mutual recognition of the authority of the *umnumzane* over his household and that of the chief over the chiefdom. Although this relationship experienced some changes under the Zulu kingdom, these were not far-reaching changes, after all, the Zulu state itself was still an extension of this domestic arrangement. The king simply assumed the mantle of head of the kingdom and father of the nation (Guy, 1994; Kuper, 1993).

Although the composition of the household heads has changed and now includes a significant number of female-headed households (36%), this earlier relationship with the chieftaincy continues. For instance, the chieftaincy recognises the authority and the semi-autonomous position of household head over domestic life (Nxasana. *Interview*. 01 March 2012). Thus, the chieftaincy entrenches the authority of the (usually male) head over the household. The household, and not the individual, is still the bearer of rights to land. While the state works with the individual, the chieftaincy follows the traditional convention of working with the household head.

Therefore, this relationship is not the simplistic “subject ruler” relationship, as argued by Ntsebenza, (2005) and Mamdani (1996). It is a mutually beneficial relationship where one institution has had its authority embedded within historical and social frameworks, and this means that control of issues and resources remains within the customarily designated sphere.

5.5 The Chieftaincy and the Community

In Chapter 4 it was argued that the chieftaincy is closely associated with the community. As the head of the community, the chieftaincy provides the organising framework and authority for community organisations and is responsible for the reproduction of community uniformity (Wallace 1970). The community is organised following the organisational hierarchy of the chieftaincy. As stated in the previous chapter, the sense of community corresponds, at the lower and more intimate level, with the *induna* ward (*isigodi*). At the higher level is the chief as the “father” of the community. Therefore, the chiefs’ subjects are those who are *umphakathi*, i.e. those on the inside. Thus, to the Gumbi people, community is simply another reference to the Gumbi chiefdom, a polity within the post-Apartheid state polity (Williams, 2010).

This is not to argue that there is homogeneity of community in the Gumbi area. Like all political organisations, there are contestations and conflicts, as evidenced by some of the trustees of the Mvokweni Community Trust. However, these contestations do not seem to question the chieftaincy’s association with the concept of community.

5.6 The Chieftaincy and the Gumbi Lineage

Although participants who identified themselves as members of the lineage tended to have strong feelings of association with the chieftaincy, the chieftaincy itself does not seem to grant them any special privileges. The exception is only the members of the royal family who, as Mandlanzi (*Interview*, 01 February 2012) argued, exercised great influence over the chief. So only the inner core of the lineage has some influence over land governance decisions which it exercises through the chief. These will be people who fit Kuper's (1993) description of the house.

5.5 Conclusion

This chapter has analysed the relationship between the institutions involved in land governance in the Gumbi area. Of particular interest was the relationship between the Gumbi chieftaincy as the central player in land governance and the other institutions, such as the post-Apartheid state, the Trust, the household, and the Gumbi lineage.

The relationship between the post-Apartheid state and the chieftaincy was shown to be ambiguous and informed by local issues and events and by the wider national and global politics of resource access and control. It was demonstrated to be part of the wider politics of identity and the growing assertion of cultural rights (Comaroff & Comaroff, 2005).

This relationship between the chieftaincy and the post-Apartheid state also informed the relationship between the chieftaincy and the Trust, yet this is a relationship fraught with problems, contestations, and contradictions. The Trust, it was argued, is unable to operate without the sanctioning of the chieftaincy, despite the fact that it does not legally require the chief's backing in order to operate.

However, the households were shown to have a mutually beneficial relationship with the chieftaincy, particularly in the area of authority production. These two institutions demonstrate certain respect with regard to each other's territories and authority. This is because the chieftaincy itself is seen as an extension of the arrangements of the domestic household. Therefore, paternal metaphors are used to define the role of chief as the head of the community. It was also argued that this arrangement is a continuation of the pre-colonial and pre-Zulu state-formation arrangements between the chiefs and the *abamnumzane*, the senior male agnates and heads of the households.

The community is closely associated with the chieftaincy. The chief, as the head of his community, provided the organisation authority required to control community assets. The Gumbi lineage on the other hand, has little influence over the chieftaincy, with the exception of those closely related to the chief.

-Chapter 6: Land Governance Outcomes-

6.1 Introduction

The results and analysis of the outcomes of land governance in the Gumbi area are presented in this chapter. The analyses focussed on the rating of the land governance process integrity, land rights orientation, land access satisfaction, and the levels of satisfaction with tenure rights security, dispute resolution, and institutional climate.

The key assumption here is that the successful granting and protection of rights to land is also crucial in the appropriation of land as political capital. However, before discussing the participants' satisfaction levels with tenure rights, the first section of this chapter will discuss the main land use types that the participants engage in, and also provide their evaluation of the benefits that they derive from the land. This is done in order to provide some perspective on the nature of the land access rights that exist in the area.

6.2 Land Property Rights Orientation

The construct of land property rights orientation tested the participants' concept of land rights. Land rights under customary law were described in Chapter 2. The main feature of these rights is that they do not necessarily apply to individuals, but are held by the household as headed by the senior male agnate. However, in Chapter 3 it was demonstrated that in the study area there was a significant percentage (36%) of households who are headed by women, the majority of whom were senior women over the age of 50. These women are also bearers of land rights and therefore are responsible for the household land use decisions.

Land rights were examined in terms of exclusion, the sense of ownership, and control over land use decisions. The first dimension that was tested was the right of exclusion. This was tested using two statements. The first statement asked participants to score the statement "my land rights include the right to exclude others from access to the land that is allocated to me" from 'strongly disagree' to 'strongly agree'. Only 41% of the participants agreed with the statement and 50% disagreed, whilst the remaining participants were neutral.

This suggests that the right of exclusion is a tenuous right. As argued in Chapter 2, customary tenure rights do not have a strong exclusive individual land use orientation. Whereas the

household is guaranteed exclusive use of the land within the homestead boundaries, outside the boundaries this exclusivity is not guaranteed. This complex right is because the land is not owned by individuals but individuals have user rights, and these user rights are overlapping and seasonal. For example, while a homestead has exclusive rights to the crops planted in the field, other natural resources that may naturally grow in the field can be used by anyone so long as no one interferes with the crops. After harvesting, the crop field becomes a stock grazing ground and anyone from within that ward can send in their cattle to graze. Therefore, these access rights do not guarantee exclusive homestead use of the land outside the homestead boundaries. This land can be accessed by anyone, however “anyone” only applies to homesteads under the same ward or sub-ward (*Isigodi*), and these usually fall under one *induna*. Therefore, there is some hostility towards people from other wards, as Nxasana (*Interview*. 01 March 2012) explains, “people are very protective of their land. They know that if they let people from other wards to come and graze here, the field will be overgrazed and depleted”. This hostility is intensified as one moves away from the area under the jurisdiction of the chief. People under other chiefs do not have the right to use the land under the jurisdiction of Gumbi chieftaincy. Sometimes these confrontations between people from different chiefdoms can even turn violent (Zungu. *Interview*. 03 March 2012).³⁵ Therefore, the processes of inclusion-exclusion applies to homesteads within the ward (included) and those from other wards (excluded).

The overlap in the land user rights is also made clear by the participant scoring of the second statement “my land rights include the right of exclusive use of the natural resources in my allocated land” (firewood, medicines, thatch grass, etc.). The majority of the participants (70%) felt that they had this right. Collected resources as movable property and as a result, possession of them equals ownership.

Fifty three (53%) of participants disagreed with the statement, “I can use my allocated land in any way I want without regard to what others think”, highlighting that the majority believe that other community members should be considered when decisions about household land use are made. In other words, households should not simply do as they wish with their landholdings, but should rather first consider the consequences their decisions may have on other households in the community and on the community itself (Zimukile. *Interview*.13

³⁵ The participant narrated a story of how one confrontation between the Gumbi people and people from another chieftaincy over a boundary turned violent and the police had to be called. He alleged that the chief was also later on involved and a case of assault was opened against him.

March 2012). Individual property rights need to be balanced against the interests of neighbours (Jackson-Smith, Kreuter & Krannich, 2005).

Fifty six percent (56%) of the participants agreed with the statement that “nothing can be done on my allocated land without my consent”, which examined the sense of control. There is some sense that participants are in control of the land allocated to them.

On the statement “I feel that my allocated land really belongs to me”. which tested the sense of ownership, only 47% of the participants agreed with the statement. This confirms the view that under customary law, land is never really owned, but people have rights of use (du Plessis, 2011), hence the limited sense of land ownership demonstrated by participants in the survey and interviews. As participants explained, “the land belongs to the chief” and households only have rights of use (Nxasana. *Interview*. 01 March 2012).

6.3 Land Governance Process Integrity

Land governance processes integrity refers to participants’ rating of the nature of land-related decision-making and implementation of those decisions. This was evaluated in terms of transparency, accountability, and the general lack of corruption.

There is a strong sense that land rights are not managed in a transparent manner. For instance, 55% of the participants disagreed with the statement that land right are managed in a transparent manner in the Gumbi area. When this is viewed with the dimensions of accountability, where 50% of the participants stated that there was lack of accountability, lack of corruption (44% disagreed), fairness (43% disagreed), it becomes clear that the overall land governance process in the Gumbi area is perceived to lack integrity.

When this perception was explored in participants’ interviews it emerged that not only were land rights not clear, but there was also a strong view that certain community members enjoyed underserved preferential rights to land, in particular members of the Gumbi lineage and members of the Mvokweni Community Trust. Still it was not the chieftaincy that was accorded the blame for this, but those “around the chief” (Zulu. *Interview*. 20 March 2012).

6.4 Tenure Rights

6.4.1 Land Access Rights Satisfaction

Land access rights refer to all legitimate means through which an individual household can benefit from the land (Ribot & Peluso, 2003:156). As stated in the methodology chapter, the land access rights dimension was tested through three, attitudinal questions. These questions addressed the issues of whether households know and understand their land access rights, whether the households were ascribed with all these rights, and lastly, whether access rights give households full access to the land. These will be looked at in turn below.

There was a diversity of opinion regarding the statement “my rights to land are clear to me”, with 49% of the respondents agreeing with the statement and 39% disagreeing. The fact that less than 50% of respondents agreed with the statement indicates that land access rights are not very clear. From the qualitative data, three issues were identified as influencing the participants’ assessment of their land access rights. The first issue that was identified concerned the perceived discriminatory practices of the two land access corporate bodies that exist in the Gumbi area (Mvokweni Community Trust and Gumbi lineage). For instance, Zulu (*Interview*. 20 March 2012), who is not a member of the Trust, argued that it is only members of the Mvokweni Community Trust that have full land rights. On the other hand, Mahlakazane (*Interview*. 10 March 2012) who is a trustee and not a Gumbi lineage member, argued that it is the members of the lineage that enjoy full land rights at the expense of everybody else. Therefore, the existence of these bodies seems to lead to some confusion as to what the rights are of the ‘subjects’ of the Gumbi chieftaincy.

The second issue that emerged was the issue of beneficiation from the land. There is very little direct livelihood benefits that the majority of the participants derive from the land. There is very little farming activity due to the nature of the land and the fact that residents lack the means to engage in productive farming. Rights are linked to the capacity to exercise those rights and this capacity is generally linked to socio-economic status. Therefore, participants derive limited benefits from the land. Some of these rights, such as rights to land, remain abstract and distanced from everyday livelihood.

The third issue was the issue of restorative justice with individual compensation as part of the process. As will be shown in this discussion, this issue is also closely linked to the issue of beneficiation. Though much of the land that was expropriated by the previous regimes has

been restored, participants still expect more in terms of compensation. Nxasana (*Interview*, 01 March 2012) complained bitterly about the number of cattle that he lost during the removals. He also stated that he does not have full rights because “there are no land rights, how can we have rights when our cattle that were taken by the Boers have not been returned, nor have we been compensated for them”. Attached to this view is the opinion that without this restoration of lost cattle, or at least some significant financial compensation, participants are unable to utilise the land as they used to in past. Cattle are still a priced possession among the rural people of KwaZulu-Natal. Much of the tilling is also done using cattle (Laband, 2005).

Fifty percent (53%) of the participants agreed with the statement, “I feel that I have full rights to the land here in the Gumbi area”. Moreover, 62% of respondents agreed with the statement “my rights to land give me full access to use the land here in the Gumbi area”. This indicates that although the land access rights might not be very clear and are not understood by a significant number of respondents, households enjoy full access to the land and are generally satisfied with this type of access.

6.4.2 Land Tenure Rights Security

In this thesis, land tenure security is concerned with the sense of security amongst the households, that is, that residents feel that their rights to occupy and use the land are protected. Accordingly, this thesis eschews techno-centric definitions that exist in documents and government statutes in favour of the participants’ feelings about their land tenure. These techno-centric definitions always look at the state-centric formalisation of tenure security through the registrations of landholdings and the issuing of land ownership title deeds (Cousins, 2005). Although useful in certain contexts, these definitions fail to account for the actual land ownership conditions that exist, sometimes in contradiction to what has been formalised by the state. This is because, as Borrás and Franco (2010) argue, tenure rights are embedded within the prevailing social relations between people, and they gain expression through people’s interactions. Therefore, in this context, the security of land tenure is dependent upon the local social relations. In this thesis, the analysis of land tenure security focussed on the existing social relations rather than on formal tenure security strategies. This was tested with four statements that looked at how the participants view 67% of the participants agreed with the statement “my rights to land are fully recognised by others” while 26% disagreed. A Mann-Whitney *U* test and bar chart demonstrated that both members

of the Mvokweni Community Trust and the Gumbi lineage were more likely to agree with this statement. It also emerged from the interviews that members of these institutions do indeed feel that their rights are secure. Members of the Mvokweni Community Trust cited that the main reason why they consider their rights to be secure is that they are on the list of the beneficiaries of the Trust (Zimukile. *Interview*. 13 March 2012). Members of the lineage argued that the land belongs to the Gumbis, and therefore their rights to land are secure, since they are Gumbis (Mthembu. *Interview*. 20 March 2012). Such statements confirm the role of these corporate bodies as collective land rights bearing institutions. Therefore, the allegations that these institutions engage in discriminatory practices in favour of their members might be true, given that those participants who are members of these institutions have a stronger sense that their land rights are recognised by the community than non-members who are less certain.

Participants felt strongly about the statements “no one can remove me from this land” and “I cannot be excluded from using the land” with 71% and 72 % in agreement respectively. There was less agreement with the pointed statement “I feel that my rights to land are fully secure” with only 59% agreeing. Members of the Gumbi lineage were more likely to express overall satisfaction with the security of their land tenure rights (see Appendix 5 for Mann Whitney *U* test), because, as one participant explained, as members of the lineage there is some sense that the land belongs to “us” (Nxasana. *Interview*. 01 March 2012).

The overall implication of this is that there is some security of tenure among the participants in the Gumbi area. This confirms the view that among the poor, security of tenure is embedded in social relations and does not necessarily depend on formal tenure process (Cousins, 2005).

6.4.3 Land Use Management Satisfaction

Land use management refers to the zoning of the land for various land use purposes such as residential and livestock grazing. Traditionally, this is not seen as important, and very few chieftaincies engage in this practice. Nevertheless, it was decided to evaluate this dimension since it constitutes an important component of land governance (Palmer et al., 2009) and the Mvokweni Community Trust had identified it as one of its key performance areas (Mvokweni Community Trust, 2005).

With regard to the statement “the demarcated land use zones are clear to me”, 49% of the participants disagreed and only 42% agreed with it. On the statement “I am satisfied with the manner in which land use is managed”, 45% of the participants agreed and 49% disagreed. This data indicates that participants were generally unaware of how the land is demarcated and were not happy with how land use is managed. Trustees complained bitterly that land use has not been rationalised as was initially planned by the Trust, and that how land is allocated is often left to the *induna* (Zimukile. *Interview*. 13 March 2012). As Mahlakazana (*Interview*. 10 March 2012) argued, “There is no land use planning to speak of, unlike in some other traditional authority areas where homesteads have been separated from grazing land and crop farms”.

From the survey data and interviews it emerged that the main reason why participants were not happy with the management of land use has to do with the community conservation area. Zulu (*Interview*. 20 March 2012) stated that “You have this game reserve. We do not have a place to farm”. Therefore, there is a perception that this form of land use is a waste of the land, which could be put to better use through farming.

6.4.4 Dispute Resolution Satisfaction

Dispute resolution refers to the resolution of conflicts that arise as a result of land access and land use. Chapter 4 has established that dispute resolution is one of the key functions, if not the main function, attributed to chieftaincy. However, this is not to argue that there is a dispute resolution mechanism dedicated to land issues, as the local dispute resolution mechanism handles all local disputes, those identified by the *Black Administration Act (1927)*, and those issues which the Act prohibits the chieftaincy from resolving, such as domestic abuse and issues of inheritance (Nxasana. *Interview*. 01 March 2012).

The rating of dispute resolution statements was positive. For instance, 76% of the participants stated that they know where to go to in order to have their disputes resolved, which as it emerged from the survey qualitative data and interviews, is the chieftaincy. Similar to the evaluation of the transparency of the land governance process (see above), 55% of the participants also agreed with the statement that land-related disputes are resolved in a transparent manner. Therefore, the rating of the two statements on transparency was consistent and implies that there is some degree of transparency in land dispute resolution. As discussed in Chapter 2, and confirmed by Induna Nxasana (*Interview*. 01 March 2012), cases

are tried in a public space where all people within the *Induna* ward can attend and voice their opinions during the trial. Although the final decision rests with the *Induna*, people are allowed to debate material that arises at the trial and to cross-examine the aggrieved party, the perpetrator, and even witnesses. Therefore, in a sense, this is a true trial by one's peers. These trials are held along the same lines of community meetings of the ward. Thus, community members are aware of the methods and processes of these trials and how decisions are reached, decisions in which they usually participate. As Bekker (1989) notes, this informality makes the customary courts "user-friendly" and public participation ensures that the process is welcomed, because community members are actively involved in decision making. This is also the reason why the statement "land-related disputes are resolved without prejudice (favouritism)" also scored positively at 53%. It is usually difficult to exercise favouritism in the full glare of the public. Another important contributing factor may be that although in other areas of land governance there is some perception that those of the Gumbi lineage and members of the Trust receive preferential treatment, this is mediated in dispute resolution by the fact that the *indunas*, who try most of these cases are by and large, not members of the lineage (and only three were members of the Trust). The chief, who perhaps might be suspected of prejudice due to his association with the lineage, serves only as appellate when the ward *induna* fails to reach a decision.

Participants also felt that land-related disputes are resolved speedily (54%) and cost effectively (54%). Therefore, there is a sense that land-related disputes are resolved in an expedient manner. Any person in the ward can simply meet with his/her local *induna* to report a case, and on the appointed day the case will be tried. No charges are laid on the aggrieved party. If found guilty, the perpetrator is usually expected to pay some form of compensation (*inhlawulo*), usually in form of livestock (goats or cattle), which, depending on the case, can be divided between the aggrieved party, the local *induna*, and even the chief (Nxasana. *Interview*. 01 March 2012). Overall, 57% of the participants stated that they were satisfied with the dispute resolution mechanism in the area. This confirms the view that customary forms of justice are accessible and affordable (Nhlapho, 2005; South African Law Commission, 1998; Bekker, 1989), that people do not have to travel long distances and do not have to pay exorbitant fees to get justice.

The main issue of this dispute resolution system is the fact that the participation by women is restricted. With the exception of the female *induna* who also tries these cases, women only attend when the case to be discussed concerns them or their family members. Even then their

contributions are limited to answering questions and speaking only when addressed directly (Zulu. *Interview*. 20 March 2012).

6.4.5 Institutional Landscape

Institutional landscape refers to institutional arrangements of land governance and the effect that this has on the outcomes of land governance in the Gumbi areas, as perceived by participants (Ostrom, 1990). This was examined using three dimensions, namely institutional role, land laws (land access and use regulations), decision-making participation, and a statement measuring overall satisfaction with the land governance institutional arrangements. 51% of the participants stated that the roles of the different institutions involved in land governance in the area were not very clear. However, when it came to participants' rating the clarity of the land laws, 50% gave it a positive score and stated that the land laws were clear. Regarding the dimension of participation in land governance, 51% of the participants stated that they feel they have a say in how the Gumbi land is governed. 61% were not satisfied with the land governance arrangements in the area. As one participant said, "It's all confusing at times. They must just leave the chief alone" (Zulu. *Interview*. 20 March 2012). Most confusion seems to concern the role of the Trust, as presented in Chapter 4. Therefore, the presence of multiple institutions has some negative outcomes when the different roles of these institutions are not clearly elucidated.

6.5 Conclusions

This chapter has presented the results and an analysis of the Gumbi households' satisfaction levels with the outcomes of land governance in the Gumbi area. The chapter established that land rights in the Gumbi area are still understood in the traditional fashion as granting people user-rights and control rather than outright ownership. This form of ownership protects local people from powerful elites who cannot simply come and purchase the land as they please, but have to go through the accepted community customs to gain access to the land. This in a sense protects the local poor people from being pushed out of their land by rich non-locals and government officials, who often do so in the guise of bringing much needed development to the area (Borras & Franco, 2012; Hall, 2011).

The land governance process was shown to lack some integrity as people perceive it to be unaccountable and biased towards those who belong to the corporate bodies, namely the

Gumbi lineage and the Trust. Yet, there is some notion that people have full rights to use the land as per customary law prescripts. The security of tenure also received positive scores, confirming the notion that security of tenure is socially embedded. The operation of the dispute resolution mechanism also received positive scores. This is because these courts are embedded in a value system based on reconciliation rather than retribution, one that emphasises processes above rules and in this way promotes social healing above punishment (Nhlapho, 2005). Dispute resolution is the main avenue through which day-to-day control is exercised once an individual has been given land. As Barzel (2002) states, dispute resolution can also be a mechanism of clarifying tenure rights. However, participants were not happy with the current institutional landscape, which they felt was confusing.

-Chapter 7: Conclusion and Recommendations-

The dominant theme of this dissertation has been the tensions caused by the differences between the customary forms of governance as practiced by chiefs and Western forms of rule as practiced by the post-Apartheid state. These tensions are a result of the conflicting land governance roles of these institutions and their contestations for power and authority. These tensions were examined from the perspective of the household heads, who, as representatives of the households, are the main intended beneficiaries of land governance processes. The perspectives of officials within the customary and post-Apartheid state institutions were also included to obtain an in-depth and balanced understanding of these institutional tensions. The thesis had four main objectives: which will be revisited in light of the findings:

Objectives 1 and 2:

To identify the institutions that are considered by households as playing key roles in land governance and to examine how these roles give rise to tensions, and

To analyse the levels of land governance authority held by the various institutions and examine how this authority is contested.

This thesis has identified the key institutions that play some role in land governance in the Gumbi area and that also hold some authority. These institutions are, in the order of the importance of their role and level of authority, the Gumbi chieftaincy, the Gumbi community, the households, the state, the Gumbi lineage, and the Mvokweni Community Trust. These institutions of governance identify the people who can and cannot benefit from the resources, and through these processes of resource access, via definitions of inclusion-exclusion, define themselves and lay the foundations for the generation of their power and authority. However, the centrality of the Gumbi chieftaincy in land governance was made apparent in the survey and interview data. Participants associated the Gumbi chieftaincy's role and authority in land governance with its perceived land ownership status. The chieftaincy is the de facto ultimate proprietor and controller of the land and community assets, and is seen as the embodiment of community ethos. Participants consider the chief as the head of the community and as its protector.

The Mvokweni Community Trust, which is the de jure land owner, was not recognised as such by many of the participants. Similarly, the post-Apartheid state was not expected by participants to involve itself in the day-to-day administration of the land, but to limit its role to bringing the much needed socio-economic development to the community.

Objective 3:

To examine the relationships among these institutions as they compete and/or cooperate to produce authority and broadcast their power.

This thesis analysed the relationship between the institutions involved in land governance in the Gumbi area. Of particular interest was the relationship between the Gumbi chieftaincy as the central player in land governance, and the other institutions such as the post-Apartheid state, the Trust, the household, and the Gumbi lineage.

The relationship between the post-Apartheid state and the Gumbi chieftaincy was shown to be ambiguous and informed not only by local issues and events, but also by wider national and global politics of resource access and control. It is part of the wider politics of identity and the growing assertion of cultural (group) rights that are attempts at claiming “resource sovereignty” by indigenous groups and minorities (Kohn & McBride, 2011; Hofbauer, 2009; Engerman & Metzger, 2003; Shriv, 1997). Thus, the chieftaincy is seen as an embodiment of the Gumbi people’s customary land rights ‘sovereignty’. That is, it claims to hold final authority to control the Gumbi land by tradition and customary right.

However, since custom/tradition is never universal, to be traditionalists often entails parochial, centrifugal tendencies. In a multi-ethnic society this entails the promotion of a unique identity separate from that forged by the post-colonial state (Cameroff & Cameroff, 2005), a phenomenon often labelled as tribalism (Mafeje, 1971). Thus traditionalists cannot really coexist peacefully with a unitary state. Thus, the post-Apartheid state’s “Unity in Diversity” mantra becomes somewhat problematic. It is in fact rendered an oxymoronic proposition. However, as Mafeje (1971:261) argues, this “ideologising about 'tribes' and 'tribalism'” is an anachronistic misnomer. This phenomenon should instead be classified as regional particularism, facilitated by the presence of the different cultural groups within society. In line with Mafeje’s view, customary land governance should also be categorised as a drive towards regional particularism, a species of localisation born of centrifugal tendencies (Bennet, 2004).

The relationship between the Mvokweni Community Trust and the chieftaincy is also characterised by these ambiguities. It shown in Chapter 5 of this thesis that the attempts by the post-Apartheid state to introduce a communal-democratic landholding institution (Mvokweni Community Trust) does not seem to be working adequately in the Gumbi context. The introduction of this institution has led to divisions between people that result in the creation of a class of rights-bearers, and are thus viewed as conferring privileges to members of privileged social groups at the expense of those who do not belong to the same groups. The fact the Trust represents only a small section of the community was major cause for concern among the participants. For example, there is deep resentment towards the involvement of Trust members who do not reside in the Gumbi area, in the decision-making and beneficiation arrangements. These people are not viewed as belonging to the community. In this instance, community belonging seems to follow traditional lines of those who, primarily, reside in the Gumbi area, and secondly owe allegiance to the Gumbi chief. Despite its democratic character, the Trust lacks popular legitimacy.

The statutory role of the Mvokweni Community Trust as a landholder was found to be the main cause of the confrontation between the chieftaincy and the Trust. This is not helped by the fact that legal ownership of the Gumbi land presents a messy picture. There is ambiguity that results from the fact that the state's ownership laws are not enforced. State laws are meant to clarify the ownership of property, and in this case they have not succeeded. People have been left to determine complicated legal issues on their own. It is possible that customary institutions are the only institutions capable of dealing with these ambiguities.

Objective 4:

To examine the levels of satisfaction among households regarding land governance outcomes including tenure rights that are constituted through these tensions.

The findings indicated that the participants were generally dissatisfied with the outcomes of the land governance regime in the Gumbi area. This was particularly so in the assessment of the land governance process integrity, access rights, and land use management. The institutional landscape was found to be confusing, particularly in relation to the roles of the Trust and the chieftaincy. Nonetheless, participants indicated that they were satisfied with the operation of the dispute resolution mechanisms, which, they argued, was highly accessible. They also indicated satisfaction with their security of tenure.

Two significant points are demonstrated by this case study. Firstly, the popular narratives that characterise the institutions of traditional leadership as mere creatures of colonialism and Apartheid are too simplistic and mask the complex relationship between chief and the central authorities. Whilst there is no disputing that colonialism and the Apartheid regime had an effect on the contemporary design and character of customary institutions, the level and the extent of that impact are in dispute. The argument that attributes the colonial and Apartheid regimes with hegemonic, almost omnipotent, powers to influence and shape events and institutions of indigenous Africans is problematic. As demonstrated in this thesis, the legitimacy that customary institutions continue to enjoy, questions this argument. Long held values and institutions cannot be destroyed overnight (Gyeke, 1997). For instance, the power of the Gumbi chief rests more on community expectations than on legislative frameworks. Although chiefs may covet the recognition by statutory edicts of their powers and responsibilities (Williams, 2010), it is not only through this formal recognition that the institutions of chieftaincy is imbued with authority. Much of its authority rests on the expectations of the community members as shaped by the specificities of local history that carry memories of pre-colonial pride and land struggles.

Therefore, a better perspective would be to see the chieftaincy institution as co-evolving with the regimes imposed on it. It had to go through some changes to resist and adapt to the new regimes and to find relevance. Similarly, the various regimes' policies also had to adapt to the realities of customary institutions; they had to ensure that policies did not seem to be fundamentally changing the nature of these institutions, but are viewed as attempts to introduce necessary reforms to the benefit of both chiefs and their subjects.

Secondly, a popular and seductive picture is often painted of traditional leaders as local despots, reminiscent of the lords of feudal Europe (Ntsebenza, 2005). This picture, while perhaps partly true, masks the complex, and often ambiguous, nature of the relationships between subjects and chief. As this thesis shows, the Gumbi chieftaincy enjoys popular legitimacy. It is an institution that is seen as rooted in pre-colonial times. In contrast to the state institutions, which are perceived as alien and distant, the chieftaincy is seen as authentic and present. This reveals the disjuncture between indigenous customary forms of governance and the imported Western political institutions. Importantly, this thesis reveals the participants' sense of bewilderment with the post-Apartheid state and its politics. It is there, but it is not part of the people, and it is understood to have no business governing the use of land. Rather, the role of the post-Apartheid state is to bring about much needed development.

The relationship between the Gumbi chieftaincy and the post-Apartheid state can be viewed as a continuation of the relationships that chiefdoms in this region have always had with central authorities, beginning with the consolidation of chiefdoms into paramount chiefdoms and kingdoms in the 18th century (Laband 1995; Guy, 1994). However, the advantage that these pre-colonial centripetal institutions had was that they appropriated the prevalent forms of social organisations that had the household head (*umnumzane*) at the pinnacle. They were seen as the extension of the domestic household. The main problem with post-Apartheid political institutions is that they are not grounded in this African experience; they lack African identity and memory. The placing of African bureaucrats to head these institutions has not been enough to transform them adequately to take the African experience into account (Englebert, 2000; Herbst, 2000). As Gyeke (1997) argues, African elites falsely believed that these institutions, because they are Western, were necessarily modern, hence their wholesale adoption, and the disdain often shown towards traditional African institutions (Ayittey, 2005). The alien nature of the post-Apartheid state, with its inherent ambiguities and contradictions, presents the paradox of possessing the state without actually owning it. That is, it does not fully satisfy the legitimate aspirations of the African people's sovereignty over land and related resources (Borras & Franco, 2012).

A pertinent and critical question that should perhaps be asked is, who owns post-Apartheid South Africa? This question is closely tied to the issues of natural resource access and control. It is a question about land sovereignty, that is, the effective control and beneficiation from the land (Borras & Franco, 2012; Hall, 2011). It is the view of this thesis that one of the developmental challenges facing South Africa results from, among other things, these disjunctures between customary and imported western political institutions. There is no sense of ownership of these institutions and consequently, no sense of a responsibility to the post-Apartheid state and its operation. As a consequence, what is lacking is a sense of control over the fate and destiny of the post-colonial society.

In this context, a question could be asked, whether land governance in the former Bantustans? It is a difficult question to answer. The strength of the customary institutions is formidable, whilst the weaknesses of the state are glaring. Whereas customary institutions are grounded in the African experience, and are accessible to a large section of the rural poor, the post-Apartheid state is none of these things. Yet the regional particularism of the customary institutions does not bode well for the state formation and nation-building initiatives of the mostly Euro-nationalist governing ANC (Oomen, 1999; Comaroff, 1996). It may be that the

current system of institutional co-evolution between customary institution and the state is the only best way forward.

Recommendations for Future Research

This study has demonstrated that although customary institutions have significant support from Gumbi community members, there is still limited participation by women. Further research is therefore necessary to explore the potential for traditional institutions to be further democratised to enable more participation by the rural women in land governance. Further research is also required to test the reliability of the tenure rights satisfaction scale. Statistical tools such as Cronbach's alpha (Cronbach, 1951) could not be used in this thesis to test the reliability of the scale because of the non-parametric nature of the data. Therefore the scale needs to be tested using a large enough data set so that its reliability can be verified.

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Appendix 1: Land Governance Survey Questionnaire

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Land Governance Perception Questionnaire of Households

This questionnaire is designed to obtain feedback from you on your perceptions regarding your experiences of land governance. The results from this survey will be used to get an in-depth understanding of your experiences of land rights in the context of the land reform process. Taking part in this survey is completely voluntary and anonymous. The questionnaire should take no more than 40 minutes of your time. Your co-operation is appreciated.

The questionnaire consists of five sections.

When evaluating the questions, please answer the question from your own perspective.

Place an X in the appropriate box where applicable or complete where required.

Thank you for taking the time to complete this survey.

Should you have any questions, please feel free to contact:

Sibongiseni Hlabisa: [REDACTED]

Screening question

Do you currently reside within the Gumbi Traditional Authority area?

Yes	
No	

If your answer is 'Yes', please continue with other sections. If your answer is 'No', you do not have to complete the rest of the questionnaire.

SECTION A – DEMOGRAPHICS

Indicate your answer by placing of a cross (X) in the appropriate block or complete where required

1. What is your gender?

Male	
Female	

1. In what year were you born?

--

2. What is your highest level of education?

No education	
Some Primary	
Primary Completed	
Some High	
Matric	
Tech diploma/degree	
University degree	
Other	
Unspecified	

3. What is your total household income per annum?

None	
Less than R20,000	
R20,000 to R49,999	
R50,000 to R79,999	

R70,000 to R99,999	
R100,000 to R129,999	
R130,000 to R159,999	
R160,000 to R189,999	
Above R190,000	
Other	

4. What is the main source of income in your household?

None	
Formal employment	
Informal employment	
Self employed	
Government grant	
Business owner	
Other	

5. How many people live with you?

--

6. Were you born in this area?

Yes	
No	

7. How many years have you lived in this area?

--

8. Are you a member of the Mvokweni Community trust?

Yes	
No	

9. Are you member of the Gumbi lineage?

Yes	
No	

SECTION B - LAND ACCESS / USE

On a scale of 1 to 5 where 1 is 'unimportant' and 5 is 'critical', indicate the extent to which you value each of the following statements and where 1 is 'strongly disagree' and 5 is 'strongly agree' indicate your level of agreement with each statement.

10. I use the land in the Gumbi Area for:

Land use Type	Unimportant	Slightly important	Important	Very important	Critical
	1	2	3	4	5
Residential Use					
Cropping (growing of crops)					
Grazing					
Collection of natural resources (firewood, medicines etc)					
Other (please specify):					

11. The following people have full rights to use land in the Gumbi area:

Group Category	Strongly disagree	Disagree	Neutral	Agree	Strongly agree
	1	2	3	4	5
All members of the community					
All members of the Mvokweni Trust who live in the area					
All members of the Mvokweni Trust including those who do not live here					
Anyone who is interested in using the land					
Anyone who has been permitted by the Chieftaincy					
Anyone who has been permitted by the Mvokweni Community Trust					
Other (please specify):					
Please state your reasons:					

SECTION C – PROPERTY / LAND OWNERSHIP

12. All the land under the Gumbi area belongs to:

Land Owner	Strongly disagree	Disagree	Neutral	Agree	Strongly agree
	1	2	3	4	5
The Government					
The Chieftaincy					
The Community					
The Mvokweni Community Trust					
The Individual Households					
Other (Please specify):					
Please state your reasons:					

13. These portions of land belong to:

Land Owner	Land Use Type				
	Residential (The land where the house is built)	Cropping (The land where you plant your crops)	Grazing (The land where your livestock graze)	Natural resources (The land where you collect firewood, medicinal plants etc)	Community Conservation Area (Somkhanda Game Reserve)
The Government					
The Chief					
The Community					
The Mvokweni Community Trust					
The Individual Households					
Please state your reasons					

SECTION D: Institutional Authority

14 These following institution(s) has(ve) the authority to decide on the use of the following portion of land:

R

Residential:					
Institution	Strongly disagree	Disagree	Neutral	Agree	Strongly agree
	1	2	3	4	5
The Government					
The Chieftaincy					
The Community					
The Mvokweni Community Trust					
The Individual Households					
Other (Please specify):					
Please state your reasons:					

Cropping:					
Institution	Strongly disagree	Disagree	Neutral	Agree	Strongly agree
	1	2	3	4	5
The Government					
The Chieftaincy					
The Community					
The Mvokweni Community Trust					
The Individual Households					
Other (Please specify):					
Please state your reasons:					

Livestock grazing:					
Institution	Strongly disagree	Disagree	Neutral	Agree	Strongly agree
	1	2	3	4	5
The Government					
The Chieftaincy					
The Community					
The Mvokweni Community Trust					
The Individual Households					
Other (Please specify):					
Please state your reasons:					

Natural Resource Collection:					
Institution	Strongly disagree	Disagree	Neutral	Agree	Strongly agree
	1	2	3	4	5
The Government					
The Chieftaincy					
The Community					
The Mvokweni Community Trust					
The Individual Households					
Other (Please specify):					
Please state your reasons:					

Community Conservation Area (Somkhanda Game Reserve):					
Institution	Strongly disagree	Disagree	Neutral	Agree	Strongly agree
	1	2	3	4	5
The Government					
The Chieftaincy					
The Community					
The Mvokweni Community Trust					
The Individual Households					
Other (Please specify):					
Please state your reasons:					

15. The following institutions play a role in the management of the land here:

Institution	Unimportant	Slightly important	Important	Very important	Critical
	1	2	3	4	5
The Government					
The Chief					
The Community					
The Mvokweni Community Trust					
The Individual Households					
Other (Please specify):					
Please state your reasons:					

16. Decisions about how the land is allocated and are made by:

Institution	Strongly disagree	Disagree	Neutral	Agree	Strongly agree
	1	2	3	4	5
The Government					
The Chieftaincy					
The Community					
The Mvokweni Community Trust					
The Individual Household					
Other (Please specify):					
Please explain your reasons:					

17. The following institution has the authority to resolve land-related disputes:

Institution	Strongly disagree	Disagree	Neutral	Agree	Strongly agree
	1	2	3	4	5
The Government					
The Chieftaincy					
The Community					
The Mvokweni Community Trust					
The Individual Households					
Other (Please specify):					
Please explain your reasons:					

SECTION E – LAND GOVERNANCE OUTCOMES

E1: land Rights Orientation and Governance Process Integrity

Statement	Strongly disagree	Disagree	Neutral	Agree	Strongly agree
	1	2	3	4	5
Land Rights Orientation					
My land rights include the right of exclusive use of the land that is allocated to me.					
My land rights include the right of exclusive use of the natural resources from my allocated land.					
I can use my allocated land in any way I want without regard to what others think					
I feel that my allocated land really belongs to me					

Statement	Strongly disagree	Disagree	Neutral	Agree	Strongly agree
	1	2	3	4	5
Land Governance Process Integrity					
I think that in this area land rights are managed in a transparent manner.					
I think that land rights are managed in a accountable manner.					
As far as I know there is no corruption involved in land governance in this area					
In this area, land is governed in a fair manner					

E2: Tenure Rights

	Statement	Strongly disagree	Disagree	Neutral	Agree	Strongly agree
		1	2	3	4	5
Land Access Rights						
1.	My land rights are clear to me					
2	I feel that I have full rights on the land here					
3	My rights to land give me full access to use the land					

Comments:						
Tenure Security						
4	My rights to land are fully recognised by others					
5	No one can remove me from this land					
6	I feel that my rights to land are fully secure.					
Comments:						
Dispute Resolution						
7	I know exactly who I have to go to in order to resolve a land-related dispute					
8	Land related disputes are resolved in a transparent manner					
9	Land related disputes are resolved without prejudice (favouritism)					
10	Land related disputes are resolved speedily					
11	Land related disputes are					

	resolved cost effectively					
12	Overall I am satisfied with the dispute resolution mechanisms that are in place here.					
Comments:						
Land Use Management Satisfaction						
13	The demarcated land use zones are clear to me					
14	I am satisfied with the manner in which land use is managed					
Comments:						
Satisfaction with Land Governance Institutions						
15	The roles of the different institutions involved in land governance in this area are clear to me.					
16	Laws and regulations regulating land access and land use are clear to me					
	I feel that I have a say in the manner in which the land is					

	governed in this area					
Comments:						

Thank you for taking the time to complete this survey!

Appendix 2: Ethics Approval



MONASH University

Monash University Human Research Ethics Committee (MUHREC)
Research Office

Human Ethics Certificate of Approval

Date: 13 December 2011

Project Number: CF11/3233 - 2011001760

Project Title: Customary land governance in post-Apartheid South Africa –
Gumbi
case study

Chief Investigator: Dr Michelle Duffy

Approved: From: 13 December 2011 to 13 December 2016

Terms of approval

1. The Chief investigator is responsible for ensuring that permission letters are obtained, if relevant, and a copy forwarded to MUHREC before any data collection can occur at the specified organisation. **Failure to provide permission letters to MUHREC before data collection commences is in breach of the National Statement on Ethical Conduct in Human Research and the Australian Code for the Responsible Conduct of Research.**
2. Approval is only valid whilst you hold a position at Monash University.
3. It is the responsibility of the Chief Investigator to ensure that all investigators are aware of the terms of approval and to ensure the project is conducted as approved by MUHREC.
4. You should notify MUHREC immediately of any serious or unexpected adverse effects on participants or unforeseen events affecting the ethical acceptability of the project.
5. The Explanatory Statement must be on Monash University letterhead and the Monash University complaints clause must contain your project number.
6. **Amendments to the approved project (including changes in personnel):** Requires the submission of a Request for Amendment form to MUHREC and must not begin without written approval from MUHREC. Substantial variations may require a new application.
7. **Future correspondence:** Please quote the project number and project title above in any further correspondence.
8. **Annual reports:** Continued approval of this project is dependent on the submission of an Annual Report. This is determined by the date of your letter of approval.
9. **Final report:** A Final Report should be provided at the conclusion of the project. MUHREC should be notified if the project is discontinued before the expected date of completion.
10. **Monitoring:** Projects may be subject to an audit or any other form of monitoring by MUHREC at any time.

11. **Retention and storage of data:** The Chief Investigator is responsible for the storage and retention of original data pertaining to a project for a minimum period of five years.



Professor Ben Canny
Chair, MUHREC

cc: Mr Sibongiseni Hlabisa

Postal – Monash University, Vic 3800, Australia
Building 3E, Room 111, Clayton Campus, Wellington Road, Clayton

 - www.monash.edu/research/ethics/human/
ABN 12 377 614 012 CRICOS Provider #00008C/01857J

Appendix 3: Consent Form

Consent Form – *Gumbi Traditional Authority Interview Group*

Title: ***Customary Land Governance in Post-Apartheid South Africa: Gumbi Case Study***

NOTE: This consent form will remain with the Monash University researcher for their records

I agree to take part in the Monash University research project specified above. I have had the project explained to me, and I have read the Explanatory Statement, which I keep for my records. I understand that agreeing to take part means that:

I agree to be interviewed by the researcher Yes
No

I agree to allow the interview to be audio-taped and/or video-taped Yes
No

I agree to make myself available for a further interview if required Yes
No

I understand that my participation is voluntary, that I can choose not to participate in part or all of the project, and that I can withdraw at any stage of the project without being penalised or disadvantaged in any way.

I understand that any data that the researcher extracts from the interview for use in reports or published findings will not, under any circumstances, contain names or identifying characteristics.

I understand that any information I provide is confidential, and that no information that could lead to the identification of any individual will be disclosed in any reports on the project, or to any other party.

I understand that data from the interview will be kept in a secure storage and accessible to the research team. I also understand that the data will be destroyed after a 5 year period unless I consent to it being used in future research.

Participant's name

Signature

Date

Appendix 4: Survey Responses

Land Use Valuation

Statement	Percentage of respondents					
(responses given on a 5 point scale)	Unimportant	Slightly Important	Important	Very Important	Extremely Important	Total
I use the land in Gumbi area for residential purposes	0	3%	8%	18%	71%	100%
I use the land in Gumbi area for cropping purposes	2%	4%	18%	38%	38%	100%
I use the land in Gumbi area for livestock grazing purposes	7%	10%	20%	24%	39%	100%
I use the land in Gumbi area to collect natural resources	13%	25%	28%	15%	15%	100%

Land Use Access Rights

Statement	Percentage of respondents					
(responses given on a 5 point scale)	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	Total
All members of the community who already live in the area have full rights to use the land	15%	0	8%	33%	44%	100%
All members of the Mvokweni Trust who live in the area have full rights to use the land	15%	12%	16%	34%	23%	100%
All members of the Mvokweni Trust including those who do not reside in the area have full rights to use the land	31%	20%	31%	13%	5%	100%
Anyone who has been permitted by the Chief has full rights to use the land	12%	7%	23%	25%	33%	100%
Anyone who has been permitted by the Mvokweni Trust has full rights to use the land	48%	12%	30%	10%	0	100%

Land Rights Orientation

Statement (responses given on a 5 point scale)	Percentage of respondents					Total
	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	
My land rights include the right to exclude others from access to the land that is allocated to me	25%	25%	9%	23%	18%	100%
My land rights include the right of exclusive use of the natural resources in my allocated land	16%	5%	9%	44%	26%	100%
I can use my allocated land in any way I want without regard to what others think	38%	15%	4%	25%	18%	100%
Nothing can be done on my allocated land without my consent	30%	11%	3%	25%	31%	100%
I feel that my allocated land really belongs to me	28%	16%	9%	26%	21%	100%

Land Governance Process Integrity

Statement (responses given on a 5 point scale)	Percentage of respondents					Total
	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	
Land rights are managed in a transparent manner in this area	30%	25%	9%	21%	15%	100%
Land rights are managed in an accountable manner in this area	25%	25%	10%	25%	15%	100%
As far as I know there is no corruption involved in the management of land rights in this area.	26%	18%	15%	23%	18%	100%
Land rights are managed in a fair manner in this area	23%	20%	8%	36%	13%	100%

Land Access Rights

Statement	Percentage of respondents					Total
(responses given on a 5 point scale)	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	
My rights to land are clear to me	21%	18%	12%	34%	15%	100%
I feel that I have full rights to the land here in the Gumbi area	23%	18%	6%	30%	23%	100%
My rights to land give me full access to use the land here in the Gumbi area'	18%	16%	3%	38%	25%	100%

Land Tenure Security

Statement	Percentage of respondents					Total
(responses given on a 5 point scale)	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	
My rights to land are fully recognised by others	21%	5%	7%	34%	33%	100%
No one can remove me from this land	13%	8%	8%	34%	37%	100%
I cannot be excluded from using the land	15%	3%	10%	38%	34%	100%
I feel that my rights to land are secure	20%	13%	8%	26%	33%	100%

Land Use Management

Statement	Percentage of respondents					Total
(responses given on a 5 point scale)	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	
The demarcated land use zones are clear to me	33%	16%	9%	26%	16%	100%

I am satisfied with the manner in which land use is managed	26%	23%	7%	25%	20%	100%
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Dispute Resolution

Statement (responses given on a 5 point scale)	Percentage of respondents					Total
	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	
I know exactly who I have to go to in order to resolve a land-related dispute	12%	10%	2%	48%	28%	100%
Land related disputes are resolved in a transparent manner	23%	16%	6%	34%	21%	100%
Land related disputes are resolved without prejudice (favouritism)	20%	20%	7%	33%	20%	100%
Land related disputes are resolved speedily	23%	15%	8%	34%	20%	100%
Land related disputes are resolved cost effectively	15%	21%	10%	31%	23%	100%
Overall I am satisfied with the dispute resolution mechanisms that are in place here	20%	12%	11%	39%	18%	100%

Institutional Land Scape

Statement (responses given on a 5 point scale)	Percentage of respondents					Total
	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	
The roles of the different institutions are clear to me	31%	20%	6%	31%	12%	100%
The land-related laws and regulation are clear to me	26%	21%	3%	36%	14%	100%
I feel that I have a say in the manner in which the land is managed here	25%	22%	2%	39%	12%	100%
Overall I am satisfied the land governance arrangements in this area	35%	26%	3%	26%	10%	100%

Appendix 5: Test for Normality of Data

1. Authority, Land Ownership and Demographics

		Decisions about how the land is allocated are made by government departments	Decisions about how the land is allocated are made by the Chief	Decisions about how the land is allocated are made by the community	Decisions about how the land is allocated are made by the mvokweni Community Trust	Decisions about how the land is allocated are made by the Gumbi lineage
N	61	61	61	61	61	61
	0	0	0	0	0	0
Mean		2.9836	3.9016	3.2295	2.8525	1.6066
Std. Error of Mean		.21614	.20738	.21090	.20357	.07851
Median		3.0000	5.0000	4.0000	2.0000	2.0000
Mode		1.00	5.00	5.00	2.00	2.00
Std. Deviation		1.68811	1.61972	1.64715	1.58993	.61315
Variance		2.850	2.623	2.713	2.528	.376
Skewness		.005	-1.077	-.127	.224	.922
Std. Error of Skewness		.306	.306	.306	.306	.306
Kurtosis		-1.762	-.629	-1.743	-1.611	2.188
Std. Error of Kurtosis		.604	.604	.604	.604	.604
Range		4.00	4.00	4.00	4.00	3.00
Minimum		1.00	1.00	1.00	1.00	1.00
Maximum		5.00	5.00	5.00	5.00	4.00
Sum		182.00	238.00	197.00	174.00	98.00

As can be seen from the table 4, Skewness and Kurtosis indicate that the data is not normally distributed. Kolomogorov-Smirnonov was also conducted to further test the distribution of the data and the test for transparency, $D(61) = 0.21$, $p < .001$; accountability, $D(61) = 0.20$, $p < .001$; lack of corruption, $D(61) = 0.18$, $p < .001$ and overall satisfaction, $D(61) = 0.21$, $p < .001$, were all significantly non-normal and therefore the data does not satisfy the assumption of normal distribution.

As a result of the non-normality of the data it was decided to use non-parametric tests for data analysis. Unlike parametric tests, non-parametric tests do not assume that the data is normally distributed and are therefore useful in analysing the data that breaks the parametric assumptions (Field, 2009).

Kolomogorov-Smirnov Test

Kolomogorov-Smirnov test was conducted to test whether the distribution of the data is normal.

Variable	Score
Authority	D (61) = 0.14, p < .05
land ownership per land use category	D (61) = 0.13, p < .001
land use benefits	D (61) = 0.14 p < .05

Kolomogorov-Smirnov test 1

The scores for the above were all significantly non-normal. The data does not satisfy the assumption of normal distribution.

Variable	Score
ultimate land ownership	D (61) = 0.09, p > .05
land access group category	D (61) = 0.10, p > .05
and land use type	D (61) = 0.10, p < .05

Kolomogorov-Smirnov test 2

The scores are significantly normal; therefore the data satisfies the assumption of normal distribution.

Leven's Test

Leven's test was conducted to test the homogeneity of variance of the data.

Factor: Gender

Variable	Score
Authority	F (1.58) = 0.04
ultimate land ownership	F (1.58) = 2.17
Ownership per land use category	F (1.58) = 1.15
land use type	F (1.58) = 0.23
land use benefits	F (1.58) = 3.84
land access group category	F (1.58) = 3.67

Figure 8: Leven's test, Gender.

The variances were equal for male and female household heads. The data satisfies the assumption of homogeneity.

Factor: Age

Variable	Score
Authority	F (2.57) = 1.72

ultimate land ownership	F (2.57) = 0.10
Ownership per land use category	F (2.57) = 1.85
land use type	F (2.57) = 0.12
land use benefits	F (2.57) = 0.85
land access group category	F (2.57) = 7.82

Leven's test, Age.

The variances were equal for all household heads age groups. The data satisfies the assumption of homogeneity.

Factor: Employment Status

Variable	Score
Authority	F (3.55) = 0.78
ultimate land ownership	F (3.55) = 0.94
Ownership per land use category	F (3.55) = 0.87
land use type	F (3.55) = 0.91
land use benefits	F (3.55) = 0.54
land access group category	F (3.55) = 0.39

Leven's test, Employment Status.

The variances were equal for all household heads age groups. The data satisfies the assumption of homogeneity.

Factor: Mvokweni Community Trust Membership

Variable	Score
Authority	F (3.111) = 2.36
ultimate land ownership	F (3.111) = 1.35
Ownership per land use category	F (3.111) = 2.25

Leven's test, Mvokweni Community Trust membership.

The variances were not equal for all household heads who are members and not members of the Mvokweni Community Trust. The data does satisfy the assumption of homogeneity.

Variable	Score
land use type	F (3.111) = 3.31
land use benefits	F (3.111) = 8.68
land access group category	F (3.111) = 2.94

Leven's test, Mvokweni Community Trust membership.

The variances were equal for all household heads who are members and not members of the Mvokweni Community Trust. The data satisfies the assumption of homogeneity.

Factor: Gumbi Lineage Membership

Variable	Score
Authority	F (1.58) = 1.31
Ownership per land use category	F (1.58) = 1.54
land use type	F (1.58) = 1.93
land use benefits	F (1.58) = 2.63
land access group category	F (1.58) = 0.05

Leven's test, Gumbi lineage membership.

The variances were equal for all household heads who are members and not members of the Gumbi lineage. The data satisfies the assumption of homogeneity.

Variable	Score
ultimate land ownership	F (1.58) = 6.11

Leven's test, Gumbi lineage membership.

The variances were not equal for all household heads who are members and not members of the Gumbi lineage. The data does not satisfy the assumption of homogeneity.

Kolmogorov-Smirnov Test

Kolmogorov-Smirnov test was conducted to test whether the distribution of the data is normal.

role in land governance	D (61) = 0.12, p < .05
interaction1: land issues	D (61) = 0.15, p < .05
interaction2: land allocation decisions	D (61) = 0.17, p < .001
interaction3: dispute resolution	D (61) = 0.26, p < .001

Kolmogorov-Smirnov test.

The scores for the above were all significantly non-normal. The data does not satisfy the assumption of normal distribution.

2. Land Governance Satisfaction

	In this area land rights are managed in a transparent manner	In this area land rights are managed in an accountable manner	As far as I know there is no corruption involved in the management of land rights in this area.	Overall I am satisfied with the way land rights are managed.
Mean	2.6721	2.8033	2.8852	2.9672
Std. Error of Mean	.18806	.18380	.19005	.19693
Median	2.0000	3.0000	3.0000	3.0000
Mode	1.00	1.00 ^a	1.00	1.00
Std. Deviation	1.46880	1.43550	1.48434	1.53804
Variance	2.157	2.061	2.203	2.366
Skewness	.302	.148	.045	-.029
Std. Error of Skewness	.306	.306	.306	.306
Kurtosis	-1.381	-1.398	-1.447	-1.549
Std. Error of Kurtosis	.604	.604	.604	.604
Range	4.00	4.00	4.00	4.00

As can be seen from the table 4, Skewness and Kurtosis indicate that the data is not normally distributed. Kolomogorov-Smirnonov was also conducted to further test the distribution of the data and the test for transparency, $D(61) = 0.21$, $p < .001$; accountability, $D(61) = 0.20$, $p < .001$; lack of corruption, $D(61) = 0.18$, $p < .001$ and overall satisfaction, $D(61) = 0.21$, $p < .001$, were all significantly non-normal and therefore the data does not satisfy the assumption of normal distribution.

Leven's test was conducted to test the homogeneity of variance of the data. The variances were equal for male and female household heads, $F(1.59) = 0.00$; age category, $F(2.58) = 0.88$; education level, $F(1.59) = 0.19$; employment status, $F(1.59) = 1.75$; Mvokweni Community Trust membership, $F(1.59) = 0.00$ and Gumbi lineage membership, $F(1.59) = 3.56$. The data satisfies the assumption of homogeneity. The variances were unequal for annual household income, $F(1.58) = 5.88$, $p < 0.05$. The data does not satisfy the assumption of homogeneity.

The Kolomogorov-Smirnov Test for land rights management $D(61) = 0.15$, $p < .001$ was significantly non-normal and therefore the data does not satisfy the assumption of normal distribution. Leven's test indicated that the variances were equal for male and female household heads, $F(1.59) = 1.64$; age categories 1, 2 and 3, $F(2.58) = 0.94$; education level, $F(1.59) = 0.03$; employment status, $F(1.59) = 2.83$ and Mvokweni Community Trust membership, $F(1.59) = 0.56$. The data satisfies the assumption of homogeneity. The variances were

unequal for annual household income, $F(1.58) = 5.37$, $p < 0.05$ and Gumbi lineage membership, $F(1.59) = 5.53$, $p < 0.05$. The data does not satisfy the assumption of homogeneity.

The Kolmogorov-Smirnov Test for land use management $D(61) = 0.15$, $p < .001$ was significantly non-normal and therefore the data does not satisfy the assumption of normal distribution.

Leven's test indicated that the variances were equal for male and female household heads, $F(1.59) = 0.42$; age categories 1, 2 and 3, $F(2.58) = 0.61$; education level, $F(1.59) = 0.03$; employment status, $F(1.59) = 1.39$; annual household income, $F(1.58) = 0.41$; Mvokweni Community Trust membership, $F(1.59) = 0.00$. The data satisfies the assumption of homogeneity. The variances were unequal for Gumbi lineage membership, $F(1.59) = 7.22$, $p < 0.05$. The data does not satisfy the assumption of homogeneity.

The Kolmogorov-Smirnov Test for dispute resolution $D(61) = 0.13$, $p < .001$ was significantly non-normal and therefore the data does not satisfy the assumption of normal distribution.

Leven's test indicated that the variances were equal for male and female household heads, $F(1.59) = 0.16$; age categories 1, 2 and 3, $F(2.58) = 1.32$; education level, $F(1.59) = 2.20$; employment status, $F(1.59) = 0.00$; annual household income, $F(1.58) = 0.36$; Mvokweni Community Trust membership, $F(1.59) = 0.19$ and Gumbi lineage membership, $F(1.59) = 2.68$. The data satisfies the assumption of homogeneity.

The Kolmogorov-Smirnov Test for dispute resolution $D(61) = 0.15$, $p < .001$ was significantly non-normal and therefore the data does not satisfy the assumption of normal distribution. Leven's test indicated that the variances were equal for male and female household heads, $F(1.59) = 0.01$; age categories 1, 2 and 3, $F(2.58) = 0.09$; education level, $F(1.59) = 0.96$; employment status, $F(1.59) = 1.66$; annual household income, $F(1.58) = 3.21$; Mvokweni Community Trust membership, $F(1.59) = 0.14$. The data satisfies the assumption of homogeneity. The variances were unequal for Gumbi lineage membership, $F(1.59) = 6.64$, $p < 0.05$. The data does not satisfy the assumption of homogeneity.

Appendix 6: Statistical Analysis

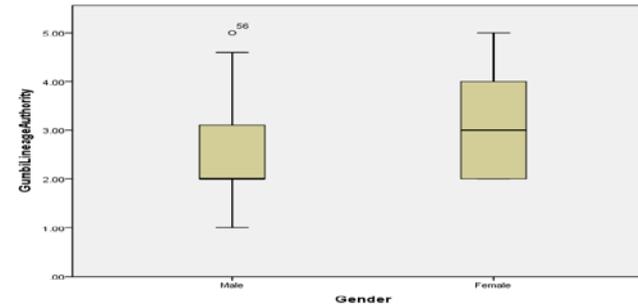
Hypothesis Tests: Mann-Whitney *U* and Kruskal-Wallis Test

1. Gender and Authority

Hypothesis Test Summary

	Null Hypothesis	Test	Sig.	Decision
1	The distribution of HouseholdAuthority is the same across categories of Gender.	Independent-Samples Mann-Whitney U Test	.635	Retain the null hypothesis.
2	The distribution of ChieftaincyAuthoityCombined is the same across categories of Gender.	Independent-Samples Mann-Whitney U Test	.728	Retain the null hypothesis.
3	The distribution of GovernmentAuthoityCombined is the same across categories of Gender.	Independent-Samples Mann-Whitney U Test	.630	Retain the null hypothesis.
4	The distribution of MCTAuthoityCombined is the same across categories of Gender.	Independent-Samples Mann-Whitney U Test	.601	Retain the null hypothesis.
5	The distribution of CommunityAuthoityCombined is the same across categories of Gender.	Independent-Samples Mann-Whitney U Test	.288	Retain the null hypothesis.
6	The distribution of GumbiLineageAuthority is the same across categories of Gender.	Independent-Samples Mann-Whitney U Test	.025	Reject the null hypothesis.

Asymptotic significances are displayed. The significance level is .05.



2. Age and Authority

Hypothesis Test Summary

	Null Hypothesis	Test	Sig.	Decision
1	The distribution of HouseholdAuthority is the same across categories of Age group.	Independent-Samples Kruskal-Wallis Test	.352	Retain the null hypothesis.
2	The distribution of ChieftaincyAuthoityCombined is the same across categories of Age group.	Independent-Samples Kruskal-Wallis Test	.725	Retain the null hypothesis.
3	The distribution of GovernmentAuthoityCombined is the same across categories of Age group.	Independent-Samples Kruskal-Wallis Test	.143	Retain the null hypothesis.
4	The distribution of MCTAuthoityCombined is the same across categories of Age group.	Independent-Samples Kruskal-Wallis Test	.518	Retain the null hypothesis.
5	The distribution of CommunityAuthoityCombined is the same across categories of Age group.	Independent-Samples Kruskal-Wallis Test	.784	Retain the null hypothesis.
6	The distribution of GumbiLineageAuthority is the same across categories of Age group.	Independent-Samples Kruskal-Wallis Test	.785	Retain the null hypothesis.

Asymptotic significances are displayed. The significance level is .05.

3. Education Level and Authority

Hypothesis Test Summary

	Null Hypothesis	Test	Sig.	Decision
1	The distribution of HouseholdAuthority is the same across categories of Employment status.	Independent-Samples Kruskal-Wallis Test	.261	Retain the null hypothesis.
2	The distribution of ChieftaincyAuthorityCombined is the same across categories of Employment status.	Independent-Samples Kruskal-Wallis Test	.542	Retain the null hypothesis.
3	The distribution of GovernmentAuthoityCombined is the same across categories of Employment status.	Independent-Samples Kruskal-Wallis Test	.485	Retain the null hypothesis.
4	The distribution of MCTAuthoityCombined is the same across categories of Employment status.	Independent-Samples Kruskal-Wallis Test	.218	Retain the null hypothesis.
5	The distribution of CommunityAuthoityCombined is the same across categories of Employment status.	Independent-Samples Kruskal-Wallis Test	.684	Retain the null hypothesis.
6	The distribution of GumbiLineageAuthority is the same across categories of Employment status.	Independent-Samples Kruskal-Wallis Test	.018	Reject the null hypothesis.

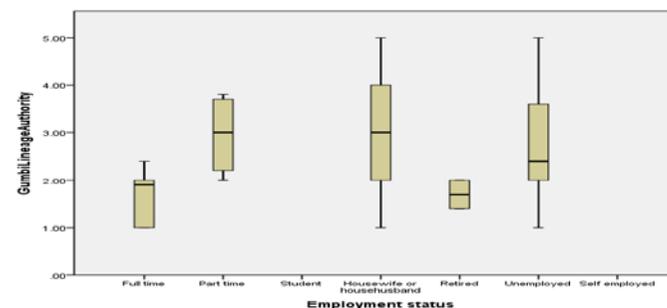
Asymptotic significances are displayed. The significance level is .05.

4. Employment Status and Authority

Hypothesis Test Summary

	Null Hypothesis	Test	Sig.	Decision
1	The distribution of GovernmentAuthoityCombined is the same across categories of Employment status.	Independent-Samples Kruskal-Wallis Test	.485	Retain the null hypothesis.
2	The distribution of ChieftaincyAuthoityCombined is the same across categories of Employment status.	Independent-Samples Kruskal-Wallis Test	.542	Retain the null hypothesis.
3	The distribution of CommunityAuthoityCombined is the same across categories of Employment status.	Independent-Samples Kruskal-Wallis Test	.684	Retain the null hypothesis.
4	The distribution of MCTAuthoityCombined is the same across categories of Employment status.	Independent-Samples Kruskal-Wallis Test	.218	Retain the null hypothesis.
5	The distribution of HouseholdAuthority is the same across categories of Employment status.	Independent-Samples Kruskal-Wallis Test	.261	Retain the null hypothesis.

Asymptotic significances are displayed. The significance level is .05.



5. Total Annual Household income and Authority

Hypothesis Test Summary

	Null Hypothesis	Test	Sig.	Decision
1	The distribution of HouseholdAuthority is the same across categories of Annual household income.	Independent-Samples Kruskal-Wallis Test	.729	Retain the null hypothesis.
2	The distribution of GovernmentAuthorityCombined is the same across categories of Annual household income.	Independent-Samples Kruskal-Wallis Test	.818	Retain the null hypothesis.
3	The distribution of MCTAuthorityCombined is the same across categories of Annual household income.	Independent-Samples Kruskal-Wallis Test	.286	Retain the null hypothesis.
4	The distribution of CommunityAuthoityCombined is the same across categories of Annual household income.	Independent-Samples Kruskal-Wallis Test	.282	Retain the null hypothesis.
5	The distribution of GumbiLineageAuthority is the same across categories of Annual household income.	Independent-Samples Kruskal-Wallis Test	.609	Retain the null hypothesis.

Asymptotic significances are displayed. The significance level is .05.

Spearman’s rho correlation Analysis

Land Ownership and Land Control Authority

There was a strong positive association between household combined land ownership (residential, cropping, stock grazing, natural resource collection and community conservation area) and combined household authority (land allocation, dispute resolution, and land use control) $r_s = 0.44$, $p < 0.001$ with a medium effect size.

There was a strong positive association between chieftaincy combined land ownership (residential, cropping, stock grazing, natural resource collection and community conservation area) and combined chieftaincy authority (land allocation, dispute resolution, and land use control) $r_s = 0.44$, $p < 0.001$ with a medium effect size.

There was a strong positive association between government land ownership (residential, cropping, stock grazing, natural resource collection and community conservation area) and combined

government authority (land allocation, dispute resolution, and land use control) $r_s = 0.59$, $p < 0.001$ with a large effect size.

There was a strong positive association between Trust land ownership (residential, cropping, stock grazing, natural resource collection and community conservation area) and combined government authority (land allocation, dispute resolution, and land use control) $r_s = 0.42$, $p < 0.001$ with a medium effect size.

There was a strong positive association between Gumbi lineage land ownership (residential, cropping, stock grazing, natural resource collection and community conservation area) and combined government authority (land allocation, dispute resolution, and land use control) $r_s = 0.31$, $p < 0.001$ with a medium effect size.

There was a strong positive association between community land ownership (residential, cropping, stock grazing, natural resource collection and community conservation area) and combined government authority (land allocation, dispute resolution, and land use control) $r_s = 0.52$, $p < 0.001$ with a large effect size.

Hypothesis Test Summary

	Null Hypothesis	Test	Sig.	Decision
1	The distribution of LandAccessRightsSatisfaction is the same across categories of Are you a member of the Gumbi lineage?.	Independent-Samples Mann-Whitney U Test	.085	Retain the null hypothesis.
2	The distribution of LandGovernanceProcessIntegrity is the same across categories of Are you a member of the Gumbi lineage?.	Independent-Samples Mann-Whitney U Test	.026	Reject the null hypothesis.
3	The distribution of LandTenureSecurity is the same across categories of Are you a member of the Gumbi lineage?.	Independent-Samples Mann-Whitney U Test	.011	Reject the null hypothesis.
4	The distribution of DisputeResolutinSati is the same across categories of Are you a member of the Gumbi lineage?.	Independent-Samples Mann-Whitney U Test	.035	Reject the null hypothesis.

Asymptotic significances are displayed. The significance level is .05.

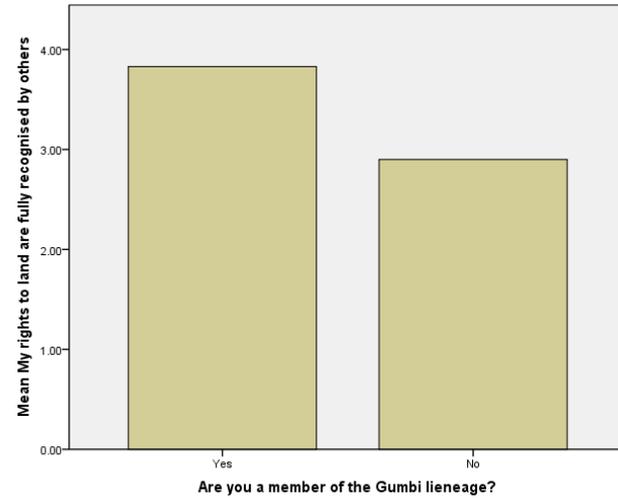
Land Tenure Rights Satisfaction

Hypothesis Tests: Mann-Whitney *U* and Kruskal-Wallis Test

Hypothesis Test Summary

	Null Hypothesis	Test	Sig.	Decision
1	The distribution of My rights to land are fully recognised by others is the same across categories of Are you a member of the Gumbi lieneage?.	Independent-Samples Mann-Whitney U Test	.030	Reject the null hypothesis.
2	The distribution of No one can remove me from this land is the same across categories of Are you a member of the Gumbi lieneage?.	Independent-Samples Mann-Whitney U Test	.338	Retain the null hypothesis.
3	The distribution of I cannot be excluded from using the land is the same across categories of Are you a member of the Gumbi lieneage?.	Independent-Samples Mann-Whitney U Test	.047	Reject the null hypothesis.
4	The distribution of I feel that my rights to land are secure is the same across categories of Are you a member of the Gumbi lieneage?.	Independent-Samples Mann-Whitney U Test	.008	Reject the null hypothesis.

Asymptotic significances are displayed. The significance level is .05.



Appendix 7: Participants Who Took Part in the Interviews

Community Member: Not a Member of the Trust or the Gumbi Lineage.

Zulu, T. 2012. *Interview on land governance*. Interviewed by Sibongiseni Hlabisa [in person] KwaGumbi, 20 March 2012.

Community Member : Mvokweni Community Trust Beneficiary

Zebedu, M. 2012. *Interview on land governance*. Interviewed by Sibongiseni Hlabisa [in person] uPhongolo, 10 March 2012.

Community Member : Gumbi Lineage Member

Mthembu, M. 2012. *Interview on land governance*. Interviewed by Sibongiseni Hlabisa [in person] KwaGumbi, 20 March 2012.

Chieftaincy officials (Izinduna)

Zungu, M. 2012. *Interview on land governance*. Interviewed by Sibongiseni Hlabisa [in person] KwaGumbi, 03 March 2012.

Nxasana, S. 2012. *Interview on land governance*. Interviewed by Sibongiseni Hlabisa [in person] KwaGumbi, 01 March 2012.

Movokweni Community Trust Trustees

Mandlanzi, G. 2012. *Interview on land governance*. Interviewed by Sibongiseni Hlabisa [in person] Jozini, 01 February 2012.

Mahlakazane, S. 2012. *Interview on land governance*. Interviewed by Sibongiseni Hlabisa [in person] uPhongolo, 10 March 2012.

Zimukile, P. 2012. *Interview on land governance*. Interviewed by Sibongiseni Hlabisa [in person] KwaGumbi, 13 March 2012.

UPhongolo Local Municipality Councillor

Mdluli, D. 2012. *Interview on land governance*. Interviewed by Sibongiseni Hlabisa [in person] KwaGumbi, 21 March 2012.

Department of Land Reform and Rural Development Official

Silwane, O. 2012. *Interview on land governance*. Interviewed by Sibongiseni Hlabisa [in person] Pietermaritzburg, 03 March 2012.