

**LAWS AND REGULATIONS AFFECTING THE POWERS OF CHIEFS IN  
THE NATAL AND ZULULAND REGIONS, 1875-1910: A HISTORICAL  
EXAMINATION**

By

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**Table of Contents**

Abstract	iii
Acknowledgments	iv
Glossary of Zulu terms used in the dissertation	v
Abbreviations	vi
 Chapter one: Introduction	 1
 Chapter two: The formalizing of the powers of chiefs in Natal, 1875-1893	 11
 Chapter three: The decline of chiefly authority in the shadow of settler domination in Natal, 1893 to 1897	 29
 Chapter four: The impact of colonial rule on the powers of chiefs in Zululand, 1879-1897	 40
 Chapter five: The impact of settler government on the powers of chiefs in the enlarged colony of Natal, 1897-1910	 54
 Chapter six: Conclusion	 71
 List of sources	 75

## Abstract

This dissertation aims to examine the nature of colonial-made laws and regulations which affected the powers of chiefs in the Natal and Zululand regions between 1875 and 1910, and the context in which they were made. Since the establishment of colonial rule in Natal in the 1840s, the colonial government had aimed to bring chiefs under control and to weaken their powers. In the 1870s the pace at which chiefly authority was undermined increased. This dissertation begins in the mid-1870s because this was when white settlers in Natal gradually began to get more influence over native affairs because of important shifts in British policies in South Africa. It ends in 1910 when the administration of native affairs in Natal was transferred from Pietermaritzburg to Pretoria upon the formation of the Union of South Africa. It argues that the making of laws governing Africans in the Natal and Zululand regions from 1875 to 1910 had to do mainly with the desire of colonial officials to tighten up control over Africans, and the desire of white settlers in Natal to ensure security against Africans who greatly outnumbered them and to obtain land and labour from African communities. The dissertation begins with a brief examination of the colonial state and the nature of the powers of chiefs in the period before 1875. From 1875 to 1893 the Natal settlers gradually gained more influence over native affairs, and used it to formalize and define the powers of chiefs and izinduna. These developments are explained in chapter two. In chapter three the laws and regulations affecting the powers of chiefs that were passed under responsible government from 1893 to 1897 are examined in detail. This was when white settlers in Natal gained power to directly control native affairs. The Zululand region, i.e. to the north of the Thukela river, also experienced similar developments as Natal from 1879 to 1897. After the Anglo-Zulu war in 1879, the powers of hereditary chiefs in Zululand were weakened, together with the strength of Zulu royal house. The impact of colonial rule on the powers of chiefs in Zululand is covered in chapter four. When Zululand was incorporated into Natal in 1897, and when the white settler farmers dominated every department in the ministry, the 'web' of chiefly authority was weakened at a faster pace than before. Some of the laws that were in the Natal Code of Native Law were extended to Zululand. The way in which chiefly authority was undermined in the enlarged colony between 1897 to 1910 is examined in chapter five. Chapter six summarizes the findings of the dissertation.

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## Glossary of Zulu terms used in the dissertation

This Glossary is extracted from Benedict Carton's Blood from Your Children: The Colonial Origins of Generational Conflict in South Africa, and John Laband Rope of Sand: The Rise and Fall of the Zulu Kingdom.

<i>iButho</i>	(pl. <i>amaButho</i> ) age-grade, or 'regiment', of men or women; member of age-group; a warrior.
<i>iBandla</i>	(pl. <i>amaBandla</i> ) council of state.
<i>iDlozi</i>	(pl. <i>amaDlozi</i> ) ancestral spirit.
<i>iLobolo</i>	cattle or goods handed over by man's family to formalize marriage transaction.
<i>iNduna</i>	(pl. <i>iziNduna</i> ) officer of state, appointed by king to position of command; headman.
<i>isiBhalo</i>	system of compulsory labour in Natal colony.
<i>isiGodlo</i>	(pl. <i>iziGodlo</i> ) king's or chief's private enclosure at upper end of his homestead; women of king's establishment.
<i>isiKhulu</i>	(pl. <i>iziKhulu</i> ) person of great importance in hierarchy of the kingdom.
<i>ukuKhonza</i>	to pay allegiance to king or chief.
<i>ukuSisa</i>	to pasture livestock in the care of a subordinate.
<i>umKhosi</i>	(pl. <i>imiKhosi</i> ) annual 'first-fruits' ceremony.
<i>umNdlunkulu</i>	girls of royal establishment attending king; maids-of-honour.
<i>umNumzane</i>	(pl. <i>abaNumzane</i> ) a married homestead head.
<i>umuZi</i>	(pl. <i>imiZi</i> ) homestead.
<i>uSuthu</i>	collective name for the adherents of Cetshwayo and Dinuzulu.

## Abbreviations

CSO	Colonial Secretary's Office
GHZ	Government House Zululand
JSA	James Stuart Archive
LCD	Legislative Council Debates
NBB	Natal Blue Book
NCP	Natal Colonial Publications
NGG	<u>Natal Government Gazette</u>
NNAC	Natal Native Affairs Commission
NW	<u>Natal Witness</u>
SANAC	South African Native Affairs Commission
SNA	Secretary for Native Affairs
USNA	Under-Secretary for Native Affairs
ZA	Zululand Archives

## **Chapter one: Introduction**

A public debate is taking place today in South Africa over the powers of chiefs and the role they can play in the development of South African society. Some parliamentarians and people on the streets see no role that chiefs can play in bringing about socio-political changes in this country, while others do. Many in the latter category claim that the powers wielded by chiefs today are “traditional” powers, i.e. that they have not been changed over the years, and are still much the same powers that Zulu chiefs such as Shaka exercised over their adherents. But historical evidence indicates that the powers which chiefs wield over their subjects today were widely shaped and reshaped by successive colonial governments from the 1840s onwards and under segregation and apartheid.

I have examined changes in the powers of chiefs in the pre-colonial period in Natal and Zululand regions in my Honours thesis. Here I want to take this study further and examine the effects that the laws passed by colonial governments in Natal and Zululand had on the powers of chiefs. I will start from the mid-1870s because the period before 1875 is well covered in the literature. Many writers have written about native policy in Natal which was a system whereby Africans were administered at a minimal expense.<sup>1</sup> In Natal native policy led to the establishment of a system of indirect rule whereby chiefs retained authority over their subjects but were made accountable to colonial officials and white magistrates. The main advocate of this system was Theophilus Shepstone, who was Diplomatic Agent and Secretary for Native Affairs in Natal from 1845 to 1876. The Natal region referred to here is the region south of the Thukela river. Natal was annexed by Britain in 1843 and from then until the 1870s African people were governed by the Shepstone system of indirect rule.

Although British officials sought to restrict the powers of white settlers in Natal in 1875 by adding two officials to the colonial Legislative Council, evidence suggests that from the late 1870s onward the balance of power in the Natal government shifted from the Colonial Office to the white settlers. After 1875 the settler-dominated Legislative Council pressed for the codification of customary law, i.e. the writing down of Native law, in its attempt to limit the powers of the Supreme Chief, to formalize the powers of chiefs, and to bring the Natal Department of Native Affairs more under their control. Before 1875, Native laws and powers of both chiefs and the Supreme Chief were not formalized and the Secretary for Native Affairs was responsible for the framing of African policies.<sup>2</sup> Other reasons for the codification of Native Law were to do with ensuring security among settlers against Africans who greatly outnumbered

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<sup>1</sup>E. H. Brookes, White Rule in South Africa, 1830-1910 (Pitersmaritzburg: University of Natal Press, 1974), p. 41.

<sup>2</sup>D. Welsh, The Roots of Segregation: Native Policy in Colonial Natal, 1845-1910 (London: Oxford University Press, 1971), p. 164.

them. From the mid-1870s to 1893, Africans in Natal were still governed by colonial officials, and the Supreme Chief was the highest authority in native administration. From 1893 to 1910 powers to pass and make laws governing Africans in Natal officially passed into the hands of Natal settlers through the granting of responsible government, but Africans were still governed according to the Code of Native Law promulgated in 1878 and amended in 1891.

My thesis ends in 1910 because this was when the Union of South Africa was formed and when native administration in Natal was transferred from the Natal Department of Native Affairs in Pietermaritzburg to the South African Department of Native Affairs in Pretoria. This meant that powers of Natal settlers to pass laws regarding Africans in Natal passed into the hands of the Union of South African government.

In this thesis I will also look at the impact of legislation on the powers of chiefs in Zululand. Zululand is the region to the north of the Thukela river. Until 1879 the Zulu kingdom in Zululand was an independent and autonomous state. The powers of chiefs changed after the defeat of the Zulu king, Cetshwayo, by British forces in the Anglo-Zulu war in 1879. After the war the Zulu king was exiled to the Cape and the Zulu kingdom was divided into thirteen small autonomous chiefdoms.<sup>3</sup> In southern Zululand a buffer zone for Natal was created after the war. This zone was named the Reserve Territory which served as a place of refuge for the Zulu people who objected to being placed under the restored Zulu king in 1883.<sup>4</sup> Officials who administered the Reserve territory were drawn from Natal. Africans in this territory were governed in the same way as those in Natal; they were required to pay hut tax and to labour for the state.

In 1887 the British government officially annexed the central and north-eastern sub-regions of Zululand and proclaimed new laws and regulations by which natives were to be governed. The Zululand Code of Native Law, which was distinct from the Natal Code of Native Law, was promulgated in 1887.<sup>5</sup> A Governor and white magistrates drawn from Natal were appointed to administer the region. In 1888 Zululand people began to pay hut tax but this was interrupted by the outbreak of the uSuthu rebellion.<sup>6</sup> After the rebellion Dinuzulu, who succeeded Cetshwayo as the Zulu king, was the Zulu king, was exiled and many chiefs were appointed and made accountable to the Governor and magistrates.<sup>7</sup> In 1897 Zululand was incorporated into Natal and this was accompanied by the extension of the Natal Code of Native Law to this region. From

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<sup>3</sup>J. Guy, The Destruction of the Zulu Kingdom (London: Longman, 1979), p. 72.

<sup>4</sup>*Ibid.*, p. 157.

<sup>5</sup>J.P.C. Laband, Rope of Sand: The Rise and Fall of the Zulu Kingdom (Johannesburg: Jonathan Ball, 1995), pp. 380-1.

<sup>6</sup>*Ibid.* p. 383.

<sup>7</sup>*Ibid.*, p. 427.



1897 to 1910 the enlarged colony of Natal was governed by the Natal government.

This study is based on the hypothesis that the main factors behind the making of laws and regulations governing African people in Natal and Zululand from the mid-1870s to 1910 had to do with mounting pressure on the colonial government from Natal settlers to be protected against the Africans who greatly outnumbered them, settler efforts to obtain more land and labour from African communities, and the increasing willingness of the British imperial government to give them more legislative power. Colonial officials also wanted to bring chiefs under control and to maintain law and order among African communities in Natal and Zululand so that a stable administration would be maintained. To do this effectively they had to weaken by laws and regulations the powers of native chiefs. We need to bear in mind that not all laws and regulations on native affairs that were passed in the period under review had a negative impact on the powers of chiefs. Some of these laws empowered chiefs, like the amendment made to the Code of Native law in 1891 which gave chiefs more power to control their subjects, more especially women and children. Another law which gave chiefs power was the Native Administration Act of 1909 which increased the fines which chiefs could impose on civil offences brought before them.

In order to examine changes in the powers of chiefs after 1875 we first need to find out more about the nature of the powers which chiefs wielded over their adherents before this. What was it that chiefs could and could not do to their subjects after 1875 in both the Natal and Zululand regions? In order to answer the above question one needs to define the concept of 'power' and relate it to chiefly powers in Natal and Zululand. It is important to outline right at the outset that there is no easy way of defining the concept of power. This is so because this concept is very wide and used in different contexts by different people. This is a complex phenomena of many dimensions. The Oxford Dictionary defines power as:

1. The ability to do something. 2. vigour, energy, strength. 3. a property, quality, or function; *great heating power*. 4. control, influence; *the party in power*. 5. What one has authority to do; *their powers are defined by law*.<sup>8</sup>

In the International Encyclopedia of the Social Sciences L. Sills defines power as:

the subsets of relations among social units such that the behaviours of one or more units (responsible units, R) depend in some circumstances on the behaviour of other units (the controlling units)<sup>9</sup>

Some writers like R. Dahl define power as the control of behaviour. His idea of power is that "A

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<sup>8</sup>The Oxford Paperback Dictionary, ed. Elaine Pollard, 4<sup>th</sup> ed. (Oxford University Press, 1994), p. 626.

<sup>9</sup>International Encyclopedia of the Social Sciences, ed. L. Sills, vol.12 (London: Collier-Macmillan, 1968), p. 407.

has power over B to the extent that he can get B to do something that B would not otherwise do.”<sup>10</sup> It seems that the interests of the latter are not affected, according to Dahl.<sup>11</sup> In his book Power: A Radical View, S. Lukes says of power that “A exercises power over B when A affects B in a manner contrary to B’s interests.”<sup>12</sup> Unlike Dahl’s Lukes’s definition stresses the fact that the interests of B are disturbed.

Other writers who define power seem to stress the intention on one party to achieve what he or she sets out to achieve. In his book, Three Faces of Power, K. E. Boulding defines power as ‘the ability to get what we want.’<sup>13</sup> He further identifies three major categories of power. The first one is what he calls ‘Threat power’ which applies particularly to political life. The second category is ‘Economic power’ which rests largely on the control of the major forces of production, distribution, allocation and exchange of wealth commodities. The last category is ‘integrative power’ which is based on relationships such as legitimacy, respect and identity.<sup>14</sup> From the discussion on the concept of power, one can argue that power is the ability to get what we want. In Natal and Zululand in the pre-colonial period, chiefs had the ability to extract labour from women and children, they had the ability to call up men for amabutho, i.e. age regiments, and they also had ability to distribute land and resources amongst their subjects and presided over both criminal and civil cases arising from their people. In that way they had power to influence people and to get what they wanted from them. Chiefs were losing aspects of their power to conquering “paramounts” or “kings”. They also continued to lose many of their powers after the establishment of colonial rule in Natal and Zululand.

When colonial rule was established in Natal chiefs could not call up their young men for amabutho without permission from white officials. Their ability to distribute land and wealth and get what they wanted from their people was gradually restricted. The colonial government gradually took on powers to force Africans to pay taxes and to provide labour for the state. It is these changes in chiefly powers that my thesis will examine, but my main focus will be on the impact of legislation governing African people on the powers of chiefs.

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<sup>10</sup>R. Dahl, ‘The concept of power’, in R. Bell, D. Edwards and W. Harrison, eds., Political Power: A Reader in Theory and Research (New York: The Free Press & London: Collier-Macmillan, 1969), p. 80. Also R. Dahl, ‘Power as the control of behaviour’, in S. Lukes, ed., Power (Oxford: Basil Blackwell, 1986), p. 37.

<sup>11</sup>Ibid.

<sup>12</sup>S. Lukes, Power: A Radical View (London: Macmillan, 1980), p. 27.

<sup>13</sup>K. E. Boulding, Three Faces of Power (London: Sage Publications, 1989), p. 15.

<sup>14</sup>Ibid., pp. 23-31.

Having explained the concept of power, I want to move on to a literature review in which I will examine the works of writers who have previously commented on the effects of laws and regulations on the powers of chiefs in Natal and Zululand from 1875 to 1910. In examining their writings on the subject, I found that there are certain areas that need to be covered, and a deeper and broader picture of the nature and impact of legislation on this period needs to be provided. In many cases the writers state that particular Acts on African affairs undermined the authority of chiefs without sufficiently and explicitly explaining those Acts. Sometimes these writers fail to provide enough of a historical perspective or explanation as to why certain laws were passed. It is, therefore, the main objective of this thesis to identify the laws and regulations that affected powers of chiefs, to examine their specific nature, to demonstrate how they changed the powers of chiefs, and to examine the historical context in which they were passed.

The main writers who have previously written about laws and regulations passed by the colonial government in the post-Shepstone period are Stuart, Brookes, Marks, Welsh, Lambert, and Carton. There are others who have written in less detail about the topic under discussion, but I want to concentrate on these because they provide useful analyses of native customary law and native administration in Natal. There seems to be no writer before Stuart who wrote in detail about native affairs and this could be because before 1910 native history received little attention from the colonial government and from writers as well. After the formation of the South African Union government in 1910, the native 'question' was the central problem that the government had to face.

Stuart, who was a magistrate and wrote in the early twentieth century, pointed out in his book, A History of the Zulu Rebellion, 1906, that the codification of Native Law in Natal in the 1870s went together with the appointment of new magistrates.<sup>15</sup> But he fails to demonstrate how the imposition of new magistrates impacted on the powers of native chiefs. His main interest was not in the legislation and its impact on the powers of chiefs, but on the causes and course of the 1906 Bhambatha Rebellion. He says very little about native laws and cited those which he thought were the causes of discontent on the part of Africans which led to the rebellion in 1906.

Moreover, there is not sufficient explanation as to why these laws were passed. He does not even explain the historical context in which these laws operated, partly because he was not a historian, and he was involved in the administration of Africans as he was an official. He focuses on native administration in Natal, and on laws regarding taxation of Africans, land and labour. He does this because laws on taxation such as the poll tax of 1905 were important laws that led to the outbreak of the 1906 rebellion. There is very little that is said by Stuart regarding the periods the 1880s and the 1890s in as far as native laws are concerned.

In the 1920s the South African government was determined to solve the problem of African in

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<sup>15</sup>J. Stuart, A History of the Zulu Rebellion, 1906 (London: MacMillan, 1913), p. 26.

South Africa and that is when Brookes, who was a historian, investigated the origins and development of native policy in South Africa. His book, The History of Native Policy in South Africa from 1830 to the Present Day was published in 1924. Brookes, unlike Stuart, focuses on the codification of Native Law in South Africa. He mentions the Natal Native Codes of 1878 and 1891, together with amendments made to them over time.<sup>16</sup> Although he looks at different native codes in South Africa, he does not examine factors, proceedings and debates surrounding codification in detail. He also does not identify individual laws within the codes together with their impact on the powers of chiefs in Natal. He touches on the Shepstone system of indirect rule together with policies governing Africans before 1875. There are many laws that Brookes does not cover in his analysis, viz. land and labour laws, and African taxation, which were important in native administration. These laws will be discussed in this thesis.

After Brookes, it was more than forty years before writers again examined African administration in Natal in the period after 1875. Writers who studied African administration in colonial Natal and Zululand focused on the pre-1875 Shepstone system of indirect rule. Among those who wrote in the 1930s and the 1940s we can mention C. J. Uys, who wrote in 1932 about Shepstone and British expansion, E. M. Berman, who wrote in 1933 about native policy in Natal, C. S. Shields, who wrote in 1939 about John Dunn and Zululand, L. M. Young, who wrote in 1941 about native affairs in the 1850s, and F. Wolfson, who wrote in 1946 about Shepstone and African administration in Natal.

From the 1960s onward the history of African people, which had long been neglected by historians attracted attention. This was when African countries gained independence. Many new concepts were brought to bear by these academics.<sup>17</sup> Thus in 1970 Marks followed Stuart by looking at the 1906 Bhambatha rebellion in Natal. In her book, Reluctant Rebellion: The 1906-08 Disturbances in Natal, Marks, who was an academic historian, traced the origins of the 1906 Bhambatha rebellion and provides a useful analysis of how chiefly authority was undermined in the late nineteenth and early twentieth centuries. Some chapters in her book deal with continuity and change in African society, land, labour and legislation governing natives in Natal, the impact of natural disasters and the 1906 rebellion. Her main aim is to track down factors which led to the outbreak of the 1906 rebellion. She looks at marriage law which was the law dealing with registration of African marriages, marriage tax, and laws dealing with African taxation such as

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<sup>16</sup>E.H. Brookes, The History of Native Policy in South Africa from 1830 to the Present Day (Cape Town: Nasionale Pers, 1924), pp. 219-20.

<sup>17</sup>S. D. Thabethe, 'An examination of the institutions of power and the changes in the powers of chiefs in the late eighteenth and early nineteenth centuries in Natal-Zululand region', unpubl. B.A. Honours thesis (University of Natal, 1999), p. 12.

hut tax and poll tax together with pass laws and labour laws. Her analysis is broader than that of Stuart, and slightly different because she looks at the rebellion from a historical point of view. She provides a clear historical context in which laws and regulations governing natives in Natal operated. Like Stuart, she cites the Native Code of 1875 and the way in which it buttressed the powers of the Supreme chief. She argued that:

While, however, the position of the Supreme chief under the Code was so powerful, that of the African chiefs who were regarded as ‘minor deputies of the Supreme Chief’ was extremely ambiguous.<sup>18</sup>

Marks also mentions the Native Code of 1891, together with laws that were passed in the 1890s.<sup>19</sup> She argues that every Act dealing with Natives that was passed in Natal undermined the authority of chiefs and increased those of magistrates and the Supreme Chief: that is why in her view, Africans rebelled against the imposed poll tax in 1906.<sup>20</sup> However, historical evidence indicates that not all laws regarding African people in Natal were aimed at undermining powers of chiefs, as Marks seems to think, but there were laws that were passed which empowered chiefs in some ways. These laws will be discussed later in this chapter.

After Marks, Welsh, who was a political scientist and sociologist, wrote The Roots of Segregation: Native Policy in Colonial Natal, 1845-1910 in 1972. He gives a good analysis of the way in which chiefly authority was undermined. He also mentions some of the Acts governing Africans that were passed by the Natal government which had affected the powers of chiefs. He writes on legislation on native policy, not on “African history”. Welsh’s is the most detailed account of African history in the period 1845 to 1910 that we have. He covers the pre-1875 period by mentioning the introduction of the hut tax, marriage law, which was the law regulating payment of ilobolo, filing of divorce by Africans, and the marriage tax, and the isibhalo system which was forced African labour.<sup>21</sup> His main interests lay not in legislation, but on the origin of segregation in the colony of Natal so the references he makes to legislation are to trace back the roots of segregation. Welsh also looks at codification of customary law in Natal, chieftainship after Shepstone and African responses to colonial rule in the twentieth century. He leaves out

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<sup>18</sup>S. Marks, Reluctant Rebellion: The 1906-08 Disturbances in Natal (Oxford: Clarendon Press, 1970), p. 41.

<sup>19</sup>Ibid., pp. 37-41.

<sup>20</sup>Ibid.

<sup>21</sup>D. Welsh, The Roots of Segregation, p. 123.

some important laws that were passed in the 1890s and early twentieth century such as the Mission Reserves Act and the Militia Act.

After fifty years since his work on the history of native policy in South Africa, Brookes re-examined customary law in South Africa in 1874. Although he modified his early ideas on the way in which native policy was developed in South Africa, he still focuses on the codification of Native Law. One of his chapters that is relevant to the topic of this thesis is the one that deals with the codification of customary law in South Africa. In this chapter he also examines the codification of customary law in Natal. He gives a good explanation of the difference between the two Natal Codes of Native Law when he states that the 1878 code was the guide to unwritten customary law, and the 1891 code as the legal code that bound chiefs and officials.<sup>22</sup>

Another important academic historian who in his book Betrayed Trust: Africans and the State in Colonial Natal, wrote about the effects of legislation on the powers of chiefs is J. Lambert. He explains the historical context in which they operated. Like Welsh and Marks, he mentions the Codes of Native Law of 1878 and 1891 in Natal in detail. He argued that:

Despite the continuing determination of the government, as reflected in the 1891 Code, to use the chiefly system to control the African population, official enactments steadily eroded chiefly powers.<sup>23</sup>

It seems that Natal native policy was contradictory by this time, according to Lambert, because on the one hand, the government wanted to weaken the powers of chiefs so as to bring them under control. On the other, it wanted to sustain them, so as to be able to use chiefs as effective agents of control in the reserves. Chapters in his book deal with early colonial Natal, land and labour in the 1880s, chiefship in colonial Natal, and mission reserves. He re-examines the late-nineteenth century colonial incursions that undermined the authority of chiefs and homestead heads as well as the homestead economy. He also looks at the impact of natural disasters on the homestead economy and on the powers of chiefs and African people in the 1890s.

He looks at the regulations forcing Africans to obtain passes if they wanted to leave Natal, and

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<sup>22</sup>E. H. Brookes, White Rule in South Africa, 1830-1910 (Pietermaritzburg: University of Natal Press, 1974), p. 61.

<sup>23</sup>J. Lambert, Betrayed Trust: Africans and the State in Colonial Natal (Pietermaritzburg: University of Natal Press, 1995), p. 104.

and also at taxation of Africans in the 1880s.<sup>24</sup> . He further looks at the legislation regarding Africans which fragmented chiefdoms in the 1890s.<sup>25</sup> Unlike Marks and Welsh, Lambert provides a useful analysis of regulations proclaimed by the Natal government governing Africans in the 1880s and 1890s. He focuses on land and labour laws, marriage laws, taxation, such as hut tax and poll tax, and pass laws governing Africans in Natal. This thesis will take the examination of these laws further and look at the historical context in which they operated in detail. Lambert says very little on laws that were passed in the early twentieth century, the extension of the Natal Native Code to Zululand, together with factors shaping the passing of Codes of Native law in 1878 and 1891. These are areas that I want to explore further.

Another important historian who has written about changes in the powers of chiefs in Natal and Zululand is B. Carton. He published his book Blood from Your Children: The Colonial Origins of Generational Conflict in South Africa in the year 2000. This is another important reflection on the changes in the powers of chiefs in Natal and Zululand in the late nineteenth and early twentieth centuries. Despite the fact that he examines the origins of generational conflict in South Africa, especially in the Thukela basin, he touches on certain laws and regulations governing Africans that were passed by the Natal government in the late nineteenth and early twentieth centuries. Unlike Lambert, Welsh and Marks, he demonstrates the way in which the Natal Code of Native Law was extended to Zululand in 1897, when Zululand was incorporated into Natal.<sup>26</sup> He argues that not all laws prescribed under the Natal Code of Native Law were implemented in Zululand in the same way as in Natal.<sup>27</sup> However, he says very little about why customary law was codified, and in what context it operated. These are areas that this thesis will examine.

By contrast to Natal, the Zululand region in the pre-1879 period is less covered in the literature. This might be due to the fact that Zululand was not a British colony until 1887, and few written records were produced on the history of Africans before this date. Until 1879, the Zulu kingdom was an independent state. The Anglo-Zulu war of 1879 is a turning point in the history of the Zulu people. In this war Zulu people were defeated and after the war the Zulu King, Cetshwayo

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<sup>24</sup>Ibid., p. 96.

<sup>25</sup>Ibid.

<sup>26</sup>B. Carton, Blood from Your Children: The Colonial Origins of Generational Conflict in South Africa (Pietermaritzburg: University of Natal Press, 2000), pp. 55-65.

<sup>27</sup>Ibid.

was exiled to the Cape.<sup>28</sup>

Although all the writers that I have cited above have important things to say concerning changes in the powers of chiefs in Natal and Zululand, especially after 1875, there are areas that they fail to cover. In this thesis I want to explore areas in African legislation in Natal and Zululand in more detail than these writers have done.

In conclusion, this chapter has tried to reveal areas that have been covered by academic historians on the history of Natal and Zululand. It has also examined areas that they fail to cover with the aim of demonstrating the direction my thesis is going to take and the areas that it will cover. Chapter two examines laws and regulations governing Africans that were passed in Natal in the period between the mid-1870s and 1893, when Natal Colony was granted Responsible Government. Chapter three gives an analysis of the legislation that was passed in Natal from 1893 to 1897. Chapter four examines laws and regulations affecting the powers of chiefs that were passed in Zululand, from 1879 to 1897 when settler gained direct control of African affairs. Chapter five looks at the laws and regulations affecting the powers of chiefs in the enlarged colony of Natal, from 1897 to 1910.

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<sup>28</sup>Laband, Rope of Sand, p. 343.



## Chapter two

### The formalizing of the powers of chiefs in Natal, 1875-1893

I have stated in chapter one that the reason for starting this examination in 1875 is that this was when customary law was, for the first time, codified in Natal. It was also the time when the power shifted towards white settlers in Natal. The codification of native law could be attributed to factors and events within Natal colony and factors which were external to it. But before we can look at these factors we need to examine what was happening before 1875 as far as native policy was concerned, how Africans were governed, what laws and regulations governing them were passed, and, most importantly, what powers chiefs exercised over their subjects. The examination of the period before 1875 aims at establishing a baseline for examining the extent to which powers of chiefs changed after that date.

The period before the 1870s was a time of 'fluidity' in the Natal administration during which neither colonial officials nor settlers were capable of asserting authority over the African population.<sup>1</sup> Although Natal was annexed in 1843, legislative and executive control took place only after the formation of the British rule in Natal in December 1845. The Lieutenant-Governor, who was subordinate to the Cape Governor, was assisted by high-ranking officials; together they made up the Executive Council.<sup>2</sup> The power to legislate remained with the Cape Legislature. Due to problems in administration of the colony of Natal, an appointed Legislative Council was set up in Natal in 1848. This council remained the legislative body of Natal until 1856 when a new constitution was drafted. In terms of the charter of the new constitution a new Legislative Council was elected, but the control of native affairs was kept in the hands of colonial officials.<sup>3</sup> The Natal settlers in the Legislative Council were pressing for a tight and direct control of African affairs, labour supply and land. But Shepstone and other officials kept them at bay when it came to the administration of African affairs because they feared that settlers were going to introduce far-reaching changes in African administration that would cause discontent on the part of Africans and result in African rebellion.<sup>4</sup>

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<sup>1</sup>Lambert, Betrayed Trust, p. 29.

<sup>2</sup>Welsh, The Roots of Segregation, pp. 38-9.

<sup>3</sup>Ibid.

<sup>4</sup>Brookes, White Rule in South Africa, pp. 59-60; N. Etherington, 'The Shepstone system in the colony of Natal and beyond borders', in A. Duminy & B. Guest, eds., Natal and Zululand from Earliest Times to 1910: A New History (Pietermaritzburg: University of Natal Press, 1989), pp. 175-6.

After the annexation of Natal by the British government in 1843, Natal native policy was developed by the colonial government. According to Brookes, Natal native policy was designed to rule and control the African population in Natal at minimal expense.<sup>5</sup> In implementing this policy, the Natal colonial government depended on a system of indirect rule which was developed by Theophilus Shepstone, who was Diplomatic Agent and Secretary for Native Affairs from 1845 to 1876.<sup>6</sup> The system of indirect rule recognized African customary law. Under this system chiefs retained a great deal of power and authority over their adherents but they were made accountable to white magistrates.<sup>7</sup> The magistrates and the Secretary for Native Affairs were responsible to the Lieutenant-Governor, who, in terms of ordinance 3 of 1849, was the Supreme Chief over all African chiefs in Natal.<sup>8</sup> However, in practice, Shepstone was the dominant force in any matter affecting the African population. Although he had no power to 'pass' laws, he issued unwritten proclamations in terms of customary law as he saw it. The customary law was never formally written down and it varied from one chiefdom to another.<sup>9</sup>

Before we can look at the changes in the powers of chiefs in the early colonial period, it is essential to first look at the authority exercised by chiefs before the establishment of colonial rule in Natal. Before 1810 chiefs in Natal and Zululand could form amabutho, i.e. age regiments, and use them as a source of labour and a military force to maintain order within chiefdoms. They also held the umkhosi, i.e. first-fruit, ceremonies in their chiefdoms. Many chiefs had power to give permission to the youth to marry and this prerogative was solely reserved for chiefs only. Chiefs were also the ones who 'liaised' with the ancestors of their chiefdoms. Chiefs exercised both criminal and civil jurisdiction over their subjects before the colonial era. When paramount chiefs or kings, such as Shaka rose to power, many chiefs lost many aspects of the powers. Some of their remaining powers were gradually undermined after the establishment of white rule in Natal. It is these aspects of powers that this study will explore in detail.

In the state of 'fluidity' in the administration of African population in early colonial Natal, the Natal government managed to impose restrictions on important customs practised by Africans.<sup>10</sup> Under the Shepstone system of indirect rule, chiefs retained authority over their subjects.

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<sup>5</sup>Ibid., p. 41.

<sup>6</sup>Lambert, Betrayed Trust, p. 58.

<sup>7</sup>Ibid., pp. 26-7.

<sup>8</sup>Welsh, The Roots of Segregation, p. 17.

<sup>9</sup>Brookes, White Rule in South Africa, p. 135.

<sup>10</sup>Lambert, Betrayed Trust, , pp. 29-30.

However, their powers were gradually undermined, especially, from the late 1840s. In the early years of colonial rule, hereditary chiefs such as Langalibalele of the Hlubi, and Phakade of the Chunu, benefitted from the colonial presence. They were allowed to call up their men for amabutho, and to try both civil and criminal jurisdictions over cases involving their subjects. They managed to strengthen their authority. However, other chiefs, such as those of the Cele, Thuli and Bhaca gradually became unpopular and insignificant as they could not provide resources to their followers.<sup>11</sup> Although the formation of age-regiments was outlawed, some hereditary chiefs continued to form regiments.<sup>12</sup> Shepstone imposed restrictions on the assembling of men, especially on their being used in military expeditions. He allowed them to be assembled only with the permission of the Supreme Chief.<sup>13</sup>

Similar restrictions were also imposed on the holding of the umkhosi ceremony. The umkhosi ceremony symbolized chiefs' control over their adherents.<sup>14</sup> It seems that this was restricted because at the umkhosi ceremony the chief was ritually strengthened and the allegiance of their people renewed. The holding of the umkhosi ceremony only with the permission from the Supreme Chief symbolized the chief's subordination to the colonial administration.<sup>15</sup> It seems that chiefly power over giving permission to young men and women to marry was also undermined by the colonial government.<sup>16</sup>

It seems that the chiefly power was continuously undermined in the 1860s. Previously, the power to give permission to marry lay with the chiefs. But in 1869 chiefly power to give permission to girls to marry certain regiments was undermined by the passing of the 'Marriage law'. This law provided for the registration of African marriages, together with the payment of a marriage registration fee of five pounds. The payment of ilobolo was being made more difficult, as fathers and chiefs pushed it higher and higher. The Natal government sought to set limits on the number of cattle payable. The Marriage Law was also passed in order to raise revenue for the colony and to make provision for the maintenance and support of chiefs.<sup>17</sup> Welsh and Lambert stated that the

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<sup>11</sup>Ibid.

<sup>12</sup>Marks, Reluctant Rebellion, p. 34.

<sup>13</sup>Lambert, Betrayed Trust, p. 29.

<sup>14</sup>Ibid.

<sup>15</sup>Ibid.

<sup>16</sup>Welsh, The Roots of Segregation, p. 82.

<sup>17</sup>Lambert, Betrayed Trust, p. 31.

Marriage Law was aimed at empowering the Governor to impose additional fees on African marriages so as to boost government's revenue.<sup>18</sup> This law provided that all African marriages should be registered with the state and that there should be a payment of marriage fee of five pounds.<sup>19</sup> Welsh further stated that this law further stipulated that no girl should be forced to marry a person of her father's or chief's choice.<sup>20</sup>

Under Shepstone, chiefs still presided over civil disputes between their respective adherents. But their criminal jurisdiction was restricted.<sup>21</sup> They could preside over minor criminal cases involving their subjects. Their decisions were subject to appeal to the magistrates. Magistrates were empowered to preside over criminal cases brought before them and to hear appeals from the chiefs' courts.<sup>22</sup> By the mid-1870s, chiefs were still recognized and respected by their people. They were also required to perform state duties, such as ensuring that law and order among their people was maintained, and providing men for isibhalo.<sup>23</sup> They still formed age-regiments and held umkhosi ceremonies only with the permission from the Supreme Chief. They could no longer pass death sentence in witchcraft cases.<sup>24</sup>

In Natal some chiefs defied the orders of the white officials in the 1850s but they were suppressed by the colonial authorities. In 1857 Sidoyi, who was a chief of a branch of the Nhangwini chiefdom, attacked a neighbouring chiefdom and refused to account for his action to the local magistrate.<sup>25</sup> A few months later, Chief Matshana of the Sithole chiefdom also ignored his magistrate's orders to surrender men accused of killing a witch. In trying to enforce colonial authority within these chiefdoms, Shepstone ruthlessly broke them and confiscated the chiefs' property.<sup>26</sup> Lambert argued that the crushing of these chiefdoms was the first attempt by

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<sup>18</sup>Welsh, The Roots of Segregation, p.82; Lambert, Betrayed Trust, p. 31.

<sup>19</sup>Welsh, The Roots of Segregation, p. 82.

<sup>20</sup>Ibid.

<sup>21</sup>Lambert, Betrayed Trust, pp. 26-30.

<sup>22</sup>Ibid., p. 23; Marks, Reluctant Rebellion, p. 33.

<sup>23</sup>Lambert, Betrayed Trust, p. 156.

<sup>24</sup>Welsh, The Roots of Segregation, pp. 21-2.

<sup>25</sup>Lambert, Betrayed Trust, p. 31.

<sup>26</sup>Ibid.

Shepstone to fragment chiefdoms in Natal so as to make them weak.<sup>27</sup>

In the early 1870s another incident of African insurrection which led to political changes in Natal took place. This was the Langalibalele affair. Langalibalele was a Hlubi chief whose chiefdom was situated in the foothills of Drakensburg. In 1873 he was ordered to summon all men of his chiefdom to go and register their guns with the Natal state. Many of these men feared that their guns were going to be confiscated by the government; as a result they resented this order.<sup>28</sup> After failing to bring forward his men to register their guns with the Natal government, Langalibalele was ordered by Shepstone to appear in person in Pietermaritzburg. Fearing that he might be punished by the government, he disobeyed the order. On hearing that a Natal government force was being sent to capture him, he fled with a number of his people to Basutoland. In a skirmish between a force of colonial volunteers and the Hlubi, three volunteers and two of their African allies were killed.<sup>29</sup> The Langalibalele's neighbouring chief, Phuthini of the Ngwe gave assistance to Langalibalele by looking after some of his cattle. Both these chiefdoms were broken up, and their land and cattle confiscated. Langalibalele was banished to the Cape and his followers imprisoned.<sup>30</sup>

The Langalibalele affair highlighted the long-felt need of Natal settlers to gain direct control of African affairs.<sup>31</sup> It also provoked criticism in Britain and led to a change of Lieutenant-Governor.<sup>32</sup> The powers of chiefs seemed to have been eroded more rapidly after 1875. This can largely be attributed, in my view, to political changes that were taking place both in Britain and Natal from the 1870s onwards. These changes influenced legislation on Africans in Natal and further undermined chiefly authority. I would like to first consider political changes in Europe because they were the ones which influenced changes in Natal in the 1870s.

In the 1870s the balance of power in Europe was changing, as Prussia defeated Denmark, Austria

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<sup>27</sup>Ibid.

<sup>28</sup>Welsh, The Roots of Segregation, pp. 132-4.

<sup>29</sup>Ibid.

<sup>30</sup>Lambert, Betrayed Trust, pp. 31-2.

<sup>31</sup>B. Guest, 'Colonists, confederation and constitutional change', in Duminy & Guest, eds., Natal and Zululand from Earliest Times to 1910, p. 155.

<sup>32</sup>Lambert, Betrayed Trust, p. 32.

and finally France. After these victories the German empire was formed.<sup>33</sup> Italy was also united in the 1870s. The United States had fought a great war to preserve its unity and was expanding rapidly westwards, while Russia was expanding eastwards and southwards.<sup>34</sup> The expansion of these European states threatened Britain's dominance as an industrial power. This pushed Britain to focus on consolidating its power in its dominions of white settlement. This change in policy was accompanied by a change in the British government, when Disraeli was elected as the new British Prime Minister.<sup>35</sup> In 1874 Lord Carnarvon became the Secretary of State for Colonies. Carnarvon developed a confederation policy with the aim of bringing about a 'uniform native policy' in all British dominions.<sup>36</sup> Guy argues that Carnarvon believed that confederation would establish a strong, united, and white-dominated southern Africa which would meet the demands of expanding capitalist development.<sup>37</sup>

Carnarvon condemned the Natal government's handling of the Langalibalele affair and described it as a miscarriage of justice but Shepstone managed to pass the blame onto the Lieutenant-Governor.<sup>38</sup> In 1875 Carnarvon sent Sir Garnet Wolseley to Natal as a new High Commissioner in order to effect constitutional changes and to enforce law within the colony.<sup>39</sup> One of the main reasons for effecting constitutional changes was to try curb the settlers' influence on African affairs and to directly increase the control of all aspects of African administration by colonial officials. However, confederation also offered the prospect of greater security to the settler community so that, in return, they could strengthen and expand the imperial system throughout the territories of southern Africa.<sup>40</sup> This was so because Natal settlers were also concerned with

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<sup>33</sup>R. Cope, 'The origins of the Anglo-Zulu war of 1879', unpubl. Ph.D. thesis (University of Witwatersrand, 1995), pp. 109-12.

<sup>34</sup>Ibid.

<sup>35</sup> R. Morrell, J. Wright, & S. Meintjes, 'Colonialism and the establishment of white domination', in R. Morrell, ed., Political Economy and Identities in KwaZulu-Natal: Historical and Social Perspectives (Durban: Indicator, 1996), p. 50; Laband, Rope of Sand, pp. 185-6.

<sup>36</sup>Cope, 'The origins of the Anglo-Zulu war', p. 105.

<sup>37</sup>J. Guy, The Destruction of the Zulu Kingdom, (London: Longman, 1979), p. 45.

<sup>38</sup>Etherington, 'The Shepstone system in the colony of Natal', p. 185.

<sup>39</sup>Ibid., p.158.; Cope, 'The origins of the Anglo-Zulu war', pp. 102-11.

<sup>40</sup>Ibid., p. 159; C. Ballard, 'The ideal colony: colonial economics and imperial relations in Natal, 1843-1896', unpubl. conference paper presented to the conference on the history of Natal and Zululand (University of Natal, 1985), p. 15.

security against the African population which greatly outnumbered them.<sup>41</sup> According to Welsh, the concern for security and tight control of Africans in 1870s was highlighted by the Langalibalele affair.<sup>42</sup> However, Laband attributes the need for security on the part of the Natal government to the increase in the number of guns entering the colony, especially brought by people who worked in the diamond fields which were established at Kimberley in the late 1860s.<sup>43</sup> Due to the heavy taxes imposed on Africans in Natal, and low wages offered by farmers, many Africans went to the diamond fields so that they could earn higher wages. When they came back they brought guns into the colony and this raised concerns among settlers for security.<sup>44</sup>

In order to limit the powers of the Supreme Chief and chiefs in the mid-1870s, the settler-dominated Legislative Council proposed the Native Administration Bill, which eventually became law in December 1875.<sup>45</sup> Although Wolseley had restricted the influence of settlers in the Legislative Council by adding two officials to it, he allowed the Native Administrative Act to be passed. This could be attributed to the fact that both Wolseley and Carnarvon were against Shepstone's autocratic exercise of power. However, they did not declare this publicly because they still believed that he was a good administrator of the native population.<sup>46</sup> By passing the Native Administration Law, the Legislative Council aimed to formalize the powers of the Supreme Chief and of chiefs and *izinduna*.<sup>47</sup> It wanted to limit the powers of chiefs so that Natal settlers could be able to secure land and labour from Africans. They also wanted to limit both the powers of chiefs and the Supreme Chief through legislation. It seems that the Natal settlers hoped that they would be able to break up a 'tribal' system which made Africans independent of settlers because they were allowed to occupy reserved areas.<sup>48</sup> Natal settlers also wanted to bring chiefs under a legal code so as to control and subordinate them. It seems that this was the first attempt by the legislature to officially define the role of chiefs and to subordinate them to a codified and

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<sup>41</sup>Welsh, The Roots of Segregation, p. 230.

<sup>42</sup>Ibid., p. 132.

<sup>43</sup>Laband, Rope of Sand, p.181.

<sup>44</sup>Ibid.

<sup>45</sup>Guest, 'Colonists, confederation and constitutional change', p. 160.

<sup>46</sup>Welsh, The Roots of Segregation, pp. 156-7; Lambert, Betrayed Trust, p. 57.

<sup>47</sup>Lambert, Betrayed Trust, p. 62.

<sup>48</sup>Mahoney, 'Between the Zulu king and the Great White Chief', pp. 193, 206-10.

organized legal authority.<sup>49</sup> As chiefs retained power under the Shepstone system, they managed to control homestead production despite pressures from outside. The Shepstone system made them partially independent of settlers as it gave them land to maintain their productive capacity.<sup>50</sup>

Law No. 13 of 1875 provided that criminal cases involving Africans were to be heard by magistrates.<sup>51</sup> Chiefs were to preside over civil cases only.<sup>52</sup> Lambert argues that the impact of the Native Administration Act of 1875 on the powers of chiefs was mainly judicial.<sup>53</sup> Before 1875 chiefs in Natal could preside over minor criminal and civil cases arising between inhabitants of their chiefdoms. But after the passing of the Law No. 13 of 1875 the entire criminal jurisdiction was removed from chiefs and transferred to magistrates.<sup>54</sup>

As part of an effort by the Legislative Council to limit the authority of the Supreme Chief and the Secretary for Native Affairs, Law No. 26 of 1875 and law No. 13 of 1876 set out to bring into being a separate African judiciary. The settler representatives in the Legislative Council felt that a separate judiciary system was necessary so as to limit the powers of the Supreme Chief and vest them in the court system. This law provided that:

There shall be constituted a Court, to be termed the Native High Court, and such High Court shall be presided over by a Judge specially appointed by the Lieutenant Governor, and such Judge shall sit as sole Judge, or may be assisted, as occasion may require, by Magistrates or Native Officers.<sup>55</sup>

This court was to hear appeal cases from the magistrates courts, civil cases that might be brought before it, and criminal cases.<sup>56</sup> This was a Supreme Court of Appeal. The jurisdiction given to

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<sup>49</sup>Ibid.

<sup>50</sup>Brookes, White Rule in South Africa, p. 60.

<sup>51</sup>Natal Colonial Publications, 6/1/1/27, Natal Government Gazettes, 14 December 1875, pp. 804-5.

<sup>52</sup>Ibid.

<sup>53</sup>Lambert, Betrayed Trust, p. 32.

<sup>54</sup>Morrell, Wright & Meintjes, 'Colonialism and the establishment of white domination', p. 49.

<sup>55</sup>N.C.P. 6/1/1/27, NGG, 15 August 1876, pp. 159-60.

<sup>56</sup>Ibid.



the Native High Court had previously been exercised by the Secretary for Native Affairs.<sup>57</sup> The new Native High Court was established in 1877 and excluded the Secretary for Native Affairs.<sup>58</sup> The exclusion of the Secretary for Native Affairs was deliberately done in order to reduce his power.<sup>59</sup> Law No. 26. of 1875 further stipulated that a Board that was to look at the way in which Africans were administered was to be appointed. It was to draw up a uniform code of law to be administered by the various courts, including the Native High Court. This Board was also to put the code into writing.<sup>60</sup> The Code of Native Law was completed in 1878. It was a document which contained all laws governing Africans that had been passed by the Natal government from 1875 to 1878. When the idea of codification was discussed in the Legislative Council in 1875 Shepstone opposed it. Welsh attributes Shepstone's resistance to codification to his secretiveness, i.e. his dislike of publicly disclosing African policies, and to the fear of losing power to make policies governing Africans in Natal.<sup>61</sup> It seems that Shepstone resigned in 1876 when he saw that Native Administration Act of 1875 had deprived him of the authority that he had previously exercised over African people.

Although Law No. 13 of 1875 also provided for the increase in taxes imposed on Africans in Natal, taxation had an indirect impact on the powers of chiefs. This law provided for the doubling of the hut tax from 1875 onwards. Before 1875 the hut tax was seven shillings; in 1875 it went up to 14 shillings.<sup>62</sup> According to Lambert, hut tax was doubled because the marriage fee was abolished due to the fact that it did not contribute as much as had been expected to the revenue of the colony.<sup>63</sup> The doubling of the hut tax in 1875 indirectly served to undermine chiefly authority in Natal. It helped push African men into migrant labour. The doubling of this tax further encouraged young Africans to become migrant labours so that they could earn money to pay tax. They gradually began to be independent of their elders and chiefs since they could no

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<sup>57</sup>Brookes, White Rule in South Africa, p. 60.

<sup>58</sup>Ibid.

<sup>59</sup>Ibid

<sup>60</sup>Ibid.

<sup>61</sup>Welsh, The Roots of Segregation, p. 164; Laband, Rope of Sand, p. 153.

<sup>62</sup>N.C.P. 6/1/1/27, NGG, 14 December 1875, pp. 804-5; Lambert, Betrayed Trust, p. 20.

<sup>63</sup>Lambert, Betrayed Trust, p. 20.

longer depend on them for lobolo and permission to marry.<sup>64</sup>

The powers of chiefs were further undermined by Law 21 of 1878. This was entitled "Law to confer increased powers to Administrators of Native Law appointed under Native Law 13 of 1875" and it increased the powers of magistrates and Administrators of Native Law.<sup>65</sup>

Administrators of Native Law were people of European descent who were appointed by the Supreme Chief in terms of Law No. 13 of 1875. They were responsible for presiding over criminal cases among African people and assisting in administration of Africans and collecting taxes as well. Some of these Administrators of Native Law were magistrates. Magistrates were to try all minor cases of crimes and offences for which the punishment would be a fine of up to 10 pounds, or imprisonment not exceeding three months.<sup>66</sup>

Law 21 of 1878 further stipulated that the Governor should have power to appoint persons of European descent or magistrates to preside and exercise authority over sections of communities of natives in the Colony, and to remove any chief found guilty of a criminal offence.<sup>67</sup> This law encouraged the fragmentation of powerful chiefdoms in order to prevent them from challenging the state and limited chiefs' powers to attract subjects.<sup>68</sup> Law 21 of 1878 is important because it was the first law that 'legalized' the fragmentation of chiefdoms. It also encouraged Africans in Natal to pay allegiance to newly appointed chiefs whenever their existing chief failed to provide land. It seems that this law was passed so that it would prevent chiefs from becoming too large and powerful.

The promulgation of this law should be understood against the background of the British attempt to federate British colonies in the late 1870s. Shepstone resigned in 1876 as Secretary for Native Affairs and was succeeded by his brother, John, who acted as Secretary for Native Affairs.<sup>69</sup> In 1877 Theophilus Shepstone was appointed as Administrator of Transvaal, and assisted in the annexation of the Transvaal.<sup>70</sup> The appointment as Administrator of the Transvaal resulted in

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<sup>64</sup>Mahoney, 'Between the Zulu king and the Great White Chief', p. 138.

<sup>65</sup>Ibid.

<sup>66</sup>Ibid.

<sup>67</sup>Ibid.

<sup>68</sup>Lambert, Betrayed Trust, pp. 32-5.

<sup>69</sup>Lambert, Betrayed Trust, p. 58.

<sup>70</sup>Etherington, 'The Shepstone system', p. 186.

Shepstone supporting the Transvaal in a boundary dispute with the Zulu kingdom. The area on the north-western borders of the Zulu kingdom was a cause of dispute between the Zulu king and the South African Republic. The Zulu king wanted to maintain his control of this area while the Boers wanted to come under their authority. Initially, Shepstone supported the Zulus against the Boers on this matter but when he became an Administrator of the Transvaal he supported the Boer claim.<sup>71</sup>

When Shepstone explained that this territory was to come under the Boers the Zulus were dissatisfied. In my view, both the Natal settlers and officials had long wanted to tighten control over Africans in Natal. When the relations between the Natal government and the Zulu king deteriorated in the late 1870s, the white settlers used this opportunity to further tighten up control over Africans. Seeing that war between Natal and the Zulu kingdom was looming because the Zulu king was not prepared to abide by the terms of the ultimatum sent to him, the Natal officials and settler representatives sought to strengthen its control over Africans in the colony by promulgating law 21 of 1878. However, their main concern was to ensure that security against Africans was achieved and their property protected.

Towards the end of 1878 relations between the Zulu king and the British rapidly deteriorated. The presence of an independent African state like the Zulu kingdom raised concerns for security among settlers and officials in Natal.<sup>72</sup> Sir Bartle Frere, who was the British High Commissioner for Southern Africa in the late 1870s, tried to enforce the Natal government's control over Zululand people by issuing an ultimatum to Cetshwayo.<sup>73</sup> The ultimatum stipulated that Cetshwayo had to pay certain fines and dismantle his military system within thirty days.<sup>74</sup> Cetshwayo failed to comply with the terms of the ultimatum and in 1879 the Anglo-Zulu war broke out. In this war the Zulu forces were ultimately defeated by the British.<sup>75</sup> Legislation governing Africans in Natal had been delayed by the war but it continued after the war.

In 1881 the Natal government appointed the Native Affairs Commission to make

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<sup>71</sup> Laband, Rope of Sand, pp. 150, 191.

<sup>72</sup> Mahoney, 'Between the Zulu king and the Great White Chief', p. 93.

<sup>73</sup> Ibid.

<sup>74</sup> Laband, Rope of Sand, pp. 193-4.

<sup>75</sup> Guy, The Destruction of the Zulu Kingdom, pp. 43-5.

recommendations as to how the government could best administer Natal's African population.<sup>76</sup> The setting up of the commission took place against the background of signs that a crisis was emerging in African society in Natal.<sup>77</sup> The white settlers and colonial officials complained about problems associated with Africans, such as disputes over gardens and grazing lands, cattle-stealing, and the growing insubordination of young men and women, together with the movement of Africans from Natal to Zululand for land.<sup>78</sup> Welsh points out that:

social changes were shaking the foundations of traditionalism; chiefs complained of losing control over their people; kinship ties were weakening and heads of families complained that they were not respected by their children and that their wives were permitted too much freedom under Shepstone's innovation.<sup>79</sup>

The Native Affairs Commission was representative of the politically and economically significant sectors of the white population, i.e. settler farmers, merchants and colonial officials. The commission interviewed both European and African witnesses. It looked at a number of issues affecting Africans in Natal, such as taxation and the pass system. One of the most important issues that had a direct impact on the powers of chiefs that the commission examined was the sale of Crown lands. The commission recommended the opening up of Crown lands for sale to both Africans and Europeans and the charging of rent on them.<sup>80</sup> The opening up of Crown lands for purchase seems to have been done against the background of growing land crisis in the 1880s.<sup>81</sup> Because of a shortage of land in the reserves, the commission recommended that Crown lands were to be open to sale to Africans in Natal. One of the reasons for the shortage of land in the 1880s was the fact that many settler agriculturalists sought to expand their agricultural businesses by acquiring more land.<sup>82</sup> This was boosted by the beginning of the commercialization of agriculture and the building of railway connecting Natal to the Transvaal. Settlers pushed

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<sup>76</sup>S. Kunene, 'The pass system in colonial Natal, 1845-1910', unpubl. M.A. thesis (University of Natal, 1995), p. 47.

<sup>77</sup>Ibid.

<sup>78</sup>Ibid.; Mahoney, 'Between the Zulu king and the Great White', pp. 117-9.

<sup>79</sup>Welsh, The Roots of Segregation, pp. 220, 222.

<sup>80</sup>Report of the Natal Native Affairs Commission, 1881-2, pp. 13-30.

<sup>81</sup>Lambert, Betrayed Trust, pp. 72-5, 81, 89-90; Report of the Natal Native Affairs Commission, 1881-2, pp. 13-30.

<sup>82</sup>Lambert, Betrayed Trust, pp. 72-82.

Africans into the overcrowded reserves. There were also some big land owners who bought land in the 1880s. They also pushed Africans into the reserves and appointed their own chiefs who could control their people.

Land shortage in Natal in the 1880s undermined the powers of chiefs over their subjects. Traditionally, chiefs were responsible for the distribution and allocation of land among their subjects. Although the sale of Crown lands was open to Africans, very few chiefs could afford to buy lands for their people because these lands were of high value.<sup>83</sup> Powers of chiefs were further undermined when missionaries purchased Crown lands. This resulted in chiefly powers being disregarded in private lands.<sup>84</sup> Many missionaries appointed their chiefs to look after their Africans. This affected powers of chiefs in the sense that their civil jurisdiction over their supporters who lived in mission reserves was gradually undermined. There were frequent disputes between the kholwa leaders and hereditary chiefs over control of African people in mission reserves.<sup>85</sup>

The powers of chiefs were further undermined by the fact that when landowners purchased land they decided to ignore the authority of local chiefs and appointed their own izinduna to control tenants and labourers.<sup>86</sup> In theory, chiefs had been given power by the 1878 Code of Native Law to exercise authority over those of their supporters who lived on private lands. In practice, much of the control of Africans on private lands were given to izinduna appointed by landowners. These izinduna were answerable not to the chiefs to whom they had originally paid allegiance, but to their employers. These appointments undermined the hierarchical structure of African society.<sup>87</sup>

Many settlers complained about the shortage of labour to the 1881 Native Affairs Commission. As a result the commission recommended that a fixed rent was to be imposed on all Africans occupying the Crown Lands so as to put pressure on them to work on white farms.<sup>88</sup> Africans who occupied Crown lands did not pay rent before 1884. But in 1884 the Natal government

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<sup>83</sup>Ibid.

<sup>84</sup>Ibid.

<sup>85</sup>Ibid.

<sup>86</sup>Ibid.

<sup>87</sup>Ibid., p. 25.

<sup>88</sup>Ibid., pp. 90,105. Report of the Natal Native Affairs Commission, 1881-2, pp.10, 15.

passed the Squatters Act which stipulated that Africans occupying Crown lands should pay a fixed rent for their land.<sup>89</sup> The passing of this Act further curtailed the authority of chiefs on Crown Lands as it encouraged young people to enter into migrant labour so that they could pay the rents and taxes imposed on them by the government.<sup>90</sup> In my view, the Squatters Act was in line with the settlers' long-felt desire of acquiring cheap African labour because it helped to push Africans from Crown lands to go out and work for wages on settler farmers. When these young men came back they began to challenge and question the authority of chiefs and elders.<sup>91</sup>

The discovery of gold on the Witwatersrand in 1886 further pulled Africans into wage labour as the demand for labour increased.<sup>92</sup> Migrant labour not only affected the authority of chiefs and homestead elders, but even agricultural settlers gradually lost their source of labour to the gold fields. After realizing that the government was failing to restrict the movement of Africans from Natal to the goldfields, the representatives of settler farmers in the Legislative Council revived the issue of self-government for Natal. The issue of self-rule had been raised in the 1870s and in the early 1880s but had been shelved because of the colony's economic difficulties.<sup>93</sup> It was also raised in 1887 after the discovery of gold. The expansion of gold mining stimulated the Natal economy by encouraging the commercialization of agriculture. Natal settler farmers began to feel that they could manage the colony's internal affairs without British assistance. Some agricultural settlers, especially on the coast, who experienced labour shortage, felt a need for the government to secure a supply of labour by restricting the movement of Africans out of Natal.<sup>94</sup> They started pressing for a form of government that would look after their interests.

Central to the debate over responsible government was the issue of native law as well as control of African affairs in Natal. The majority of settler representatives felt that the existing Code of Native Law, which had been passed by the Natal government in 1878, needed to be revised.<sup>95</sup> It

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<sup>89</sup>Mahoney, 'Between the Zulu king and the Great White Chief', p. 133; Lambert, Betrayed Trust, pp. 89-91.

<sup>90</sup>Ibid.

<sup>91</sup>Mahoney, 'Between the Zulu king and the Great White Chief', p. 133, 139.

<sup>92</sup>Ibid.

<sup>93</sup>Kunene, 'The pass system in colonial Natal', pp. 50-2; J. Lambert, 'Sir John Robinson and Responsible Government, 1863-1897', unpubl. Ph.D thesis (University of Natal, 1975), pp. 114-5.

<sup>94</sup>Lambert, Betrayed Trust, pp. 95-96.

<sup>95</sup>Brookes, White Rule in South Africa, pp. 147-8.

seems that these settlers wanted it to be revised because, on the one hand, it failed to control the supply of labour, as many Africans went out to the gold fields on the Witwatersrand.<sup>96</sup> On the other hand, it seems that it failed to address the crisis in many African homesteads which developed in the 1880s and 1890s under the impact of migrant labour.<sup>97</sup>

The growing land shortage in this period made it difficult for chiefs to meet the needs of the increasing African population, and clashes and disputes over gardens erupted. The growing disregard of chiefly authority by young men and women who entered into migrant labour was indicative of a growing crisis in the African society.<sup>98</sup> Due to the crisis in African homesteads, the Legislative Council promulgated the Native Administration Amendment Act in 1887. Although this law restored the powers of the Supreme Chief which had been removed by the Native Administration law of 1875<sup>99</sup>, it also provided that a new code was to be developed so as to address the labour problem and to re-codify native customary law.<sup>100</sup>

The elected members of the Legislative Council insisted that amendments to the code should be passed by the Legislative Council while colonial officials wanted amendments to be made by a select committee.<sup>101</sup> The majority of white settlers in the Legislative Council supported the proposal that the code should be amended by the Legislative Council.<sup>102</sup> In 1891 a complete Code of Native Law was proclaimed by the Legislative Council. It consisted of 102 clauses. Clause 19 of the new code provided, for the first time, that the chief in charge of a section of an African community was regarded as “minor deputy of the Supreme Chief and a Judicial officer, and holds such offices during the pleasure of the Supreme Chief.”<sup>103</sup> This law served to degrade the status and prestige of chiefs and made them state officials who served during the pleasure of

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<sup>96</sup>Mahoney, ‘Between the Zulu king and the Great White Chief’, pp. 139, 193.

<sup>97</sup>Lambert, Betrayed Trust, pp. 74-6, 81-2, 105-12.

<sup>98</sup>*Ibid.*, p. 131.

<sup>99</sup>N.C.P. 1/1/1/35, Votes and Proceedings of the Legislative Council of the Representative Government, 16 June 1887, pp.50-1; N.C.P. 6/1/1/38, NGG, 17 October 1887, pp. 149, 680, 1248.

<sup>100</sup>*Ibid.*, pp. 61-2.

<sup>101</sup>Welsh, The Roots of Segregation, p. 168.

<sup>102</sup>*Ibid.*

<sup>103</sup>R. L. Hitchins & W. Sweeney, eds., Statutes of Natal, vol. 2 (Pietermaritzburg: P. Davis & Sons, 1901), pp.15-17.

the Supreme Chief. This further empowered the Supreme Chief to appoint and dismiss chiefs and izinduna as he pleased. According to clause 19, the chief was responsible for “the general good conduct of his tribe, the prompt supply of men for purposes of defence, or to suppress disorder or rebellion, or as labourers for public works, or for the general needs of the Colony.”<sup>104</sup>

Chiefly authority was further undermined by clause 32 of the code, which provided that the Supreme Chief had “absolute power to appoint and dismiss chiefs, and require Africans to furnish military service and labour on public works.”<sup>105</sup> He was empowered to divide existing chiefdoms, if necessary, into two or more parts and to dismiss any chief found guilty of criminal offence.<sup>106</sup> Lambert argued that clause 32 encouraged fragmentation of chiefdoms and led to ‘faction fighting’ among Africans in Natal.<sup>107</sup> It seems that the fragmentation of chiefdoms by the Supreme Chief aimed at preventing chiefs from being too powerful to challenge the state authority. This law was passed against the background of increasing ‘faction fighting’ which was mainly caused by the shortage of land in the colony of Natal.<sup>108</sup>

Although some clauses of the code weakened chiefs’ authority over their subjects, others, such as clauses 66 to 78, increased the powers of chiefs and elders over women and children.<sup>109</sup> Historical evidence indicates that official recognition of chiefs’ and elders’ authority in the 1890s had to do with the crumbling of African homesteads by the late 1880s and 1890s under the impact of migrant labour and land shortage.<sup>110</sup> Chiefs had been unable to maintain law and order within their chiefdoms and to provide labour for isibhalo because they did not have sufficient power to control their people.<sup>111</sup> Some settler leaders were beginning to realize that traditionalism and customary law were useful instruments in securing both labour and land; that is why in 1891 they recognized powers of chiefs to try all civil cases (divorces excepted) between Africans, whether

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<sup>104</sup>Ibid.

<sup>105</sup>Ibid.; Carton, “Blood from your sons”, pp. 14, 139.

<sup>106</sup>Ibid.

<sup>107</sup>Lambert, Betrayed Trust, pp. 123-4.

<sup>108</sup>Mahoney, ‘Between the Zulu king and the Great White Chief’, p. 174-5.

<sup>109</sup>Hitchins & Sweeney, Statutes of Natal, p. 14.

<sup>110</sup>Lambert, Betrayed Trust, pp. 89-92, 105-108, 123-6; Morrel, Wright & Mentjes, ‘Colonialism and the establishment of white rule’, p. 76.

<sup>111</sup>Lambert, Betrayed Trust, pp. 89-92.



arising from contract, or from 'tout' labour or otherwise.<sup>112</sup> Disputes over contracts, especially labour contracts, involving Africans had previously been heard by magistrates in terms of the Native Code of 1878 and the Pass Law of 1884. Clause 66 of the new code also allowed chiefs to impose a fine of up to two pounds in civil cases.<sup>113</sup> Sons who refused to be controlled by their homestead heads could be disinherited by a homestead head acting in conjunction with the chief.<sup>114</sup> Elders were empowered to use force and corporal punishment on children who disobeyed their orders, to demand the earnings of women and children, and distribute them for the benefit of the house, and to give authority to women who wanted to enter into any contract.

Before 1891, women were allowed to be independent of their husbands in cases such as labour contracts, and girls were allowed to marry persons of their choice as provided by the law regulating marriage among Africans.<sup>115</sup> In the late 1880s and 1890s many women had begun to be migrant labourers. This was when they started to be gradually independent of their husbands and homestead heads and began to challenge their authority. They also refused to perform their duties within the homesteads.<sup>116</sup> Clauses 66 to 78 of the new code empowered elders and chiefs to inflict corporal punishment on women and children who disobeyed their orders. Under clause 72 of the code, married women were subjected to their husbands, and all contracts involving women were to be confirmed by a homestead head or husband because the code regarded women as minors.<sup>117</sup> Females could neither inherit property nor determine who should inherit it.<sup>118</sup>

In conclusion, after losing powers, such as the right to hold umkhosi, call up amabutho, and sentence people to death, before 1875, in the next 16 years chiefs lost more powers. In the early 1890s chiefs could no longer distribute land as they had previously done without the consent of magistrates, and were subject to removal by the Supreme Chief if found guilty of a criminal offence. Their jurisdiction was confined only to civil cases and they were allowed to impose fines of up to two pounds in those cases, but their decisions were subject to appeal to the magistrates' court. This encouraged their followers to institute cases in magistrates' courts rather than in

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<sup>112</sup>Welsh, The Roots of Segregation, p. 172.

<sup>113</sup>*Ibid.*

<sup>114</sup>*Ibid.*, p. 26.

<sup>115</sup>Welsh, The Roots of Segregation, p. 275.

<sup>116</sup>Lambert, Betrayed Trust, pp. 135-6.

<sup>117</sup>Hitchins & Sweeney, Statutes of Natal, pp. 19-32.

<sup>118</sup>*Ibid.*, p. 26.

chiefs' courts. Chiefs could no longer preside over disputes on private lands as they had previously done. Many chiefs and elders complained to the magistrates about the way their authority was weakened by the late 1880s and the early 1890s. Although they had some powers over women and children, the government tried to shore them up through the new code. By 1893 Natal settlers gained more power to control native affairs via the granting of responsible government. They continued fragmenting powerful chiefdoms and undermining the powers of chiefs. Chapter three will examine the changes in the powers of chiefs under responsible government from 1893 to 1897.

### **Chapter three**

#### **The decline of chiefly authority in the shadow of settler domination, 1893 to 1897**

By 1893, Natal settlers had gained more control through the granting of ‘responsible government’ over the making of native policy, the economic development of the colony and the distribution of labour. These important political changes in Natal were taking place against the background of important economic changes, stemming largely from the discovery of gold on the Witwatersrand in 1886. This led to economic expansion in Natal and an increase in capital investment, the expansion of Natal’s commercial links with other neighbouring states, and the construction of railways, roads and harbours.<sup>1</sup> The economic and political changes that took place in Natal in the early 1890s led to the tightening up of control over the African population. This took place at a time of the increasing crisis in African society. The tightening up of control over chiefs was viewed as necessary by the government so that it could manage to ‘secure’ the property of the settlers against Africans who outnumbered them, and to secure land and labour.<sup>2</sup>

The conferring of responsible government on Natal led to changes in the structure of the colony’s administration. The Prime Minister together with ministers were elected. The first ministry under responsible government was led by Sir John Robinson who had been a prominent architect of responsible government and represented the Durban borough.<sup>3</sup> The new Governor, Sir Walter Hely-Hutchinson, retained his powers as Supreme Chief, but he was now required to consult with ministers in any matter concerning Africans. Lambert argues that the Supreme Chief never exercised his powers independently of his ministers.<sup>4</sup> The Secretary for Native Affairs was now in effect a ‘Minister’ of Native Affairs who was appointed as a member of the Prime Minister’s ‘cabinet’. The equivalent to the old Secretary for Native Affairs was now the Under-Secretary for Native Affairs. The new Secretary for Native Affairs was R. Moor, who was a farmer, while the Under-Secretary for Native Affairs was S. O. Samuelson. One of the major changes regarding the administration of African affairs was the appointment of the Under-Secretary for Native affairs by the Prime minister and the Governor. The Under-Secretary for Native Affairs was the senior

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<sup>1</sup>B. Guest, ‘The new economy’, in Duminy and Guest, eds., Natal and Zululand from Earliest Times to 1910, p. 303; Kunene, ‘The pass system in colonial Natal’, p. 52.

<sup>2</sup>Lambert & Morrell, ‘Domination and subordination’, p. 71.

<sup>3</sup>Lambert, Betrayed Trust, p. 98.

<sup>4</sup>Ibid., p. 66.

official in the Native Affairs Department in Natal from 1893 to 1910.<sup>5</sup> By 1893 the Shepstone dynasty's rule was over, but Shepstonism, as interpreted by his successor, remained alive.

Another important constitutional change that took place in 1893 was the establishment of two houses of Parliament, a Legislative Council and a Legislative Assembly.<sup>6</sup> The Legislative Council consisted of eleven members nominated in the first instance by Governor, and thereafter by the Governor-in-Council.<sup>7</sup> The Legislative Assembly consisted of thirty-seven elected members.<sup>8</sup> The settler farming representatives were given twenty-nine seats as opposed to the eight allocated to the boroughs in the Legislative Assembly.<sup>9</sup> Although the distribution of seats in the Legislative Assembly ensured a majority of farmers' representatives, the farmers were not politically united. Sugar farmers were more concerned with the availability of plentiful seasonal migrant labour, whereas other farmers were more concerned with a constant supply of labour and conditions of labour control.<sup>10</sup>

Government policies under the new dispensation were at first shaped by the need to strengthen commercial links with the Transvaal.<sup>11</sup> Although the Robinson ministry represented all influential sectors of the settler population, the interests of the Durban merchants and artisans seem to have been predominant. Lambert states that 'the first two responsible government ministries, headed by Robinson and Escombe, tended to pay more attention to urban, mercantile and mining interests than to farming.'<sup>12</sup> This could be attributed to the fact that both Robinson and Escombe came from Durban and represented the interests of Durban merchants and artisans.<sup>13</sup> Robinson was more concerned with improving economic ties with neighbouring states, especially the

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<sup>5</sup>Welsh, The Roots of Segregation, p. 232.

<sup>6</sup>N.C.P. 5/2/31, Laws of the Colony of Natal, 1893, pp. 69-70.

<sup>7</sup>Ibid.

<sup>8</sup>Ibid.

<sup>9</sup>Lambert, Betrayed Trust, p. 67.

<sup>10</sup>Lambert & Morrell, 'Domination and subordination', p. 67.

<sup>11</sup>Lambert, Betrayed Trust, pp. 64, 67.

<sup>12</sup>J. Lambert, 'From independence to rebellion: African society in crisis, c. 1880-1910', in Duminy and Guest, eds., Natal and Zululand from Earliest Times to 1910, p. 383.

<sup>13</sup>Lambert, Betrayed Trust, pp. 64, 67.

Transvaal,<sup>14</sup> as this was more important for the big merchants in Durban than was securing a constant labour supply for settler agriculture.<sup>15</sup> Robinson was reluctant to restrict the outflow of African labour to the goldfields because he did not want to antagonize the Transvaal and jeopardize the growth of commercial links between Natal and the Transvaal.<sup>16</sup>

Economic and political changes in Natal influenced and shaped the way in which Africans were administered, but it seems that the new government experienced difficulties in its administration of Native affairs. On the one hand, it was determined to tighten control of chiefs against the background of the increasing crisis in African society. On the other hand, it wanted to give chiefs certain powers so that the rural population would be controlled so as to ensure a supply of labour to the Transvaal and to the Natal's newly opened coal mines.<sup>17</sup> Although Welsh argues that little legislation affecting Africans was passed in the period from 1893 to 1897 because of the government's other priorities, historical evidence indicates that there was major legislation governing Africans that was passed in this period which affected the powers of chiefs.<sup>18</sup>

The thrust of native policy did not change much because the new government continued ruling the African population through chiefs. The new government made use of the 1891 Code of Native Law, but with a strong desire to further tighten control over chiefs and their people. One factor making for the tightening up of control over chiefs was the impact of economic changes, but another was a feeling of insecurity among the settlers. They thought that Africans in the colony would view the government as weak because it had lost the military resources of imperial Britain.<sup>19</sup> On the other hand, the tightening up of control of chiefs had to do with the crisis in African society indicated by overpopulation of the reserves and the disputes that erupted over diminishing resources in the reserves and over boundaries dividing chiefdoms. The government

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<sup>14</sup>R. Ovendale, 'The politics of dependence, 1893-9', in Duminy and Guest, eds., Natal and Zululand from Earliest Times to 1910, p. 324.

<sup>15</sup>Lambert, Betrayed Trust, p. 99-100.

<sup>16</sup>Ibid.; U. Dhupelia, 'African labour in Natal: Attempts at coercion and control, 1893 - 1903', Journal of Natal and Zulu History, vol. 5 (1982), p. 39

<sup>17</sup>Lambert, Betrayed Trust, p. 99.

<sup>18</sup>Welsh, The Roots of Segregation, p. 229.

<sup>19</sup>Lambert, Betrayed Trust, p. 99.

feared that the deteriorating situation in the locations would lead to an African insurrection.<sup>20</sup>

Before we can examine the changes in the powers of chiefs under responsible government, it is important to look first at the way in which powers of the Supreme Chief were weakened. The codes of 1878 and 1891 had both sought to define the powers of the Supreme Chief. From the 1870s, settlers in Natal wanted to undermine the powers of the Supreme Chief because they felt that he made Africans independent of settlers by giving them land which was an essential resource for homestead economy.<sup>21</sup> Many Africans cultivated the land and raised livestock, which made them independent of wage labour.<sup>22</sup> The granting of responsible government gave Natal settlers more power to reform the office of the Supreme Chief, and to subordinate the Governor and the Native Affairs Department.<sup>23</sup> The most important event that led to the restructuring of the powers of the Supreme Chief was the Qwabe succession dispute which erupted in the 1890s.

On the death of Musi, the Qwabe chief in Natal in 1890, a highly complicated succession dispute arose. There were two claimants to the Qwabe chiefship, Meseni and Siziba.<sup>24</sup> In 1892 the Supreme Chief appointed Meseni as a new chief. In 1894 the rival claimant, Siziba kaMmiso appealed to the Native High Court, which ruled in his favour, awarding him the right to property of the chiefly house.<sup>25</sup> In the same year the settler representatives in the Legislative Assembly were instrumental in passing Act No. 2, 1894 which provided that the Supreme Chief should appoint heirs to chiefship but not determine who should inherit property.<sup>26</sup> It also stipulated that there should be no appeal from the decision of the Supreme Court.<sup>27</sup> This weakened the powers of the Supreme Chief because previously it was he who determined who should inherit property

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<sup>20</sup>Lambert and Morrell, 'Domination and subordination', p. 76.

<sup>21</sup>Mahoney, 'Between the Zulu king and the Great White Chief', pp. 193, 206-7.

<sup>22</sup>Ibid.

<sup>23</sup>Ibid.

<sup>24</sup>Lambert, Betrayed Trust, p. 131; Mahoney, 'Between the Zulu king and the Great White Chief', pp. 196-9.

<sup>25</sup>Ibid.

<sup>26</sup>N.C.P., 6/1/1/45, NGG, 30 June 1894, p. 640.

<sup>27</sup>Marks, Reluctant Rebellion, p. 228.

of a dead chief.<sup>28</sup>

By this time conditions in the African reserves were deteriorating rapidly, as land became scarcer for the growing African population. Chiefly authority was weakened by the shortage of land since chiefs could no longer easily provide land to their followers, and distribution of land was an important source of power for chiefs.<sup>29</sup> Agricultural production in the reserves was also reduced by over-cultivation and the destruction of major resources such as forests and bush cover which were essential resources for the fertility of the soil. The destruction of bush cover created conditions for soil erosion.<sup>30</sup>

In order to secure land and labour white settlers fragmented powerful chiefdoms in Natal. They made them weak out of the fear of African insurrection as the crisis in African society deepened.<sup>31</sup> The powers of chiefs were weakened in order to continue fragmenting the existing powerful chiefdoms by appointing izinduna and giving them powers like the hereditary chiefs.<sup>32</sup> In 1893 there were 183 state-recognized chiefs in Natal. By 1905 the number had increased to approximately 231.<sup>33</sup> This is indicative of an extent to which chiefdoms had been broken up after 1893. It seems that the settler representatives, especially those representing settler farmers, felt that the appointment of izinduna would help in securing a constant supply of labour to the settler farms because many chiefs could no longer provide labour.<sup>34</sup> Act No. 13 of 1894, entitled 'Native Code Amendment Act', provided that:

1. The Supreme Chief may give to a District Headman, who is in charge of a detached portion of a tribe, the same powers for the trial of civil cases as are exercised by Chiefs under Law No. 19 of 1891.
2. The power to appoint Chiefs conferred by Section 33 of Law No. 19, 1891, shall be deemed to include the power to appoint persons to exercise all or any

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<sup>28</sup>Ibid.

<sup>29</sup>Lambert, Betrayed Trust, pp. 109, 123.

<sup>30</sup>Ibid., p. 109.

<sup>31</sup>Mahoney, 'Between the Zulu king and the Great White Chief', p. 228.

<sup>32</sup>Lambert, Betrayed Trust, pp. 123-4.

<sup>33</sup>N.C.P. 8/2/6, Blue Book of the Colony of Natal: Departmental Reports, vol. 2, 6 March 1905, pp. 2-3.

<sup>34</sup>Ibid.

powers of Chiefs for any time and on such condition as to emoluments or otherwise as the Supreme Chief shall deem fit.<sup>35</sup>

This law was passed by a majority of 24 out of 29 votes.<sup>36</sup> Lambert argues that this Act encouraged the fragmentation of chiefdoms by empowering izinduna to try civil cases without reference to their chiefs.<sup>37</sup> It seems that this law implied that chiefs who were previously responsible for the appointment of izinduna would no longer exercise this power. This also implied the growing determination of the government to directly and tightly control chiefs so as to prevent them from challenging the state. According to Marks, the amendments, such as the appointment of izinduna and the extension of chiefly authority to them, which were made to the Code of Native Law in the 1890s aimed more at tightening up control over the 'tribal system' than at expanding customary law.<sup>38</sup>

In an attempt to end disputes of this kind the Natal government enacted the Native Code Amendment Act of 1895.<sup>39</sup> Clause 15 of this Act entirely removed the civil jurisdiction which chiefs had previously exercised over those of their adherents who lived on private lands.<sup>40</sup> It provided that:

A judgement of a Native Chief shall not be enforced on private lands otherwise than on a writ of execution, which the Administrator of Native Law is hereby given a discretion to issue or withhold.<sup>41</sup>

Under this law, the power to pass judgement on civil cases on private lands was removed from the chiefs to the magistrates. This law also increased powers of the Administrators of Native Law who were appointed by the Supreme Chief in terms of Law No. 13 of 1875. Administrators of Native Law were people of European descent who were appointed by the Governor and given criminal jurisdiction. Some of these administrators of Native Law were appointed as magistrates when the need to tighten up control of chiefs and their people rose.

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<sup>35</sup>Ibid.

<sup>36</sup> Natal Witness, 5 November, 1894.

<sup>37</sup>Ibid., p. 124.

<sup>38</sup>Marks, Reluctant Rebellion, p. 37.

<sup>39</sup>N.C.P. 5/2/33, Laws of the Colony of Natal, 1895, pp. 69-70.

<sup>40</sup>Lambert, Betrayed Trust, p. 101.

<sup>41</sup>N.C.P. 6/1/1/46, NGG, 02 February 1895, p. 253-4; Lambert, Betrayed Trust, p. 101.



From 1894 onward, conditions in many of the African reserves were worsened by environmental disasters, such as locust plagues, which destroyed crop production.<sup>42</sup> After 1894 droughts recurred in Natal. The first new disaster was a locust plague.<sup>43</sup> They began to appear in October 1894. By December vast numbers were seen throughout the colony.<sup>44</sup> Locust plagues destroyed crops and the government delayed taking action until June 1895. Chiefs in the reserves were finding it more difficult to control their subjects without enough resources to cement and strengthen their relationship with their headmen and people.<sup>45</sup> As a result of this there was a potential for confrontation between chiefs and the state. In the light of the deteriorating living conditions on the reserves in the mid-1890s, the government further sought to extend its control over chiefs. In 1896 the Legislative Assembly passed the Native Locations Act which gave more powers to the magistrates. It also gave powers to the Supreme Chief to appoint inspectors to administer the reserves.<sup>46</sup> These inspectors were responsible for distributing land to Africans and the admission of new Africans in the locations and the removal of Africans from them (locations). The administration of locations had previously been done by chiefs, but now their powers were removed from them and placed in the hands of the Governor-in-Council, magistrates and inspectors. This Act provided that:

1. It shall be lawful for the Governor, from time to time, to appoint, during pleasure, fit and proper persons, to be called Inspectors, to supervise Native locations at such salaries as may from time to time be fixed by the Governor.
2. The Governor in Council may make, alter, and amend rules to regulate the use and occupation of lands already or hereafter to be set apart as Native Locations.
3. The rules to be passed under this Act may provide for (a) The apportionment of land in locations for use and occupation by natives. (b) The admission of natives to locations. (c) The removal of natives from locations. (d) The allotment of lands in locations for kraal sites, and for cultivation, pasturage, and commonage. (e) The duties of Chiefs, District Headmen, and kraal heads in locations, and with regard to the distribution of people therein, the allotment of kraal sites and sites for cultivation, and the removal of kraals in locations.<sup>47</sup>

Traditionally, chiefs were responsible for the allotment of land to their subjects for homestead

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<sup>42</sup>Lambert, Betrayed Trust, p. 143.

<sup>43</sup>Ibid.

<sup>44</sup>Ibid.

<sup>45</sup>Ibid., p. 82.

<sup>46</sup>N.C.P. 6/1/1/47, NGG, 01 September 1896, p. 1404;

<sup>47</sup>N.C.P. 5/2/33, Laws of the Colony of Natal, 1896, pp.134-5.

sites, and cultivation. They were also responsible for admitting newcomers and removing those people guilty of offence but this power passed into the hands of inspectors from 1896 onward.<sup>48</sup> The undermining of chiefly authority in 1896 seems to imply the government's determination to bring chiefs under control and to ensure that law and order was maintained among African communities. The effect of this law was to undermine the powers of chiefs as leaders of communities, and to take another step in turning them into 'officials' answerable to the Supreme Chief.

Fearing that chiefs would turn against the settler government as land became more scarce, the government continued strengthening the powers of izinduna so as to rely on them against the hereditary chiefs.<sup>49</sup> This was an important shift in government policy. The izinduna were being brought more directly under the central administration. The increase in the powers of izinduna in 1896 weakened those of chiefs in Natal.<sup>50</sup> In terms of Act No. 13 of 1894 izinduna had been empowered to try civil cases without reference to their chiefs. In 1896 the government promulgated Act No. 40 of 1896 which provided for the extension of the powers of chiefs concerning lobolo matters to the izinduna or district headmen.<sup>51</sup> This law provided that "The Governor in Council may place any appointed chief on the same footing with respect to lobolo as an hereditary chief in charge of a tribe."<sup>52</sup> This applied to both izinduna and appointed chiefs. The 1896 Act also proclaimed that any district headman could be removed from office by an Administrator of Native Law on the direction of the Secretary for Native Affairs or the Governor in Council.<sup>53</sup>

Due to the rise in 'faction fighting' in the 1890s, as reported by the Natal Witness in 1896,<sup>54</sup> the government enforced legislation which gave magistrates more power to try 'faction fights'. Before we can look at the provision of this law, we need to define the term 'faction fight' so that we will be able to comprehend legislation regarding 'faction fighting'. 'Faction fight' is a

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<sup>48</sup> Stuart, A History of the Zulu Rebellion, pp. 32-7; Laband, Rope of Sand, pp. 3-10.

<sup>49</sup> Lambert, Betrayed Trust, p. 124.

<sup>50</sup> Ibid.

<sup>51</sup> N.C.P. 5/2/33, Laws of the Colony of Natal, 1896, pp. 134-5.

<sup>52</sup> Hitchins & Sweeney, Statutes of Natal, pp. 45-6.

<sup>53</sup> Ibid.

<sup>54</sup> Natal Witness, 07 July 1896, and 24 September 1896; Mahoney, 'Between the Zulu king and the Great White Chief', pp. 130, 210-9.

disputed term. The law of 1896 defined ‘faction fighting’ as fighting with or without weapons between Africans in which not less than eight persons were involved.<sup>55</sup> A. Minnaar defines so-called ‘faction fight’ as ‘collective violence’ between rural societies.<sup>56</sup> He further states that these were full-scale violent confrontations between traditionally-armed gangs of men.<sup>57</sup> In his unpublished M.A. thesis, ‘Land, officials, chiefs and commoners in the izimpi zemibango in the Umlazi Location of the Pinetown District in the context of Natal’s changing political economy, 1920 to 1936’, D. J. Sithole defines ‘faction fighting’ as izimpi zemibango, which are incidents of violence within and between rural African communities.<sup>58</sup> These incidents ranged from land disputes to cattle stealing disputes.

‘Faction fighting’ was caused by a number of factors. One was the growing shortage of land in the reserves which resulted in clashes and disputes over grazing lands and lands for homestead sites. It was also caused by succession disputes like that in the Qwabe chiefdom.<sup>59</sup> We cannot also overlook the fact that in many cases the Natal government also contributed to the brewing of ‘faction fighting’ among Natal Africans. This is evident by looking at the government’s fragmentation of chiefdoms, such as Thetheleku’s chiefdom, which was fragmented after his death, leading to people being placed under chiefs whom they despised.<sup>60</sup> Another example of government’s contribution to faction fights was its stand on the Qwabe dispute in the 1890s which led to faction fighting between sections of the Qwabe chiefdom. Mahoney argued that after responsible government had been granted to Natal, the government suppressed ‘faction fights’ among Africans by defining boundaries of chiefdoms and appointing new chiefs.<sup>61</sup> In 1896 an Act entitled “To provide for the Trial of Faction Fighting among Natives” was enacted.<sup>62</sup> This law provided that:

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<sup>55</sup>N.C.P. 6/1/1/47, NGG, 02 June 1896, pp. 691-2.

<sup>56</sup>A. Minnaar, Conflict and Violence in Natal/KwaZulu: Historical Perspectives (Pretoria: Human Sciences Research Council, 1991), pp. 1-3.

<sup>57</sup>*Ibid.*

<sup>58</sup>D. J. Sithole, ‘Land, officials, chiefs and commoners in the izimpi zemibango in the Umlazi Location of the Pinetown District in the context of Natal’s changing political economy, 1920 to 1936’, unpubl. M.A. thesis (University of Natal, 1998), pp. X, 40-1.

<sup>59</sup>Lambert, Betrayed Trust, p. 131.

<sup>60</sup>J. Lambert, ‘Violence and the State in Colonial Natal: conflict between and within Chiefdoms’, in unpubl. conference paper (University of Natal, 1985), p. 12.

<sup>61</sup>Mahoney, ‘Between the Zulu king and the Great White Chief’, pp.216-9

<sup>62</sup>N.C.P. 6/1/1/47, NGG, 02 June 1896, p. 691-2.

1. Faction Fighting shall be a crime cognizable in the courts of the magistrates:  
 Provided, however, that- (a) nothing in this Act shall prevent a prosecution for any offence with which, but for this Act, any person might have been charged. (b) Nothing in this Act shall be deemed to take away the discretion of a Magistrate to commit any one or more of the accused for trial in the Supreme Court or a Circuit court.
2. For the punishment of Faction Fighting a Magistrate shall have power to pass upon each person convicted a sentence of imprisonment for any term not exceeding two years, or a fine not exceeding twenty pounds sterling.<sup>63</sup>

It seems that the promulgating of the faction fighting Act in 1896 was another important measure by the government to try and suppress faction fighting. This measure also had an effect on the powers of chiefs. Previously 'faction fights' had been dealt with in chiefs' courts, but after 1896 this jurisdiction was removed from the chiefs courts' to those of the magistrates.

To conclude, the granting of responsible government or self-rule to Natal in 1893 gave Natal settlers more power to pass laws governing Africans. Within the period of four years covered by this chapter, the government introduced far-reaching legislative measures which aimed at depriving chiefs of their remaining civil jurisdiction over their adherents who lived on private lands. The government empowered the Supreme Chief to appoint izinduna or district headmen in its attempt to break up powerful chiefdoms. Chiefs were regarded as minor deputies of the government exercising their rights at the pleasure of the Supreme Chief. The Natal government further undermined the authority of chiefs to assert their authority over people who resided on the private lands. This was a measure which was in part aimed at preventing confrontations between hereditary chiefs and kholwa chiefs and sometimes izinduna. It also aimed at undermining the powers of chiefs. Chiefly authority was further undermined by the extension of chiefly powers to the izinduna in 1896. After 1893 chiefs in Natal lost power to allocate and distribute land to their subjects for homestead sites and cultivation, and to distribute wealth through the custom of sisaning cattle. The power to distribute land in the locations passed to inspectors of native law who were appointed by the Governor-in-Council to administer the locations. The power to try 'faction fight' cases was also removed from chiefs' courts to those of the magistrates'. Chiefs became little more 'than policemen responsible for ensuring that the rules and regulations of the colony were not contravened.'<sup>64</sup> In 1897 the Natal government concluded negotiations with the British government to incorporate Zululand into Natal. This was accompanied by a shift in the native policies of the Natal government and the gaining of more power by settler farmers. The next chapter will turn to an examination of how the powers of chiefs had been affected by the extension of colonial domination over Zululand region since 1879.

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<sup>63</sup>Ibid.

<sup>64</sup>Lambert, Betrayed Trust, p. 124.

## **Chapter four**

### **The impact of colonial rule on the powers of chiefs in Zululand, 1879-1897**

The outbreak of the war between the British and the Zulus in 1879 was a turning-point in the history of the Zulu people. When the war broke out Cetshwayo was Zulu king. Until 1879 the Zulu kingdom was an independent and autonomous state. Powers of chiefs changed after the Anglo-Zulu war and the Zulu kingdom was fragmented by British officials. Traditional institutions, such as age-regiments, the annual first-fruits ceremony, and chiefs' private establishments of women, i.e. isigodlo, (though very few chiefs had izigodlo since this was a requisite of the king) through which chiefs exercised authority over their adherents, came under pressure. The powers of chiefs were undermined by the imposition, by the colonial officials, of white magistrates and of appointed chiefs who tended to disregard the authority of hereditary chiefs and became loyal and faithful to the white officials.

Before we can examine the extent to which powers of chiefs in what became Zululand were undermined after 1879, we need to look first at their position and powers in the Zulu kingdom in the 1870s. This aims at establishing a baseline which will be a foundation for discussion of the nature of chiefly powers in the 1880s and 1890s. Before the establishment of colonial rule in Zululand, the king was the supreme and central authority in the Zulu kingdom.<sup>1</sup> The basis of his power lay on the formation and maintenance of important institutions of power, such as amabutho and izigodlo.<sup>2</sup> The king was the only one who formed regiments and gave permission to the young men and women to marry. However, in some cases, the great chiefs, those who were regarded as izikhulu, had been given power and permission by the king to give their young men and women permission to marry.<sup>3</sup>

The Zulu king was also regarded by his adherents as the rain doctor of the nation.<sup>4</sup> As a rain doctor he was the one responsible for calling on the ancestors of the kingdom if there was drought or scarcity of rainfall. This was a very important practice in the Zulu kingdom and it

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<sup>1</sup>J. Guy, The Destruction of the Zulu Kingdom, pp. 29-40; J. Guy, 'The destruction and reconstruction of Zulu society', in S. Marks & R. Rathbone, eds., Industrialization and Social Change in South Africa: African Class Formation, Culture and Consciousness, 1870-1930 (London: Longman, 1982), pp. 167-70.

<sup>2</sup>Guy, The Destruction of the Zulu Kingdom, p. 29-40.

<sup>3</sup>Ibid.

<sup>4</sup>JSA, vol. 4, evidence of Ndukwana kaMbengwana, pp. 342, 51.

symbolized power and prestige for the king.<sup>5</sup> There was no person, other than the king, who was allowed to make rain in times of drought. This normally took place near the graves of the ancestral Zulu chiefs.<sup>6</sup> The holding of this ceremony in the ancestral Zulu chiefs' area was done so that other lineages of the Zulu kingdom, especially those who were conquered, would gradually be assimilated into the fabric of Zulu-dominated society.

The king gave chiefs power to distribute land but there were constant tensions between the king and chiefs about the scope of their respective powers.<sup>7</sup> Although the king who held the land on behalf of his people, the great chiefs were the ones who were responsible for allocating and distributing it to individual households. These chiefs were the ones who welcomed newcomers, and then reported them to the king, who gave authority for that person to be given land. According to Ndukwana, in cases of disputes over gardens, such quarrels were settled by the umnumzane, i.e. a homestead head. If the umnumzane failed to resolve the matter, then this was referred to the isikhulu or great chief.<sup>8</sup> Appeals were made to the king. At the local level chiefs had power to resolve civil and criminal disputes and to implement and enforce law within their chiefdoms.<sup>9</sup>

Chiefs were also responsible for the appointment of headmen in their chiefdoms, but the king was consulted in that matter. Chiefs exercised both civil and criminal jurisdiction over their adherents.<sup>10</sup> Concerning punishment, Cope argues that "there is much evidence that Cetshwayo never succeeded in making the right to inflict capital punishment a royal monopoly and that the chiefs retained the power to execute without reference to the king."<sup>11</sup> It seems that chiefs were also allowed to try cases associated with witchcraft.

The war of 1879 brought an end to many of these powers of chiefs in Zululand. After the Anglo-Zulu war, Sir Garnet Wolseley, the High Commissioner who was appointed in 1879, was

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<sup>5</sup>Ibid.

<sup>6</sup>Carton, 'Blood from your sons', pp. 45-7.

<sup>7</sup>JSA, vol. 4, evidence of Ndukwana kaMbengwana, p. 358.

<sup>8</sup>Ibid., p. 359.

<sup>9</sup>Guy, The Destruction of the Zulu Kingdom, pp. 30-2.

<sup>10</sup>Ibid.

<sup>11</sup>R. Cope, 'The origins of the Anglo-Zulu war of 1879', unpubl. Ph. D. thesis (University of Witwatersrand, 1995), p. 54.

specifically entrusted with responsibility for the affairs of Zululand, the Transvaal and Natal.<sup>12</sup> The thrust of his policy was not to annex Zululand, but to dismantle the unitary kingdom of the past, and to replace it with thirteen chiefdoms ruled by chiefs appointed by the British power, and to prevent the Zulu royal house from reasserting its domination over the Zulu people.<sup>13</sup> On 1 September 1879, Wolseley proclaimed the post-war settlement in Zululand.<sup>14</sup> The proclamation of the settlement was a major step that was taken by the colonial officials in their attempt to curtail the powers of chiefs in Zululand. The settlement contained eleven clauses.

The most important clause that undermined the powers of both the Zulu king and chiefs in Zululand was the division of the kingdom into thirteen independent chiefdoms.<sup>15</sup> The Zulu monarchy was dismantled and the king exiled to the Cape. The thirteen chiefdoms were autonomous, as Zululand had not yet been annexed. The British seem to have had some shadowy, ill-defined suzerainty over the region.<sup>16</sup> These chiefdoms were to be ruled by thirteen independent chiefs who would be appointed by the British government. All appointed chiefs were required to sign the document of settlement which bound them to respect all orders of the British Resident and to respect their new boundaries.<sup>17</sup> The British Resident from 1880 to 1883 was Melmoth Osborn who was a senior official in Zululand. From 1883 to 1887 he was appointed as Resident.<sup>18</sup>

Osborn was given the task of implementing colonial administration in Zululand.<sup>19</sup> He was a Natalian and a friend of Theophilus Shepstone.<sup>20</sup> This seems to have had an impact on the way in

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<sup>12</sup>Webb & Wright, eds., A Zulu King Speaks, p. xxiii

<sup>13</sup>Ibid.

<sup>14</sup>British Parliamentary Papers, C.2482, no. 87, Correspondence, Wolseley to Hicks Beach, 1 January 1879.

<sup>15</sup> Ibid.

<sup>16</sup>Ibid.

<sup>17</sup>Guy, The Destruction of the Zulu Kingdom, p. 70.

<sup>18</sup>Guy, 'The role of the colonial officials in the destruction of the Zulu kingdom', in A. Duminy and C. Ballard, eds., The Anglo-Zulu War in Zululand: New Perspectives (Pietermaritzburg: University of Natal Press, 1981), p. 155.

<sup>19</sup>J.P. C. Laband & P. S. Thompson, 'The reduction of Zululand, 1878-1904', in A. Duminy and B. Guest, eds., Natal and Zululand from Earliest Times to 1910: A New History, pp. 203-11.

<sup>20</sup>Guy, The Destruction of the Zulu Kingdom, p. 108.

which Africans were ruled in Zululand in the 1880s. Shepstone was still influential in both Natal and Zululand in the 1880s. In my view, the post-war division of the Zulu kingdom into thirteen chiefdoms, the appointment of compliant chiefs and the placing of the British Resident at Eshowe were signs of the Shepstone system of indirect rule. This involved a divide-and-rule system, the appointment of chiefs, and the giving of powers to those chiefs by colonial officials.

After the thirteen chiefs had been appointed and given powers to exercise over their people, the authority of the existing chiefs who were not recognized by the 1879 settlement was gradually undermined. Many of the hereditary chiefs in Zululand after the war were men of great status and influence among their people and they were linked to the Zulu royal house. The colonial government considered it necessary to exclude hereditary chiefs from authority and to reduce their independent power by giving more power to the appointed chiefs.<sup>21</sup> Colonial officials wanted to reduce hereditary chiefs' authority out of the fear that they might revive the power of the Zulu royal house.<sup>22</sup> They relied on the powers of the appointed and compliant chiefs whose powers and influence were not dependent on the old ways of surplus extraction and distribution.<sup>23</sup>

The uLundi settlement of 1879 has been criticized by many historians, who point out that it was the cause of civil 'turmoil' that ravaged the northern part of Zululand from 1880 to 1883. By the end of 1880 serious clashes and disputes had occurred in the northern part of Zululand in the territories of Hamu and Zibhebhu.<sup>24</sup> The civil turmoil was caused by the fact the settlement had placed under these chiefs some of the influential members of the old Zulu kingdom. Under Zibhebhu, there was Ndabuko who was the exiled king's full brother and guardian of the king's son, Dinuzulu. Mnyamana, who was Chief Minister to the king and chief of the powerful Buthelezi chiefdom, came under Hamu.<sup>25</sup> The uSuthu chiefs (those that supported the Zulu royal house and who were the adherents of the Zulu king) reported cases of mal-treatment by appointed chiefs to Osborn. It was reported that Zibhebhu could order chiefs to do what he wanted and could raid their territories when they resisted his rule. In all these complaints Osborn supported the appointed chiefs. This was indicative of his determination to crush the remnants of the Zulu

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<sup>21</sup>Guy, 'The role of colonial officials in the destruction of the Zulu kingdom', p. 165.

<sup>22</sup>Ibid.

<sup>23</sup>Ibid.

<sup>24</sup>Ibid., pp. 156-7.

<sup>25</sup>Ibid.; Laband, Rope of Sand, p. 337.



royal house.<sup>26</sup>

It is important to state that, although thirteen chiefs were appointed after the Anglo-Zulu war, the main focus of many writers has been on the three who became prominent from 1880 to 1883. These chiefs were Zibhebhu, who was allocated land in the north-east of Zululand, Hamu in the north-west, and John Dunn in the south-east. Guy has argued that the colonial state had insufficient resources at its disposal to coerce the uSuthu, i.e. the adherents of Cetshwayo, to obey the appointed chiefs and colonial officials.<sup>27</sup> He further stated that even other appointed chiefs, apart from the ones mentioned above, were encouraged to break down the chiefdoms of the uSuthu chiefs.<sup>28</sup>

The outbreak of the civil war between the uSuthu and Mandlakazi (Zibhebhu's supporters) in the early 1880s caused Natal officials to fear that it might spill over to Natal.<sup>29</sup> Sir Evelyn Wood, who was Natal Governor in the early 1880s unsuccessfully attempted to reconcile the two fighting parties in Zululand. The uncontrollable situation in this region induced the British government to allow Cetshwayo, the exiled Zulu king, to travel to London in order to plead for his cause.<sup>30</sup> British officials began to believe that the only solution to end the continuing civil war in Zululand lay in the restoration of Cetshwayo to Zululand. By 1882 arrangements had been made for the restoration of Cetshwayo, but this was delayed by Natal officials who feared that the retention of the Zulu king would lead to another conflict. They managed to persuade the British government that if Cetshwayo was to be restored, his authority should be confined to the central portion of Zululand where he would be under the supervision of a British Resident.<sup>31</sup>

In 1883 Cetshwayo was allowed to return to Zululand but his authority was undermined and weakened. His land was reduced in size and his authority. His authority could no longer be

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<sup>26</sup>BPP, C.3182: no. 34, 'Inquiry into the complaints of Ndabuko and Ziwedú', 26 January 1881.

<sup>27</sup>Ibid.

<sup>28</sup>Guy, The Destruction of the Zulu Kingdom, p. 109.

<sup>29</sup>Laband, Rope of Sand, pp. 348-9; J. P. C. Laband, 'The uSuthu-Mandlakazi conflict in Zululand', South African Historical Journal, No. 30 (1984) pp. 40-1.

<sup>30</sup>Laband, Rope of Sand, pp. 348-9.

<sup>31</sup>Ibid., p. 350.

enforced upon his people.<sup>32</sup> He was not allowed to call up his young men and women for amabutho. The prohibition of amabutho was the most important mechanism used by British officials to weaken the powers of the restored Zulu king. Amabutho were central to the king's authority and it was through them that he could managed to consolidate his authority. They were also a source of labour for the king. But after the Anglo-Zulu war the king could no longer raise amabutho and he could no longer give permission to the young men to marry because previously he was able to do this through ibutho system. Although Cetshwayo was seen as an independent king by his adherents, his authority was limited.<sup>33</sup>

At the same time the region south of the Mhlathuze river in the south of Zululand was set aside as the Reserve Territory.<sup>34</sup> This area served as a sanctuary or place of refuge for those who wished to run away from the restored Zulu king's rule.<sup>35</sup> The powers of chiefs in this region were further undermined by the fact that some of their cases were handled by officials on the other side of the Thukela river, the colony of Natal.<sup>36</sup> It seems that not only the powers of the hereditary chiefs were eroded by the officials from Natal after 1883, but even those wielded by appointed chiefs were undermined. In terms of the 1879 settlement, chiefs were to try both criminal and civil cases brought to them by their adherents.<sup>37</sup> As early as 1883 a hut tax of 14 shillings, the same amount as in Natal, was imposed on people in the Reserve Territory. Men were also required to render services to the state through the isibhalo system.<sup>38</sup> Although Zululand had not yet been annexed in 1883, the payment of hut tax and the isibhalo system indicates the extension of the Shepstone system of indirect rule to Zululand. The introduction of hut tax and isibhalo system into the south of Zululand had an indirect impact on the powers of chiefs. They forced men and women into wage labour and made them independent of their elders and chiefs. In my view, young men could no longer depend on their fathers for lobolo and they started to question and challenge the authority of chiefs when they came back from their work places.

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<sup>32</sup>Laband, Rope of Sand, pp. 350-1; J. Laband and P. S. Thompson, 'The reduction of Zululand', p. 211.

<sup>33</sup>Laband, Rope of Sand, pp. 350-1.

<sup>34</sup>Ibid.

<sup>35</sup>BPP, C.3615, no. 31, Miscellaneous correspondence, T. Shepstone to Bulwer, 27 February 1883; Laband and Thompson,

<sup>36</sup>Carton, 'Blood from your sons', p. 149.

<sup>37</sup>BPP, C. 2482, Dispatch: Wolseley to Beach, 1 January 1879.

<sup>38</sup>Laband and Thompson, 'The reduction of Zululand', p. 211.

After the partitioning of Zululand in 1883, three chiefs became dominant in the region. These were John Dunn, who was in the Reserve Territory, the restored Zulu King, Cetshwayo, in central Zululand, and Zibhebhu in the northern areas.<sup>39</sup> It is not clear as to what happened to the other chiefs who had been appointed in 1879. Colonial officials continued to aim at preventing the resurgence and revival of the Zulu royal house by lending support to Zibhebhu and Dunn.<sup>40</sup> The return of Cetshwayo seems to have provoked conflict between the uSuthu and Mandlakazi in mid-1883. In 1884 Cetshwayo died in the Reserve territory.<sup>41</sup> His son Dinuzulu took over from him. The uSuthu now sought allies and appealed for military assistance from the Boers who were living in the south-eastern Transvaal.<sup>42</sup> The uSuthu leaders hoped that the Boers would recognize Dinuzulu as the new Zulu king in return for land. Both the Boer forces and uSuthu defeated Zibhebhu, and the Boers claimed more land from Dinuzulu. Zibhebhu fled to the Reserve Territory for protection.

The defeat of Zibhebhu by uSuthu and Boer forces led to the establishment of the New Republic over the rest of Zululand north of the Mhlathuze in 1884. Laband has argued that the establishment of the New Republic and the extension of a Boer 'protectorate' over the areas north of the Mhlathuze negated Dinuzulu's position as a king and reduced him to no more than a nominal ruler in the hands of the Boer invaders.<sup>43</sup> However, it seems that Dinuzulu had retained a lot of power, though he could not protect his adherents who fell under the Boers.

Fearing that the Boers would get access to the sea the British intervened. In 1886 the British government recognized the boundaries of the New Republic. In the same year Germany was expanding. The British were determined to prevent any possible coalition between Germany and the Boers.<sup>44</sup> In an attempt to further curb the Boers from reaching the Indian Ocean, in 1887 the British government annexed central Zululand and the Reserve territory as the British Colony of Zululand.<sup>45</sup> Under the terms of annexation, Sir Arthur Havelock, Governor of Natal since

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<sup>39</sup>Guy, The Destruction of the Zulu kingdom, p. 109.

<sup>40</sup>Ibid.

<sup>41</sup>C. T. Binns, The Last Zulu King: The Life and Death of Cetshwayo (London, Longman, 1963), pp. 204-214.

<sup>42</sup>Laband and Thompson, 'The reduction of Zululand', p. 213.

<sup>43</sup>Laband, Rope of Sand, p. 375.

<sup>44</sup> Ibid.

<sup>45</sup>Ibid., p. 377; BPP, no. 28: Proclamation of the Annexation of Zululand, 14 May 1887.

February 1886, was in addition appointed as Governor of the new territory.<sup>46</sup> The Governor was also regarded as the Supreme Chief over Zululand and ruled the territory through the Resident Commissioner.<sup>47</sup> Melmoth Osborn, formerly British Resident in Zululand, was appointed as Resident Commissioner and Chief Magistrate in the new colony.<sup>48</sup> Six Resident magistrates were appointed and the Resident Commissioner was to supervise them.<sup>49</sup> The magistrates were to be established at Eshowe, Nkandla, Emthonjaneni, Ndwande, and Lower Mfolozi.<sup>50</sup> Although Zululand was now a British protectorate, all officials in the colony were recruited from Natal. This shows that some of the policies that were in operation in Natal were likely to be applied to the new colony. The Shepstone system was also likely to be extended to the new colony because Natal officials became dominant in the affairs of Zululand.

The appointment of the Governor, the Resident Commissioner, and the magistrates in Zululand undermined the powers of chiefs in Zululand. The Governor as the Supreme chief exercised political authority over all Africans in Zululand.<sup>51</sup> He could appoint chiefs, divide and amalgamate chiefdoms, and remove any chief found guilty of a criminal offence. He had power to call chiefs and their men to supply labour to the state. The Governor exercised similar powers over Africans in both Natal and the British colony of Zululand.

In 1887 the Zululand Code of Native Law was promulgated. Some clauses in the Zululand Code of Native Law were the same as those in the Natal Code of 1878. One of the clauses that was same as the one in operation in Natal was the imposition of a hut tax of 14 shillings. The court of the Chief Magistrate was constituted as a court of appeal.<sup>52</sup> Clause 2 of the code recognized the chiefs' civil jurisdiction in cases between their adherents within their chiefdoms.<sup>53</sup> It also

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<sup>46</sup>GHZ, 845: Correspondence, Secretary of State to the Special Commissioner of Zululand, 11 May 1887.

<sup>47</sup>Laband, 'Dick Addison', p. 10.

<sup>48</sup>*Ibid.*; ZA, no.R595/87: Despatch, Havelock to Osborn, 21 June 1887.

<sup>49</sup>*Ibid.*

<sup>50</sup>BPP, C.5331, no. 53, Correspondence from Osborn to Havelock, 16 July 1887.

<sup>51</sup>*Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup>ZA, 41, no. 3: Correspondence, Osborn to Havelock, 16 July 1887; BPP. C.5143, no. 28: Proclamation of the Annexation of Zululand, 14 May 1887.

provided that chiefs could try minor criminal cases.<sup>54</sup> Clause 2 of the code also stipulated that chiefs could not inflict capital punishment.<sup>55</sup> Only the Supreme Chief was allowed to impose the death sentence.<sup>56</sup>

Clause 11 of the Zululand code gave magistrates considerable powers over Africans within their districts.<sup>57</sup> Some of the powers that had been previously wielded by chiefs were now placed in the hands of magistrates. Magistrates were given more power to hear criminal cases between Africans.<sup>58</sup> Decisions of local chiefs were subjected to appeal to the magistrates' courts, and from the magistrates courts to the court of the Resident Magistrate, whose court was the supreme court of appeal.<sup>59</sup>

Unlike the position in Natal, chiefs in Zululand had jurisdiction according to customary law in criminal cases arising between members of their chiefdoms, except in cases of rape, murder, culpable homicide, witchcraft, assaults arising from faction fights and theft from other tribes.<sup>60</sup> By this time chiefs in Natal had had their criminal jurisdiction removed, and minor and important criminal cases were heard by magistrates. In Zululand chiefs could still preside over minor criminal cases but could no longer sentence people to death.<sup>61</sup>

The uSuthu chiefs were required to dismantle their amabutho.<sup>62</sup> Although, from the early 1880s colonial officials had been calling for the disbandment of the amabutho, the actual disbandment came after the annexation of Zululand in 1887. Throughout the 1880s, the formation of regiments was outlawed, but chiefs continued enrolling their men. The permission to call men together was now to be sought from the Supreme chief beforehand. The dismantling of the amabutho meant

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<sup>54</sup>Ibid.

<sup>55</sup>BPP, C.5331, no. 53, 1887, Correspondence relating to the Affairs of Zululand and Adjacent territories, p. 1-2.

<sup>56</sup>GHZ, 846, Laws and Regulations, articles, 8, 15.

<sup>57</sup>BPP, C.3331, no. 2, Proclamations II and 11 of the Zululand Code, 14 July 1887; GHZ, 856, Laws and regulations of Zululand, 1887, articles 32-3.

<sup>58</sup>ZA, 41, no.3: Osborn to Havelock, 16 July 1887.

<sup>59</sup>Ibid.

<sup>60</sup>Ibid. GHZ, 846, Laws and Regulations, articles 32 & 33.

<sup>61</sup>Cope. 'The origins', p. 54.

<sup>62</sup>BPP, C.3331, no. 2, Proclamation 11 of Zululand laws, 1887.

the lost of substantial power on the part of chiefs.

The Natal marriage law of 1869 was extended to Zululand in 1887.<sup>63</sup> The marriage fee had already been repealed in Natal. However, some sections of the Marriage Law of 1869 still operated. These were the ones that were extended to the new British colony in terms of clause 2 of the code of Zululand.<sup>64</sup> This law stipulated that no woman was to be forced to marry without her consent. Previously, the king, elders and chiefs, had been the ones responsible for giving permission to their children to marry. When this law was extended to Zululand in 1887, it meant that chiefs in Zululand could no longer force women to marry people of their (chiefs') choice.<sup>65</sup>

The discovery of gold in the Transvaal in 1886 also had a major impact on the powers of chiefs in Zululand. Young men left Zululand to go to find wage- labour on the mines and towns in order to pay for the hut tax.<sup>66</sup> After the final dismantling of the amabutho many young men entered into wage labour.<sup>67</sup> However, labour migrancy weakened the powers of chiefs and elders. When young men came back from the towns and mines they began to challenge and question the authority of elders and chiefs. They became independent of their fathers since they could now pay for ilobolo themselves and no longer depended on them for permission to marry. This labour migrancy had eroded and ruined relationships between young men and elders and between young men and chiefs.<sup>68</sup> By the late 1880s magistrates in Zululand saw a need to give more powers to the local chiefs and elders in order to prevent homesteads from chaos. This, according to Carton, stemmed from the upheavals of the early 1880s and magistrates wanted to prevent any occurrence of such situation.<sup>69</sup> It seems that magistrates felt that elders and chiefs were the ones who could force young men to obey the law.

Seeing that their power was undermined by the laws proclaimed in 1887, and that the government wanted to allow Zibhebhu who was in the Reserve territory to return to the northern part of Zululand, the uSuthu chiefs resisted laws that were passed. In 1888 Dick Addison, Resident

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<sup>63</sup>D. R. Morris, The Washing of the Spears (London: Jonathan Cape, 1965), p. 596.

<sup>64</sup>Ibid.

<sup>65</sup>Ibid.

<sup>66</sup>Guy, 'Destruction and reconstruction', pp. 176-8.

<sup>67</sup>Carton, 'Blood from your sons', p. 134.

<sup>68</sup>Ibid., p. 127.

<sup>69</sup>Ibid., p. 134.

Magistrate in the northern district of Zululand proceeded to separate the uSuthu and Mandlakazi who were living intermingled.<sup>70</sup> He also continued to force Dinuzulu to pay cattle fines for 'eating up' Mfokazane's cattle and killing his wife in 1887.<sup>71</sup> Havelock, the Governor of Natal and Zululand, wanted Zibhebhu to be allowed to return to the north of Zululand so that he could help the government against the uSuthu leaders.<sup>72</sup> When Dinuzulu heard about the return of Zibhebhu he was enraged, and continued to disregard authority of colonial officials. This resulted in the outbreak of the uSuthu rebellion in 1888.<sup>73</sup> Not all chiefs participated in the rebellion but mainly those who were in the Ndwandwe district in the north of Zululand, where many uSuthu adherents were concentrated. Dinuzulu was defeated and forced to surrender in November 1888. After the rebellion, Dinuzulu, Ndabuko, who was a guardian of Dinuzulu and other influential leaders of the uSuthu were found guilty of high treason and public violence. Dinuzulu, together with his uncles and other uSuthu chiefs, was exiled to St. Helena.<sup>74</sup>

The expense of putting down the uSuthu rebellion caused the British government to change its policies in Zululand. This was accompanied by political changes that took place in the British government in 1892. Lord Ripon became the new Liberal Secretary of State for the Colonies. Changes in the British government had an important influence on the administration of Africans in both Natal and Zululand. Other important changes that took place in Natal and Zululand influenced native administration in both these regions. In 1893 Sir Theophilus Shepstone died, and in the same year Osborn retired. Natal was also granted responsible government by the British government.<sup>75</sup> These events signalled the end of some features of the Shepstone system in both Natal and Zululand. In 1893 Lord Ripon appointed Sir Marshall Clarke, who had been a successful administrator of Basutoland, as Resident Commissioner of Zululand, following Osborn's retirement.<sup>76</sup> Clarke was given a task of developing a new policy for governing Africans in Zululand. Marks has argued that this appointment 'marked a brief spell of new

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<sup>70</sup>Laband, Rope of Sand, p. 383.

<sup>71</sup>Ibid.

<sup>72</sup>Ibid.

<sup>73</sup>Laband, 'Dick Addison', pp 217-20.

<sup>74</sup>Ibid. p. 219.

<sup>75</sup> R. Edgecombe, 'Sir Marshall Clarke and the abortive attempt to "Basutolandise" Zululand', Journal of Natal and Zulu History, 1 (1979), p. 46.

<sup>76</sup>Ibid.

thinking about Zulu problems.’<sup>77</sup> Clarke criticized the past policy of divide-and-rule and felt that it exacerbated tensions in Zululand by setting up ‘inter-tribal’ camps which led to land disputes.<sup>78</sup>

One of the most important changes that Clarke effected in native administration in Zululand was that of trying to work closely with the hereditary chiefs, whose authority had been diminished by the 1879 post-war settlement. Although there were disagreements between Clarke and the new Governor, Sir Walter Hely-Hutchinson, who was appointed in 1893, the real pressure against Clarke’s policy came from the Natal settlers. Clarke proposed a new native policy that was quite distinct from that developed by Shepstone and Osborn in Zululand.<sup>79</sup> Instead of trying to split the Zulu royal house into independent factions and undermine the powers of the hereditary chiefs, he proposed to grant more powers both to the hereditary chiefs and to certain appointed ones.<sup>80</sup> Clarke wanted to apply methods that he developed as British Resident in Basutoland from 1884 to 1893.<sup>81</sup> In Proclamation IV of 1894, Clarke enforced the use of chiefs’ courts as the courts of first instance.<sup>82</sup> Clarke seemed to have revived the status and authority of local chiefs in Zululand and encouraged their people to look at their chiefs first before they went to the magistrates. Under this proclamation, Clarke reduced the number of chiefs from 54 to 32. He also recognized their jurisdiction over civil cases according to customary law.<sup>83</sup> Nineteen of these chiefs were hereditary chiefs and the remainder were powerful chiefs with strong and large followings.<sup>84</sup> The amalgamation of chiefdoms in the early years of Clarke’s rule made chiefdoms more powerful, with chiefs exercising considerable authority over their people. However, the powers of those chiefs who had been sidelined was weakened.

Being driven by the desire to restore the Zulu royal house and powers of hereditary chiefs, Clarke recommended the return of Dinuzulu and other uSuthu chiefs from exile in 1894, on condition

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<sup>77</sup>Marks, *Reluctant Rebellion*, p. 98.

<sup>78</sup>Ibid. Colonial Secretary’s Office, 879, no.2 Correspondence, Clarke to Ripon, 8 December 1893.

<sup>79</sup>Edgecombe, ‘Sir Marshall Clarke’, p. 47.

<sup>80</sup>Ibid.

<sup>81</sup>Ibid., p. 43.

<sup>82</sup>C.S.O., 179, Proclamation IV of 12 January 1894.

<sup>83</sup>Ibid.

<sup>84</sup>Edgecombe, ‘Sir Marshal Clarke’, p. 48; C.S.O., 427, Minutes from Clarke to Hely-Hitchinson, 18 January 1894



that Dinuzulu would be a government induna and advisor. He would also be paid a salary of 500 pounds per annum for working and for being loyal to the state.<sup>85</sup> He was to be employed in resolving land disputes, inheritance claims and 'faction fights'. His power was to be reduced and he would no longer be regarded as the Supreme or paramount authority over his people.<sup>86</sup> Clarke also wanted Zibhebhu, who had fled to the Reserve Territory after being defeated by the uSuthu in the 1888 rebellion, to be allowed to return to the Ndwandwe district.<sup>87</sup> Although Clarke began by amalgamating chiefdoms and making them more powerful, evidence indicates that he gradually leaned towards the interests of the Natal settlers who wanted to fragment powerful chiefdoms. This is indicated by the fact that in 1893 there were 32 chiefs that were recognized by the state, but by 1898 the number of chiefs in Zululand had increased from 32 to 83.<sup>88</sup>

It seems that when Zululand was peaceful under Clarke, Natal settlers pressed for the incorporation of Zululand into Natal. They saw Zululand as having abundant land for occupation. The issue of the return of Dinuzulu to Zululand encouraged the Natal government to interfere in the affairs of Zululand and to press very strongly for the incorporation of Zululand into Natal. The Natal Legislative Council used the question of the restoration of uSuthu chiefs to pave the way for the incorporation of Zululand into Natal.<sup>89</sup> There were also fears among the white settlers in Natal that the Cape colony would annex Zululand.<sup>90</sup> The fall of the Liberal government in Britain in 1895 provided an opportunity for Natal to secure the incorporation of Zululand. In 1895 Joseph Chamberlain succeeded Ripon as Colonial Official. He wanted the immediate incorporation of Zululand into Natal so as to reduce the responsibility of the British government.<sup>91</sup> By 1897 arrangements had been made for the incorporation of Zululand into Natal and in December the same year incorporation took place.<sup>92</sup> This meant the likely reversal of Clarke's policies towards the chiefs in Zululand.

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<sup>85</sup>Edgecombe, 'Sir Marshall Clarke', p. 50.

<sup>86</sup>Ibid.

<sup>87</sup>C.S.O., 427, Correspondence, Clarke to Ripon, 18 January 1894.

<sup>88</sup>N.C.P. 8/2/6, Blue Book of the Colony of Natal, 1905: Departmental Reports, vol. 2, 6 March 1905, pp. 2-3.

<sup>89</sup>Edgecombe, 'Sir Marshall Clarke', p. 51.

<sup>90</sup>Ibid.

<sup>91</sup>Ibid. p. 52.

<sup>92</sup>Ibid.

To sum up, the defeat of the Zulu king in the 1879 war with the British led to the extension of a system of indirect rule over the region north of the Thukela and the rapid weakening of the authority of the hereditary chiefs'. After the Wolseley settlement of 1879 which led to the appointment of thirteen state-recognized chiefs, the colonial officials gave more powers to the appointed chiefs in an attempt to weaken the hereditary and uSuthu chiefs in Zululand. In 1883, when Cetshwayo returned from exile, his land was reduced and authority confined to the central part of Zululand. In the second partition of 1886, when the British officials recognized the New Republic, the powers of the uSuthu chiefs were further undermined, while much of their land fell under Boer authority. In the following year Zululand was annexed by Britain and magistrates were appointed to preside over serious criminal cases. Chiefs' powers were confined to civil and non-capital cases, and their decisions were subject to appeal to the magistrates' courts. Chiefs were also required to disband their regiments and to call their young men up for labour for the state when the Supreme Chief desired. In 1893 when Marshall Clarke succeeded Osborn as a new Chief Magistrate and Resident Commissioner in Zululand, he sought to amalgamate chiefdoms, and make them more powerful. He wanted to give hereditary chiefs more powers to exercise over their people in the same way as he had done with the hereditary chiefs in Basutoland. This was a reversal of policy in certain respect. But this new policy was itself reversed after 1897, when white settlers (farmers) in Natal finally achieved their long-standing ambition of having Zululand incorporated into Natal. The next chapter will examine the changes in the powers of chiefs in the enlarged colony from 1897 to 1910 when the Union of South Africa was formed.

## **Chapter five**

### **The impact of settler government on the powers of chiefs in the enlarged colony of Natal, 1897-1910.**

The year 1897 is important in the history of the chiefs in both Natal and Zululand. One of the important changes that affected the powers of chiefs was the election of a settler-farmer government in Natal. In September 1897, the Escombe Ministry was defeated and a new ministry under Henry Binns as Prime Minister was elected.<sup>1</sup> This began to cause a shift in the politics of the colony in the sense that the interests of the white settler farmers became predominant. By December 1897 the arrangements for the annexation of Zululand by Natal had been made and the British government acceded to the desires of the Natal settler farmers by allowing Natal to annex Zululand.<sup>2</sup> In my view, British wanted to reduce its responsibilities in Zululand and to strengthen the Natal colony against the Transvaal. The integration of Natal and Zululand in 1897 and the political changes that took place in the same year in Natal were important in shaping policy governing Africans in both sub-regions of the enlarged province. Powers of chiefs were further undermined by the continuous fragmentation of chiefdoms by the Natal government so as to secure adequate labour for white farmers. The government further tightened up control over chiefs and their people by giving more powers to the magistrates and increasing their criminal jurisdiction.

The coming to power of the Binns ministry in Natal marked the beginning of a shift in the politics of the government. Before Binns, the Robinson and Escombe ministries had pre-dominantly represented the interests of Durban merchants. Under the new farmer-dominated ministry elected in 1897, policies shifted in favour of settler farmers, and were shaped in a way that aimed to secure a supply of labour to settler farms.<sup>3</sup> From 1897 to 1910 white farmers dominated the framing of legislation governing Africans in Natal and further tightened up control over chiefs so that they could provide labour to the white farms. They held important positions in the ministries and the cabinet, and used their considerable political powers to try to transform Africans into farm labours.<sup>4</sup> Under the new ministries, restrictive laws controlling the movement of Africans out of the colony were enforced and tightened up. Some of the existing pass laws, which could not

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<sup>1</sup>Lambert, Betrayed Trust, p. 159.

<sup>2</sup>Marks, Reluctant Rebellion, p. 105.

<sup>3</sup>Lambert, Betrayed Trust, p. 159.

<sup>4</sup>Marks, Reluctant Rebellion, pp. 17-20.

sufficiently restrict labour in the colony were repealed, while others amended.<sup>5</sup>

The formal incorporation of Zululand into Natal provided that the uSuthu chiefs were to be allowed to return to Zululand.<sup>6</sup> These chiefs, including the claimant to the Zulu chiefship, Dinuzulu, had been exiled to St. Helena in 1889 following their rebellious actions against the government.<sup>7</sup> As part of the agreement concerning the annexation of Zululand by Natal, the British wanted a five-year period to lapse before Zulu lands could be opened up for white settlement.<sup>8</sup> The long-desired dream of many sugar farmers in Natal to extend their farms to the coastal belts of Zululand was beginning to be realized when Natal annexed Zululand.<sup>9</sup> Natal's annexation of Zululand also saw the transfer of Sir Marshall Clarke to Southern Rhodesia. He was succeeded by Charles Saunders, first as Zululand Commissioner and Chief Magistrate and later as Commissioner for Native Affairs.<sup>10</sup> Marks argues that despite the fact that Saunders was undoubtedly a good administrator, the transfer of Clarke deprived Dinuzulu of the support and advice of a man who may have understood his predicament and who had had no connection with the unhappy affairs of the eighties.<sup>11</sup> Saunders did protect Dinuzulu from the accusations made against him until the mid-1907 when he confessed that he never understood Dinuzulu's predicament.<sup>12</sup>

The incorporation of Zululand into Natal also undermined the powers of chiefs and the Zulu king in Zululand. When the settler-farmers got direct control of native affairs in 1897 the powers of the hereditary chiefs were weakened. The evidence of the way in which chiefly authority was undermined in Zululand can be seen from the way in which Dinuzulu's powers were curtailed when he arrived back in Zululand in 1898. As part of the deal for the annexation of Zululand by Natal, Dinuzulu was to be allowed to return. He arrived in Zululand on the 10 January 1898.<sup>13</sup>

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<sup>5</sup>Kunene, 'The pass system', pp. 83-4.

<sup>6</sup>Marks, Reluctant Rebellion, p. 105.

<sup>7</sup>Edgecombe, 'Sir Marshal Clarke', p. 46.

<sup>8</sup>Marks, Reluctant Rebellion, p. 105.

<sup>9</sup>Lambert & Morrell, 'Domination and subordination', p. 86.

<sup>10</sup>Marks, Reluctant Rebellion, p. 108.

<sup>11</sup>Ibid., pp. 108-9.

<sup>12</sup>SNA, 1/6/29, no. 165, correspondence from Charles Saunders to the Governor, 15 June 1907.

<sup>13</sup>Carton, 'Blood from Your Sons', p. 108.

His position was that of an induna and advisor on customary law to the government. He was required to exercise his authority only over uSuthu supporters.<sup>14</sup> He was to be treated by the Natal government in the same way as any other chief, and was subject to laws that governed all chiefs in the colony. The undermining of the powers of Dinuzulu was further indicated by the government's action of giving him a salary of 500 pounds per annum, as envisaged by Marshall Clarke.<sup>15</sup> The payment made to Dinuzulu and some of the Zulu royal family members had the effect of degrading their positions as 'traditional' leaders who could act in their own right in matters governing their African people. It made them government servants who were paid on the basis of the work they did for the state and the good behaviour they showed in pursuing the state's responsibilities.

The powers of chiefs in Natal were also undermined by the spread of rinderpest, which killed numbers of cattle in 1897. The spread of rinderpest undermined the powers of chiefs in many ways. After hearing reports of the spread of rinderpest in neighbouring colonies in 1896, the Natal government prohibited sisaning among African chiefs in the colony.<sup>16</sup> The prohibition of ukusisa restricted the ability of chiefs to extend their patronage and consolidate authority among their adherents. The killing of many cattle by rinderpest also affected other institutions of importance, such as ukulobola, which helped chiefs to bolster their powers. The ability of chiefs to reward those of their subjects who became loyal to them was also restricted and this further weakened the powers of chiefs. Traditionally, chiefs had rewarded people with cattle for good work and, so they (chiefs) managed to strengthen their support and authority as well. They also managed to extend their range of patronage to people who had previously been ruled by other chiefs. Carton has asserted that rinderpest 'ripped the complex web of homestead privileges and rights' and diminished the ability of chiefs to extend and strengthen patronage.<sup>17</sup> In a way, rinderpest did an important job for the Natal government, a job which it would otherwise have had to do by making laws to weaken the chiefs. At the same time it created opportunities for the government to tighten up 'screws' over the control of chiefs and Africans and to further weaken the authority of hereditary chiefs.

On the other hand, powers of chiefs were eroded by the fact that rinderpest forced young Africans

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<sup>14</sup>Edgecombe, 'Sir Marshall Clarke', p. 52.

<sup>15</sup>Ibid.

<sup>16</sup>Lambert, Betrayed Trust, p. 147.

<sup>17</sup>Carton, Blood from Your Children, p. 67.

into wage labour.<sup>18</sup> Previously cattle were used in paying for the lobolo, so when a substantial number of cattle were killed in 1897, the payment in cattle was largely replaced by payments in cash.<sup>19</sup> This forced young men to leave their homesteads and look for wage labour in urban centres such as the Witwatersrand and Kimberley and Durban. They stayed there for long periods.<sup>20</sup> Evidence indicates that numbers of African people still paid their taxes in cattle in the late 1890s, so when the cattle died they were forced to pay their taxes in cash. According to Carton, this change made elders dependent on their sons because they could manage to pay for taxes.<sup>21</sup> After returning from work young men often developed an antagonistic attitude towards chiefs and elders. They became independent of their fathers since they no longer depend on them for ilobolo, and they even challenged the authority of chiefs. The weakening of power by rinderpest in this way is important because it did a job which the government would otherwise probably have to have done by making laws.

By the end of the 1890s Africans in the reserves were living under appalling conditions. Rinderpest had killed off numbers of their cattle.<sup>22</sup> Overcrowding on the reserves continued to cause tensions and quarrels between chiefs over diminishing resources and land.<sup>23</sup> The situation was made worse by the fact that the colonial state was rigorously enforcing its authority over Africans.<sup>24</sup> The Natal government was also determined to further tighten up the control over Africans in the colony so as to prevent them from challenging the state.<sup>25</sup> In 1898 it passed the Native Courts Act in an attempt to strengthen the authority of magistrates and Administrators of Native Law.<sup>26</sup> This Act provided that all Administrators of Native Law were to be appointed as magistrates and be given powers similar to those of magistrates.<sup>27</sup>

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<sup>18</sup>Carton, Blood from Your Children, p. 64.

<sup>19</sup>Ibid.

<sup>20</sup>Carton, Blood from Your Children, p. 64.

<sup>21</sup>Ibid.

<sup>22</sup>Lambert, Betrayed Trust, pp. 152-3.

<sup>23</sup>Ibid., p. 149

<sup>24</sup>Ibid.

<sup>25</sup>Kunene, 'The pass system', p. 159; Lambert, Betrayed Trust, p. 159.

<sup>26</sup>Marks, Reluctant Rebellion, p. 40.

<sup>27</sup>Ibid.

Administrators of Native Law were not magistrates before 1898. Their duties involved collecting taxes, and helping in the administration of Africans and in resolving criminal cases among Africans.<sup>28</sup> In 1898 their powers were extended and became similar to those wielded by magistrates. The passing of the Native Courts Act of 1898 seems to have been due to the continued crisis in African society due to rinderpest and overcrowding on the reserves. The crisis in African society heightened fears among white settlers of African insurrection, as a result they wanted to bring chiefs under control. In order to do this effectively they had to give officials more powers over Africans. So the government wanted sought to give magistrates and Administrators of Native Law more powers to exercise over Africans. After 1898 powers of magistrates and Administrators of Native Law were to try criminal cases, hear appeals from chiefs' courts, issue passes to Africans who wanted to leave or enter Natal, help raise labour for the state, and collect taxes.

After the return of Dinuzulu in 1898 magistrates in Zululand were given more powers by the government to exercise over people in Zululand. It seems that this was done in order to prevent Dinuzulu from becoming powerful again and from acting as an independent king.<sup>29</sup> Although the permission to hold the umkhosi and to assemble men was supposed to be obtained from the Supreme Chief, magistrates in Zululand placed restrictions on these ceremonies without reference to the Supreme Chief.<sup>30</sup> Magistrates in Zululand were also given power to restrict uSuthu young men from going to Dinuzulu's headquarters.<sup>31</sup> This undermined the powers of Dinuzulu and made it difficult for him to control young men. It also prevented him from strengthening his authority and extending his patronage to the young men of his chieftom who were the most important basis for his political authority. This was done out of the fear that Dinuzulu might revive the strength of the Zulu royal family and that this would pose a serious threat to the government.

In 1898 the government continued to remove powers from chiefs and placed them in the hands of white officials in an attempt to both tighten up control over chiefs and to secure labour for white farmers. The power to make rules governing beer-drinking ceremonies and other assemblies was removed from the chiefs and placed in the hands of the Governor-in-Council.<sup>32</sup> There had been

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<sup>28</sup>Carton, Blood from Your Children, p. 56.

<sup>29</sup>Lambert & Morrell, 'Domination and subordination', p. 88.

<sup>30</sup>Carton, 'Blood from Your Sons', p. 150.

<sup>31</sup>C.S.O., 179, Despatch, Governor to Secretary for Native Affairs, 11 February 1898.

<sup>32</sup>Acts of Natal, 1898, p. 24.

legal restrictions on the sale of liquor and traditional beer before 1898, but the government had never made rules governing beer-drinks. Chiefs in their respective chiefdoms were supposed to see that order was maintained while they were taking place, and they had their own rules, which differed from one chiefdom to another, governing ceremonies. Due to the 'faction fights' that arose in 1897 and 1898 out of beer-drinking ceremonies, the government proclaimed Act No. 5, the Regulation of Native Assemblies Act of 1898, in order to make rules governing the assembling of African people.<sup>33</sup> In the evidence of the committee on the supply of liquor to Africans which was set up by the government in 1898, many magistrates reported that there was a high level of drunkenness in their districts, and stated that both young men and women participating in the ceremonies were consuming liquor.<sup>34</sup> The Regulation of Assemblies Act further provided that:

The Governor in Council may from time to time, make rules for controlling and regulating any gathering of Natives belonging to different kraals or homes for the purpose of feasting or beer drinking."<sup>35</sup>

The passing of this Act deprived chiefs of their power to make rules governing ceremonies and other assemblies. After the passing of the Regulation of Native Assemblies Act of 1898 chiefs were required to obtain permission to assemble their men from the Supreme Chief and to follow the rules made by him.<sup>36</sup> This Act also provided that there should be a limit on the number of people attending the ceremonies and that no persons from other chiefdoms were allowed to attend.<sup>37</sup>

The year 1899 saw the outbreak of the war between the British and the Boers and it effected changes in the powers of chiefs.<sup>38</sup> However, the war delayed legislation in Natal. During the war the Natal officials leaned towards supporting the British military commanders who wanted chiefs to raise amabutho and fight against those who supported the Boers in the Transvaal. But after the war legislation continued to weaken the powers of chiefs. Evidence indicates that chiefs and

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<sup>33</sup>Welsh, The Roots of Segregation, p. 304.

<sup>34</sup> C.S.O., 351, Report of the Committee on the Supply of Liquor to Natives, 15 February 1898, pp. 15-8.

<sup>35</sup>Ibid.; Acts of Natal, 1898, p. 10

<sup>36</sup>Acts of Natal, 1898, p. 10.

<sup>37</sup>Ibid.

<sup>38</sup>A. Duminy and B. Guest, 'The Anglo-Boer war and its economic aftermath', in Duminy and Guest, eds. Natal and Zululand from Earliest Times to 1910, pp. 354-6.



African people played a significant role in the Anglo-Boer war. Many chiefs in Natal, including Dinuzulu, managed to increase their powers over young men because they were required to use their regiments against the Boers.<sup>39</sup> They were also required to send their men as scouts and cattle raiding parties into the Transvaal territory.<sup>40</sup> Many chiefs used these amabutho to attack their enemies and rivalries and to raid their cattle. They also used amabutho to expand their powers by exerting their authority among their people and by using them to maintain internal stability and control. By acquiring cattle through cattle-raiding, chiefs were able to reward their warriors and men of distinction and courage, thus strengthening their authority. Some of the chiefs were rewarded with wages and rations by the British government for fighting against the Boer guerrillas.<sup>41</sup> It seems that this was a temporary boost to chiefly powers because after the war the Natal government resumed making laws that weakened the powers of chiefs.

The powers of chiefs were also undermined by the passing of the Land Acquisition Act of 1902.<sup>42</sup> This Act was passed against the background of population increase in the reserves, which intensified disputes over gardens between chiefs.<sup>43</sup> The wartime boom continued until 1903. The start of the recession coincided with a return of drought and locusts and a minor recurrence of rinderpest.<sup>44</sup> The remaining powers of chiefs to distribute resources, such as land, among their followers on the reserves had been removed from them and placed in the hands of the Governor-in-Council in 1896.<sup>45</sup> The Land Acquisition Act of 1902 enforced the stipulations of the Native Locations Act of 1896 which gave the Governor-in-Council more powers over the distribution of lands on the reserves.<sup>46</sup> The Land Acquisition Act provided that the Governor-in-Council should have power “to acquire, by purchase, exchange, or by expropriation any lands in the colony which may be deemed suitable for the settlement of persons of European descent.” It seems that the passing of this Act aimed to give the Governor-in-Council more power to expropriate land in the colony of Natal.

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<sup>39</sup>Marks, Reluctant Rebellion, p. 112.

<sup>40</sup>C.S.O., 189, Despatch, SNA to the Governor, 18 December 1899.

<sup>41</sup>Carton, Blood from Your Children, p. 67.

<sup>42</sup>Acts of Natal, 1902, p 51.

<sup>43</sup>Lambert, Betrayed Trust, pp. 161, 163.

<sup>44</sup>*Ibid.*

<sup>45</sup>N.C.P. 6/1/1/47, NGG, 1 September 1896, p.1404.

<sup>46</sup>Acts of Natal, 1902, p. 51-2.

The Zululand Lands Delimitation Commission was appointed in 1902 as provided by the terms of the annexation of Zululand by Natal. In terms of the agreement reached between the British and Natal governments over the incorporation of Zululand in 1897, Zululand lands were not to be alienated until a joint imperial-colonial commission had been set up to set aside sufficient lands for white settlement.<sup>47</sup> This commission took away land from chiefs in Zululand, and set aside lands that were to be occupied by whites. Most of the land that originally belonged to chiefs was taken away by the commission. This weakened the powers of chiefs because they consolidated their authority by distributing land among their adherents. When land was taken away from them by the commission their ability to distribute it was restricted and their authority weakened.

In 1902 the South African Native Affairs Commission was appointed by representatives of the British colonies at a conference in Bloemfontein.<sup>48</sup> This commission was formed by representatives from most of the British colonies in Southern Africa.<sup>49</sup> No Africans were included in its membership. It commenced from 1902 until 1905 when it presented its report to the government. The shortage of labour was the central topic that the commission discussed.<sup>50</sup> It had to look at the ways of securing sufficient labour for both urban centers and farms. It also investigated the harsh economic conditions faced by Africans, together with the ways in which rural society was being eroded. This was said to have created discontent on the part of Africans.<sup>51</sup> The Natal delegation did not have the same perceptions as the rest of the representatives on the commission. F. R. Moor, who sat on the commission, disregarded the warning of other members that heavy taxes on Africans would lead to rebellion, as he felt that Africans in Natal were undertaxed.<sup>52</sup> The commission recommended the erosion of chiefly authority so that colonies would be able to secure labour.

The commission deliberated on the issue of khulwa exemption. Some commissioners proposed that the exemption law should be abolished on the grounds that the khulwa posed a threat to the

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<sup>47</sup>Acts of Natal, 1897-1898, p. 2; Edgecombe, 'Sir Marshall Clarke', p. 52.

<sup>48</sup>L. M. Thompson, The Unification of South Africa, 1902-1910 (Oxford, Clarendon Press, 1960), pp. 4-5.

<sup>49</sup>South African Native Affairs Commission, 1903-5, Proceedings of the Commission, pp. 1-5.

<sup>50</sup>D. R. Burton, 'The South African Native Affairs Commission, 1903-1905: an analysis and evaluation', unpubl. M.A. thesis (University of South Africa, 1985), pp. 71-2.

<sup>51</sup>S.A.N.A.C., Report, p. 69.

<sup>52</sup>Ibid., p. 65.

state by their demands for the same rights as white people.<sup>53</sup> One of the kholwa leaders who presented evidence before the commission was J. Jabavu.<sup>54</sup> Kholwa had their powers undermined by the commission, which recommended the removal the right of kholwa chiefs to own property, including land. This restricted their ability to distribute land among their people. Although, the commission recommended that Africans were to be gradually civilized and their traditional institutions were to be undermined so that they would be forced to render labour to the states. It criticized the major 'props' of traditional African society and these were communal use of land, the system of ukulobola and the institution of polygamy because it felt that these institutions made chiefs independent of whites and powerful.<sup>55</sup>

Although there was a continuing friction between the kholwa chiefs and hereditary chiefs, especially in the 1890s, some kholwa chiefs began to realize that they needed to work co-operatively with the hereditary chiefs in order to fight against oppression.<sup>56</sup> Kholwa chiefs were those chiefs who were Christians. They wanted to be given equal rights as whites in Natal. They were exempted from the native law, but the government continued in the 1890s to weaken their powers by restricting them access to land. These Christian chiefs broke away from the white missionaries when they were disillusioned by the imperfections of the colonial society.<sup>57</sup> The philosophy of religious independence, which manifested itself in the rise of African separatist churches that broke away from the control of white missionaries was known as 'Ethiopiansm' which developed in South Africa towards the end of the nineteenth century.<sup>58</sup> Towards the end of the nineteenth century different separatist churches had been established and this was backed up by African political organizations and different African newspapers that were the platforms to express their grievances that were established.<sup>59</sup> Close co-operation between kholwa leaders and hereditary chiefs had been indicated in a number cases in the early twentieth century.

In earlier years, the aspirations of kholwa chiefs had been different from those of hereditary chiefs

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<sup>53</sup>S.A.N.A.C, 1903-5, evidence of F. R. Moor, p. 216-7.

<sup>54</sup>S.A.N.A.C, 1903-5, evidence of J. Jabavu, p. 82.

<sup>55</sup>Report of the S.A.N.A.C. 1903-5, pp. 13-8.

<sup>56</sup>A. Ondeldaal, Vukani Bantu: The Beginnings of Black Protest Politics in South Africa to 1912 (Cape Town: David Philip, 1984), pp. 23-9.

<sup>57</sup>*Ibid.*

<sup>58</sup>*Ibid.*

<sup>59</sup>*Ibid.*, p. 59.

in that they were “westernized” and wanted to join colonial society on equal terms with whites. By the early twentieth century they, and traditional chiefs were facing a common oppression. This was when kholwa chiefs began realizing that they could not be treated as equal as whites, and they started seeking to work closely with hereditary chiefs.<sup>60</sup> Friction between the two categories of chiefs seems to have been lessened in the early years of the twentieth century. By now, the kholwa chiefs had grievances that overlapped with those of the hereditary chiefs and the rural population. In 1903 the Natal government passed the Mission Reserve Act which abolished freehold tenure for Christian people and instituted rents, half of which were to be paid to the missions and half to the government.<sup>61</sup>

Evidence of collaboration between hereditary and kholwa chiefs can be seen on the Esidumbeni Mission Station, which sought to cooperate with chief Meseni and chief Swayimana in an attempt to fight against oppression.<sup>62</sup> They may have chosen these antagonistic chiefs to try and heal divisions between them in order to create a more coherent force against the state. However, not all hereditary chiefs co-operated well with the kholwa leaders. Other chiefs and izinduna rejected partnership with them.<sup>63</sup> Co-operation between the kholwa and hereditary chiefs was also evident during the disturbances of 1906.

The overcrowding of the African reserves, and the widespread disputes over garden sites and grazing lands, compounded by the growing trend among Africans to migrate to the urban centres in the early twentieth century, pushed the government to further tighten up control over chiefs.<sup>64</sup> Widespread disputes over gardens raised feelings of insecurity among the Natal settlers; as a result in 1903 the Militia Act was passed.<sup>65</sup> It provided for the formation of a militia force in each magisterial district, with the Governor being empowered to order any part of the militia to any reserve to enforce law and order there.<sup>66</sup> The powers of chiefs were undermined by the establishment of the militia force in the sense that members of the militia arrested people from

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<sup>60</sup>Etherington, ‘Christianity and African society in nineteenth century Natal’, in A. Duminy and B. Guest, eds. Natal and Zululand from Earliest Times to 1910, p. 298.

<sup>61</sup>Acts of Natal, 1903, p. 16.

<sup>62</sup>W. Smith, ‘Motivation for and obstacles to rebellion in Maphumulo during the 1906 rebellion in Natal’, unpubl. M.A. thesis (University of Natal, 1997), p. 16.

<sup>63</sup>*Ibid.*, pp. 16-7.

<sup>64</sup>Lambert & Morrell, ‘Domination and subordination’, p. 76.

<sup>65</sup>Acts of Natal, 1903, pp. 108-24.

<sup>66</sup>*Ibid.*

the reserves without any notification being made to the chief.<sup>67</sup> Presenting his evidence before the 1906-7 Native Affairs Commission, Chief Stephen Mini complained that the militia undermined the authority of chiefs because they did what they liked in the districts.<sup>68</sup>

Powers of chiefs were further curtailed after the rebellion of 1906 in Natal. The rebellion broke out after the imposition of poll tax on all young men in Natal. Different factors have been raised by different writers as the possible causes of this rebellion. One has to do with the failure of the Natal government to address problems that elders and chiefs faced. This was intensified by the increasing insubordination of young men who left the colony for the gold and diamond fields and for industrial centres in both Natal and the Transvaal. The poll tax served as a trigger to the long-felt dissatisfaction of many chiefs about the way the government administered African affairs. The evidence indicates that during the disturbances of 1906 some chiefs increased their powers over their subjects.<sup>69</sup> According to Lambert and Morrell, chiefs who remained loyal to the colonial officials seized this opportunity by encouraging their men to fight against old rivals who had joined the rebels.<sup>70</sup> However, they found this difficult because their men were often not prepared to do so. As a result authority of those chiefs was weakened.<sup>71</sup>

During the disturbances, powers of chiefs were further weakened by the fact that large numbers of people broke away from them.<sup>72</sup> The defection of people was due to dissatisfaction with them. When people felt that their chiefs had gone too far to the colonial side, they would try to hive off to another leader who was prepared to express their concerns.<sup>73</sup> Some of the them who became loyal to the government lost support as people broke away because they were not in tune with the wishes and aspirations of their people. Amongst the chiefs who lost support in this fashion were, according to Marks, acting chief Ngqamuzana of the Thembu people and Chunu chief, Silwane.<sup>74</sup> Not all chiefs who supported the government during the disturbances lost their followers. Some managed to carry their followers with them and aided the government against

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<sup>67</sup>Natal Native Affairs Commission, Evidence of Chief Stephen Mini, p. 703.

<sup>68</sup>Ibid.

<sup>69</sup>Lambert & Morrell, 'Domination and subordination', p. 89.

<sup>70</sup>Ibid.

<sup>71</sup>Ibid.

<sup>72</sup>Marks, Reluctant Rebellion, p. 311.

<sup>73</sup>Ibid., p. 317.

<sup>74</sup>Ibid.

rebellious chiefs. One of these was Chief Sigungu of the Hlaba people, who managed to strengthen his political position in his chiefdom.<sup>75</sup> Many chiefs who were loyal to the state during the disturbances were given powers by the government to confiscate livestock from the homesteads of rebels in Natal.<sup>76</sup>

Chiefs who fought against the rebels found that their powers increased after the suppression of the rebellion by the state forces. In my view, the disturbances of 1906 further enabled the government to weaken and undermine chiefly authority by breaking up the remaining powerful chiefdoms such as the Swayimana's in Natal. However, as a reward to those chiefs who fought against the rebels, especially chiefs in the lower Thukela region, their powers were increased. The number of chiefdoms in the lower Thukela was reduced from 19 to 9, and many chiefs, like Msolwa and Makewu were deposed and found guilty of treason.<sup>77</sup> Their chiefdoms were fragmented and loyal appointed-government chiefs ruled over them. Among the chiefdoms that were fragmented were the Cube and the Zondi.

After the disturbances of 1906, strong efforts were made by the government to remove from positions of influence prominent members of the Zulu royal house and to reduce their hereditary power. At the same time the reliable chiefs, especially those who were loyal to the state during the rebellion, were given more powers to distribute land among destitute people.<sup>78</sup> However, rebellious chiefs were crushed, and their political status was denigrated. Their people lost faith in them because they could no longer provide resources, such as land. Many hereditary chiefs were exiled while others were deposed.<sup>79</sup> Dinuzulu was tried for treason, and his uncle Shingana and his family were exiled from Zululand.<sup>80</sup> Other Zulu chiefs, such as Maboko, Mafu, and Tshibela, were deposed.<sup>81</sup> Sigananda, who was chief of the Cube people, had also been deposed. The

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<sup>75</sup>Ibid., p. 324.

<sup>76</sup>Carton, Blood from Your Children, p. 155.

<sup>77</sup>Natal Native Affairs Commission, 1906-7, evidence of Magistrate F. P. Shuter of the Lower Thukela, p. 497.

<sup>78</sup>Carton, Blood from Your Children, 164.

<sup>79</sup>Ibid., pp. 165-70.

<sup>80</sup>SNA. 1/1/460, Minutes, Governor-in-Council, 10 March 1907.

<sup>81</sup>Ibid.

Mthethwa chiefdom under chief Matshwili was fragmented.<sup>82</sup> Powers of hereditary chiefs were further undermined by the fact that soldiers destroyed the crops in the country-side. This left people without food to eat and helped to push young people to wage labour.<sup>83</sup> This affected the powers of both chiefs and elders.

After the disturbances the Natal government appointed the Natal Native Affairs Commission in 16 October 1906. It sat from 16 October 1906 to 18 June 1907.<sup>84</sup> It was set up in order to inquire into native problems and reasons for possible disaffection amongst Africans in Natal. It was required to make recommendations for the handling of native affairs in the colony. The commission consisted of three members of the Legislative Council, two members of the Legislative Assembly, one missionary and the British representative on the Zululand Lands Delimitation Commission.<sup>85</sup> It represented all sectors of the white population, i.e. white farmers, merchants, colonial officials and magistrates.<sup>86</sup> Information collected by the commission was taken in the form of verbal evidence. Three hundred whites and 906 Africans came forward to speak before the commission. Three hundred and eighty one were hereditary chiefs, government-appointed chiefs, chiefs' representatives and headmen.<sup>87</sup> Four hundred and ninety of the Africans were classified as Christians and exempted people.<sup>88</sup> It also listened to non-chiefs and white people.

Shortage of land, heavy taxes, and the breakdown of the homestead economy and family lives were the major grievances brought to the attention of the commission by hereditary chiefs. Commenting on the shortage of land, Chief Majozi of Richmond stated that "the government should provide the chiefs with sufficient land on which to accommodate all their people, and so avoid the necessity of numbers of them going to lands belonging to other tribes."<sup>89</sup> Chiefs who

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<sup>82</sup>Marks, Reluctant Rebellion, pp. 232-4.

<sup>83</sup>Carton, Blood from Your Children, pp. 165-70.

<sup>84</sup>P. D. S. Forsyth, 'Natal 'Native Policy' in the aftermath of the Bhambatha rebellion', unpubl. Honours thesis (University of Natal, 1985), p. 18.

<sup>85</sup>Brookes, White Rule in South Africa, p. 66.

<sup>86</sup>Ibid.

<sup>87</sup>Forsyth, 'Natal Native Policy', pp. 18-9.

<sup>88</sup>Ibid.

<sup>89</sup>Natal Native Affairs Commission, 1906-7, evidence of Chief Majozi of Richmond, p. 709.

presented evidence before the commission complained about the weakening of chiefly powers. Chief Mlotshwa stated that chiefs were paid as constables and that chiefs had lost authority over their subjects.<sup>90</sup> Chief Sibokwa and chief Mqolombeni both noted that their children no longer belonged to them as they were obliged to work for wages in order to pay government taxes and rents.<sup>91</sup>

In the light of all the different grievances brought to the attention of the commissioners by chiefs, the commission made its recommendations. One of the most important recommendations that the commission made was the need to uphold African social and 'tribal' relationships, and to strengthen those already working in it for order and stability.<sup>92</sup> It also recommended that no further land was to be alienated from Africans and the distribution of land to Africans was to be controlled by allocating reserves for them.<sup>93</sup> It further recommended that the powers of the Supreme Chief were to be increased and that the position of the Secretary for Native Affairs be made a permanent one.<sup>94</sup> There was a shift in native policy towards extending and strengthening rather than weakening the powers of chiefs. This was done in order to prevent disintegration of family life. The recommendation was motivated by the fact that African families were disintegrating in the aftermath of the rebellion. The lack of authority in many chiefdoms was caused by that many chiefs had been deposed while others had been exiled. The chiefs were to be recognized by legislation and to exercise powers over wards that they would be given by the government.<sup>95</sup>

In 1908 the Legislative Council proposed a bill which provided for the nomination by the Governor-in-Council of four members to represent the interests of Africans in the Legislative Council.<sup>96</sup> But this was not passed into law. In the same year a large deputation of Africans, comprising chiefs, ministers and headmen, presented their complaints about the nomination of four members by the Governor-in-Council to represent Africans in the Legislative Council to F.

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<sup>90</sup>Ibid., evidence of chief Mlotshwa of Richmond, pp. 707, 709.

<sup>91</sup>Ibid., evidence of chief Sibonkwa and chief Mqolombeni, pp. 842, 767.

<sup>92</sup>Ibid., Report, pp. 17-8.

<sup>93</sup>Ibid., p. 3.

<sup>94</sup>Ibid., pp. 13-20.

<sup>95</sup>Ibid.

<sup>96</sup>Welsh, The Roots of Segregation, pp. 314-5



R. Moor, Minister of Native Affairs.<sup>97</sup> These Africans also requested the extension of the franchise right to the native races in the colony.<sup>98</sup> The bill on the nomination of four members was not enacted because the majority of the members of the Natal Legislature rejected the proposal for the representation of Africans in the Legislative Council.<sup>99</sup>

In 1909 the Legislative Assembly passed the Native Administration Act which embodied many of the recommendations made by the 1906-7 Natal Native Affairs Commission.<sup>100</sup> The government was acting in its own particular interests by increasing the powers of chiefs. The Native Administration Act increased the powers of chiefs.<sup>101</sup> The Minister of Native Affairs, officers of the department of the Native Affairs and other officers exercising administrative functions under native law were regarded as representing the authority of the Supreme Chief.<sup>102</sup> Another provision of the 1909 Native Administration Act was the creation of a Council for Native Affairs, consisting of nine members nominated by the Governor-in-Council.<sup>103</sup> For the purpose of effective African administration, the Act provided that the colony should be divided into four districts, each under the control of a District Commissioner.<sup>104</sup>

The Native Administration Act gave chiefs the power to punish their adherents by a fine of up to five pounds for civil cases brought before them by their subjects.<sup>105</sup> Before this, chiefs had been allowed to impose fine of up to only two pounds in terms of the 1891 Code of Native Law.<sup>106</sup> Although it seems that chiefs were allowed to fine their subjects, their power was limited and confined to the wards allocated to them.<sup>107</sup> The most important point is that the government of Natal was prepared to increase chiefs' powers slightly in some spheres, while at the same time

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<sup>97</sup>Ibid.

<sup>98</sup>Ibid.

<sup>99</sup>Ibid.

<sup>100</sup>Acts of Natal, 1909, pp.15-7.

<sup>101</sup>Ibid.; Marks, Reluctant Rebellion, p. 343.

<sup>102</sup>Welsh, The Roots of Segregation, p. 316.

<sup>103</sup>Acts of Natal, 1909, pp. 15-7.

<sup>104</sup>Ibid.

<sup>105</sup>Ibid.; Welsh, The Roots of Segregation, p. 316.

<sup>106</sup>Welsh, The Roots of Segregation, p. 316.

<sup>107</sup>Ibid.

restricted their powers in other spheres. The Native Administration Act emphasized the fact that chiefs were government officials rather than hereditary heads of chiefdoms.<sup>108</sup>

In conclusion, the election of Binns as Prime Minister and the incorporation of Zululand into Natal in 1897 marked the beginning of a shift in the politics of the colony. Powers of hereditary chiefs continued to be weakened and undermined. When Dinuzulu was returned to Zululand in 1898, his power and authority were undermined and he was allowed to rule only his section of uSuthu. The powers of other chiefs were further curtailed in the late 1890s. The government increased those of the magistrates and Administrators of Native Law. Chiefly authority was temporary boosted by the outbreak of the Anglo-Boer war, because some chiefs were required to form regiments and to use their men to fight against Boers and their African counterparts. Some of these chiefs used these regiments to strengthen their authority by raiding cattle from their rivals. After the war, many young men entered into wage labour and when they came back they challenged the authority of chiefs. The living conditions in the reserves were deteriorating due to the recurrence of drought, locust plagues and rinderpest in the early twentieth century. Rinderpest killed off numbers of African cattle. In a sense it did a good job for the government by undermining the powers of chiefs which the government would have done by making laws. The government continued to fragment chiefdoms in order to make them weak. The establishment of a militia force also undermined the authority of chiefs because these forces arrested people within chiefdoms without any notification being made to the chiefs.

Many chiefs who remained loyal to the state during the 1906 rebellion lost substantial support as their people defected to other chiefdoms that were prepared to express their concerns and aspirations. In the aftermath of the rebellion, some of these chiefs were rewarded by the government by being given more powers to allocate land to destitute people. However, hereditary chiefs' powers were eroded after the rebellion, many were deposed, and others were exiled and imprisoned and their chiefdoms broken up. The government fragmented the remaining powerful chiefdoms, deposing the uSuthu chiefs, including Dinuzulu, in its attempt to prevent the restoration of Zulu royal strength.

The commission was set up to inquire into native problems and reasons for possible disaffection amongst Africans in Natal. In 1909 its recommendations were embodied into the Native Administration Act. This Act strengthened the powers of chiefs by allowing them to fine up to five pounds in civil cases brought before them. The role of chiefs as government officials was emphasized. It is important to state that, up until 1909, chiefs in Zululand still exercised civil jurisdiction and limited criminal jurisdiction, whereas those in Natal had civil jurisdiction only. By

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<sup>108</sup>Ibid.

the time of the Union in 1910 the Natal government was showing signs of recognizing that chiefs' powers had been undermined to a point where they could no longer function effectively as controllers of the rural population. As a consequence, the government was beginning to partially refurbish the institution of chiefship.

## **Chapter six**

### **Conclusion**

In my examination of the changes in the powers of chiefs I have found that legislation governing Africans in Natal steadily undermined the powers of chiefs between 1875 and 1910. Although these powers had been weakened since the establishment of colonial rule in Natal in the 1840s, from 1875 onward the white settlers in Natal began to gain more power to control native affairs. As from the mid-1870s onward, pressures on the institution of chiefship began to mount, slowly at first, because of the weakness of the colonial state and the ambiguities in the policies of the Natal government, which was dominated by the British officials until 1893, and under contrary influences from the settler farmers and merchants.

In 1875 the Native Administration Act was passed. Although British government reduced the powers of white settlers in Natal, it allowed the Native Administration Act to be passed. This was because of the way in which native administration was handled, especially after the Langalibalele affair. Settler representatives in the Legislative Council pushed forward this law in an attempt to formalize and weaken the powers of both the Secretary for Native Affairs and the chiefs. Before 1875, chiefs had civil jurisdiction and restricted criminal jurisdiction. But the Act of 1875 entirely removed civil jurisdiction from the chiefs and placed it in the hands of magistrates. It also empowered the Governor to appoint Administrators of Native Law to help in the administration of Africans. They were also responsible for collecting taxes for the state. It seems that the Natal settlers wanted to weaken the powers of the chiefs out of the fear of Africans who greatly outnumbered them. In order to undermine the powers of chiefs they wanted to define them first and then weaken them by legislation.

The Native Administration Act of 1875 also provided for the codification of customary law. But before the codification was completed, the Act 21 of 1878 was passed. This Act increased the powers of Administrators of Native Law. In the same year the codification of customary law was completed. The Natal Code of Native Law consisted of all laws governing Africans that had been passed by the Natal government from 1875 to 1878. Legislation governing Africans was delayed by the outbreak of the Anglo-Zulu war in 1879. In the 1880s little legislation which affected powers of chiefs in Natal was passed. One of the laws that was passed was the Squatters Act of 1884. This law provided that Africans in Crown lands should pay rents. This helped to push Africans out of the land and to work for white farmers and in the diamond mines. Many young people who became migrant labours began to be independent of their fathers since they could afford to pay for themselves ilobolo. Towards the end of the 1880s the issue of responsible government for Natal was discussed and the 1878 code was revised. By 1891 a new code was completed. Clause 19 of the new code provided that the chief in charge of a section of the

chiefdom was a minor 'deputy' of the Supreme Chief and held such office during the pleasure of the Supreme Chief. This law served to degrade the status and prestige of chiefs and made them state officials. Chiefly authority was further undermined by clause 32 of the new code, which provided that the Supreme Chief had absolute power to appoint and dismiss chiefs, and require Africans to furnish military service and labour on public works. He was empowered to divide existing powerful chiefdoms in an attempt to prevent any African insurrection. This clause encouraged fragmentation of chiefdoms and made chiefs weak.

However, there were clauses in the new code which increased powers of chiefs in certain spheres. Clauses 66 to 78 increased chiefs' and elders' power over women and children. Fathers were allowed to demand earnings from their sons and wives. Women and children were not allowed to enter into any agreement without the consent of the homestead heads. The recognition of chiefly authority over children and women had to do with the crumbling of African society under the impact of migrant labour and land shortage.

When settlers gained power to directly control native affairs through the granting of responsible government in 1893, they continued to pass laws that affected the powers of chiefs. The pace at which the powers of chiefs was undermined was increased. In 1894 the Native Law Amendment Act was passed. This Act elevated izinduna to the position of hereditary chiefs. The izinduna were gradually brought under the direct authority of the state. They were allowed to try civil cases without reference to the chiefs. Powerful chiefdoms were broken up and made weak so that they would not be able to challenge the state. In the following year Native Administration Law was amended. This Act removed civil jurisdiction that chiefs had previously exercised over their adherents who lived on private lands. This Act was passed against the background of increasing clashes between kholwa and hereditary chiefs and between izinduna. In order to end these clashes, the civil jurisdiction of chiefs over adherents living on private lands was removed.

From 1894 to 1896 the government continued to give izinduna powers that were similar to those exercised by hereditary chiefs in an attempt to further weaken chiefly authority. The Native Locations Act was passed in 1896 and it took away chiefly powers to distribute land and other resources among their subjects and placed them in the hands of the inspectors of native law. It also gave them power to allow people into the reserves, which was something that had previously done by the hereditary chiefs. In the same year the Faction Fighting Act was passed in order to suppress faction fights among Africans. This Act took away the jurisdiction of chiefs to hear faction fight cases and placed it in the hands of magistrates. This Act was followed by the Native Assemblies Act which gave the Supreme Chief power to make rules governing ceremonies organized by Africans. Previously, chiefs were the ones who made rules for ceremonies.

When the government heard reports of the spread of rinderpest in neighbouring states in 1896, it proclaimed the abolition of the institution of ukusisa in an attempt to protect the cattle of settler farmers in Natal. This proclamation was enforced in 1897 when rinderpest struck Natal and killed off numbers of cattle. Rinderpest did the important job for the government, that of undermining the powers of chiefs which the government would probably have to have done by making laws.

Zululand experienced a different 'tragedy' in the period from 1879 to 1897. After the defeat of the Zulu people by British forces in 1879, the uLundi settlement was proclaimed by Wolseley. This settlement divided Zululand into thirteen chiefdoms. Each chiefdom was ruled by the chief appointed by colonial government. The powers of hereditary chiefs were weakened and the Zulu king, Cetshwayo, was exiled to the Cape. The chiefs were not allowed to raise amabutho. Due to the conflict that occurred between the uSuthu, i.e. Cetshwayo's adherents, and Mandlakazi, Zibhebhu's supporters, in the early 1880s, Cetshwayo was allowed to return to Zululand in an attempt to end the conflict. He arrived in central Zululand in 1883. His land had been reduced in size and his authority weakened. In the same year the Reserve Territory in the south of Zululand was established. It served as an area of refuge for those who rejected the restored king's rule. Powers of chiefs in the Reserve Territory were undermined by the fact that officials from Natal tried cases involving Africans in the reserve. From 1883 to 1887 there were four powerful chiefs in Zululand, Cetshwayo and his son, Dinuzulu who succeeded him in 1884, Zibhebhu in the northern Zululand and John Dunn, the white chief, in the southern Zululand. In 1887 Zululand became a British protectorate. The Zululand Code of Native Law was passed. Some of the laws it contained were similar to those that were operating in Natal. Clause 2 of the code recognized the civil jurisdiction of chiefs and their criminal jurisdiction which was restricted to only non-capital offences. In 1888 uSuthu supporters rebelled against the return of Zibhebhu, who was in the Reserve Territory, and the payment of cattle fines imposed on their leaders. But the colonial government suppressed the rebellion. After the rebellion uSuthu chiefs, including Dinuzulu, were tried for public violence and treason, and were exiled to St. Helena. In 1893 Sir Marshall Clarke replaced Melmoth Osborn as Resident Commissioner in Zululand and he amalgamated chiefdoms and made them bigger and powerful. He reduced the number of chiefs from 54 to 32. He wanted to give more power to the hereditary chiefs. This was a brief reversal of policy. In 1894 he recommended that uSuthu chiefs should be returned to Zululand. Clarke's policies towards chiefs seem to have been reversed when settler-farmer ministry was elected in Natal in 1897. Zululand was incorporated into Natal in the same year.

In the enlarged colony powers of chiefs continued to be weakened and undermined. In 1898 magistrates and Administrators of Native Law were given more power to try criminal and serious civil cases involving Africans through the passing of the Magistrates Courts. Legislation governing Africans seems to have been delayed in 1899 when the Anglo-Boer war broke out. The

war temporarily increased the powers of chiefs as they were required to raise the amabutho and to use them in cattle-raiding. In 1902 the Zululand Lands Delimitation Commission was set up by the Natal government as part of the agreement reached between Natal and Britain concerning the annexation of Zululand in 1898. This commission took away land from chiefs in Zululand and gave it to white settlers. This affected the powers of chiefs because chiefs were left with little land to distribute among their subjects. In 1903 the government passed the Militia Act which provided for the establishment of a militia force. The militia force undermined the authority of chiefs because it arrested and took away people from chiefdoms without any formal notification to the chiefs.

In 1905 poll tax was imposed on all young men in the colony. Africans could no longer shoulder the burden of taxes imposed on them by the government and showed their dissatisfaction by rebelling against the state in 1906. During the rebellion some chiefs who supported the state lost their power as many of their supporters left them and joined chiefs who could express their concerns and aspirations. After the disturbances the chiefs who fought on the side of the state were given increased powers to allocate land among destitute people and to hear civil cases between them. On the other hand, the powers of the hereditary chiefs and those who rebelled against the state were weakened and some chiefs were exiled and others disposed. However, in 1909 the Native Administration Act was passed and it gave chiefs power to fine their adherents a fine not exceeding five pounds in civil suits. By this time the Natal government seems to have begun to realize that powers of chiefs had been undermined to such an extent that they could not work effectively as controllers of African population. Afterwards, the Union of South Africa was formed and the administration of Africans was transferred to Pretoria.

Looking at the way in which chiefly authority was undermined by white governments in Natal, one can argue that the claim that chiefs today wield ‘traditional’ powers, i.e. that their powers are still the same as those wielded by great Zulu kings and chiefs, is unwarranted and unjustifiable. The powers of chiefs today are a mixture of ‘traditional’ powers and powers deferred by successive white governments since colonial times. Now a new democratically elected government is also busy redefining those powers. In my observation I found that each government manipulated the institution of chieftainship in its own way in order to achieve its aims. The incorporation of chiefs into democratic institutions partially causes a debate over the contribution that chiefs can make in maintaining democracy in South Africa.

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