C.T.L.D.C
Commission on Traditional Leadership Disputes and Claims

traditional affairs
Department:
Traditional Affairs
REPUBLIC OF SOUTH AFRICA

QUARTERLY (JANUARY TO MARCH 2012) REPORT OF THE COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS

1. Background

This report is submitted in terms of section 24B (2) of the Traditional Leadership and Governance Framework Act, 2003 (Act 41 of 2003) (The Act). The report covers the period from 01 January to 31 March 2012.

The Commission on Traditional Leadership Disputes and Claims was established in terms of section 22 of the Act to resolve all disputes and claims of all levels of traditional leadership 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 delegated to them by the Commission in terms of section 25(6) of the Act.

2. Mandate

The mandate of the Commission is derived from sections 25 and 28(10) and (11) of the Act read with the relevant sections of the Commissions Act, 1947, (Act No. 8 of 1947).

3. Performance of the Commission

3.1 Meetings of the Commission

The Commission held three meetings during the quarter under review. The aim of those meetings was amongst others to:

- consider the previous quarterly report;
- discuss with the two established provincial committees the rules and orders of the CTLDC,
- provide guidance to the two established committees on holding public hearings
- synchronise approach on assessing claims and disputes lodged;
- discuss progress made on the establishment of the remaining three provincial committees of the Commission;
- consider the finalized reports of disputes and claims for processing to the relevant functionaries as required by sections 21, 26 and 28 of the Act;
- process 139 claims and disputes
- consider research reports from Northern Cape province, and
- prepare for the two meetings with the Minister of Cooperative Governance and Traditional Affairs

3.2 Public Hearings planned

The Commission is required in terms of section 4 of Commissions Act, 1947, (Act No. 8 of 1947) to hear evidence of claimants or of those disputing certain issues in public. The Commission resolved to conduct public hearings in respect of five claimants for Kingship in KwaZulu-Natal on 17-18 April 2012. The public hearings are one mechanism to elicit more information from the claimants as per the guidelines provided in the rules and orders of the Commission.

3.3 Consideration of disputes and claims from Northern Cape Province

The Commission considered the disputes and claims from Northern Cape Province. It emerged that most claimants did not understand the purpose of the Commission. Most claimants thought

that the Commission is the structure to consider applications for recognition of new traditional leadership positions. Some claimants did not submit sufficient information to the Commission for purposes of investigation. As a result of this, section 25 (c) of the Act was invoked.

The Commission considered eleven (11) disputes and claims from Northern Cape. Eight of these did not meet minimum requirements for further investigation by the Commission due to insufficient information supplied by claimants. This was notwithstanding numerous requests to claimants for additional information.. The Commission will hold public hearings in respect of three disputes in the Northern Cape during May 2012.

Names of Claimants

1. Mr. Mathidibe Tafita David
2. Sesinyi Sekang Godfrey
3. Sehunelo Vincent Keoagile
4. Mr. Otletseng Gaboikaiwe Roundboy
5. Diteko Nelson Seboko
6. Letlape Mpete Johannes
7. Lebogang Ambrose Mancho
8. Mr. Kuriti
9. Gaseemelwe Lesangkgosi Albert
10. Mr. Gontsi Kgosidintsi Piet
11. Mr. Aobakwe Thaganyane

Brief summary of the Nature of claim/dispute

Number	Basis/Assertion for claim	Decision of the Commission
1.	**Mr. Mathidibe Tafita David** The claimant states that their senior traditional leadership was lost, when his ancestor was dethroned by the white administration based on the allegation that the said ancestor has murdered a white farmer.	The claim is dismissed on the following: a) falls out of the mandate of the Commission. b) The information submitted is limited and does not warrant the Commission to investigate. c) Therefore the claim by Mr. Tafita David Mothidibe is dismissed in terms of sections 25 (2)(c) read with section 25(2)(a)(viii) of the Act.
2.	**Sesinyi Sekang Godfrey** Mr. Sesinyi isapplying for the upgrading of the position of headmanship to that of Senior Traditional Leadership on the basis that his grandfather was the senior traditional leader. However, Mr. Sesinyi admits that his father was a headman.	• The claimant is dismissed on the following: a) The requirements for the restoration of a senior traditional leadership in respect of recognized traditional communities have not been met. b) The position of senior traditional leadership as requested did not exist and can therefore not be restored. • .
3.	**Mr. Otletseng Gaboikaiwe Roundboy** this is a boundary dispute as well as a traditional leadership claim. He is basing his claim on the fact that the Batswana	• The claim is dismissed on the following: **a)** Commission is not mandated to investigate any claim or dispute of Bogosi in the absence of a sound historical background in support of

	were the first to reside in the area they are occupying at the moment. He further alleges that they realized as Batswana that they were "naked" on 06 August 1907 after they ate the sacred fruit in the middle of the field.	the claim. **b)** The fact that the claimant did not provide any facts in support of his claim is indicative of the misunderstanding of what Bogosi is all about.
4.	**Mr. Boitumelo Andrew Seboko** This Barolong community claim to be originally from Thabanchu in the Free State and they are the first to occupy the area of Skeifontein during the Anglo-Boer war. Mr. Seboko alleges that he is claiming the Senior traditional leadership of his fore fathers who ascended the position by killing a "Tiger" with his bare hands and the community elected him as their leader. He was removed by the Whites after the Anglo-Boer war. The Barolong community elected Nelson Deteko Seboko to be their leader and representative at an Upington meeting where discussions on traditional leadership were held. They want their own Senior Traditional Leadership and do not want to be under the current Senior Traditional Leadership of Kgosi Toto.	The claim is dismissed on the basis that: • There is no historical evidence of recognized senior traditional leadership within the Seboko clan.
5.	**Letlape Mpete Johannes** Mr. Letlape is applying for a new Bogosi. His application is based on the following: • They bought land • They are not accepted as part of the existing BoKgosi • They are prevented from opening their own bank trust account	The claim is dismissed on the following: a) The claim does not meet the requirements of the Act, therefore it is dismissed.
6.	**Lebogang Ambrose Mancho** Mr. Mancho is applying for an upgrade from headmanship to Senior Traditional Leadership. The claimant alleges that the current senior traditional leaders took advantage of the kindness, freility and illiteracy of his late father and imporse themselves to the levels of SNR thereby downgrading the rightful heir to such position to the lower level of headmanship He further alleges that the current boundaries and allocation of land are falls as land was incorrectly distributed during the same period as his grandfather was taken advantage of.	This claim is dismissed on the following: a) There is no empirical (historical) evidence in support of the assertions b) The claimant's father (according to the claimant) was a headman c) There is no proof of the existence of Senior Traditional leadership within Mancho clan. d) The is no basis for the commission to upgrade the position of headman to senior traditional leadership.

7.	**Sehunelo Vincent Keoagile** of 8021 Kabelo Makandi str in Kimberley. He is claiming Senior Traditional Leadership of Batlhaping on the following: His father was an elected senior traditional leader His father voluntarily gave his position to Neo Sehonelo Neo resigned the position as a results of misconduct associated with abuse liquor. The community adopted the leadership of CPA(there should not be a traditional leaders) The claimant is of the view that now is the time for the re-establishment of the position of SNR and should revert to him as per his claim.	The claim is dismissed on the basis that: a) His father was not a hereditary senior traditional leader but an elected senior traditional leader. b) The community resolved that they do not want Bogosi in their area
8.	**Mr. Kuriti** : Headmanship dispute The claimant alleges that the Municipal councilor recognizes says in his area there is another headman who is not supposed to be operating there.	The claim is dismissed on the basis that a) the Kgosi concerned recognizes Kuriti as headman. b) This is not a dispute between two headmen, the person alleged to be recognized by the councilor is not a headman and the senior traditional leader recognizes the present one.
9.	**Gaseemelwe Lesangkgosi Albert: Senior Traditioan Leadership** He is claiming that the Motswarakgole are from maternal side, they were requested to act while he was still young. The government decided to continue with the lineage of Motswarakgole though the Gaseemelwe informed government that the said lineage was wrong. The matter had gone through a number of processes including the high court where the official inauguration of Motswarakgole was interdicted. The claimant alleges that the Bokgosi of Phuduhudu is wrongly placed on the side of Motswarakgole who is from maternal side and not from where the custom and tradition of Phuduhudu dictates.	The following is resolved: a) allegation by Gaseemelwe deserve a thorough investigation and validation from the information contained in the files of government. b) The decision by government of North West to recognise Motswarakgole at the expense of Gaseemelwe needs to be checked vis a vis the custom and customary law of Phuduhudu. c) The Commission will conduct public hearing whereby the family of Gaseemelwe and of Motswarakgole would make a presentation to the Commission.
10.	**Mr. Gontsi Kgosidintsi Piet: Senior Traditional Leadership** a. Assert that the incumbent Kgosi is his younger brother and from the junior house	The following is resolved: a) matter will be further researched and public hearing conducted to establish the authenticity of the allegation

11.	**Mr. Aobakwe Thaganyane: Lineage of Senior Traditional Leadership** The dispute is about a wrong lineage that was followed in identification of a successor. The claimant alleges that the current lineage is not the correct one to bear a successor to the late senior traditional leader (Kgosi Godfrey Thaganyane). The provincial government disregarded the person identified by the royal family (Mr. Teko Thaganyane) who is born from the correct house and lineage to lead the community. The claimant alleges that the person who is holding the position was identified by government and not the royal family. The current person is acting (Gaboitsiwe) while the real person Aobakwe is not recognised.	The following is resolved: a) The identification of a successor is the responsibility of the royal family and government must only confirm if the person so identified is of royalty. b) The Commission will conduct public hearing of the two factions to find out who the authentic person to occupy the position of a Senior Traditional Leader is.

3.4 Provincial Committee

The implementation of the strategic and operational plans of the Commission is being interfered with by the delays in the establishment of the provincial committees. The mandate of the Commission with regard to service delivery can only be properly executed if provincial committees are established and properly resourced.

STATUS OF PROVINCIAL COMMITTEES

Province	Progress
Eastern Cape	Committee members were appointed in August and September 2011 while staff members started to work in July and August 2011 respectively. The conditions of appointment of members of the Committee are not in terms of the requirements of the Act. The members of the Committee have been appointed in terms of the Public Service Act as opposed to section 26A of the Act. However, this is the best staffed committee of the Commission at this point in time.
Mpumalanga	Committee members were appointed on the 1st September 2011. They have inadequate offices. The Committee operates on the basis of seconded staff members.

North West	Interviews were conducted. However, the Premier has still to decide on the appointments. Two staff members have been appointed to assist the Chairperson of the Committee.
KwaZulu-Natal	Only one member of the two has been appointed although section 26A (2)(a) of the Act has not been complied with. Only one staff member was seconded and appointment of others will be finalized during the 2012-13 financial year.
Limpopo	. A re-advertisement on the news paper for the members of the committee was placed with the national news papers. The closing date for the re-advertisement is on the 10 April 2012.

3.5 LITIGATION

SUMMARISED LITIGATION REPORT

1. **The Vhavenda Kingship:** The Commission found that the Vhavenda kingship must be occupied by Peter Toni Mphephu. However, Nephawe Netshdidziwelele (Vhagona) has challenged this decision and has been joined by Kennedy Tshivhase and Tshivhase royal family in the litigation process. The Commission has responded to the Court papers and the matter was set down for hearing on 12-14 March 2012 in Venda High Court. The case has been postponed indefinitely. Senior Council Adv. Arendse and Adv. Baloyi (JC) is representing the Commission and the Ministry of Cooperative Governance and Traditional Affairs.

2. **Bapedi Ba Morota:** The Commission found that the Kingship of Bapedi Ba Marota exists under the lineage of Thulare Victor Thulare. However, Mampuru is challenging this decision in Court. The matter was before the High Court but has been postponed indefinitely . Adv. Bofilatos (SC) and Adv. Moloisane (JC) are representing the Commission and the Ministry of Cooperative Governance and Traditional Affairs.

3. **AmaShangane:** Mr. Mpisane Eric Nxumalo has challenged the findings of the Commission 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 on. Adv. Arendse (SC) and Borgstromn (JC). are representing the Commission and the Ministry of Cooperative Governance and Traditional Affairs.

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).

The kingship resides with Zanozuko Tyelovuyo Sigcau. The matter is before the High Court and was heard on 22-23 February 2012 in South Gauteng High Court. Senior Council Adv. Arendse and Adv. Lupuwana (JC) is representing the Commission and the Ministry of Cooperative Governance and Traditional Affairs. Judgment was awarded in favour of government.

5. **AmaMpondo of Nyandeni:** The Commission established that amaMpondo of Nyandeni are the junior house of amaMpondo of Qaukeni. As such, they do not have a Kingship. The current deemed King Ndamase kaNdamase is challenging the said decision of the Commission. The matter will be allocated to a Junior Council.

6. **AmaRharhabe:** Amarharhabe are part of amaGcaleka (amaXhosa). The Commission found that amaRharhabe being the junior house of amaGcaleka do 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. Senior Council Adv. Arendse and Sidaki (JC) is representing the Commission and the Ministry of Cooperative Governance and Traditional Affairs.

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. The Commission is represented by Junior Council Matebese in the matter yet to be heard in Mthatha High Court.

8. **AmaNdebele wakwaNdzundza:** Mr. Mathews Mahlangu lodged a case against the decision of the President of the Republic of South Africa to recognize Mr. Mbusi Mahlangu (Mabhoko III) as the deemed King of AmaNdebele wakwaNdzundza. The matter has not been heard as yet. Adv. Arendse (SC) and Adv. Moloisane (JC) are representing the Commission and the Ministry of Cooperative Governance and Traditional Affairs.

9. **AmaHlubi Royal Council:** **Inkosi** Muziwenkosi Johannes Radebe brought an application seeking the North Gauteng High Court to review and set aside the decision of the Commission that amaHlubi do not have a Kingship, declare him as the King of amaHlubi and compel the President of the Republic of South Africa to issue a recognition certificate to that effect. The Department is opposing the litigation. Adv. SS Matebese (JC) is representing the Commission and the Ministry of Cooperative Governance and Traditional Affairs.

10. **Siaga Royal Council:** Mr. Mudau Muvhango Siaga Munzhedzi and two others brought an application before the Limpopo High Court in Thohoyandou seeking the Court to relieve another headman of his duties and that the Commission be ordered to investigate the claim. The Department filed a notice through the State Attorney Thohoyandou to abide by the Court's decision taking into account that the appointment of a headman is the responsibility of the Premier of the Province and that the Commission has a mandate to investigate such.

11. **Ndzundza Mabhoko (Amandebele):** Mr. Sello Mahlangu approached the North Gauteng High Court seeking the order to prevent the Minister of Cooperative Governance and Traditional Affairs from issuing recognition certificate to Mbusi Mahlangu (Mabhoko III). On 17 December 2010 the judgment was delivered where a rule nisi was discharged. Applicants filed an application for leave to appeal against an order of Honourable Ms Phakathi AJ delivered by Honourable Mr Justice Hiemstra on 17th December 2010. The outcome thereof is still awaited. Adv N Arendse SC and Adv S Masimane JC is representing the Commission and the Ministry of Cooperative governance and Traditional Affairs

4. Challenges

4.1 Legislation

The Commission is experiencing challenges in the implementation of the different pieces of the provincial specific legislation by provinces. The first challenge relates to inability of provinces to follow what is provided for in their legislation such as the review of the acting capacity of Senior Traditional Leaders. The review process is provided for in section 14(2)(b) of the Act and different provincial specific legislation on traditional leadership. Most of the disputes are as a result of lack of review of the acting capacity of Senior Traditional Leaders by provincial governments. Furthermore, the provinces have failed to implement the provisions of section 21 of the Act. The effect of this has been that some matters before the Commission are as a result of provinces not attending to disputes and claims lodged after their specific pieces of legislation came into effect.

4.2 Capacity in provinces

Some provinces lack the understanding to resolve disputes and claims of traditional leadership. Some of the claims referred to the Commission ought to have been dealt with by the Provincial Governments. 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 relating to new traditional leadership positions. Houses of Traditional Leaders require capacity and sense of urgency in dealing with disputes and claims.

5 Conclusion

The Commission is inundated with disputes and claims lodged with the previous Commission. The Commission planned to finalize at least one hundred disputes and claims during the current financial year but surpassed its target by finalizing 139 disputes and claims.

With the support from the Minister, the Commission is convinced that it will finalize all the disputes and claims lodged by 31st December 2015. The Department of Traditional Affairs is expected to assist provinces to implement their legislation in order to enhance the performance of the Commission.

Mr. BJ Tolo

Chairperson: Commission on Traditional Leadership Disputes and Claims

Date: