
MANIPULATION OF TRADITIONAL LEADERSHIP AND TRADITIONAL LEGAL INSTITUTIONS: ZULULAND DURING THE 1880s

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1 Introduction

On 27 April 1994, South Africa inaugurated a new constitutional democracy which embraced the freedom and equality of all sectors of the South African society. The Preamble of the Constitution of the Republic of South Africa, 1996, stated as one of its aims that it sought to “heal divisions of the past and establish a society based on democratic values, social justice and fundamental human rights”. This goal was to be realised by, among others, section 211 which recognised the institution, status and role of traditional leadership and entrenched indigenous African law as a source of South African law alongside the common law.

Ironically, on the very same day, 27 April, in 1889, the British Administration rejected the time-honoured institution of traditional leadership in Africa and decided finally to remove the hereditary traditional leaders from Zulu society, thus causing irreparable harm to Zulu solidarity.¹ The Resident Commissioner of Zululand sent the following telegram to the Governor of Natal: “Judgment has been given by Special Court in the cases tried as follows: – For high treason, Ndaduko, 15 years; Tshingana, 12 years; and Dinuzulu, 10 years imprisonment, without hard labour.”² Eight months later, the Colonial Office

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1 Much has been written about this period in the history of colonial Natal and Zululand. The following materials were consulted regarding the general background: *The Court of the Special Commissioners for Zululand October - December 1888* (1889); *Colenso Cases of Six Usutu (Other than the Exiles at St Helena) Punished for Having Taken Part in the Disturbances of 1888* (1893 repr Pietermaritzburg, 1996); Lucas *Historical Geography of the British Colonies* Vol 4 South and East Africa (1900); Lugg *Historic Natal and Zululand* (1948); Van Zyl *Dinuzulu se Vlug na die Suid-Afrikaanse Republiek in 1888* (1961); Brookes & Webb *A History of Natal* (1965); Binns *Dinuzulu. The Death of the House of Shaka* (1968); Marks *Reluctant Rebellion. The 1906-8 Disturbances in Natal* (1970); Roberts *The Zulu Kings* (1974); Laband & Wright *King Cetshwayo kaMpande* (1980); Van Wyk *Dinuzulu en die Usutu-opstand van 1888* (1983); Laband *Rope of Sand. The Rise and Fall of the Zulu Kingdom in the Nineteenth Century* (1995); Guy *The View Across the River. Harriette Colenso and the Zulu Struggle against Imperialism* (2001); Sutherland & Canwell *The Zulu Kings and their Armies* (2004); Nicholls “Zululand 1887-1889: The Court of Special Commissioners for Zululand and the rule of law” 1994/1995 *Journal of Natal and Zulu History* 41.

2 Resident Commissioner to the Governor, Natal (27 Apr 1889), telegram enclosed in Despatch 147 (Osborn to Havelock, 27 Apr 1889) *BPP: CA* Vol 34 at 495. Where possible I consulted the Irish University Press Series of the *British Parliamentary Papers (BPP): Colonies, Africa (CA)*, (1971). This Series consists of an unabridged photo-lithographic reproduction of the original documents. Correspondence regarding Natal and Zululand is contained in volumes 32–35. Reference to page numbers is to the continuous pagination supplied for ease of reference by the editors of the Series. The circular numbers which appear in the table of contents of each

informed the Governor of Zululand that “Her Majesty’s Government have decided that the sentences ... cannot be remitted, and ... [that the] prisoners should be removed to St Helena”.³

This banishment of the Usutu chiefs, Undabuko and Tshingana, brother and half-brother of the Zulu King, Cetshwayo,⁴ and of his son and hereditary successor, Dinuzulu, may be linked directly to the destruction of the Zulu Kingdom by the Anglo-Zulu War of 1879; the undermining of the Zulu Royal House and concomitant destabilisation of Zulu cultural institutions; the subsequent tribal conflict and division in Zululand in the decade following the War; and Britain’s refusal to accept responsibility for governing the territory.⁵

At the heart of these events were the manipulation and erosion of traditional leadership, a core African institution, and with it the violation of sacred communal land rights. In line with British colonial policy, traditional leadership was used as an instrument of indirect rule by appointing chiefs and creating internal tribal divisions. The judicial system, in turn, was utilised to undermine the traditional indigenous governance and judicial structures. British interference in traditional leadership through the abuse of the legal system culminated in the unjust trials of the Usutu chiefs.

Land became the focus of the conflict between the Zulus and the British colonial administration and between the Zulus and the Boers. However, land disputes in Zululand were complex. Inter-tribal conflict which prevailed during Dinuzulu’s life cannot be attributed solely to the destabilisation of tribal structures by the British Administration and the pilfering of tribal land by the

volume has not been referred to. Correspondence between the Counsel for the defence of the Usutu chiefs and the Colonial Office was published shortly after the trials: Dumat & Escombe *Remonstrance on behalf of the Zulu Chiefs 1889* (1889 repr 1989). I made use of the original documentation as it appears in the *BPP*.

- 3 Colonial Office to Havelock (18 Dec 1889) Despatch 7 *BPP: CA* Vol 35 at 18. The Secretaries of State for the Colonies during the period under discussion were: 1882-1885: Edward Henry Stanley, fifth Earl of Derby; 1885-1886: Frederick Arthur Stanley; Feb-Aug 1886: Granville George Leveson-Gower, second Earl of Granville; 1886-1887: Edward Stanhope; 1887-1892: Henry Thurston Holland, first Baron Knutsford; 1892-1895: George Frederick Samuel Robinson, first Marques of Ripon. See “Secretaries of State for the Colonies (1801-1966)” *Oxford Dictionary of National Biography* (online ed, Sep 2004): <http://oxforddnb.com/view/theme/92817> (28 May 2008).
- 4 Cetshwayo was the son and successor of Mpande who ruled the Zulu Kingdom for forty years. Mpande was supported by the Transvaal Republic and had the dubious accolade of being crowned King of the Zulu Nation by Theophilus Shepstone. With the support of Zibhebhu, Chief of the Mandlakhazi tribe, Cetshwayo defeated the British Army at the notorious battle of Isandhlwana. However, the Zulu armies were eventually defeated by Britain.
- 5 Defence counsel for the Usutu wrote: “Since the unjust invasion of Zululand in 1879 England has refused, as if ashamed of acts done in her name, to accept responsibility for governing the country”: Escombe to Knutsford (3 Jun 1889), Encl in Despatch 172 (Havelock to Knutsford, 5 Jun 1889) *BPP: CA* Vol 34 574 at 591.

Boers. It should also be seen against the historical displacement of indigenous tribes from tribal land during the earlier reign of Shaka and the despotic military rule of both Shaka and his successor Dingane.

2 British colonial policy: divide and rule

Manipulation and undermining of traditional Zulu leadership structures to control the indigenous population was already employed in 1845, shortly after the annexation of Natal. Shepstone and West⁶ implemented a policy of indirect rule through appointed chiefs whose positions immediately became hereditary. They endeavoured to reinstate tribal structures as a means to control the indigenous population. A moderately positive upshot of this reinstatement of the tribal system, albeit an artificially recreated system, was that the judicial functions of chiefs were to an extent restored and, concomitantly, that African customary law was recognised in terms of Natal Ordinance 3 of 1849 in as far as it was not repugnant to the general principles of humanity observed in the civilised world.

In 1893, more than a decade after the Anglo-Zulu War, the Resident Commissioner of Zululand affirmed that indirect rule had been official British policy also in Zululand. He wrote as follows to the Colonial Secretary in a confidential report:

The system which has obtained in Zululand for the past twelve years has been "divide and rule"; the principle cleavage has been between those who adhered to their hereditary chiefs and those who did not. The Government held with the latter party.⁷

The impact of this policy on the indigenous Zulu society will be discussed with reference to African values regarding traditional leadership.

3 Excursus: traditional leadership in African culture

Amongst the indigenous people of Southern Africa, the institution of traditional leadership extended far beyond the simplistic notion of political organisation

6 Theophilus Shepstone was appointed as the Diplomatic Agent to the native tribes of Natal in 1845; Martin West was the first Lieutenant-Governor of Natal after its annexation to the Cape in 1845. See Brookes & Webb (n 1) 54ff; Brookes *Native Policy in South Africa from 1830 to the Present Day* (1924) 26ff.

7 Hely-Hutchinson to Ripon (16 Dec 1894) Despatch 2: *Zululand. Correspondence Relative to the Affairs of Zululand and the Proposed Repatriation of Certain Zulu Chiefs* [African (South) No 471] Feb 1896, copy in CO 879 41/4 National Archives (NA), Kew, 4 and Clarke to Ripon (8 Dec 1893) Encl in Despatch 2 at 5.

and an individual leader. An important feature of the institution was the link between the ruler, the people, the land and the ancestors.⁸

On a political level traditional leadership was founded on a strict hierarchical structure which transcended the living community and included the superhuman. In principle, the ruler, or king, who held a position of reverence and was regarded as a father figure, was the genealogical highest ranking male of the ruling family. He had comprehensive authority and in line with the non-specialised nature of African cultures, he was the legislative, judicial and executive head of the tribe. The realm was divided into jural communities under chiefs and various levels of headmen who had similar functions within their communities. The positions of the ruler and the other traditional leaders were hereditary.

The ruler exercised his powers in consultation with a private and also a representative council. His private council consisted of members of the ruling family and the representative council included chiefs and headmen who represented the people. A ruler's actions were valid only if exercised in council.

As the guardian of fundamental values, the ruler was the religious head and the direct, living representative of his ancestors who guarded the tribe. In that capacity he was the centre of ritual. In the ancestor cult, he acted as mediator between the people and the ancestors whose goodwill and co-operation were essential to the existence of the tribe.⁹

Land was regarded as an integral part of the social group. It belonged to the community as a whole, to the living, to those yet to be born, and to the superhuman. As custodian of the tribal land, the ruler managed its use. Utilisation of land was governed by religious beliefs and social relationships which included relationships with the ancestors. These relationships flowed over in a magico-religious devotion to the graves and shrines of deceased ancestors. In view of the characteristic lack of abstraction in indigenous African

8 See generally the following sources regarding traditional values with regard to land: Dalton "Traditional economic systems" in Paden & Soja (eds) *The African Experience* Vol 1 (1970) 71-72; Nyerere *Freedom and Unity. Uhuru na Umoja* (1974) 53ff, 166, 167; Ayittey *Indigenous African Institutions* (1991) 243, 285-287; M'Baye "The African Conception of Law" *International Encyclopedia of Comparative Law* (1975) ch 1: "The Different Conceptions of the Law" 149; Myburgh *Papers on Indigenous Law in Southern Africa* (1985) 89-91; Seyfarth & Van Rensburg "Economy" in Myburgh (ed) *Anthropology for Southern Africa* (1981) 62-63.

9 See generally Krige *The Social System of the Zulus* (1977) 217ff; Vorster "Political Organization" in Myburgh *Anthropology* (n 8) 79-84; Myburgh *Papers* (n 8) 55ff; Ayittey (n 8) 108-113.

culture, religious space was connected to concrete places and therefore site-specific. It naturally followed that land was not considered as a negotiable commodity and was not susceptible to individual ownership.

Against this backdrop it is understandable that the manipulation of traditional leadership in Zululand after the Anglo-Zulu War affected Zulu society to its core.

4 Cetshwayo

The policy of indirect rule which had proved to be successful in the Colony of Natal was also employed when Zululand came under the supreme authority of Great Britain after the Anglo-Zulu War. After the War, King Cetshwayo was exiled to the Cape. Zululand was distributed amongst thirteen appointed chiefs, disregarding Zulu traditional leadership principles and political organisational hierarchies. This triggered a civil war.¹⁰ The King's full brother, Ndabuko, together with Novimbi Msweli, mother of his eldest son Dinuzulu, acted as Regents during his exile. They were placed under the rule of Zibhebhu of the Mandlakhazi tribe, who was an appointed chief and arch enemy of the Zulu King and his Usutu tribe.¹¹ This was a shrewd political move by the British Administration, bearing in mind the strict hierarchy of Zulu political organisation and the fact that the ruling family was regarded as the nucleus of indigenous African constitutionalism.

Importantly, Zibhebhu seized the royal herds which in fact belonged to the people and also laid claim to some of Cetshwayo's wives. This was a particularly heinous crime in indigenous African law, since the King represented the tribal ancestors. As a rule, adultery with royal wives was punishable by death. The violation of allegiance to the king, disloyalty to the ruling family, or the rejection of the ruling dynasty constituted treason; the most serious of crimes in indigenous African law because it threatened the survival of the realm. It is not surprising, then, that unrest among the Zulu tribes escalated and that Dinuzulu, although, at that time, still merely a boy, ran away from Zibhebhu's rule.

In 1882 Cetshwayo was reinstated by the new Liberal Government that came to power in Britain. But this so-called "reinstatement" was a fallacy. He was accorded the status of a chief, not hereditary but appointed. His land was only

10 Granville to Havelock (11 Mar 1886) Despatch 16 *BPP: CA* Vol 33 356 at 357.

partially restored. Zululand was re-apportioned and a Reserve Territory,¹² under the jurisdiction of Britain, was created in southern Zululand, bordering on Natal, for those tribes who disagreed with the restoration of Cetshwayo and did not want to live under his regime.¹³ From 1880 the highest judicial and administrative authority in the Reserve vested in a resident commissioner, Melmoth Osborn, who reported to the Natal governor.¹⁴ This intervention by Britain in the Zulu civil war evidenced a complete disregard for the existing traditional cultural institutions and social organisation and merely exacerbated the divide amongst the Zulus themselves.

Zibhebhu, who was widely supported by the colonial officials, played a crucial role in the inter-tribal hostilities.¹⁵ It was at the insistence of Osborn that he was appointed as one of the thirteen chiefs when Cetshwayo was exiled, thus becoming an important link in the destruction of the Zulu Royal House. Zibhebhu, who was opposed to the restoration of Cetshwayo, was allocated extensive parts of land – parts that were still inhabited by loyal supporters of Cetshwayo – in northern Zululand.¹⁶ That the allocation of this land to Zibhebhu was a grave mistake on their part, the colonial administration had to concede a decade later.¹⁷

Also in the Reserve, which largely encompassed the most fertile parts of Zululand, a great number of Cetshwayo's followers held their traditional lands.¹⁸ Between the Reserve and Zibhebhu's land fell the barren, often uninhabitable

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- 11 Dinuzulu was born in 1868. He was the eldest son of Cetshwayo. His mother, Msweli, was not the King's first wife. The son of Cetshwayo's first wife was born after his death. Dinuzulu was eleven years old during the Anglo-Zulu War and under his uncle Ndabuko's guardianship.
- 12 In the correspondence and literature referred to as the "Reserve".
- 13 For an exposition of the events that led to the establishment of the Reserve and the Usutu reaction to it, see: The Aborigines Protection Society to the Colonial Office (13 Jul 1883), Despatch 2 *BPP: CA Vol 32* at 29-31 and Bishop Colenso "Notes on the Reserved Territory" (undated), Encl 1 in Despatch 2 *BPP: CA Vol 32* at 31-34. It should be borne in mind that until approximately 1818 the Zulu was an insignificant clan within the Nguni tribe. The Zulu nation was established when, at the beginning of the nineteenth century, Shaka conquered most of the other Nguni clans in Zululand. Both Shaka and his successor Dingane were cruel, tyrannical rulers who did not adhere to indigenous customary laws and social practices. In contrast, Mpande's reign of odd years was peaceful and Cetshwayo too enjoyed widespread support. See Bryant *The Zulu People as They Were before the White Man Came* (1949); Krige (n 9) 1-22.
- 14 Osborn was appointed Resident Commissioner of Zululand after its annexation by Britain in 1887 and remained in the position until 1893.
- 15 His so-called loyalty to the British Crown was widely praised in the correspondence. See, eg, Minute by the Secretary of Native Affairs (26 Apr 1887), Encl 2 in Despatch 9 (Havelock to Holland, 3 Aug 1887) *BPP: CA Vol 34* at 55.
- 16 Cetshwayo complained that Britain was not true to its word: "It has not been fulfilled what was spoken in England, that a small piece was to be cut off. Why! There has been taken my land to the north with my headmen and given to Zibedu ...": The Aborigines Protection Society to the Colonial Office (13 Jul 1883) Despatch 2 *BPP: CA Vol 32* 29 at 30.
- 17 Ripon to Clarke (2 Jun 1894) Despatch 1: Zululand. Correspondence Relative to the Affairs of Zululand and the Proposed Repatriation of Certain Zulu Chiefs, Zululand CO 879 41/4 (NA), Kew, 3.
- 18 See The Aborigines Protection Society to the Colonial Office (13 Jul 1883) Despatch 2 *BPP: CA Vol 32* at 29-31 and Bishop Colenso "Notes on the Reserved Territory" (undated), Encl 1 in Despatch 2 *BPP: CA Vol 32* at 31-34.

land restored to Cetshwayo. Naturally these inroads into traditional social and political organisation, the erosion of traditional forms of governance and the redistribution of sacred tribal land – without any input on the part of the ruler – led to the intensification of the conflict among the local population and to the pursuance of individual personal interests and ambitions.

Cetshwayo's¹⁹ appeals to the British authorities for help against Zibhebhu and his pillaging followers were, of course, ignored. After all, events were playing out perfectly in accordance with the strategy of divide and rule. In 1883, shortly after his restoration, Zibhebhu defeated Cetshwayo, first at the battle of Msebe, and then at the battle of Ulundi. The King was driven into the Reserve where he died. His loyal followers averred that he was poisoned by Zibhebhu.

The death of Cetshwayo did not bring to an end the unrest in Zululand. In 1886 Bulwer blamed the continuing disturbances on the Usutu's "aggressive policy" and on the fact that governance had become a problem for the Usutu since Dinuzulu was still a minor and could not be instituted as the ruler.²⁰ However, in 1893, Marshall Clarke, who had taken over as Resident Commissioner of Zululand in August of that year, pointed out in a confidential report that inter-tribal conflict was the result of "the line of policy hitherto pursued by the Government".²¹ Dinuzulu and his Usutu tribe wanted to avenge the King's death and wanted to restore their tribal land appropriated by Zibhebhu and his Mandlakhazi tribe. Not surprisingly, in view of their goal to obliterate the Zulu Royal House, the British Administration consistently refused to acknowledge Dinuzulu as Cetshwayo's successor despite the fact that they were well aware that Cetshwayo had confirmed his succession prior to his death: "When my father died, he left the country to me; now I die and leave the country to Dinuzulu".²²

The mounting disturbances and warfare impacted on trade and agriculture. It caused much distress to the local communities, especially the women and

19 "Zibedu's impi went out on a raid ... I declare that it has burnt all over the land ... eating up the cattle, carrying captive the women and children, and killing the men ...": Cetshwayo to Bishop Colenso (18 May 1883), Encl 2 in Despatch 2 (The Aborigines Protection Society to the Colonial Office, 13 Jul 1883) *BPP: CA* Vol 32 at 34.

20 See his memorandum on the state of Zululand presented to the Colonial Secretary: "Memorandum on the situation in the Zulu Country beyond the Reserve Territory, and on the expediency of some of the action being taken by her Majesty's Government on behalf of the Native and the British interests which are concerned in the future of that country" (6 Jan 1886) *BPP: CA* Vol 33 321 at 325. Of course, in indigenous African culture, the age of the hereditary successor was of no consequence since he ruled in-council.

21 See, too, Clarke to Ripon (8 Dec 1893), Encl in Despatch 2 Zululand. Correspondence Relative to the Affairs of Zululand and the Proposed Repatriation of Certain Zulu Chiefs, Zululand CO 879 41/4 (NA), Kew, 5.

22 Zulu Deputation Interview (7 May 1886), Encl 1 in Despatch 50 (Havelock to Granville, 23 May 1886) *BPP: CA* Vol 33 397 at 399. See Guy (n 1) 3ff for an analysis of Britain's position as regards succession in the Royal House.

children who were driven from their homes and could no longer provide for themselves. On numerous occasions, the Usutu sought to elicit the aid of the British Government against the marauding Mandlakhazi *impi*.²³ But this was to no avail. While the conflict was between the Usutu and the Mandlakhazi, it was not only the British Colonial Office that refused to interfere in Zululand, but also its local officials, notably Osborn, Resident Commissioner of the Reserve and Bulwer, the Governor of Natal.²⁴ Both supported and protected Zibhebhu, who was regarded as a powerful tool in the pursuit of indirect rule and the destruction of the Royal House. Importantly, Osborn distorted the Usutu's pleas for aid from Britain: he withheld information from the Governor and also supplied him with twisted versions of actual events.²⁵

5 The Usutu and the Boers

The first to come to the aid of the Usutu were some one hundred farmers – in the contemporary correspondence and also in the literature referred to as “Boers” – from the Zuid-Afrikaansche Republiek and the Free State.²⁶ They agreed to assist the Usutu against Mandlakhazi hostilities in exchange for land which they required in order to declare a new independent republic.²⁷

Boer justification for intervention appears from the first proclamation of the subsequently established New Republic,²⁸ Proclamation No I, 1884:

[Since] no civilised government has felt itself called upon to interfere in the affairs of Zululand to put a stop to the bloodshed of defenceless women and children and to restore peace and order ... a number of farmers from the various states and colonies of South Africa deem it a holy duty to accede to the appeals of the Zulu Chiefs, in the interests of humanity and civilisation, and with an eye to the safety of life and property of the adjoining people.²⁹

23 Civil society too, especially Hariette Colenso and the Aborigines Protection Society, persistently tried to elicit Britain's help in ending the conflict in Zululand.

24 Sir Henry Ernest Gascoyne Bulwer was Governor of Natal from 1882-1885 and Special Commissioner of Zululand. He was replaced by Sir Arthur Elibank Havelock, who was Governor of Natal from 1886-1889 and became Governor of Zululand from 1887. From 1889 to Aug 1893, Sir Charles Bullen Hugh Mitchell was Governor; from Jul to Sep 1893 Francis Seymour Haden acted as Governor and from Oct 1893 to 1901 Sir Walter Francis Hely-Hutchinson was Governor. See “Colonial Administrators and Post-independence Leaders in South Africa (1797-2000)”, *Oxford Dictionary of National Biography* (online ed, Oct 2005): <http://oxforddnb.com/view/theme/93267> (28 May 2008).

25 See, eg, Guy (n 1) 172.

26 In a petition from local colonists it is stated that the Boers included also residents of Natal “together with other Europeans, under colour of protecting the Usutu party and maintaining peace”: Petition from Natal Colonists to Derby, Colonial Secretary (2 Feb 1885), Encl in Despatch 31 (Bulwer to Derby, 3 Mar 1885) *BPP: CA Vol 33* 109-110.

27 Agreement between “Dinuzulu, king of the Zulu nation and of Zululand” and the “principal leaders of the Boers” in Grant to Bulwer (4 Aug 1885), Encl 1 in Despatch 21 (Bulwer to Stanley, 15 Sep 1885) *BPP: CA Vol 33* 242 at 245.

28 The establishment of the New Republic will be explained in more detail below.

29 Procl 1 of 1884, published in the *Natal Mercury* 2 Sep 1884, Encl in Despatch 56 (Bulwer to Derby, 1 Oct 1884) *BPP: CA Vol 32* at 722.

Importantly, this Proclamation also contained the agreement between the Boers and the Usutu for the transfer of land in return for Boer support in the struggle against Zibhebhu and the Mandlakhazi. The overt motive for helping the Usutu appeared to be altruistic. But, as Shula Marks pointed out, “Boer supremacy was based on outright expropriation of Africans”.³⁰ The events which followed attest to the fact that the true incentive for offering assistance to the Usutu was the all too easy opportunity to acquire land from a desperate people. As part of their strategy to acquire land in Zululand, the Boers proclaimed Dinuzulu, whom they regarded as Cetshwayo’s rightful successor, as King of the Zulu Nation on 21 May 1884. So transparent was the Boer agenda that Governor Bulwer observed to London that “the real purpose for which they entered Zululand was not to establish peace and quietness, but to acquire land and farms”.³¹

In June 1884, Dinuzulu defeated Zibhebhu with the assistance of the Boers, under command of Lucas Meyer, at the battle of Tshaneni.³² Six of Zibhebhu’s brothers were slain, but he escaped. Usutu women and children were freed and cattle reclaimed. Zibhebhu fled to Eshowe and appealed to Osborn for British support. Although Britain refused to lend active military assistance, they did harbour the remainder of Zibhebhu’s tribe as well as their cattle in the Reserve.³³

The original agreement between the Boers and the Usutu was that a limited area of Usutu land would be ceded to the Boers in exchange for their military assistance in putting an end to Zibhebhu’s reign of terror. The agreement involved only those Boers who had assisted the Usutu in this endeavour. Predictably, the Boers did not keep to their agreement. Soon all and sundry made demands for land not originally included in the agreement. For obvious reasons the Usutu refused to grant more land than had been agreed upon. But they were eventually worn down. On 16 August 1884, acting upon a misrepresentation by William Grant, adviser to the Usutu,³⁴ who feared that the

30 Marks “Natal, the Zulu Royal Family and the Ideology of Segregation” Apr 1978 *J of Southern African Studies* at 174.

31 See his memorandum on the state of Zululand presented to the Colonial Secretary: “Memorandum on the situation in the Zulu Country beyond the Reserve Territory, and on the expediency of some of the action being taken by her Majesty’s Government on behalf of the Native and the British interests which are concerned in the future of that country” (6 Jan 1886) *BPP: CA Vol 33 321* at 326-327.

32 Interestingly, Louis Botha, future Prime Minister of the Union of South Africa, was among the Boers who supported and took part in the Usutu’s defeat of Zibhebhu.

33 Bulwer to Derby (15 Oct 1884) Despatch 67 *BPP: CA Vol 32* at 734.

34 The letter of Grant’s appointment as the representative of the Zulu Nation was signed with a mark by Dinuzulu, namely “King of Zululand, at present a minor duly assisted by his uncle Undabuko, Regent and Guardian and Umnyamana, Prime Minister of Zululand”: See Grant to Bulwer (11 Sep 1884), Encl in Despatch 14 (Bulwer to Derby, 5 Nov 1884) *BPP: CA Vol 33 35-36*. The mere fact that reference is made to the position of “Prime Minister of Zululand”, a

Boers “would enforce by arms, if necessary, what they deemed their just claims”,³⁵ Dinuzulu signed a Proclamation (known as “Dinuzulu’s Proclamation”), prepared by the Boers, for the transfer of more than 1.3 million hectares of land.

The Usutu had no idea what they were actually signing. It has to be borne in mind that at this stage of his life Dinuzulu was illiterate³⁶ and therefore wholly dependent on what Grant and the Boers told him. Moreover, he was merely sixteen years old. In an interview with the Governor, when asked whether Dinuzulu had been aware of what he was signing, Ndabuko answered: “Dinuzulu was not acquainted with anything but that in holding the feather (i.e., the pen) he was giving the boundary we have described.”³⁷ On his part, Grant intimated that he had explained to the Usutu exactly which land was at stake. However, this was not true. He could not have known the extent of the area to be transferred because it had not been specified anywhere. The Usutu were under the impression that they had conceded to the transfer of no more than the area originally agreed upon.³⁸ From a legal point of view, this contract was, if not void, at least voidable. Mistake, misrepresentation, Dinuzulu’s minority, the fact that he had not acted in-council, that land was not a negotiable commodity and that a contract involving the transfer of ownership in land is unlawful in indigenous law: these are some of the factors which could have impacted on the validity of the contract, whether under English law, Roman-Dutch law or indigenous African law.

Moreover, from the perspective of international law, the question arises whether the Zulus had any rights in the land that they had transferred to the Boers. Britain’s view was that after the Anglo-Zulu War of 1879 and after Cetshwayo’s restoration, the Zulus had no sovereign land rights in Zululand and could neither sell nor alienate it without the consent of the British Government.³⁹ Lucas Meyer and his followers were well aware of this, but they

position completely foreign to indigenous African government systems, evidences how contrived this document was. Grant had also been Cetshwayo’s advisor.

35 Grant to Bulwer (4 Aug 1885), Encl 1 in Despatch 21 (Bulwer to Stanley, 15 Sep 1885) *BPP*: CA Vol 33 242 at 244; see Grant’s exposition of the events at 242-245.

36 Dinuzulu was taught to read and write only some five years later when he was in exile on the island of St. Helena.

37 Zulu Deputation Interview (7 May 1886), Encl 1 in Despatch 50 (Havelock to Granville, 23 May 1886) *BPP*: CA Vol 33 397 at 403.

38 For the Zulus’ view of the course of events involving the Boers, see the minutes of three interviews with a delegation of Zulus (including Ndabuko and Tshingana), conducted by the Governor: Zulu Deputation Interviews (7, 10 and 17 May 1886), Encl 1, 2 and 3 in Despatch 50 (Havelock to Granville, 23 May 1886) *BPP*: CA Vol 33 at 397ff.

39 See Grant’s memorandum in Grant to Bulwer (4 Aug 1885), Encl 1 in Despatch 21 (Bulwer to Stanley, 15 Sep 1885) *BPP*: CA Vol 33 at 242.

were of the opinion that since the country had been in a state of anarchy after Zibhebhu's defeat of Cetshwayo and since Britain had shown no intention of becoming involved in the inter-tribal conflict in the area, they had in effect abandoned it and had forfeited their rights. Naturally the African conception of sovereign rights in tribal land differed dramatically from that of the British Administration. And, judged from an indigenous African viewpoint, Dinuzulu could have issued a proclamation only if he had acted in-council.

The area designated in Dinuzulu's Proclamation and in Proclamation No I, New Republic, 1884, to be transferred to the Boers extended over an area "in extent more or less 1,355,000 (one million three hundred and fifty-five thousand) morgen", but the boundaries were nowhere specifically demarcated in either.⁴⁰ Further, there was no indication that the land would be distributed to approximately 800 farmers, although only 100 farmers had joined in the protection of the Usutu.

The New Republic, with Lucas Meyer as President, was proclaimed in September 1884,⁴¹ and a protectorate declared⁴² over the remainder of Zululand. This placed not only the best grazing lands but also the ancestral burial grounds of Dinuzulu's family in the hands of the Boers. Then the land grab escalated. Armed Boers invaded Zululand; some of the Usutu eventually fled, but others resisted the increasing invasion of the Boers. The Boers were angered by the Usutu's repudiation of their claim. They retaliated with vicious attacks, burning of kraals, destroying crops and seizing cattle.

5.1 Appeals to the British Administration

In June 1884, in a letter from the Colonial Office, it was stated in no uncertain terms that "Her Majesty's Government intend to maintain peace and order in the Reserve, but they have no intention of extending their authority and interference beyond its present limits", thus creating the impression that they had abandoned the territory they had conquered in the Anglo-Zulu War.⁴³ While

40 See *Natal Mercantile Advertiser* 26 Aug 1884: "Mr. Grant and the Boers in Council. Dinuzulu's Proclamation. The "New Republic", Encl in Despatch 44 (Bulwer to Derby, 26 Aug 1884) *BPP*: CA Vol 32 at 706.

41 Procl 1 of 1884, published in the *Natal Mercury* 2 Sep 1884, Encl in Despatch 56 (Bulwer to Derby, 1 Oct 1884) *BPP*: CA Vol 32 at 722. Bulwer was informed on 13 Sep 1884 by Esselen, the Acting Government Secretary of the New Republic, about the formation of the Republic and the proclamation of a protectorate over the remainder of Zululand. In his letter to the Governor, the Government of Natal was asked to recognise the New Republic. This correspondence – together with the relevant proclamations – was forwarded to the Colonial Secretary, Stanley, requesting the position of the British Government on the recognition of the Government of the New Republic. See Bulwer to Derby (29 Oct 1884) Despatch 9 *BPP*: CA Vol 33 at 28.

42 For a translation of the Proclamation, see Acting Government Secretary to Colonial Secretary, Natal (13 Sep 1884), Encl in Despatch 9 (Bulwer to Derby, 29 Oct 1884) *BPP*: CA Vol 33 at 29.

43 Colonial Office to Dillwyn MP (11 Jun 1884) Despatch 23 *BPP*: CA Vol 32 at 524.

the Colonial Office was apathetic to the predicament of the Usutu, the Resident Commissioner of Zululand was openly hostile. Not surprisingly, much resentment ensued on the part of the Usutu.

Following Dinuzulu's defeat of Zibhebhu, Osborn's attitude towards the Usutu took a turn for the worse: he started persecuting them. He regarded the Usutu who lived in the Reserve as rebels and expelled all of them who, in his view, showed allegiance to Dinuzulu and the Zulu Royal House. As indicated above, the Reserve was established over an area traditionally inhabited by many Usutu.⁴⁴ In Osborn's view, recognition and submission to the "paramount authority of Her Majesty's Government in the territory ..." was a precondition for occupation in the Reserve.⁴⁵

Moreover, because of his ungrounded belief in the Usutu's hostility against the British Government, Osborn refused permission that Cetshwayo's grave in the Reserve be guarded by a few select Usutu men.⁴⁶ It was not without cause that the Usutu wanted to protect the former King's grave. In indigenous societies, the burial place of the kings was regarded as sacred in the extreme. The close connection between the king, as ruler, and his chiefly ancestors put him in a deferential religious relationship with his followers. As king, he was regarded as sacred and as a repository of his ancestral spirits. He retained that position after his death when he became a tribal god.⁴⁷ But there was also another, practical, reason why the Usutu wanted to protect this sacred ground: they feared that Cetshwayo's grave might be violated since the grave of Dinuzulu's grandfather, King Mpande, had been looted by the British.⁴⁸

44 See Bishop Colenso "Notes on the Reserved Territory" (undated), Encl 1 in Despatch 2 (The Aborigines Protection Society to the Colonial Office, 13 Jul 1883) *BPP: CA Vol 32* 31 at 32 where reference is made to the "old inhabitants, who are mostly devoted to Cetshwayo" in the Reserve.

45 Osborn to Bulwer (25 Sep 1884), Encl in Despatch 42 (Bulwer to Derby, 29 Oct 1884) *BPP: CA Vol 33* at 62.

46 Osborn to Bulwer (25 Sep 1884), Encl in Despatch 42 (Bulwer to Derby, 29 Oct 1884) *BPP: CA Vol 33* at 62. Binns (n 1) 13-15: This was a repeat of Osborn's stubborn obstructive performance with the burial of Cetshwayo. Due to the prevailing unrest at the time, the burial of the King had to be delayed for some six weeks. Cetshwayo's brothers then requested permission from the Resident Commissioner to bury the King in the traditional burial ground in the Emakosini Valley. Osborn refused on the ground that the country was still too unsettled. He further refused the request that the King be buried at the Lohunu Kraal in the Nkandhla – the reason for that refusal was that the burial was a ploy to gain popular support against Zibhebhu. That was the last straw for Cetshwayo's widows who approached him *en masse*. Osborn was not up to challenging the wrath of the widows and he granted permission for the removal of the King's remains and his burial at the kraal of Dabulamanzi.

47 Ayithey (n 8) 126.

48 See Grant to Osborn (11 Sep 1884), Encl in Despatch 42 (Bulwer to Derby, 29 Oct 1884) *BPP: CA Vol 33* 62 at 63 where it was stated that Mpande "lived and died as friend of the English, and yet his grave was rifled, and the chair on which he sat (buried with him, with remainder of his personal articles, in accordance with Zulu custom) was seen in Pietermaritzburg".

From a Western or European perspective, Osborn's paranoia about the enmity of the Usutu may have been understandable: one cannot serve two kings. However, from an African perspective it was possible to embrace new loyalties without abandoning existing ones. There was no evidence that the Usutu's allegiance to the Zulu Royal House ever displaced their loyalty to the Queen. The fact that on various occasions they attempted to elicit help from Britain against the land-grabbing Boers, attests to this.

It was not only the indigenous population who wanted British intervention in the unrest and protection against the encroachment of the Boers. A number of Natal colonists, too, implored Britain "emphatically and unhesitatingly ... that humanity demands that something should be done to mitigate the great evil now present amongst the unhappy Zulu people, and to avert the still greater evil impending – the annihilation of the race".⁴⁹ Eventually even Bulwer⁵⁰ grudgingly had to join the cause. But he did not have only the interests of the local population at heart.

The Governor saw the escalating appropriation of land by the Boers as a potential threat to the stability and peace in Zululand that could spill over into the Reserve and also into Natal. Moreover, by early 1885 the Boers had extended their encroachment onto Zululand soil as far as St Lucia Bay. The fact that they had advanced to the coast, surveying plots and measuring out farms, posed an additional problem for Natal. Boer occupation of the area would effectively sever the route between Natal and the northern parts of Zululand. Bulwer requested the British Government to take action against the Boers: "[I]f the Boers are allowed to take the Zulu country in the way they propose ... a great and irreparable injury will be done to the people of Zulu race; and a great injury will be done to the Colony of Natal."⁵¹ As to be expected, Britain did not want to accept responsibility for Zululand. What did interest them, though, was St Lucia Bay which would afford the Boers the much

49 Petition from Natal Colonists to Derby, Colonial Secretary (2 Feb 1885), Encl in Despatch 31 (Bulwer to Derby, 3 Mar 1885) *BPP: CA Vol 33* at 109-110.

50 See, among others, his memoranda on the state of Zululand presented to the Colonial Secretary: "Memorandum on the situation in the Zulu Country beyond the Reserve Territory, and on the expediency of some of the action being taken by her Majesty's Government on behalf of the Native and the British interests which are concerned in the future of that country" (6 Jan 1886) *BPP: CA Vol 33* at 321-333; and "Further Memorandum on the situation in Central Zululand with suggestions as to the course which it will be most advisable for us to take in that country under existing circumstances" (14 Jan 1886) *BPP: CA Vol 33* at 333-338.

51 Bulwer to Derby (12 Jan 1885) Despatch 21 *BPP: CA Vol 33* 99 at 100.

coveted thoroughfare to the coast. In August 1885, Britain annexed St Lucia Bay.⁵²

In the meantime the Boers had tried to obtain the co-operation and blessing of the Usutu, but their attempts failed and Bulwer again asked the British Government to step in and resolve the conflict. He pointed out that the New Republic was broke and that there was disagreement amongst the Boers in Zululand, the greater number of whom desired occupation by Britain.⁵³ Up to that point, the extent of the land appropriated by the Boers had not officially been communicated to Britain.⁵⁴ However, when a Proclamation of 26 October 1885, defining the boundaries of the New Republic, claimed approximately five-sixths of Zululand outside the Reserve, as well as St Lucia Bay, Britain reacted.⁵⁵ The Special Commissioner for Zulu Affairs informed the Boer authorities that their survey of the land would not be recognised and that occupation would not confer valid title nor affect existing rights of the Zulu inhabitants since “these allotments of land would seriously and injuriously encroach on the territory of Dinuzulu and his people who are friendly to Great Britain”.⁵⁶ Nevertheless, some of the Boers started settling in Zululand illegally and clashes with the local inhabitants escalated. Zulus continued to be forcibly thrown off their land, and to have their kraals burnt and livestock seized.⁵⁷ Starvation and much hardship ensued for the indigenous population. Repeated requests for help yielded no more than an increased flow of correspondence between Britain and her local officials.

In March 1886, forty-two members of the House of Commons petitioned the Colonial Secretary to afford the Zulus British protection. In no uncertain terms they attributed the deplorable conditions prevailing in Zululand to Britain:

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- 52 Bulwer to Stanley MP (10 Sep 1885) Despatch 17 *BPP: CA Vol 33* at 227 and Government Notice 255 of 1885, Encl in Despatch 17 (Bulwer to Stanley MP, 10 Sep 1885) *BPP: CA Vol 33* at 227.
- 53 Bulwer to Derby (1 Jul 1885) Despatch 97 *BPP: CA Vol 33* at 174-175.
- 54 Mitchell, Special Commissioner of Zulu Affairs, to Stanley, MP, (26 Dec 1885) Despatch 47 *BPP: CA Vol 33* at 283.
- 55 According to Binns (n 1) 73ff, it was also pressure from other European countries that forced Britain to start taking cognisance of the Zulu plight.
- 56 Mitchell to Lucas Meyer, Chief Representative of the Boers in Zululand, (8 Jan 1886), Encl 1 in Despatch 3 (Mitchell to Stanley, 11 Feb 1886) *BPP: CA Vol 33* at 339. See, too, Stanley to Mitchell (4 Jan 1886) Despatch 49 *BPP: CA Vol 33* at 283.
- 57 See “Statement of Siziba, Umemi and Martin Lutuli, Zulu Messengers” (6 Jan 1886), Encl 1 in Despatch 5 (Mitchell to Stanley, 16 Feb 1886) *BPP: CA Vol 33* at 342.

In our judgment the anarchy and misery to which the Zulus have been reduced are the result of the war waged against them by this country, and, which, by breaking up their government, their military system, their social order and their nationality, exposed them to subsequent encroachments and cruel treatment of white men from the neighbouring territories.⁵⁸

A communication from the Colonial Secretary clearly set out the British Government's position with regard to appeals by the Usutu chiefs for the protection of and intercession by Britain: Britain "has at no time surrendered its rights and the obligations as the paramount power"⁵⁹ in Zululand which came under its authority in consequence of the Anglo-Zulu War; she retains the right to interfere in the affairs of the territory if deemed necessary; she chose not to intercede in tribal affairs, but never relinquished her right to do so "if circumstances should render that course advisable".⁶⁰

Britain's reasoning regarding the validity of the agreement between the Usutu and the Boers falls outside the parameters of any law. On the one hand, they declared that the agreement was invalid as the Usutu was bound by a treaty with the British Government not to alienate any portion of their land. On the other hand, they recognised the agreement but declared that the Usutu could not be held bound by its "full literal effect" as they had been unaware of how much of their land they had given away. And, finally, they decided that the agreement was after all valid as the Usutu had consented to alienate their land and that given the amount of time that had elapsed, they would under reasonable conditions recognise the Boer occupation of a section of Zululand.⁶¹ In addition they decided that the New Republic itself should be recognised. Britain further stated that consideration would be given to Bulwer's⁶² request that Zululand be brought under British rule, but that it would only consider the occupation of the remainder of the country not included in the New Republic.

5.2 Settlement of the land dispute

Deliberations to settle the land dispute between the Zulus and the Boers started between the British Administration and the Boer leaders, with all but complete disregard of the indigenous traditional leadership. However, these negotiations soon reached an impasse.⁶³ Having heard of the negotiations with the Boers, senior Usutu males⁶⁴ appealed to the Governor. They reiterated that

58 Members of House of Commons to Granville (Mar 1886), Encl in Despatch 22 (Pease, MP to Colonial Office, 26 Mar 1886) *BPP: CA Vol 33* at 362.

59 Granville to Havelock (11 Mar 1886) Despatch 16 *BPP: CA Vol 33* 356 at 357.

60 Ibid.

61 Granville to Havelock (11 Mar 1886) Despatch 16 *BPP: CA Vol 33* 356 at 357-358.

62 He had been recalled to Britain at that stage and Havelock had taken over as Governor of Natal.

63 For a detailed discussion see Binns (n 1) 77ff.

64 Ndabuko, Tshingana and several other senior males.

although they had agreed to a limited transfer of land, the boundaries demarcated in the Proclamation of 26 October 1885 were vastly out of proportion to that which they had agreed to; that Grant had no authority to sign any agreement on their behalf since he had not been appointed as their representative at that stage; and that Dinuzulu himself had no power to transfer land without the authority of the leaders of the Usutu. After lengthy discussions, over three days, the response of the Governor was brief: While he felt sorry for the Usutu, there was nothing that could be done, except to apportion a parcel of land in Zululand to them.

The pending deliberations between the British Government and the Boers neither put a halt to the continued appropriation of Zulu territory by the Boers nor did it ameliorate the wretched circumstances of the local inhabitants. The land grab had escalated beyond Usutu tribal land and encompassed wider Zulu territory. Not only were they deprived of their land and cattle, but their ancestral burial places were desecrated. Again they appealed for help to “the very great Queen of the English”.⁶⁵ The reply was in the same vain as before: The Zulus were the architects of their own misfortune.⁶⁶

Negotiations between Britain and the Boers were resumed and on 22 October 1886 a draft treaty, or Memorandum of Agreement, was signed. It disallowed any input from the indigenous population in determining their own fate. Among others, the treaty contained the following: An agreement on the partition of Zululand and a description of the boundaries of the New Republic adjoining the Zuid-Afrikaansche Republiek in the west and the Reserve Territory to the south; a Proviso B which provided that all the settlers who had received allotments within a tract of land (which become known as the Proviso B Territory) to the south-east of the New Republic and bordering on the Reserve could continue to occupy their land;⁶⁷ an agreement that the settlers of the New Republic would honour the undisturbed occupation and possession of Zulus in the land allocated to them; an agreement that the Boers would relinquish all claims to a Protectorate over the remainder of Zululand which did not fall within the New Republic; an agreement that a Commission representing the Zulus, Boers and British Government would be appointed to carry the treaty into effect; and an agreement that the British Government would implement the

65 See the translation of a letter from Dinuzulu and others to Havelock (4 Aug 1886), Encl 1 in Despatch 16 (Havelock to Granville, 6 Oct 1886) *BPP: CA Vol 33* at 467. See also Encl 2, at 468 for a second letter dated 5 Aug 1886, in which they dismiss Grant as “Adviser and Agent” of the Usutu.

66 Reply of Havelock to Dinuzulu and others (6 Sep 1886), Encl 4 in Despatch 16 (Havelock to Granville, 6 Oct 1886) *BPP: CA Vol 33* at 470.

67 These settlers would not receive full ownership of the land and would live under Zulu law and custom. They would also not have any jurisdiction over the local Zulu inhabitants.

earlier decision to grant recognition to the New Republic when all the conditions and stipulations in the treaty had been complied with.⁶⁸

Within a month of the settlement being reached, the *Volksraad* of the New Republic had approved the terms of the Memorandum of Agreement.⁶⁹ A month later, in accordance with its Article III, the Governor of Natal appointed the representatives of the British Administration and the Zulus on the Demarcation Commission: Osborn, Resident Commissioner of the Reserve Territory (as president), Lieutenant-Colonel Cardew, Acting Sub-Commissioner of the Reserve Territory and a Chief nominated by the chiefs of the Zulus “on their behalf and on that of the Zulu Nation”.⁷⁰

Understandably, the Zulus were dissatisfied with the boundaries as set out in the treaty between the British Government and the Boers and objected to the fact that they had not been part of the negotiations. In November 1886, they conveyed their objections in person to the Governor and made it clear that they could not accept the land settlement and would consent to the cession of only the small portion of land initially agreed upon to be transferred to the hundred Boers who had assisted them. They wanted the remainder of the Boer settlers to vacate Zululand. In an attempt to have the cession of the land to the Boers reversed, several deputations were sent to the Governor in the months to follow. At the very least the Zulus wanted “a fresh enquiry, between them and the Boers as to the cession of the territory in the presence of each other”.⁷¹ The Governor’s response was unchanged, namely that the Zulus should be grateful for the help offered by her Majesty’s Government and that the settlement was final and would not be changed. However, he did agree that an attempt would be made to restore the Makosini Valley, which was situated on the south-eastern border of the New Republic, to the Zulus because the sacred burial grounds of their former kings were located there.

68 Memorandum of Terms of Settlement agreed upon between Havelock and a deputation representing the Boer Settlers of the New Republic (22 Oct 1886), Encl 2 in Despatch 42 (Havelock to Stanhope, 24 Nov 1886) *BPP: CA Vol 33* at 502. The map of the area appears in Encl 1 of this Despatch. Natal colonists were disgruntled for being overlooked in the negotiation process since they regarded the settlement of the land question in Zululand and the Reserve of vital importance to their own interests and future. Not only were they not part of the negotiations, but the content of the discussions was also not made available to them. The Natal Legislative Council brought their objections to the attention of the Governor and British Government. For a detailed discussion of this issue, see Binns (n 1) 90-94.

69 Meyer to Havelock (23 Nov 1886), Encl in Despatch 66 (Havelock to Stanhope MP, 29 Dec 1886) *BPP: CA Vol 33* at 581.

70 See Havelock to Stanhope MP, (29 Dec 1886) *BPP: CA Vol 33* at 582 and Encl 1 at 583, the document appointing the commissioners. Encl 2 (583f) in this Despatch contains the “Instructions for the Guidance of the Zululand Demarcation Commission”.

71 Havelock to Holland (11 May 1887) *BPP: CA Vol 33* at 688.

True to his word, Governor Havelock put forward a request to Meyer, the leader of the Boers, for the reversal of this area.⁷² However, Osborn advised that the Makosini Valley contained graves of only the original small Zulu tribe before the rule of Shaka and that all the great kings of the united Zulu Nation, such as Shaka, Dingane, Mpande and Cetshwayo were buried elsewhere. The official conclusion then was that the burial grounds were not that sacred. Further, due to the fact that there were already a substantial number of white settlers in the area it would be difficult to allot the strip of country to the Zulus. Therefore, they had to abide by the fact that “the Governor has now written to the Boers to ask that these burial places should be respected and treated in the same way as that of Tyaka”.⁷³ Osborn’s attitude regarding the burial grounds does not surprise, and neither do his insensitivity and lack of understanding of the Zulus’ magico-religious attachment to land. In fact, it was consistent with the policy of employing and manipulating traditional institutions to control the indigenes and further the interests of the colonial power.

The British administration asked Henrique Shepstone, Secretary for Native Affairs, and well-trusted by the Zulus, to convey to them that the land settlement was final and would under no circumstances be reopened. The Zulus’ complaint that the Boers were levying taxes outside the borders of their allocated territory (the New Republic) would be dealt with, but nothing was mentioned about their further grievance that they had no means to pay taxes since “they have no means to obtain money, as they, the Boers, force men, women, and children to work for them without any wages, and are constantly subject to be beaten”.⁷⁴

The Zulus were adamant not to relinquish to the Boers such a huge tract of their land. The Aborigines Protection Society, which sought legal counsel regarding the land distribution on behalf of the Zulu from Messrs Dumat and Campbell, Advocates and Attorneys of Durban, Natal, were informed by the firm that “as a matter of reparation and justice” it should not be difficult to

72 Havelock to Meyer (12 Nov 1886), Encl 8 in Despatch 62 (Havelock to Stanhope MP, 19 Nov 1886) *BPP: CA Vol 33* at 573. In Despatch 62 are enclosed transcripts of the interviews with the chiefs, translation of letters from them addressed to the Governor and the Queen objecting to the settlement, as well as reports and documents regarding the dissatisfaction of the Zulus. See, too, Meyer’s response: Meyer to Havelock (23 Nov 1886), Encl 1 in Despatch 67 (Havelock to Stanhope MP, 28 Nov 1886) *BPP: CA Vol 33* at 581 and Havelock to Osborn (17 Nov 1886), Encl 3 in Despatch 68 (Havelock to Stanhope MP, 29 Dec 1886) *BPP: CA Vol 33* at 584-585.

73 See Shepstone’s reply to the Zulus’ request for assistance (11 May 1887), Encl 4 in Despatch 27 (Havelock to Holland, 11 May 1887) *BPP: CA Vol 33* at 693.

74 “Statement of Zulu Deputation taken by the Interpreter of the Supreme Court, Pietermaritzburg” (30 Apr 1887), Encl 3 in Despatch 27 (Havelock to Holland, 11 May 1887) *BPP: CA Vol 33* at 692.

convince Britain to restore the land containing the graves and remove the Boers from the Proviso B Territory.⁷⁵

Legal counsel of the Zulus advised them that it would be “worse than useless” to appeal to Britain to upset the “English and New Republic Convention”.⁷⁶ They were to request from the Crown first, that the existing boundary be adjusted to include within eastern Zululand the district containing the Zulu royal graves and, secondly, that the Boers be vacated from the Proviso B Territory, if need be, by buying the farms they occupied. Legal counsel further instructed the deputation of chiefs to provide proof that they were acting on behalf of the Zulu Nation.

The Governor expressly refused to accept that the firm of Dumat and Campbell acted as legal advisors for the Zulus: He recognised Campbell only as a spokesman and interpreter since the Zulu chiefs were subjects of the Queen. Any request which they wanted to make with respect to Zululand had to be in the form of a petition addressed to the Governor as the Queen’s representative.⁷⁷ This response was not surprising as Osborn had advised Governor Havelock that the reluctance of Dinuzulu and his chiefs to abide by the British Administration’s settlement was instigated by “mischief-makers [such as the Aborigines Protection Society]”.⁷⁸

Importantly, though, the Colonial Office was prepared to entertain the request that the land containing the graves be restored to the Zulus. But, while it was of the opinion that “there would be distinct advantages in a scheme under which the Zulus should buy the rights” of the settlers in Proviso B, it did not regard this as a feasible solution for a lack of available funds on the part of the Zulus. The Colonial Office resolved “that under a just and intelligent administration the Boers and Zulus may learn to live contentedly side by side”.⁷⁹

6 Annexation of Zululand: Legal aspects

On 14 May 1887, the Governor of Natal issued a Proclamation declaring “the whole of Zululand, including the territory known as the Zulu Reserve Territory,

75 “In re Zulu Deputation” (18 May 1887), Encl in Despatch 29 (Aborigines Protection Society to Colonial Office, 16 Jun 1887) *BPP: CA Vol 33* at 695.

76 “Opinion” (12 May 1887), Encl in Despatch 29 (Aborigines Protection Society to Colonial Office, 16 Jun 1887) *BPP: CA Vol 33* at 696. Other documents enclosed in this Despatch were: “Case” by the representatives of the Zulu Nation; and “In re Zulu Deputation” (16 May 1887) 695-697.

77 Private Secretary of the Governor to Campbell (26 May 1887), Encl 2 in Despatch 33 (Havelock to Holland, 30 May 1887) *BPP: CA Vol 33* at 701.

78 Havelock to Holland (11 May 1887) Despatch 27 *BPP: CA Vol 33* 688 at 689.

79 Colonial Office to Fowler, Aborigines Society (7 Jul 1887) Despatch 41 *BPP: CA Vol 33* at 706.

but excluding the territory known as the New Republic ... a British Possession under the name of Zululand".⁸⁰ Havelock, the Governor of Natal, was appointed Governor of Zululand. He was assigned the power to make laws for the good governance of Zululand and to appoint magistrates and other officials.⁸¹ The Governor of Zululand was also created the Supreme Chief over Zululand and its population, thus integrating chiefly authority with colonial government.⁸²

Havelock appointed Osborn as Resident Commissioner and Chief Magistrate of Zululand.⁸³ He was in charge of the administration of justice and the maintenance of peace, order and good governance within the territory.⁸⁴

The Governor issued Zululand Proclamation 2 of 1887, dated 21 June 1887. It imposed "western" law as the principal law of the land, thus engaging the legal system to control and subjugate the indigenous population, and, significantly, further eroding the institution of traditional leadership. The measure decreed that the "laws now in force in the Colony of Natal [in terms of Natal Ordinance 12 of 1845, Roman-Dutch law as influenced by English law⁸⁵] ... so far as applicable ... save as hereinafter in this Proclamation is specially otherwise provided" would be the law of Zululand. He further promulgated special Laws and Regulations for the Government of Zululand. Sections 2 to 35 of these Laws and Regulations dealt with the administration of justice, including courts of law, and their procedure and jurisdiction.⁸⁶ Essentially indigenous governance and judicial structures were displaced by a Western form of government and judiciary.

Some two years after the annexation of Zululand, the Colonial Administration delivered a severe blow to the upper echelon of the Zulu traditional leadership by removing Dinuzulu and his uncles to St Helena following contrived criminal trials. The Laws and Regulations played an important role in that process. On the one hand, the imposed legal system was manipulated to orchestrate a judicial process that would ensure an advantageous outcome for Britain. On

80 Procl of 14 May 1887, Encl in Despatch 28 (Havelock to Holland, 14 May 1887) *BPP: CA Vol 33* at 694. See, too, Binns (n 1) 100ff.

81 See Holland to Havelock (21 May 1887) Despatch 24A and the Commission of Appointment, Natal (Zululand) 19 May 1887, Encl in Despatch 24A *BPP: CA Vol 33* at 686.

82 Procl 2 of 1887, s 1.

83 Commission by Havelock Governor of Natal and Zululand to Osborn (26 Jun 1887), Encl in Despatch 1 (Havelock to Holland, 26 Jun 1887) *BPP: CA Vol 34* at 31.

84 *Ibid.*

85 Roman-Dutch law was to a large extent influenced by English law. The District of Natal was annexed by Britain in 1843 and became a Crown Colony in 1856. See generally Hahlo & Kahn *The Union of South Africa. The Development of its Laws and Constitution* (1960) 24-28, 64-72; Kennedy & Schlosberg *The Law and Custom of the South African Constitution* (1935) 19-26; Van Zyl *Geskiedenis van die Romeins-Hollandse Reg* (1983) 471-472.

86 See the Laws and Regulations for the Government of Zululand, Encl 1 in Despatch 2 (Havelock to Holland, 26 Jun 1887) *BPP: CA Vol 34* at 32ff.

the other hand, the judicial functions of the traditional leaders were so severely curtailed that they ignored the restrictions, thereby adding to the indictment against their loyalty to the Crown.

Section 8 of the Laws and Regulations⁸⁷ determined that the criminal law of Natal relating to “offences against the person or property” would apply in Zululand. No mention was made of offences against the State. Significantly, these Laws and Regulations for Zululand overruled certain important provisions of Natal Ordinance 14 of 1845 which regulated the administration of justice in that Colony. In line with the Charters of Justice, this Ordinance provided that the Judge of the District Court of Natal had to be a barrister of England or an advocate of the Cape. Although the District Court was later abolished by Natal Law 10 of 1857 and replaced by the Natal Supreme Court, which had full original competency and was composed of a Chief Justice and two Puisne Judges, the required qualifications of the presiding officers remained the same. The Laws and Regulations contained no similar requirement for the Chief or Resident Magistrates of Zululand.⁸⁸

Natal Ordinance 12 of 1845 further provided that criminal trials had to be held before a jury. This requirement, too, was overruled by the Laws and Regulations of Zululand which made no mention of criminal trials by jury. The omission of this important mechanism to ensure a just criminal trial severely jeopardised the cases of the Usutu chiefs. As a matter of fact, any possibility of a trial by jury was deftly circumvented by charging Dinuzulu also with murder, thus necessitating that, in terms of section 27 of the Laws and Regulations, he be tried in Zululand instead of Natal. This charge was then dropped, once his presence was secured in Zululand.

Sections 26 and 29 of the Laws and Regulations of Zululand determined that the law of criminal procedure applicable in the Supreme Court of Natal would be applied as far as circumstances in Zululand permitted, also in the Court of the Chief Magistrate, and that the powers of the Supreme Court of Natal would vest in the Court of the Chief Magistrate.

The Laws and Regulations made no provisions regarding appeals to the Privy Council. Therefore, the Natal position still prevailed and, in accordance with the

87 This section also instituted the death penalty as a competent penalty for murder. In terms of s 16 a death sentence could be carried out only upon the warrant of the Governor.

88 Ss 39-41 required that only English and Irish barristers, Scottish advocates, advocates of the Supreme Court of the Cape Colony and Natal, and attorneys admitted in the United Kingdom of England and Ireland or the Cape Colony or Natal could practice before a court of law in Zululand. However they made no mention of the legal qualifications required for the Chief or Resident Magistrates.

Charters of Justice, civil appeals lay to the Privy Council. Hence, Dinuzulu approached the Privy Council twice in the course of the legal proceedings brought against him. The first was a petition against his forced removal from Natal to place him under jurisdiction of the Court of Special Commissioners in Zululand,⁸⁹ and the second was a petition for leave to appeal to the Privy Council against the decision of that Court.⁹⁰

Three sections of the Laws and Regulations were of particular importance to the trials of Dinuzulu and his uncles. In terms of section 15 “[t]he trial of every person charged with a crime punishable by death shall be held before a Court consisting of the Chief Magistrate and any two Resident Magistrates appointed by him”; section 31 determined that the Resident Magistrates had criminal jurisdiction except in cases punishable by death; while section 6 determined that anyone “appointed to be a Resident Magistrate, or to act as or in the stead of any Resident Magistrate shall before exercising any functions of his office, take the oath of allegiance, the oath of office and the judicial oath”.⁹¹ The judicial officers who presided in the trial of Dinuzulu never took any oath. Further, sections 15 and 31 were amended by the Governor to make provision for the constitution of the Court of Special Commissioners in Zululand for the trials of the Usutu chiefs thereby eliminating the existing, albeit limited, protection the law afforded an accused in a criminal trial.

Sections 32 to 34 of the Laws and Regulations had a more direct impact on the indigenous inhabitants of Zululand. They recognised “Native Courts” and circumscribed their civil and criminal jurisdiction according to “Native Law”. The criminal jurisdiction of the chiefs was limited to crimes between “Natives of their respective tribes”. Serious crimes were excluded from their jurisdiction as well as punishment involving death, mutilation or grievous bodily harm. Section 19 regulated the internal conflict of laws. In terms of this measure, the Code of Zulu Law of 1878 became binding on Zululand.⁹² Interestingly, in their legal opinion, Messrs Dumat and Campbell had advised the Zulus that they had

89 The documentation relating to the proceedings for Dinuzulu's removal to Zululand appear as enclosures in Despatch 90 (Escombe to Colonial Office, 4 Jan 1889) *BPP: CA Vol 34* at 404ff. See the decision of the Privy Council (29 Jan 1889) as Encl in Despatch 113 (Council Office to Colonial Office, 7 Feb 1889) *BPP: CA Vol 34* at 442.

90 Dinuzulu ka Cetuywayo v Attorney General of Zululand (1889) 5 Times Law Reports 699.

91 In terms of the judicial oath in Schedule A, the appointee had to swear “to do right to all manner of people after the laws and usages of this territory of Zululand, without fear or favour, affection, or ill-will”.

92 Brookes & Webb (n 1) 219ff; Bennett Application of Customary Law in Southern Africa (1985) 44.

“good reason to pray the Queen to leave them under Zulu law, as opposed to a system known as Natal native law [ie the Code of Zulu Law]”.⁹³

It is not surprising that the indigenous chiefs paid little attention to the infringement of their judicial functions and the severe curtailment of their jurisdiction.⁹⁴ For many of them the administration of justice was business as usual and they continued to try cases and impose penalties. Dinuzulu himself even imposed the death penalty for witchcraft⁹⁵ although both the crime and the punishment fell outside the jurisdiction of the chiefs in terms of section 33 of the Laws and Regulations of Zululand. Dinuzulu had earlier objected that the Zulus did “not understand this placing of white magistrates all over the small strip of thorn country left to the Zulus; that they have not been used to magistrates offices, and do not know how to get on with them, and that they are afraid they will not be able to do so”.⁹⁶ His sarcastic reference to the “small strip of thorn country” did not elicit any reaction from the colonial administration, but they were well aware that the traditional leaders had no intention of abiding by the new imposed laws.⁹⁷

Even though Zululand Proclamation 2 of 1887 was publicly read at two different occasions, all the chiefs had not attended.⁹⁸ Dinuzulu and Ndabuko deliberately boycotted these occasions. Many of the magistrates appointed by the Governor were further too inexperienced to control the local population. In an editorial in *The Times* of London,⁹⁹ the annexation of Zululand was aptly if flowery described as a “fanfaronade followed by a ridiculously inadequate show of power, and no settlement which does not involve a largely increased establishment of police or military, or both will inspire confidence”.¹⁰⁰

The two areas which experienced the most disturbances were the Ndwandwe district (to which both the Usutu and the Mandlakhazi lay claim) where Addison was Resident Magistrate, and the Lower Umfolosi district (also inhabited by Usutu) where Pretorius and Shepstone were magistrates. These magistrates

93 “Opinion” (12 May 1887), Encl in Despatch 29 (Aborigines Protection Society to Colonial Office, 16 Jun 1887) *BPP: CA Vol 33* at 696.

94 Nicholls (n 1) 47 aptly describes their attitude as “perplexed and deliberately uncooperative”.

95 Osborn to Mitchell (17 Oct 1889), Encl in Despatch 204 (Mitchell to Knutsford, 19 Oct 1889) *BPP: CA Vol 34* at 690; Binns (n 1) 104ff.

96 Dinuzulu to the Governor of Zululand (11 Oct 1887), Encl 1 in Despatch 30 (Havelock to Holland, 20 Oct 1887) *BPP: CA Vol 34* at 75.

97 Osborn wrote to the Governor that “to prove his determination to ignore the Protectorate [Dinuzulu] lost no time to show his defiance by contravening the only two conditions given him for his observance when the Protectorate was declared”: Osborn to Mitchell (17 Oct 1889), Encl in Despatch 204 (Mitchell to Knutsford, 19 Oct 1889) *BPP: CA Vol 34* 690 at 691.

98 Among these chiefs who did attend were only three members of the Royal Family. Osborn to Havelock (22 Jun 1887), Encl in Despatch 45 (Havelock to Holland, 26 Jun 1887) *BPP: CA Vol 33* 708 at 709.

99 12 Sep 1888 at 9.

100 The editorial also suggested that the power of the chiefs be drastically reduced.

imposed fines and gathered hut taxes, and in an effort to control the local inhabitants by instilling fear, they started imposing illegal floggings without the benefit of a trial.¹⁰¹

Dinuzulu and Ndabuko openly defied the authority of the Governor and Resident Commissioner and refused to obey summonses issued by the latter on different occasions to appear before him to explain their actions, including an alleged plot against the Queen and an assault upon the Governor's messenger.¹⁰²

In November of 1887, the Governor succeeded in convening a meeting which Dinuzulu and his uncles Ndabuko and Tshingana attended. It stretched over several days.¹⁰³ The chiefs had to answer to accusations of defying the sovereignty of the Queen, of plotting against her authority, seeking protection from the New Republic and ignoring summonses of the Resident Commissioner and assaulting his messenger.¹⁰⁴ Dinuzulu was informed that the "rule of the House of Chaka is a thing of the past. It is dead. It is like water spilt on the ground",¹⁰⁵ and that there was no question of him continuing the Zulu Royal House. As far as the Governor was concerned, the chiefs' answers to these allegations were not satisfactory. They were fined fifty head of cattle for the "grave offence of defying the authority of those duly appointed to exercise authority in Zululand" by ignoring the summons of the Resident Commissioner.¹⁰⁶

At this meeting, Havelock announced that Zibhebhu, who had always been loyal to the Queen and recognised her authority over him, would be repatriated

101 Binns (n 1) 141ff. Having perused various reports on these actions, the Colonial Office concluded that Addison's "conduct [was] deserving of censure": See Knutsford to Mitchell (20 Dec 1889) Despatch 8 *BPP*: CA Vol 35 at 19. The Governor wrote to the Colonial Office that "[t]here can be no doubt that Mr. Addison exceeded his authority and inflicted what, in time of peace, would be considered an utterly illegal punishment" but that he had understandably used "the best means in his power to deter others from disturbing the peace in Zululand": Mitchell to Knutsford (20 Sep 1889) Despatch 203 *BPP*: CA Vol 34 at 687; Addison and Osborn's explanations appear in Encl 1 and Encl 2 in this Despatch on 688 and 689.

102 Havelock to Holland (8 Oct 1887) Despatch 26 *BPP*: CA Vol 34 at 70. In this correspondence (at 71), Havelock indicated that he had cautioned Osborn "that it is most undesirable to incur any risk of collision between the troops and the Natives and that [he will] be unable to authorize the employment of troops in advance on Dinuzulu's kraal till every other expedient has been exhausted". In Despatch 25 *BPP*: CA Vol 34 at 70, however, he does mention that should the chiefs continue to disregard the Resident Magistrate's summons, they would be charged with "treason-felony"; see, too, Havelock to Holland (1 Nov 1887) Despatch 33 *BPP*: CA Vol 34 at 80 where the Governor threatened to charge them with treason in terms of Natal Law 3 of 1868 which applied also in Zululand.

103 Osborn to Havelock (18 Dec 1887), Encl 1 in Despatch 46 (Havelock to Holland, 1 Nov 1887) *BPP*: CA Vol 34 at 106.

104 The minutes and memoranda of the meetings appear in the correspondence between Havelock and Holland in Despatches 37 and 38 and the enclosures in these Despatches: *BPP*: CA Vol 34 at 87ff.

105 Memorandum by the Governor (15 Nov 1887), Encl 4 in Despatch 37 (Havelock to Holland, 20 Dec 1887) *BPP*: CA Vol 34 96 at 97.

106 *Ibid.*

to Zululand to re-occupy the lands he had previously occupied, not as an independent chief but as a British subject. The land allocated to him fell in the Ndwandwe district. History was repeating itself. A large number of the local inhabitants, dismissively referred to as "Usutu squatters",¹⁰⁷ had to be evicted from their tribal land for this purpose. In a deceptive report to the Governor, the Resident Commissioner estimated the number of displaced Usutu at 819.¹⁰⁸ This number was in fact 4800.¹⁰⁹ Not surprisingly, local British officials were anxious about the inevitable conflict they feared would ensue and a possible retaliation by the Usutu. Osborn's solution was to send numerous unfounded messages to the Colonial Office averring that Dinuzulu was seeking assistance from the New Republic to once again defeat Zibhebhu.¹¹⁰ The repatriation of Zibhebhu and the concomitant dislocation of Usutu led to the final disturbances that culminated in the exile of three Usutu chiefs, the punishment of six others and the execution of one who had been found guilty in an undefended trial.

In January 1888, Zibhebhu with an armed force of about 1000 men personally demanded from Addison the removal of all Usutu from the land allocated to him. Addison failed to heed the instructions of his superiors to reconcile the opposing tribes. Zibhebhu, true to style, callously plundered Usutu grain and seized their land to which he had no claim. The Resident Commissioner realised that Addison's demarcation of Zibhebhu's land was inequitable and upon instruction of the Governor he appointed the Assistant Commissioner of the Entonjaneni District to revise the boundaries. Compensation was offered to the displaced Usutu for the loss of growing crops and grain which had been appropriated by Zibhebhu's people. The Usutu rejected the proposed settlement. Osborn bombarded the Governor with reports of the Usutu's so-called disloyalty, their efforts to resurrect the Zulu dynasty, their planned vengeance against Zibhebhu and opposition to the extension of British rule.¹¹¹

107 Minute by the Resident Commissioner (30 Dec 1887), Encl 2 in Despatch 48 (Havelock to Holland, 3 Jan 1888) *BPP: CA Vol 34* at 112.

108 Osborn to Havelock (22 Jan 1889), Encl in Despatch 122 (Havelock to Knutsford, 26 Jan 1889) *BPP: CA Vol 34* at 461.

109 Colenso (n 1) 5. Counsel for the Usutu chiefs, too, estimated the number around 4000: Escombe & Dumat to Knutsford (13 May 1889), Encl 1 in Despatch 170 (Havelock to Knutsford, 31 May 1889) *BPP: CA Vol 34* 536 at 543 and Encl 3 in Despatch 170 *BPP: CA Vol 34* 560 at 565.

110 The fact that the Governor had contacted the New Republic and that the assertions had been firmly denied, did not stop Osborn from continuing with and elaborating on the accusations. Nevertheless, the Governor received the allegations with skepticism. He wrote to the Colonial Office: "Past experience in such matters leads me to doubt the accuracy of the report as to Dinuzulu's plan of attack": Havelock to Knutsford (25 May 1888) Despatch 13 *BPP: CA Vol 34* at 155.

111 See Havelock to Knutsford (30 Mar 1888) Despatch 6 and Enclosures, *BPP: CA Vol 34* at 141ff; Confidential Report, Osborn to Havelock (4 May 1888), Encl 2 in Despatch 20 (Havelock to Knutsford, 13 May 1888) *BPP: CA Vol 34* at 166.

While Dinuzulu was attempting to elicit aid from the New Republic and later the Swazi King, Addison raided his kraal¹¹² on the instructions of the Resident Commissioner and in direct contravention of the Colonial Office and Governor's instructions to maintain peace and affect reconciliation. He seized cattle in lieu of the fines which had not been paid.¹¹³ Ndabuko thwarted an attempt to arrest some of his men who were wanted for contempt of court and, outnumbered by the Usutu *impi*, the police contingent who were sent for that purpose had to withdraw.¹¹⁴ Warrants were issued for the arrest of Dinuzulu, Ndabuko and the men who were sought for contempt of court.

In the meantime, with a view to avoid conflict, all available Usutu were called to assemble at Ceza Mountain. It lay on the boundary of the South African Republic and offered an easy escape from confrontation with the colonial forces. The nearby kraals of enemy chiefs were raided to feed the rebels. The raids were not violent and were not authorised by the chiefs. In fact, Dinuzulu promised the victims to replace what had been taken.¹¹⁵ Support for Dinuzulu spread through Zululand.

In June 1888 an armed police and military force of about 200 men, together with 400 men of an aggrieved Mandlakhazi chief, Mnyamana, approached Ceza Mountain to arrest Dinuzulu and Ndabuko. Adding insult to injury, Zibhebhu offered his services in the quest against the Usutu. The Usutu chiefs' attempt to avoid bloodshed was frustrated when one of two messengers, sent to enquire from the army why the Usutu were being persecuted, was killed. The Government forces fired the first shot. Counsel for the defence described their actions as war "under cover of arrest".¹¹⁶ Nevertheless, the colonial side was defeated in the end. Following their victory, the Usutu raided those who refused them support. A trader and his son were subsequently killed because they assisted the colonial administrators. They also attacked Zibhebhu's

112 Addison had previously intimated to Osborn that the only way in which the fines would be obtained from the unwilling chiefs was by force: Addison to Osborn (27 Dec 1887), Encl 1 in Despatch 48 (Havelock to Holland, 3 Jan 1888) *BPP: CA Vol 34* at 111.

113 Minute by the Resident Commissioner (30 Dec 1887), Encl 2 in Despatch 48 (Havelock to Holland, 3 Jan 1888) *BPP: CA Vol 34* at 112.

114 For the colonial official's version of the events, see Havelock to Knutsford (4 May 1888) Despatch 16 *BPP: CA Vol 34* at 157 and Osborn to Havelock (26 Apr 1888) with the reports of Addison and J H Osborn, sub-inspector of the Zululand Police, Encl 6 in this Despatch *BPP: CA Vol 34* at 157-162. Counsel for the Usutu chiefs described the police seizure as cattle raids similar to the raids executed by the Usutu: Escombe & Dumat to Knutsford (13 May 1889), Encl 1 in Despatch 170 (Havelock to Knutsford, 31 May 1889) *BPP: CA Vol 34* 536 at 548.

115 Escombe & Dumat to Knutsford (13 May 1889), Encl 1 in Despatch 170 (Havelock to Knutsford, 31 May 1889) *BPP: CA Vol 34* 536 at 548.

116 Escombe & Dumat to Knutsford (13 May 1889), Encl 1 in Despatch 170 (Havelock to Knutsford, 31 May 1889) *BPP: CA Vol 34* 536 at 550. The Resident Commissioner had a very different view of what had occurred and reported it as such to the Governor: Osborn to Mitchell (17 Oct 1889), Encl in Despatch 204 (Mitchell to Knutsford, 19 Oct 1889) *BPP: CA Vol 34* at 690.

Mandlakhazi and defeated them once more.¹¹⁷ The rebellion spread. In August 1888, Dinuzulu fled to the South African Republic.¹¹⁸

Then Dinuzulu's uncle Tshingana was defeated by the British troops near Nkonjeni from where he had conducted raids against Government supporters. This was a large blow to the Usutu whose "quarrel was not so much with Britain as against the maladministration of the Natal officials which had resulted in the reinstatement of Zibhebhu".¹¹⁹ Zululand was flooded with colonial troops and the Usutu chiefs surrendered.

In November 1888, Dinuzulu decided to give himself up to the Natal authorities. He went to the home of his longstanding friends, Hariette and Agnes Colenso, daughters of Bishop Colenso, patron of the Zulus in Pietermaritzburg. Dinuzulu was then eighteen years old. In Pietermaritzburg he was arrested by the Mounted Police. The Governor decided that he should be moved to Eshowe in Zululand for a preliminary pre-trial examination by Colonel Thompson of the Royal Scots. Dinuzulu was opposed to being tried in Zululand where the local officials who had been persecuting him, especially Osborn and Addison, were in charge of the administration of justice. Fearing that the defence witnesses would be too intimidated to reveal the maladministration in Zululand,¹²⁰ the defence immediately applied for an interdict preventing Dinuzulu's removal there.

On 17 November 1888, an urgent application for an interdict preventing Dinuzulu's removal for a period of fifteen days was heard by the Natal Supreme Court. The interdict was granted but on condition that application for the discharge of the interdict could be brought before the court within that period. The interdict was discharged on 20 November.¹²¹ On the same night, Dinuzulu was secretly removed to Eshowe and handed over to the Zululand police in the middle of the Tugela River which divides Natal and Zululand. Undue haste by

117 Escombe to Knutsford (3 Jun 1889), Encl in Despatch 172 (Havelock to Knutsford, 5 Jun 1889) *BPP: CA Vol 34 574 at 576*, Escombe states that this attack on Zibhebhu was regarded as one of the "overt acts" on which the charge of high treason was based.

118 See generally Van Zyl (n 1) for a detailed exposition of Dinuzulu's stay in the South African Republic and the attempts of both the latter and the Natal authorities to apprehend him. Interestingly, during this period Henderson, State Attorney of the New Republic, tried to convince Dinuzulu to return to Natal, offering to represent him. These attempts were in the end thwarted by the Government of the South African Republic who regarded his meddling with "Native affairs" as illegal: *idem* 23ff.

119 Binns (n 1) 129-130.

120 It has to be borne in mind, though, that the Governor was not always aware of the maladministration of the newly annexed section of Zululand. In fact, in correspondence to the Colonial Office he complained that the Chief Magistrate and other local colonial officials very infrequently released to him information regarding the disturbances in that part of the territory and that the information that he did receive was often inadequate. See Havelock to Knutsford (8 Apr 1888) Despatch 7 and Encl *BPP: CA Vol 34 at 150-151*.

121 *In re Dinuzulu* (1888) 9 NLR (NS) 257.

the prosecution prevented sufficient time for Dinuzulu's defence to prepare for the case against him. The preliminary hearing took place a mere seven days after the discharge of the interdict which had forbidden his removal from Natal.

7 Conclusion

The subsequent assessment of the events recounted by Ripon, Colonial Secretary in 1893, evidences a surprising change in the attitude of the colonial administration regarding the prosecution of the Usutu chiefs: “[W]hat has been amiss in their [Usutu] conduct since annexation has been due to provocation, errors of judgement in the authorities, and mutual misunderstandings.”¹²²

In the same correspondence Ripon informed the new Resident Magistrate of Zululand that it was a recognised fact, borne out by the correspondence of the time, that “the troubles in Northern Zululand were due to mistakes in assigning to Usibebu [Zibhebhu] territory as to which his claim was doubtful, and which was largely inhabited by people who were unwilling to recognise his chieftainship, and inclined to carry their opposition to the point of resistance”.¹²³

What makes these observations significant is the fact that the chiefs had all been accused of high treason, despite their actions never having been inspired by disloyalty to the British Crown. As a matter of fact, the Colonial Secretary had to admit, some four years after their trials, that no distinction could be drawn between the loyalty of the Usutu and that of the anti-Usutu, who had been so highly praised for their loyalty in the correspondence of the time.¹²⁴

Nevertheless, in 1888 and 1889, the events were judged differently, and for reasons other than the administration of criminal justice and the maintenance of peace and order. The Usutu chiefs were found guilty of high treason in what was averred by many to be an unjust trial. Counsel for Dinuzulu summed up the judgement:¹²⁵

Stripped of all useless words the judgement found Dinuzulu guilty of High Treason on the grounds – That he resisted her Majesty's officers in Zululand; and in person led attacks upon her majesty's forces; and with the intent to overthrow the Queen's rule in Zululand.

122 Ripon to Clarke (2 Jun 1894) Despatch 1: Zululand. Correspondence Relative to the Affairs of Zululand and the Proposed Repatriation of Certain Zulu Chiefs CO 879 41/4 (NA), Kew, 2.

123 *Idem* 3. But even before the trials, the Governor informed the Colonial Office that the animosity of the Usutu was directed against Zibhebhu and not the Government: Havelock to Holland (23 Jan 1888) Despatch 55 *BPP*: CA Vol 34 at 117; Marks (n 1) 96ff.

124 Ripon to Clarke (2 Jun 1894) Despatch 1: Zululand. Correspondence Relative to the Affairs of Zululand and the Proposed Repatriation of Certain Zulu Chiefs CO 879 41/4 (NA), Kew, 1.

125 Escombe & Dumat to Knutsford (13 May 1889), Encl 1 in Despatch 170 (Havelock to Knutsford, 31 May 1889) *BPP*: CA Vol 34 536 at 538.

There is no doubt that the trials of Dinuzulu and his uncles were political trials in which the courts and the Legislature were manipulated to subjugate the political adversaries of those colonial officials in charge of the administration of Zululand and to cover up their maladministration of the territory. These trials evidenced a gross miscarriage of justice and negation of the rule of law.¹²⁶

In civil society there was outrage about the trials. It was felt that while the Governor was at liberty to constitute courts and proclaim new laws of general application, he could not

by a special law, take from under the operation of the general laws that he had established for Zululand, particular individuals designated by him, and hand them over to a tribunal created for the purpose of trying them by rules which were applicable to them alone, and which deprived them of advantages secured to their fellow-subjects by these general laws.¹²⁷

The trials of the Usutu chiefs are so important and the circumstances surrounding them so complicated that any analysis of them warrants separate consideration.

What happened in Zululand was not an isolated chain of events. It was a phenomenon widespread throughout Africa. The ruthless manipulation of traditional African institutions in South Africa continued and gained momentum during the years of apartheid. It impacted severely on the development of indigenous African law, and, importantly, it eventually led to the notion that institutions of traditional leadership and indigenous law were anachronisms of the colonial past which perpetuated patriarchal values and gender inequality.

The conflict over the acknowledgement of African cultural institutions did not come to an end with the constitutional recognition of traditional authorities and indigenous law. Moreover, State initiatives to incorporate traditional institutions into democratised judicial and governance structures have not been welcomed by all. Mangusuthu Buthelezi, a direct descendant of Dinuzulu, has voiced his distrust of some of these endeavours as imposing foreign values “inimical to the traditions, history and needs of KwaZulu-Natal” and as “a subversion of our monarchy”.¹²⁸ For different reasons, gender activists have fiercely opposed the Traditional Courts Bill, 2008, which entrenches judicial powers of traditional leaders and African values.

126 This was, of course, strongly denied by the Resident Commissioner in July 1889, shortly after the trials of the Usutu chiefs. Report by Resident Commissioner, Encl in Despatch 189 (Mitchell to Knutsford, 30 Jul 1889) *BPP: CA* Vol 34 at 339.

127 See the letter to the editor of *The Times* of London 14 Aug 1889, Column “Letters to the Editor” entitled “The Case of Dinuzulu”.

128 *Mercury* 25 Sep 2008.

Indeed, Nelson Mandela warned that “respect and recognition of the institution of traditional leaders require more than fine-sounding declarations in a constitution”.¹²⁹ Many issues, which echo their historical antecedents described above, remain problematical. These include the reconciliation of elected leadership structures and the true hereditary traditional leadership, the continuing conflict over land as well as burial rights, the problem of incorporating judicial and political powers of traditional leaders into existing State structures, and the adaptation of indigenous law to constitutional dictates.

The challenge is to accommodate a fundamental indigenous African institution within existing State structures and to align it with constitutional principles, and, importantly, to do so for the sake of safeguarding the cultural heritage of a large section of the South African society, not for the sake of attaining political goals.

129 Address by President Nelson Mandela at the inauguration of the National Council of Traditional Leaders, Cape Town, 18 Apr 1997:<http://www.anc.org.za/ancdocs/history/mandela/1997/sp970418.html> (25 Oct 2009).