



traditional affairs

Department:
Traditional Affairs
REPUBLIC OF SOUTH AFRICA

**PROGRESS REPORT ON TRADITIONAL LEADERSHIP DISPUTES AND
CLAIMS TO BE SUBMITTED TO SAHA**



DEPARTMENT OF TRADITIONAL AFFAIRS

7 OCTOBER 2013

1 PURPOSE OF THE REPORT

To submit to SAHA on the work of the Commission on Traditional Leadership Disputes and Claims and further highlight the findings of the Commission since 2009 to date. The report deals with with background on the establishment of the CTLDC, members of the CTLDC, provincial Committees of the CTLDC, progress to date, total claims received and processed to date, plan of the CTLDC for the remaining years and litigation.

Vision

The vision of the Commission on Traditional leadership Disputes and Claims is the restoration of the dignity of traditional leadership through resolution of claims and disputes.

Mission Statement: To finalize claims and disputes through:

- Researching claims and disputes lodged
- Holding of public hearings
- Defending litigations against the CTLDC

1.1. BACKGROUND TO THE ESTABLISHMENT OF THE CTLDC

The Commission was established as a result of continuous requests by, amongst others, traditional leaders, for the establishment of an Independent Commission to investigate the institution of traditional leadership with the aim of restoring it to its original form. It was established in terms of section 25 of the Traditional Leadership and Governance Framework Act, (Act 41 of 2003).

1.2 THE MANDATE OF THE COMMISSION

The mandate of the Commission is located in section 25 of the Act. The Commission had the powers to investigate issues related to the institution on its own accord, or as

requested by person where there was doubt as to whether a kingship, a senior traditional leadership or a headmanship / headwomanship was established in terms of the relevant customary law and customs. Section 26 of the Act empowered the Commission to make a decision, which had to be communicated to the President of the Republic of South Africa where the position of a King was affected, or to the Premier of the relevant Province where any position lower than that of a King was affected. The decision of the Commission was not reviewable by government, and the decision had to be immediately implemented.

The Nhlapo Commission as it was known, was announced to the public through the Government Gazette number 26927 as general notice number 2394 of 2004 published on 22 October 2004 as follows: "*The President has in terms of section 23(1) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), and with effect from 1 November 2004, appointed the following persons to be members of the Commission on Traditional Leadership Disputes and Claims:*

- a) **Prof. R T Nhlapo - Chairperson**
- b) **Adv. J C Bekker**
- c) **Ms P P Robinson**
- d) **Dr R M Ndou**
- e) **Prof. P P Ntuli**
- f) **Adv. S Poswa-Lerotholi**
- g) **Ms S R Mdluli**
- h) **Prof. M A Moleleki**
- i) **Adv. S D Ndengezi**
- j) **Mr A S Hlebela**
- k) **Adv. Z P Pungula; and**



l) **Prof. J B Peires."**

The term of office of the Commission ended on 31 January 2010.

1.2.1 OPERATIONS OF THE NHLAPO COMMISSION

The Commission was required to investigate the then existing Paramountcies and Paramount Chiefs first, before any other claim was investigated. In order for the Commission to realise its mandate and objectives, it developed its own procedures for its operations, which included research, public hearings and other methods of gathering information. In 2008 and 2010, the Commission produced two reports, the details of which are indicated below.

1.2.2 LEGISLATIVE AMENDMENT

In 2010 government proposed an amendment to the Traditional Leadership and Governance Framework Act, 2003 which amendment was approved by this Parliament. The amendment provided for a transitional period and a new position of traditional leadership. The transition is that irrespective of the decision of the Commission regarding those Paramountcies who did not qualify to be Kingships, they would continue until they pass on and their successors would be deemed Principal traditional leaders. A number of kings are deemed kings in terms of the provision of the amended section 28 of the Framework Act.

1.3 FINDINGS OF THE NHLAPO COMMISSION

AmaXhosa

AmaXhosa in the past had two paramountcies namely:

AmaGcaleka and AmaRharhabe: The Commission established in 2008 that AmaRharhabe were a junior house, which did not have a Kingship, whilst the Senior House did have a Kingship. In 2010, the Commission further established that the Kingship of AmaXhosa/AmaGcaleka resided within the House of Xolilizwe, and that his son Mpendulo Calvin Sigcau, rightfully succeeded him. The recognition certificate of King Mpendulo Calvin Sigcau was handed over to him in February 2011. However, AmaRharhabe approached the high Court to reverse the 2008 decision of the Commission and the subsequent announcement by the President of the Republic of South Africa.

AmaMpondo

AmaMpondo had in the past two paramountcies namely: **AmaMpondo of Qaukeni and AmaMpondo of Nyandeni.**

The Commission established in 2008 that AmaMpondo of Nyandeni were a junior house without a Kingship, whilst the Senior House of Qaukeni had a Kingship. In 2010, the Commission further established that Kingship of AmaMpondo resided within the lineage of Zanozuko Tyelovuyo Sigcawu who was conceived through the *ukungena* custom. However, King Mpondombini Justice Sigcawu approached the High Court for an interdict to prevent his removal from the throne and the installation of Zanozuko as the King of amaMpondo. The interdict was granted in favour of King Mpondombini Justice Sigcawu. The current King of AmaMpondo is still King Mpondombini Justice Sigcawu (Ah! Thandizulu) until the review case has been finalised. As part of the soft landing, the Kingship of AmaMpondo of Nyandeni is recognised only in terms of section 28(9)(b) of the Act, and his successor will be recognised as a principal traditional leader. The King of AmaMpondo of Nyandeni, King Ndamase kaNdamase also approached the High Court to reverse the 2008 findings of the Commission. However, King Ndamase was given his recognition certificate as a deemed King in February 2010.

AbaThembu

AbaThembu had two paramountcies in the past, namely: **AbaThembu of Rhoda and AbaThembu of Dalindyebo.**

The Commission established in 2008 that AbaThembu of Rhoda were a junior house, which did not have a Kingship, whilst the Senior House of Dalindyebo had a Kingship.

In 2010, the Commission further established that Kingship of AbaThembu resided with King Buyelekhaya Dalindyebo. The Kingship of AbaThembu of Rhoda will continue to exist until the then King has passed on and the successor would be regarded to be a Principal Traditional Leader, in terms of section 28(9)(c) of the Traditional Leadership and Governance Framework Act, 2003. The recognition certificate of King Buyelekhaya Dalidyebo has not been issued due to the demands he has put before government. AbaThembu of Rhoda (Matanzima) is thus currently recognised as a Principal Traditional Leadership and not a Kingship.



AmaNdebele

AmaNdebele had two paramountcies in the past, namely: **AmaNala and AmaNdzundza.**

The Commission established in 2008 that AmaNdzundza were a junior house, which did not have a Kingship, whilst the Senior House of AmaNala had a Kingship. In 2010, the Commission further established that the Kingship of AmaNdebele resided within the House of King Makhosoke II, and a certificate of recognition was handed to King MaKhosoke II in December 2010. As part of the soft landing, the Kingship of AmaNdzundza is recognised only in terms of section 28(9)(b) of the Act, and his successor will be recognised as a principal traditional leader. King Mabhoko III (Mbusi Mahlangu) was given his recognition certificate as a deemed King in February 2010. The delay of the recognition certificate was a Court interdict by one member of the royal family who had developed an interest into the position. He lost the case with costs hence the recognition certificate was issued in February 2011.

AmaZulu

The Commission established that amaZulu did have a Kingship. The Kingship of amaZulu resided under the lineage of Cetshwayo. The King of AmaZulu, King Goodwill Zwelithini Zulu has been recognised as Isilo samaZulu.

Batlokoa

The Commission investigated the paramountcy of Batlokoa, and established that it was not a Kingship. As part of the soft landing, the Kingship of Batlokwa is recognised only in terms of section 28(9)(b) of the Act, and the successor of the current King will be recognised as a principal traditional leader. The recognition certificate of King Lekunutu Cavandish Mota was handed over to him in February 2011.

Bakwena

The Commission investigated the Paramountcy of Bakwena, and established that it was not a Kingship. As part of the soft landing, the Kingship of Bakwena is recognised only in terms of section 28(9)(b) of the Act, and the successor of the current King will be recognised as a principal traditional leader. The recognition certificate of King Mopeli Thokwana Mopeli was handed over to him in February 2011.

Bapedi Ba Marota

The Commission investigated the paramountcy of Bapedi headed by Sikhukhune, and established that the paramountcy of Bapedi did exist, but that it did not reside with the House of Sikhukhune. The Kingship of Bapedi resided with the House of King Thulare Victor Thulare. The recognition certificate of King Thulare Victor Thulare has not yet been issued to him due to the fact that there is a review Case in the North Gauteng High Court.

VhaVenda

The Commission investigated the claim of VhaVenda, including the claim of five claimants to the throne, namely: Azwidowi Tshidziwelele Nephawe on behalf of Vhangona; Azwianewi David Mutshinvalo Ravhura on behalf of the House of Ravhura;

Midiavhathu Prince Kennedy Tshivhase; Gordon Mphaphuli; and Toni Peter Ramabulana Mphephu. The Commission found that the Kingship for the VhaVenda as a whole resided with Toni Peter Ramabulana Mphephu. A recognition certificate could not be handed over to him due to a Court interdict that has prevented government from recognising him.

The Commission further investigated other claims and found that the following did not have any kingships at all:

AmaHlubi;

AmaShangane;

AmaKwayi;

AmaKhonjwayo;

AmaSwati akaMlambo; and

AmaMpondomise.



All these claims were dismissed.

1.4 IMPLEMENTATION OF THE FINDINGS OF THE NHLAPO COMMISSION

The Department of Traditional Affairs has already issued recognition certificates to several Kings as part of the implementation of the findings of the Commission and the decisions of the President of the Republic of South Africa. The issuing of the certificates was done in partnership with the relevant Provincial Governments, due to the concurrent responsibility on matters of traditional Leadership. The Department is furthermore defending all the High Court litigation matters, which emanated from the findings of the Commission and the decisions of the President of the Republic of South Africa.

1.4.1 IMPLEMENTATION OF THE FINDINGS

The following Kings have received their certificates

Kingship	King	Province
AmaXhosa	Mpendulo Calvin Sigcau	Eastern Cape
AmaMpondo of Nyandeni	Ndamase KaNdamase	Eastern Cape
AmaNdebele	Makosoke Enock Mabhena	Mpumalanga
AmaNdebele of Ndzundza	Mbusi Mahlangu	Mpumalanga
Batlokwa	Lekunutu Cavandish Mota	Free State
Bakwena	Mopeli Thokoana Mopeli	Free State

The following Kings have not received their recognition certificates as yet:

Kingship	King	Reasons	Province
AmaZulu	Zwelithini Goodwill Zulu	The province is arranging a function for the certificate of recognition to be handed over	KwaZulu-Natal
AbaThembu	Zwelibanzi Dalindy'ebo	He has set conditions to be met by Government before accepting the certificate of recognition	Eastern Cape
Bapeli	Thulare Victor Thulare	High Court Interdicts	Limpopo
ASES	Toni Peter Mphephu	High Court Interdicts	Limpopo

2 WORK OF THE CURRENT COMMISSION

The current Commission is the successor in law of the previous Commission. All claims lodged with the previous Commission are deemed to be lodged with the current Commission. The Commission operates nationally in plenary and provincially in

committees. It is assisted by Committees to resolve disputes and claims. The Commission is required to delegate claims and disputes to provincial committees except those claims of kingships and or queenships. The Committees were established from September 2010 to August 2012.

2.1 MEMBERS OF THE CTLDC

The Commission was established with the following members:

- Mr. B J Tolo Chairperson from Mpumalanga
- Dr. N. Mndende Deputy Chairperson from Eastern Cape
- Mr. MJ Mafereka member
- from Free State Mrs. RT Kgatla member from Limpopo; and
- Mr. DB Sikhakhane member from KwaZulu-Natal

2.2 COMMITTEES OF THE CTLDC

The following is the list of Committees: 

Province	Number of Committee members	Date of assumption of duties
National Commission	05 Members	01 January 2011
Mpumalanga Committee	07 Members	01 September 2011
Eastern Cape Committee	03 Members	01 September 2011
North West Committee	02 Members	01 May 2012
Limpopo Committee	05 Members (Only 1 full time the rest are part time)	01 June 2012
KwaZulu-Natal Committee	02 Members	May and August 2012

2.3. TOTAL CLAIMS RECEIVED AND PROCESSED TO DATE

The Commission as a successor in law inherited 1244 claims and disputes.

PROVINCE	NUMBER OF CLAIMS	NUMBER OF CLAIMS PROCESSED	OUTSTANDING CLAIMS
Eastern Cape	183	82	101
Western Cape	29	29	00
Free State	64	64	00
North West	85	39	46
Northern Cape	10	09	01
Limpopo	541	140	401
KwaZulu-Natal	157	73	84
Gauteng	7	7	00
Mpumalanga	168	80	88
Total	1,244	523	721



2.3.1 PROGRESS TO DATE

The Commission is required by law to investigate and process all disputes and claims to government within five years. The Commission is left with almost eighteen months to finalize the remaining disputes and claims. To date the Commission has processed five hundred and twenty three (523) disputes and claims as it will be indicated in the next slide. The figure above includes the work of the Committees. The remaining seven hundred and twenty one (721) claims will be processed within the remaining 18 months.

2.4. LITIGATION

As indicated above, the Commission on Traditional leadership Disputes and Claims is mandated to investigate the claims on disputes and claims. The investigation into disputes and claims represents a set of promises that are made to claimants and government about what will be achieved in a given timeframe in this case by December

2015. The Commission is constantly challenged at the High Court on disputes and claims that have been finalized where another party believes that the Commission came to a wrong conclusion. The Commission is managing about fifteen (15) High Court cases emanating from its work and that of the previous Commission. The following table reflect the status of the litigations to date:



Claimant	Clan	Type of claim	Case no.	Court	Status
Bapedi Mamone Royal Council	Bapedi Marota Mamone	Dispute of kingship	40404/2008	North Gauteng High Court	<p>The claim was about the dispute over the Bapedi Kingship.</p> <p>The determination of the Commission found that the kingship of Bapedi Marota Mamone exist under the lineage of Thulare Victor Thulare.</p> <p>The Bapedi Mamone royal Council is seeking that the decision of the Commission be reviewed and set aside.</p> <p>The application for review was dismissed with cost in favour of the Commission.</p> <p>The claimant is appealing to the Supreme Court of Appeal in Bloemfontein.</p>
Kgagudi Kenneth Sekhukhune	Bapedi	Dispute of kingship	55035/2012	Constitutional Court	<p>The claim was about the dispute over the Bapedi Kingship.</p> <p>The determination of the Commission found that the kingship of Bapedi Marota Mamone exist under the lineage of Thulare Victor Thulare.</p> <p>It is not residing with the current Acting Kgosikgolo Kgagudi Kenneth Sekhukhune.</p> <p>The acting Kgosikgolo applied to court to review the decision of the Commission.</p> <p>The applicant was granted a leave to appeal and the order was set aside by the Constitutional Court.</p>
Azwidowi Tshidziwelele Nephawe	VhaVenda	Dispute of kingship	696/2010	Limpopo High Court	<p>This matter was about the dispute over VhaVenda kingship.</p> <p>The determination of the Commission found that the kingdom of VhaVenda does exist and must be occupied by Peter Toni Mphephu (Ramabulana).</p> <p>Nephawe is challenging the decision of the Commission.</p> <p>The application for review was dismissed with cost in favour of the Commission.</p> <p>The claimant is applying for to the Supreme Court for the leave to appeal.</p>
Masindi Clementine Mphephu	Vhavenda	Dispute of kingship	773/2012	Thohoyandou High Court	<p>The matter was about the dispute over the VhaVenda Kingship.</p>

					The determination of the Commission found that the kingship of VhaVenda exist under the lineage of Peter Toni Mphephu (Ramabulana). The matter is still with the attorneys to draft answering affidavits.
Siyabonga Dalimvula Matanzima	AbaThembu		41002/2012	North Gauteng High Court	The Commission found that the abaThembu of Rhode Paramountcy did not qualify to be recognized as a kingship. The claimant has approached the North Gauteng High Court to review the decision of the Commission where the President did not recognize the kingship of AbaThembu of Rhode. The matter is still with the lawyers and they still have to file the answering affidavits. It will be set down in the North Gauteng High Court
Mpondombini Justice Sigcau	AmaMpondo a se Qaukeni	Dispute	CCT84/12		The Commission found the kingship of AmaMpondo does not reside with king Mpondombini Sigcau. The kingship resides with Zanozuko Sigcau. The claimant applied for Court to review the decision of the Commission. The judgment for this matter was handed down by the Constitutional Court.
Mpisane Eric Nxumalo	Amashangane		3829/2011	North Gauteng High Court	Mpisane Eric Nxumalo has challenged the findings of the Commission that the Amashangane never had a kingship in the Republic of South Africa. Therefore the claimant took the matter to Court. The applicant's application for review was dismissed with cost in favour of the Commission. The applicant is therefore applied for leave to appeal which was also dismissed, and is now applying for leave to appeal against the judgment.
Ndamase Ndamase	Nyandeni		45462/2008		The determination of the Commission found that AmaMpondo ase Nyandeni is the junior house to AmaMpondo ase Qaukeni. As such they do not have a kingship. The current deemed king Ndamase ka Ndamase is challenging the decision of the Commission. The matter was terminated while it was done by Petse Attorneys who were appointed by the Commission.

					At the moment the matter is with the Commission attorneys to deal with it.
Luzuko Matiwane	AmaMpondomise	Claim		Mthatha High Court	The Commission established that amaMpondomise were never a kingship, and therefore declined their claim. Mr Luzuko Matiwane has challenged the findings of the Commission. This matter was heard on the 12 and 13 June 2013 and waits for the judgment.
King Sandile (Ms Noloyiso Sandile)	Amarharhabe		22654/2011	North Gauteng High Court	The findings of the Commission that the AmaRharhabe are part of AmaGcaleka and they are the junior house and do not have a kingship. Ms Noloyiso Sandile is continuing with the claim lodged by King Sandile, to reverse the decision of the Commission. The applicant has to file the supplementary affidavit and the matter will then be set down in the North Gauteng High Court.
Muziwenkosi Johannes Radebe	Amahlubi	Claim	37875/2011	North Gauteng High Court	The findings of the Commission found that AmaHlubi does not have a kingship. Mr Muziwenkosi Johannes Radebe declares him as the King of Amahlubi and the President to issue him a recognition certificate. The Commission is opposing that and the answering affidavit is drafted by the attorneys. The matter will be set down to North Gauteng High Court.
His Majesty Sebatshelwa Mahlangu (King Litho)	Amandebele		23541/2011	North Gauteng High Court	The applicant's lodged a case against the decision of the Commission that the kingship of Amandebele wa ka Ndzundza as a deemed kingdom. The applicant's attorneys has to file a supplementary affidavit and the matter be then set aside.
Kgosi James Ramokoka			264/2013	North West High Court	In this matter the applicant's application was dismissed with cost. The correspondent Attorneys was instructed to tax the bill and recover the cost in this matter.
Joyina Jim Mahlangu	Sokhulumi	Dispute	9768/2013	North Gauteng High Court	The applicant lodged a case against the decision of the Commission that the Senior Traditional Leadership of Sokhulumi is with Mkhambi Mahlangu. The applicant's had brought an

					application to amend their supplementary affidavit, and once the court granted them the leave to file their supplementary affidavit, they will then have to formally serve the said application to the attorneys of the Commission.
Mavis Kekana	Amandebele a Lebelo	Dispute	47170/2013	North Gauteng High Court	This is a dispute of the Kekana's over the chieftaincy of Amandebele a lebelo. The applicant lodged a case against the decision of the Commission said that the chieftaincy of Amandebele a Lebelo is with Kgosi K C Kekana. She has brought an urgent application with regard to an inauguration of Chief K C Kekana. The said application was dismissed with cost in favour of the Commission . The matter is in the Gauteng High Court.




2.5. PLAN OF THE CTLDC FOR THE REMAINING YEARS

The Commission has planned to execute all its the remaining seven hundred and twenty one (721) claims for the remaining eighteen (18) months starting from the 2013/14 financial year to 2015/16 financial year effectively and efficiently. The Commission has developed its rules and orders in order to ensure that its work is approached professionally and within the set timeframes. The Commission has also developed a monitoring tool that will ensure the effective acceleration of processing of Provincial Committees and plenary.

2.6 REMAINING TARGETS

The Commission has to date seven hundred and twenty one (721) claims to be handled within eighteen months (18) months. Table xxx indicates the number of claims spread over three financial years.

TABLE XXX TARGETS REMAINING



2013/14 target	2014/15 Target	2015/16 Target
360	320	125

3. CONCLUSION

The developed rules and orders and the monitoring tool of the Commission if properly implemented will ensure that the remaining claims are processed effectively and efficiently and within the given timeframes. With the dedicated leadership and staff of at provincial and national offices there is no doubt that the set strategic objectives of ensuring that all claims and disputes of Traditional leadership will be processed and finalised as planned.