



traditional affairs

Department:
Traditional Affairs
REPUBLIC OF SOUTH AFRICA

TO THE MINISTER

**3RD QUARTERLY PERFORMANCE
REPORT OF THE COMMISSION ON
TRADITIONAL LEADERSHIP DISPUTE
AND CLAIMS**



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Department:
Traditional Affairs
REPUBLIC OF SOUTH AFRICA

MEMORANDUM

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THE MINISTER

3rd QUARTERLY PERFORMANCE REPORT OF THE COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS

1. PURPOSE

To present the third quarterly performance report of the Commission on Traditional leadership Disputes and Claims (CTLDC) for the period of 01 October to 31 December 2011.

2. BACKGROUND

The Commission on Traditional Leadership Disputes and Claims was established in terms of section 22 of the Traditional Leadership and Governance Framework Act, 2003 (Act 41 of 2003) (the Act) for a period of five years. Upon assumption of duty in January 2011, the commissioners signed a performance contract with the Minister of Cooperative Governance and Traditional Affairs. The performance contract amongst others requires the Commission to submit its performance report in terms of the Act.

3. DISCUSSION

- 3.1 The commission is required to report to the Minister on a quarterly basis and as and when the Minister requires a report. This is the third quarterly report of CTLDC for the 2011-2012 financial year and it covers the period of 01 October to 31 December 2011.
- 3.2 The Report includes achievements during the quarter under review, progress report on the establishment of provincial Committees of the Commission, report on litigation cases and challenges.
- 3.3 The Commission believes that it will meet its annual target of finalizing 100 claims during 2011-12 financial year.

*This portion
does not align
with what
the Commission
requested.*

- 3.4. The Commission has finalized and adopted thirty three (33) reports on individual claims and disputes listened to since April 2011. The Commission has further refused to consider One Kingship Claim and 14 Senior Traditional Leaders on the basis of lacking sufficient information and that the person is staying in an urban area where there was no traditional leadership before. The decision of the Commission to refuse to consider the above mentioned claims is based on section 25 (2) (c) of the Act.
- 3.5. The Commission will submit to the Premier of Gauteng two (2) reports; one claim of a new traditional leadership and one on dispute. It will further submit Twenty six reports of Senior Traditional Leadership claims to the Premier of Western Cape and four kingship reports to the President of the Republic of South Africa before the end of January 2012. The Minister will be given copies of all above mentioned reports for his noting.

4. RECOMMENDATIONS

It is recommended that the Minister takes note of the Commission on Traditional Leadership Disputes and Claims third quarterly performance report; and provide guidance and direction where the Minister considers necessary.

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MR. B. J. Tolo

CHAIRPERSON: COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS

Date: 23/01/2012



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DR. M.S.D SIBANBZE

DEPUTY DIRECTOR-GENERAL: RESEARCH POLICY AND LEGISLATION

Date 23/1/12

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Prof. M.C NWAILA

DIRECTOR-GENERAL: DEPARTMENT OF TRADITIONAL AFFAIRS

Date: 16/02/12

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MR. BALOYI, MP

MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

Date: 20/2/03/04

Let me have this reviewed with what the Commission reported recently at the DeLEG MIM. [Signature]



**QUARTERLY (OCTOBER TO DECEMBER 2011) REPORT OF THE COMMISSION ON
TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS**

1. Background

The report is in terms of section 24B (2) of the Traditional Leadership and Governance Framework Act, 2003 (Act 41 of 2003) (The Act) as amended. The report covers the period from 01 October to 31 December 2011 as the third quarter of the 2011-12 financial year.

The Commission on Traditional Leadership Disputes and Claims was established in terms of section 22 of the Act to resolve all disputes and claims within the period of five years starting from 01 January 2010 to 31 December 2015. The Commission operates nationally in plenary and provincially in committees. The provincial committees deal with disputes and claims as delegated by the Commission in terms of the Act.

2. Mandate

The mandate of the Commission is derived from section 25 of the Act which stipulates amongst others that the Commission has authority to investigate:

- Whether a kingship, principal traditional leadership, senior traditional leadership or headmanship was established in terms of custom and customary law.
- And consider all claims and disputes starting from 01 September 1927 to the date on which the relevant provincial legislation on traditional governance came into effect.
- All gender related disputes relating to traditional leadership positions arising after 27 April 1994.
- Disputes on boundaries of traditional councils and should consult with the Municipal Demarcation Board before finalization of such.
- Delegation of claims and disputes to provincial committees except those of kingship/queenship;
- Disputes and Claims that were lodged with the previous Commission up to the end of August 2010; and

- This Commission does not have powers or legal mandate to review the work of the previous Commission; it is the successor in law of the previous Commission.

3. Performance of the Commission

The following has been achieved during the quarter under review:

3.1 Meetings of the Commission

The Commission held five meetings and five public hearing sessions during the quarter under review. The aim of those meetings was amongst others consideration of the previous quarterly report, strategizing on the approach to the public hearings planned, discussion on the progress on the establishment of the provincial committees of the Commission, letters from the public protector and legal representatives of the various claimants, consideration of the reports and the conduct the actual public hearings on claims and disputes.

3.2 Public Hearings

The Commission is required by section 4 of Act 8 of 1947 to hear evidence in of claimants or those disputing in public. Notwithstanding the requirements of the provisions of section 4 of Act 8 of 1947, the Commission has analysed the rationale and the basis for public hearings in terms of Act 41 of 2003. To this end, the Commission has analysed the White Paper on Traditional Leadership and Governance which is the precursor to the framework legislation. The emerging **principal policy shift** can be summarised as "government objective to restore the dignity of the institution of traditional leadership".

The dignity of the institution of traditional leadership is sought to be restored as close as it can be possible to its pristine pre 1927 condition. This is the period before the social and institutional contamination brought about by the Black Administration Act of 1927.

Furthermore, the restoration of the dignity of the institution of traditional leadership requires the knowledge and the correct interpretation of each community's customs and cultural practices. As part of its contribution towards the restoration of dignity and in the acknowledgment of the central role of custom and tradition in the resolution of disputes and claims, the Commission has developed an operational template for all public hearings which emphasises the following elements and principles;

- a) The royal family is a cardinal structure whose decisions are critical in the succession process and all presentations in public hearings intends where possible to include utterances of the royal family.

- b) Public participation in the hearing must be encouraged and such participation must be aligned with customary law requirements.
- c) The imposition of procedural and administrative requirements that are foreign to customary law and general practice of traditional communities must be avoided.
- d) Public hearings are not "trials" or court of law but a single element (among various elements) in the Commission's information gathering toolkit.
- e) In addition to public hearings, the Commission gathers information using other means such as research etc.
- f) The Commission does not make any ruling or recommendation at the end of the hearing. The Commission utilises all information received (from various sources including public hearings) to decide on the appropriate recommendation to be submitted to government.
- g) Questions asked by Commissioners during public hearings are designed to elicit additional facts, to test the validity of statements made and to afford an opportunity to presenters to clarify aspects of the presentation.

In compliance with these principles, the Commission arranged the following five (5) sessions of public hearings amongst others those that were not completed during the previous quarter.



Summary of presentations made during Public Hearings held at Limpopo, Eastern Cape, Free State and Gauteng:

Limpopo Public Presentations – Public Hearings on Claims and Disputes of Kingships held at Polokwane on 223 November 2011		
Number	Claimant	Nature of claim and decision of the Commission during the hearing
01	Mmamodimo Daniel Maake representing Bessie Maake	The Bakgaga indicated that they could not bring all the Senior Traditional Leaders of Bakgaga to the Commission due to the financial constrain. Those who were present indicated that the House of Maake is indeed Senior within Bakgaga. However, some indicated that they were not told about the processes and the claim prior to their coming into the meeting. One Senior Traditional Leader declined to make any statement indicating that he does not have a mandate from both his royal family and the traditional council. Most of those who supported Bessie Maake's claim were not as yet recognized by government as senior traditional leaders. The claimant alleged that he was supported by a number of recognized senior traditional leaders of Bakgaga, however, evidence produced was letters from the same source. The Commission had reservations on the authenticity of the said letters.

		<p>SUMMATION</p> <p>The Commission was concerned about the non-attendance of the senior traditional leaders whom it is alleged that they pay allegiance to Bessie. The Commission after listening and asking questions for clarity resolved to study all historical material and may conduct further research to the recognized Senior traditional leaders claimed by Maake.</p>
<p>Eastern Cape presentations: AmaBhaca public hearings held at Kokstad on 28 November 2011</p>		
Number	Claimant	Nature of claim and decision of the Commission during the hearing
01	Mr. Madzikane Diko and Mr. Phila Mduyana	<p>Inkosi Diko and Inkosi Mduyana are the current Senior Traditional Leaders amongst the Senior Traditional Leaders of amaBhaca. During the presentation, the amaBhaca Council which represents all amaBhaca refuted the claims that they were both pre-mature. They were aggrieved by both Senior Traditional Leaders who lodged separate claims and proceeded to the public hearings in Mthata without having discussed with them as amaBhaca. They indicated that if one of them is recommended and approved by government, he will preside over them therefore it is important to approach the Commission as a united amaBhaca as opposed to the current piece meal approach. They went further to say there was never a Kingship amongst amaBhaca, they have always formed part of amaZulu hence they are called uZulu ebhacile (Zulu fleeing and hiding)</p> <p>AmaBhaca delegation including Mr Phila Mduyana did not have an objection to discuss the matter with the council of elders of amaBhaca but Mr. Diko did not agree with the proposal. One recommendation was that the claims be suspended pending a meeting between the royalties of amaBhaca.</p> <p>SUMMATION</p> <p>The Commission appreciated the honest discussions and presentations by the various stakeholders and royalties of amaBhaca. It indicated that the only person who can withdraw a claim is a claimant as opposed to the suggestions by the elders of amaBhaca. The Commission will continue to investigate and recommend to government accordingly.</p>

Free State presentations: Batiokoa Kingship and Mohale Senior Traditional Leadership Dispute public hearings held Qwaqwa on 21 November 2011		
Number	Claimant	Nature of claim and decision of the Commission during the hearing
01	Mohale	<p>The claimant is the daughter of the late Morena Mohale who passed on without a heir/successor. His brother, the current Morena Mohale took over the Borena. The reason for the claim is that since the adoption and coming into operation of the Constitution of the Republic of South Africa, women are equal to men and due to the fact that when the late Morena Mohale took over, they were still young and could not lay a claim to her father's position. The Commission established during questioning time of both the claimant Ms Mpepua and Mrs Mohale that they are having difficulties to lead a normal life due to poverty. The current Morena does not assist the house of the late Kgosi at all.</p> <p>Summation</p> <p>The Commission accepted the fact that the matter happened prior to the coming into operation of the South African Constitution and that there was a division within the royal family when the current Morena was appointed. The Commission was very straight forward with Morena Mohale for failing in his duties as a traditional leader and moreover as the head of Mohale for taking care of the family of the deceased. The Commission promised to investigate the matter further and to recommend accordingly to the Free State Government.</p>
	Mr. Kakudi (Batlokoa)	<p>The Commission informed Mr. Kakudi who is claiming the Kingship of Batiokoa from Eastern Cape to Free State that the Kingship of abaTiokoa was finalized by the previous Commission and can therefore not be re-opened. The previous Commission ruled that abaTiokoa never had a kingship in the Republic of South Africa. Mr. Kakudi was further informed that the current Commission is the successor in-law to the previous Commission therefore they cannot review the decisions of the previous commission.</p>
Gauteng presentations: AmaNdebele a Lebello and amaNdebele wakwaNdzundza Sokhulumi dispute on Senior Traditional Leaderships public hearings held on 30 November and 01-02 December 2011 respectively.		
Number	Claimants	Nature of claim and decision of the Commission during the hearing
	Sokhulumi	<p>Mr. Joyina Jim Mahiangu did not attend the hearing instead he sent his daughters and the legal representative to the Commission. Ms Fungiwe Mahiangu addressed the Commission stating amongst others that the Commission has not followed the proper procedures</p>

		<p>because the matter was never before the UMndeni and the Premier of the Province of Gauteng in terms of section 21.</p> <p>The team of Mr. Mkhambi Petrus Mahlangu presented before the Commission indicating that they have tried on several occasions to engage Mr. Joyina Jim Mahlangu regarding the chieftaincy but all were in vain. They indicated that Mr. JJ Mahlangu communicate with them through his lawyer instead of him facing the royal family. They alleged that the KwaNdebele Government removed Mkhambi Petrus Mahlangu from the position due to political reasons. They disputed the findings of the Kruger Commission that Mr. Mkhambi was drunk at some public gathering because no blood test was conducted to scientifically prove and justify the level of intoxication of the Ikosi and thus they do not accept the findings.</p> <p>Summation</p> <p>The Commission after having listened and asked questions of clarity indicated that it was going ahead to finalize the case as the matter has been long outstanding.</p>
13	Five claimants from Kekana	<p>The position of Senior Traditional Leadership of amaNdebele a Lebello is being contested by five claimants as will be indicated here below:</p> <ol style="list-style-type: none"> 1. Ms Mavis Kekana <p>She is the first born child of the late Kgosi Hans Kekana. She is born from a candle wife. Based on the Constitution of the Republic of South Africa and on the previous decision taken by the royal family, she qualifies to be the Senior Traditional Leader of amaNdebele-A Lebelo.</p> <ol style="list-style-type: none"> 2. Richard Fonko Kekana <p>Mr. Fonko is claiming the Senior Traditional Leadership of amaNdebele-a-Moletlane. He is alleging that the position of Senior Traditional Leader originally is his and therefore he qualifies to be the Senior Traditional leader.</p> <ol style="list-style-type: none"> 3. Enock Masenya Joseph <p>Enoch Masenya Kekana is late and nobody was mandated to handle his claim, therefore his claim falls off.</p> <ol style="list-style-type: none"> 4. Lleka Kekana <p>Lleka Kekana is disputing the whole dynasty of amaNdebele a lebelio. He is alleging that they should hand over the chieftaincy to him because he is born from the senior house. He alleges that Jambuka being one of the oldest Senior Traditional Leaders of Lebelo was acting and therefore his dynasty which is the current one cannot have a chieftaincy if their father was acting.</p>

		<p>5. Karel Kekana</p> <p>Karel is born from Hans and his sister. It is incest. He is claiming that he is of royal blood. The question asked by the Commission is can a child born out of incest be in a leadership position? A research is required in this regard. Some members of the royal family were surprised to learn such and sounded taboo.</p> <p>6. Kgosi KC Kekana</p> <p>Kgosi indicated that he was appointed by the royal family to act for his late elder brother Silas. Silas could not be a Senior Traditional Leader because of a criminal record; therefore, the royal family asked Cornelius Kekana to hold the position for the children of Silas. The royal family is inactive and much divided amongst the different claimants.</p> <p>SUMMATION</p> <p>The Commission, having listened to them, resolved that it will further conduct a research on who was the first candle wife, how many children were born of that candle wife and whether did they occupy a position of leadership. The Commission after finalizing everything will recommend accordingly.</p>



3.3 Provincial Committee

The implementation of the strategic and operational plans of the commission is being thwarted by the delays in the establishment of the provincial committees. The mandate of the Commission with regards to service delivery can only be properly executed if provincial committees have been established and properly resourced.

STATUS OF PROVINCIAL COMMITTEES

Province	Progress
Eastern Cape	Committee members were appointed on August and September 2011 while staff members started in July and August respectively. They still do not have office space as yet. The conditions of appointment of members of the Committee is not in terms of the Traditional Leadership and Governance Framework Act, 2003 (Act 41 of 2003) as required. The members of the Committee have been appointed like a contractual public servant. An Intervention is required in this regard.

Mpumaianga	Committee members and staff appointed effective on 01/09/2011. They have offices with no furniture. The furniture is in the process of being purchased.
North West	Interviews were conducted. However, Premier has still to decide on appointments. Four staff members have been seconded and one appointed.
KwaZulu-Natal	No progress has been recorded as yet on the members of a committee. The recruitment process has started; an advertisement for staff was placed on the national newspapers.
Limpopo	Advertisement for members of the committee was placed on the newspaper; shortlist and interviews will take place soon. Staff members will be seconded from the Department to assist the committee. Offices will be acquired for the committee once appointed.

3.4 LITIGATION

1. **The Vhavenda Kingship:** The Commission found that it must be occupied by Peter Toni Mphephu was challenged by Nephawe Netshdidziwelele joined by Vhagona. The CTLDC has responded to the papers and the matter is set down for March 2012.
2. **Bapedi Ba Morota:** The Kingship of Bapedi Ba Marota which the Commission found that it does exist under Thulare Victor Thulare was challenged by Mampuru. The matter was before the High Court by postponed sine die.
3. **AmaShangane:** Mr. Mpisane Eric Nxumalo challenged the findings of the CTLDC that the AmaShangane never had a Kingship in the Republic of South Africa. The matter is before the high Court. A date is yet to be decided.
4. **AmaMpondo of Qaukeni:** The Commission found that the Kingship of AmaMpondo of Qaukeni does not reside with the current King Thandabantu (Mpondombini Justice Sigcawu) instead it resides with Zanozuko Tyelovuyo Sigcau. The matter is before the high Court and will be heard on 22-23 February 2012.
5. **AmaMpondo of Nyandeni:** The Commission established that amaMpondo of Nyandeni is the junior house of amaMpondo of Qaukeni therefore they do not have a Kingship. The current deemed King Ndamase kaNdamase is challenging the said decision of the CTLDC.
6. **AmaRharhabe:** Amarharhabe are part of amaGcaleka (amaXhosa). The Commission found that amaRharhabe being the junior house than amaGcaleka does not have a Kingship. The Acting

Principal Traditional Leader Ms Noloyiso Sandile is continuing with the application lodged by the late King Sandile to reverse the decision of the Commission.

7. **AmaMpondomise:** The Commission established that amaMpondomise were never a Kingship and therefore declined their claim. Mr. Luzuko Matiwane is challenging the decision in the High Court.
8. **AmaNdebele wakwaNdzundza:** Mr. Mathews Mahlangu lodged a case against the decision of the President to recognize Mr. Mbusi Mahlangu (Mabhoko III) as the deemed King of AmaNdebele wakwaNdzundza. The matter has not been heard as yet.

4. Challenges

4.1 Legislation

The Commission is experiencing challenges in the implementation of legislation by provinces. The first challenge relates to inabilities of provinces to follow what is provided for in their legislation such as the review of acting capacity of Senior Traditional Leaders. The review is provided for in section 14 (2) (b) and it must be reviewed regularly. Most of the disputes are as a result of lack of review of the acting capacity of Senior Traditional Leaders by provincial governments. The challenge is the failure of provinces to implement the referral of provinces as set out in section 21 of the framework act, this result in the serving of matters before the Commission becoming procedurally irregular.

4.2 Capacity in provinces

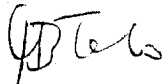
Some provinces lack understanding or capacity in resolving disputes and claims. Some claims referred to the Commission ought to have been dealt with by the Provincial government. The implementation of the Traditional Leadership and Governance Framework Act including the provincial specific legislation must be seriously considered by the relevant departments in order for them to resolve disputes and claims to new traditional leadership.

5 Conclusion

The Commission is seized with Claims and Disputes lodged with the previous Commission. The Commission intends to finalize at least one hundred claims and disputes during the current financial year subject to the provision of resources and establishment of provincial committees mentioned above.

The Department of Traditional Affairs is expected to assist provinces to implement their legislation and further to ensure that what is provided for in their pieces of legislation is realized. The full

implementation of the provincial specific legislation will ease the pressure and enhance the performance of the Commission.



Mr. BJ Toio

Chairperson: Commission on Traditional Leadership Disputes and Claims

Date: 23/01/2012

