DETERMINATION ON AMAZULU PARAMOUNTCY

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INTRODUCTION

1.1 CONSTITUTIONAL PROVISIONS

(a) Chapter 12 (Sections 211 and 212) of the Constitution of the Republic of South Africa Act 106 of 1996 ("the Constitution") provides for the recognition of the institution of traditional leadership, its status and role according to customary law, subject to democratic principles. It is common cause, however, that over the years the institution of traditional leadership has been undermined, distorted and eroded.

(b) Some of the main causes of this distortion were imperialism and colonization; repressive laws, in particular, the Black Administration Act 38 of 1927 ("the Black Administration Act") and Apartheid laws which provided for the creation of territorial authorities, self-governing states and pseudo-independent enclaves.

1.2 ESTABLISHMENT OF THE COMMISSION

(a) In order to restore the dignity of this institution, the State President of the Republic of South Africa appointed a Commission on Traditional Leadership Disputes and Claims.

(b) The Commission is established in terms of section 22(1) of the Traditional Leadership and Governance Framework Act 41 of 2003 ("the Framework Act").

1.3 FUNCTIONS OF THE COMMISSION

(a) In terms of 25(1) the Commission operates nationally and has authority to decide on any traditional leadership disputes and claims contemplated in subsection (2) and arising from any province. Accordingly in terms of section 25(2)(a) of the Framework Act, the Commission has authority to investigate either on request or of its own accord the following:-

(i) a case where there is doubt as to whether a kingship, senior traditional leadership or headmanship was established in accordance with customary law and customs;

(ii) a traditional leadership position where the title or right of the incumbent is contested;

(iii) claims by communities to be recognised as traditional communities;

(iv) the legitimacy of the establishment or disestablishment of "tribes";

(v) disputes resulting from the determination of traditional authority boundaries and the merging or division of "tribes".

(vi) where good grounds exist, any other matters relevant to the matters listed in this paragraph, including the consideration of events that may have arisen before 1 September 1927.

(b) In terms of section 28(7) of the Framework Act, the Commission must in terms of section 25(2), investigate the position of paramountcies and paramount chiefs that had been established and recognised, before the commencement of this Act, before the Commission commences with any other investigation in terms of section 25(2).

(c) Furthermore, when considering a dispute or claim, the Commission is obliged in terms of section 25(3)(b)(i) to be guided by the criteria set out in section 9(1)(b) and such other customary norms and criteria relevant to the establishment of a kingship.

(d) In order to satisfy itself whether a kingship exists, the Commission has to take into cognisance the following considerations:-

(i) the need to establish uniformity in the Republic in respect of the status afforded to a king or queen;

(ii) whether a recognised kingship exists:-

(aa) that comprises the areas of jurisdiction of a substantial number of senior traditional leaders that fall under the authority of such a king or queen;

(bb) in terms of which the king or queen is regarded and recognized in terms of customary law and customs as a traditional leader of higher status than

the senior traditional leaders referred to in subparagraph (aa); and

(cc) where the king or queen has a customary structure to represent the traditional councils and senior traditional leaders that fall under the authority of the king or queen; and

(iii) the functions that will be performed by the king or queen.

2.

FOCUS

2.1 Having defined the functions of the Commission in general under paragraph 1.3 hereinabove, this investigation is limited to section 25(2) (a) (i).

2.2 Section 28(7) of the Framework Act enjoins the Commission to investigate, in terms of section 25(2), the position of paramountcies and paramount chiefs that had been established and recognised, and which were still in existence and recognised, before the commencement of this Act, before the Commission commences with any other investigation in terms of section 25(2).

2.3 The focus of this investigation is on amaZulu paramountcy.

2.4 The investigation is to determine whether the paramountcy of amaZulu was established in accordance with customary law and customs. The investigation is conducted by the Commission of its own accord.

3.

METHODOLOGY

3.1 The determination focuses on the paramountcy of AmaZulu.

3.2 In the process of its investigation, the Commission conducted public hearings in two stages:-

3.2.1 The first stage was used to gather evidence and information.

3.2.2 The second stage was held after the Commission had conducted its own research. The purpose of this second stage was to canvas information gathered during the research of the Commission.

3.2.3 The royal house had been furnished with a set of questions arising from the research of the Commission. They were expected to respond specifically to the said questions at the hearing.

3.3 During both stages the procedure adopted at the hearings was as follows:-

3.3.1 Public hearings in which selected members of the amaZulu royal house and others appointed by them testified under oath and referred the Commission to supplementary research material;

3.3.2 This was followed by an opportunity for commissioners to raise questions and seek clarity from the presenters;

3.3.3 Interested parties were afforded an opportunity to challenge the version of the royal house and state their case;

3.3.4 Members of the public were permitted to pose questions to the presenters and make comments. (This was only applicable to the first stage).

4.

HISTORICAL BACKGROUND

4.1 According to oral narrative and the submission made by His Majesty, King Goodwill Zwelithini, the historical background of amaZulu is as follows:-

4.1.1 AmaZulu are originally from the Great Lakes of Central Africa. They share their roots with all the Nguni peoples whose ancestral and linguistic roots are Ntu. Ntu begot Mnguni; Mnguni begot Xhosa, Luzumane, Swazi and Ndebele;

4.1.2 Each of the descendants of the sons of Mnguni subsequently established their own kingdoms and spatial territories. Luzumane is the progenitor of amaZulu;

4.1.3 Luzumane was succeeded by Malandela, Zulu, Ntombela, Nkosinkulu, Phunga, Mageba, Ndaba, Jama, Senzangakhona, Shaka, Dingane, Cetshwayo, Dinuzulu, Maphumzana, Bhekuzulu and the current king, Zwelithini;

4.1.4 Malandela had two quarrelsome sons, Qwabe and Zulu. In order to prevent them from fighting, he sent them to different areas to settle and establish their own traditional communities;

4.1.5 At this time, there was no Zulu kingdom as such. In fact, there were several traditional communities which were semi-independent entities, but not kingdoms. They lived in a loose confederation from the hills of Babanango to the Mhlathuze river. The borders of KwaZulu were the White Umfolozi river to the north and the Mhlathuze river to the south;

4.1.6 The neighbours of amaZulu included amaNdwandwe, abaThethwa, isiThelezi, amaHlongo or abaseLangeni and amaQwabe. AmaNdwandwe under the leadership of Zwide and abaThethwa led by Dingiswayo were the most powerful of these communities.

4.1.7 The two leaders continuously extended their areas of influence by conquest and incorporation of smaller communities. Their ambitions ultimately led to a battle for supremacy between them.

4.1.8 Shaka was one of the traditional leaders of amaZulu who played a significant role in the

creation and expansion of the kingdom of amaZulu:-

(a) Shaka was one of the sons of Senzangakhona. He was born out of wedlock and his mother was Nandi. After the death of Senzangakhona, Shaka usurped the throne with the aid of Dingiswayo of abaThethwa. He immediately set about organising the Zulu warriors into a mighty force;

(b) Meanwhile, the conflict between amaNdwandwe and abaThethwa escalated and culminated in the killing of Dingiswayo, the benefactor of Shaka. This enraged Shaka and he gathered both the amaZulu and abaThethwa armies and routed amaNdwandwe. Zwide fled and later died;

(c) When Shaka ascended the throne in 1816, there were about 50 independent traditional communities

in KwaZulu. Between 1816 and 1828, he attacked, defeated and subjugated most communities whilst others simply submitted and paid tribute and allegiance to the new king.

(d) He carved a nation from these communities. He formed a kingdom with its own structures of governance and sub-systems of culture and civilisation.

(e) The first White people arrived in Natal during the reign of Shaka. He welcomed them, gave them land around Port Natal and even appointed some of them as chiefs.

(f) Shaka was a renowned military commander-in-chief. His army was constituted of a number of regiments *(amabutho).*

(g) The regiments formed a major support and defence structure of the kingdom. Young men, who had become of age, were trained as regiments, assigned special duties and taught a way of life which bred self-confidence, unity, respect and self-reliance.

(h) Shaka was also head of state. The heads of the various traditional communities united by him were given a new title of *amaduna engonyama,* the present-day *amakhosi*. These *amakhosi* formed the foundation of a new Royal Council to deliberate on matters of state and governance.

(i) Amongst these *amakhosi* one of them would be appointed as *undunankulu*. He would be the most senior member of the council sitting next to the king in council. His responsibilities amongst others would be military

operations. Ngomane ka Mqoboli of the Mdletshe was *undunankulu wesizwe* and uMdlaka kaNcidi of Ntshangase was *undunankulu* for Shaka.

(j) In 1828, Shaka was assassinated by his half-brothers, Dingane and Mhlangana, assisted by Mbopha ka Sithayi who was in control of the homestead of Shaka.

4.1.9 Shaka was succeeded by Dingane in 1828. Dingane was the son of the sixth wife of Senzangakhona, Mpikane. During his reign:-

(a) Dingane built his main palace at Mgungundlovu (Pietermaritzburg) where most of his regiments were formed. He mustered about 11 regiments;

(b) Dingane was faced with challenges from several important factions and chiefdoms whose loyalty was directed to the personage of Shaka, and not to the

institution of the monarchy itself. He thus killed all those he suspected of disloyalty;

(c) Dingane began punishing clans for real or imagined offences. He attacked the Qadi clan for seditious tendencies. This caused desertion from his own ranks;

(d) In 1833 Dingane fought against amaNdebele of Mzilikazi and was defeated. AmaZulu were forced to retreat to KwaZulu;

(e) In 1835 Dingane successfully attacked Port Natal. He also fought and defeated John Cane and Robert Bigger, the leaders of cattle raiding expeditions from Port Natal;

(f) The Voortrekkers made their appearance before Dingane at Mgungundlovu in January 1838. Subsequently tensions arose, mainly over livestock, between amaZulu and the Voortrekkers. The skirmishes between amaZulu and the Voortrekkers led to the Battle of Ncome on

16 December 1838. AmaZulu were defeated.

(g) Following the defeat of Dingane by the Boers, discord developed in the royal house of amaZulu. Two factions emerged, one group under Dingane and another under his half-brother, Mpande.

(h) Dingane was defeated by the army of Mpande at the Battle of Maqongqo. After his defeat at Maqongqo, Dingane fled towards uBombo hills, which was occupied by amaSwazi. He was killed by amaSwazi following a dispute over land.

4.1.10 Dingane was succeeded by Mpande, who was installed as king of amaZulu in February 1840. During his reign:-

(a) Mpande built his palace at Nodwengu. He restructured the army of amaZulu by forming his own regiments. He had 21 regiments.

(b) Having formed *amabutho*, Mpande was determined to re-assert the authority of amaZulu over the outlying traditional communities. He also sought to eliminate any possible claimants to the throne. Thus, in 1843 Mpande murdered his only surviving half-brother, Gqugqu, who had a stronger geneaological claim to the throne than Mpande.

(c) The murder of Gqugqu triggered an exodus of amaZulu from KwaZulu into Natal.

(d) In July 1847 Mpande deployed regiments to seize cattle in Swaziland. AmaSwazi concealed their cattle and hid themselves in caves whilst soliciting the assistance of Voortrekkers stationed at Ohrigstad. The regiments therefore returned empty-handed.

(e) Mpande continued in his endeavours to seize the cattle from amaSwazi with little success. This was due to the intervention by the Natal government and Voortrekkers

who ordered Mpande to desist from any further forays into Swaziland.

(f) Mpande fathered about 29 sons. He failed to designate a successor. This gave rise to a fierce fight between two of his sons, Cetshwayo and Mbuyazi. Cetshwayo was the eldest son by the first wife of Mpande, Ngqumbazi the daughter of Tshana of the Zungu clan. Mbuyazi was the son of Monase, the second wife to Mpande.

(g) Both sons contested kingship. Cetshwayo claimed that he was the eldest son of Mpande, whereas Mbuyazi claimed that his mother, Monase, was the favourite wife of Mpande.

(h) In order to preserve peace in the royal household, Mpande sent his two wives and their sons to different parts of KwaZulu. During this period the two sons garnered support in their respective areas. Cetshwayo, who found himself in a more densely populated area, had about three

times more followers (uSuthu) than those of Mbuyazi (iziGqoza).

(i) The conflict simmered on until the 3 December 1856 when the two rivals attacked each other on the northern bank of Thukela river. The battle is known as the Battle of Ndondakusuka. The regiment of Cetshwayo, uSuthu, defeated iziGqoza. Thereafter, Cetshwayo was accepted as the most powerful figure and enjoyed the most support.

(j) Mpande died in October 1872. In June 1873 Cetshwayo was installed as king at the Emakheni royal village.

4.1.11 Cetshwayo reigned as king from 1873 to 1884. He was the son of Ngqumbazi and Mpande ka Senzangakhona. Ngqumbazi was the first wife of Mpande and as such a commoner. In terms of the custom of amaZulu, the first born son of the first wife is not an heir to the throne. After the Battle of Ndondakusuka in 1856, Mpande appointed Ngqumbazi Zungu as his great wife.

(a) Following the death of Mpande, Cetshwayo moved from Ndlalangubo to build his uNdi palaces, Zinhlendleni and Landandlovu on a hill in the Mahlabathini valley.

(b) Cetshwayo fathered two sons, Dinuzulu and Manzolwandle, and six daughters.

(c) Cetshwayo gathered various regiments and placed them in his palaces.

(d) Cetshwayo forcefully repossessed the land (near the Swaziland border) that his father Mpande had given to the Voortrekkers. This without doubt caused strife between Cetshwayo and the Voortrekkers. The Voortrekkers retreated and never returned to the area.

(e) The Battle of Isandlwana, also known as the Anglo-Zulu War (22 January 1879), was fought between the British and amaZulu. The British were defeated.

(f) However, on 29 March 1879, the British defeated amaZulu at the Battle of Hlobane.

(g) Another battle between amaZulu and the British ensued. It resulted in the capture of Cetshwayo by the British with the aid of his headman Ntshingwayo ka Mahole Khoza.

(i) Cetshwayo was exiled to Cape Town. By right of conquest the whole of KwaZulu became vested in her Majesty Queen of Britain in 1879.

(j) On 18 July 1879, Sir Wolsely, the new British High Commissioner for Southern Africa, divided KwaZulu into 13 districts. He nominated amakhosi to administer the districts.

(k) Cetshwayo was reinstated by the British in 1881, not as a king but one of the chiefs. AmaZulu were infuriated by this insult to their monarch. As a result, a war broke out and continued until the death of Cetshwayo in 1884.

4.1.12 Cetshwayo was succeeded by Dinuzulu, one of his three sons, who reigned from 1884 to 1908. Upon ascending the throne, he lived in the Ndwandwe district, which was one of the six districts created by the British Colonial establishment after the annexation of KwaZulu in May 1887.

(a) He married about 70 wives. His palaces included Osuthu (Mkhontweni), Mahashini, Mpisendlini, Ensideni, Ezinhlendleni, Nobamba, Ggqikazi, ekuBazeni, ekuBuseni, and Esikhaleni Senyoka.

(b) He had three daughters, Zakomunye, Magogo and Mpapu. He had ten sons, Nkayishana (Solomon Maphumzana), David (Nyawana), Mshiyeni, Mdlenevu, Mngunywana, Magangeni, Mpembeni, Nswabo, Tshelwendoda and Nkunzi.

(c) On 6 June 1888, Dinuzulu left KwaZulu accompanied by a group of approximately 20 men. He crossed the border into Vryheid, passed on to the then Transvaal

north of the Phongolo river, with a view of gathering an army to attack Zibhebhu, Mnyamana and his uncle Zwedu and others in the upper parts of KwaZulu, for having pledged allegiance to the British government. The mission failed.

(d) The conduct of Dinuzulu was deemed treasonous by the colonialists. He became a wanted man. On 15 November 1888, he boarded a train to Pietermaritzburg to seek refuge from Bishop Stone. The bishop betrayed him and surrendered him to the police. He was arrested and charged with high treason.

(e) In October 1889 he was tried and found guilty of high treason. He was sentenced to exile in St Helena island.

(e) Dinuzulu returned from exile in 1898 as a petty chief of uSuthu people living within the Nongoma district of the province of KwaZulu.

(f) In 1906 *inkosi* Bhambatha kaMancinza Zondi led an uprising against the British imposition of poll-tax which was to be paid by every Zulu male. In 1907 Dinuzulu gave refuge to the wives and children of Bhambatha in his palace.

(g) Bhambatha killed a substantial number of British soldiers at Mome Gorge. He was later caught and exiled.

(i) In 1909 Dinuzulu was found guilty of harbouring rioters during the Bhambatha uprising and was sentenced to four years imprisonment.

(j) After the establishment of the Union of South Africa in 1910, the Prime Minister Louis Botha, who was a long standing friend of Dinuzulu, released him. Dinuzulu died in the Transvaal in 1913.

(k) After the death of Dinuzulu a succession dispute arose between his sons, Solomon and Nyawana. The kingship claim by Nyawana rested on being the eldest son,

whilst Solomon claimed that he was the heir nominated by his father. Eventually, the uSuthu family council chose Solomon as the successor.

4.1.13 Nkayishana Maphumzana Solomon Zulu (generally known as Solomon ka Dinuzulu) was born on 2 January 1893 when his father was exiled on St Helena island. He reigned from 1913 to 1933. During his reign Solomon:-

(a) surrounded himself with *izinduna* (headmen) and *izinceku* (aides to the king) who had historic claims to positions of responsibility in the national affairs of amaZulu;

(b) built his principal palace called Kwa-Dlamahlahla in the Ndwandwe district of Nongoma;

(c) accompanied by 41 delegates of the royal family and some amakhosi in January 1915 spear- headed a meeting in Pretoria with Prime Minister General Botha, to discuss

his status. The outcome of the meeting was that:-

(i) Solomon was to be recognised as an *inkosi* over uSuthu only.

(ii) His domicile was to be in the Nongoma district;

(iii) He was to abide by the dictums of his local magistrate.

(iv) Solomon was forbidden from raising regiments.

4.1.14 Solomon attempted to assert himself as the primary authority over amaZulu by:-

(a) Forming a cultural organisation known as Inkatha ka Zulu[1] in the 1920s. The objective of the organisation was to preserve the solidarity of amaZulu and inculcate traditional human values. Inkatha ka Zulu later collapsed due to a shift to

[1] traditionally inkatha is a sacred coil

political organisations as a means to address problems and

(b) reviving such traditional ceremonies as regimentation.

4.1.15 Such endeavours were met with disapproval by the colonialists. It was alleged that Solomon intended to attack other traditional communities and also assist the Germans in conquering South Africa. He was imprisoned in Pretoria.

4.1.16 Solomon died on 4 March 1933.

4.1.17 Solomon had not nominated a successor before his death. The matter was further complicated by the fact that he had 37 wives. The matter was eventually resolved by a court of law where the mother of Prince Cyprian, first wife of Solomon, queen Ntombeni, produced a letter showing that Solomon had nominated Cyprian as his successor.

4.1.18 Cyprian was installed at Kwa-Dlamahlahla as *inkosi* of uSuthu clan on 27 August 1948. He was officially recognised as such by the South African Government.

4.1.19 During his reign, Cyprian made an unremitting effort to restore the pride and respect of the Zulu kingdom. He advocated peaceful cooperation with the South African Government. He went so far as to accept the much despised Black Authorities Act, in 1955.

4.1.20 Cyprian died in 1968 at the age of 44.

4.1.21 When Cyprian died in 1968, Zwelithini, who was the successor in title was still a minor. Zwelithini was the eldest son of Cyprian with his second wife, Queen Thomo. The first wife of Cyprian, Priscilla Maseko had daughters only.

4.1.22 The royal family council nominated Mcwayizeni, who was the son of Solomon and an uncle of Zwelithini as a regent for Zwelithini. Mcwayizeni was accordingly appointed by the government as acting paramount chief of amaZulu. He reigned as regent for four years.

4.1.23 Zwelithini was appointed on 4 December 1971 as the paramount chief of amaZulu.

4.1.24 Currently Zwelithini has five wives, each is known as *undlunkulu* (queen) of her own palace.

4.1.25 In 1969, before his coronation Zwelithini married Sibongile Dlamini. She became *undlunkulu* (queen) of KwaKhethomthandayo.

4.1.26 In 1974 Zwelithini married Buhle Mathe. She became the queen of KwaKhangelamankengane.

4.1.27 On 23 July 1988 the king married his fourth wife Jane Thandekile Ndlovu. She became queen of Ondini Great Place.

4.1.28 Zwelithini married his fifth wife Nompumelelo Mchiza in 1992. She became the queen of eNyokeni.

4.1.29 Zwelithini, like his father Cyprian, had to contend with the continued interference by the apartheid regime in the affairs of the kingship of amaZulu. He however, was not deterred from his mission to rebuild the dignity of amaZulu.

4.1.30 He ensured that although the spatial basis of the kingdom of KwaZulu had been occupied, it continued to live on in the minds and memory of amaZulu.

4.1.31 Zwelithini has on several occasions pleaded with the present Government for:-

(a) Clearly defined powers and functions for both himself and *amakhosi* under his authority;

(b) Official recognition as the monarch of the whole territory of KwaZulu Natal within which he can play an active role in the upliftment of his people, through the eradication of poverty, consolidation and administration of indigenous law, and the performance of ceremonial and symbolic duties.

4.1.32 The KwaZulu Natal Traditional Leadership and Governance Act No 5 of 2005, has to a great extent sought to address the concerns of Zwelithini. Section 17 of the Act provides for the recognition of *Isilo* as the monarch of the province of KwaZulu

Natal or king as defined in section 1 of the Framework Act and clearly spells out his role and duties.

5.

CUSTOMARY LAW OF SUCCESSION

5.1 Succession to the Kingship of AmaZulu

5.1.1 As it is with most African communities, customary succession among amaZulu is governed by the principle of male primogeniture. A female cannot succeed.

5.1.2 A king usually has more than one wife. Usually, the successor will be the first-born son of the great

wife. In a polygamous marriage, she is the first wife.

5.1.3 The great wife is identified by the king, either amongst the existing wives or a wife married specifically for that purpose. The king would choose his great wife only when he is advanced in years in order to avoid usurpation.

5.1.4 The first-born son of the first wife is known as an heir of a commoner.

5.1.5 However, it was not unusual for the kingship to be obtained by might.

6.

IMPACT OF LEGISLATION

6.1 Colonial Era

6.1.1 Before the advent of colonisation the basic political unit of amaZulu was the traditional community[2]. The institution of traditional leadership was regulated mainly by a customary law and practice

[2] Formerly referred to as a "tribe"

of a traditional community. The king ruled by popular mandate. He took decisions with his councillors, who were normally members of the extended royal family. The essence of the system was described by Fortes and Evans-Pritchard[3] as follows:-

> *"The Zulu nation may therefore be defined as a group of people owing allegiance to a common head (the king) and occupying a defined territory. They combined under the king to attack or defend themselves against outside groups. In addition to controlling relations with other Bantu-speaking peoples and the Europeans, the king exercised judicial, administrative, and legislative authority over his people, with power to enforce his decisions. He performed religious ceremonies and magical acts on behalf of the nation. All the tribes which made up the nation spoke dialects of the same language and had a common culture."*

6.1.2 The Republican policy was one of segregation. In August 1943 the Volksraad accordingly adopted a

[3] *African Political Systems (1940)page 30*

system they called the “surplus native population,” meaning people not needed as farm labourers would be located between the Umtamvuma and Umzimvubu rivers. They could not enforce the system. The Boer Republic did not interfere with the tribal life of amaZulu. Therefore, traditional leadership remained intact.

6.1.3 Natal Proper (excluding Zululand) was annexed to the British Crown on 10 May 1843 and the Volksraad was dissolved in 1845. In May 1843 a proclamation was issued declaring all Africans to be British subjects. This was followed by Ordinance No.12 of 1845 providing that the Roman-Dutch law was the only accepted law. Officials called “Diplomatic Agents” nevertheless applied African customary law in cases involving Africans. During this period traditional leadership institutions continued to operate.

6.1.4 Sir Theophilus Shepstone was appointed “Diplomatic Agent to the Native Tribes” in Natal in 1845. This introduced a turning point in the role of traditional leaders. Although all people were nominally subject to Roman Dutch law, Shepstone

governed amaZulu in accordance with customary law. He had no authority to do so, he overtly made use of the amaZulu traditional leaders.

6.1.5 Later, by virtue of Royal Instructions promulgated on 8 March 1848 and confirmed by the policy of Shepstone, Ordinance 3 of 1949, was officially adopted. He appointed magistrates. While this weakened the position of traditional leaders, he had respect for and utilised amaZulu judicial and political institutions.

6.1.6 Shepstone was elevated to Lieutenant-Governor and in that capacity was appointed as Supreme Chief, virtually an imitation of the head of the amaZulu kingdom. Shepstone operated in these positions for 30 years.

6.1.7 The period after Sir Theophilus Shepstone saw the establishment of the Natal Native High Court by Act 26 of 1875 and the promulgation of the Natal Code of Zulu Law by Government Notice No. 194 of 1878.

6.1.8 There were no significant changes in the field of traditional leadership. Pre-union legislation and

conditions prevailed until 1927 when the Black Administration Act was adopted.

6.2 **Apartheid Era**

6.2.1 The Black Administration Act, 38 of 1927 re-affirmed the colonial "recognition" of chiefs and headmen. In terms of section 1, the Governor-General (later State President) was declared Supreme Chief of all blacks in the country. Other traditional leaders had to be appointed formally as chiefs. Provision was also made for the appointment of paramount chiefs. In addition, tribes could be established or disestablished (sections 3 to 12).

6.2.2 From 1927 to 1951, traditional leaders and their councils played a minor role in district administration. They were paid a quarterly stipend and some functions, mainly aimed at maintaining law and order, were assigned to them. These functions eventually came to be legalized by Regulations Prescribing the Duties, Powers, Privileges and Conditions of Service of Chiefs and

Headmen, initially Government Notice 2252 of 1928 and later Proclamation No. 110 of 1957.

6.2.3 These Regulations remained in force and only came to be repealed by virtue of provincial legislation on traditional leadership enacted in pursuance of the Framework Act.

6.2.4 In 1951 matters took another turn. The National Party literally re-discovered and re-designed tribal authorities to form the building blocks of its homeland constitutional structures. With that end in view the Black Authorities Act, 68 of 1951 was adopted. It provided for -;

(a) The activation of tribal authorities, consisting of a group of administrative areas (formerly called locations) owing allegiance to a senior traditional leader;

(b) Where there was no coherent traditional leadership contiguous administrative areas were grouped together in community authorities, virtually creating artificial traditional authorities.

(c) Authorities belonging to the same district were grouped together into regional authorities.

(d) The regional authorities in turn were grouped together in a territorial authority for the homeland concerned.

(e) The regional authority was granted legislative powers.

(g) Then self-government was conferred on the homeland.

6.2.5 In terms of the Black Authorities Act 1 of 1951, 203 tribal authorities, and two community authorities were established in KwaZulu. They were grouped into 26 regional authorities and all of them united in 1970 into a territorial authority. The territorial authority was converted into a so-called phase one legislative assembly by Proclamation R69 of 30 March 1972.

6.2.6 Before 1972 KwaZulu was known as Zululand. On 1 April 1972 the territorial authority decided to replace “Zululand” with “KwaZulu”.

6.2.7 Finally, self-government was conferred on KwaZulu by Proclamation R11 of 1 February 1977.

6.3 **Post-Apartheid Era**

6.3.1 The Traditional Leadership and Governance Framework Act, 41 of 2003 replaces the homeland statutory framework. Its objects are to provide for the recognition of traditional authorities, the establishment and recognition of traditional councils, a statutory framework for leadership positions within the institution of traditional leadership, the recognition of and removal from office of traditional leaders, the functions and roles of traditional leaders, and for other related matters.

6.3.2 The Framework Act requires the governments of the provinces (including KwaZulu-Natal) to enact legislation to provide for matters peculiar to the provinces. The Legislature of the KwaZulu-Natal Province has accordingly enacted the KwaZulu-Natal

Traditional Leadership and Institutions Act, 5 of 2005.

(a) In terms of section 17(1) of the KwaZulu-Natal Act 5 of 2005 ;

> *"Isilo must be appointed in terms of customary law and customs subject to this Act*."

(b) Section 17(3) prescribes the process to be followed when the position of *isilo* is to be filled;

(c) The Monarch of KwaZulu-Natal (*Isilo*) is recognised as Monarch of the Province (defined as the Province of KwaZulu-Natal) contemplated in section 103 of the Constitution. According to Collins *Cobuild English Dictionary*

> *"the monarch of a country or an empire is the king, queen or other hereditary ruler who reigns over the country or empire."*

(d) In terms of section 13 of the KwaZulu Amakhosi and Iziphakanyiswa Act, 9 of 1990

"The inkosi of the Usuthu Tribe is the paramount inkosi of the Zulus and is also known as the King of the Zulus, the Ingonyama or Isilo.

"*Isilo*" is defined as "the Monarch of the Province of KwaZulu-Natal, as recognised in section 17 or 'king' as defined in section 1 of the Traditional Leadership and Governance Framework Act.

7.

CURRENT STATUS

7.1 In terms of section 28 (1) of the Framework Act, any traditional leader who was appointed as such in terms of applicable provincial legislation and was still recognised as a traditional leader immediately before the commencement of this Act, is deemed to have been recognised as such in terms of section 9 or 11, subject to a decision of the Commission in terms of section 26.

7.2 AmaZulu have an officially recognised Monarch under the leadership of King Goodwill Zwelithini.

7.3 There are about 284 senior traditional leaders under his authority.

7.4 In terms of section 17(1) the Kwazulu-Natal Traditional Leadership and Governance Act, 2005 his area of jurisdiction is the whole of KwaZulu-Natal.

8.

DETERMINATION

8.1 **Issues to be Determined**

8.1.1 The issues are:-

(a) whether in the course of the history of amaZulu a kingship was established, and if it was;

(b) by whom, how and when; and

(c) whether the kingship has since been passed on from one generation to another;

(d) whether the position of the paramount chief was established in terms of customary law and customs.

8.2 **Analysis of Issues**

8.2.1 In pursuit of uniformity in the Republic in terms of the Framework Act the Commission takes cognisance of the following principles:-

(a) The establishment of an independent traditional community under one leader,

(b) Welding together diverse cultural and linguistic elements or communities each with its own recognisable traditional leader under one principal traditional leader;

(c) The traditional community should not have lost its independence through indigenous political processes which resolved

themselves during the centuries before colonial intrusion.

(d) The principal traditional leader should rule over the entire traditional community with linguistic and cultural affinities rather than a section thereof.

8.3 **Analysis of Evidence**

8.3.1 AmaZulu trace their origin to their ancestral and linguistic roots. The earliest oral and written records reveal that they developed a common language and culture that gave them a collective identity.

8.3.2 Until the death of Senzangakhona, amaZulu constituted a small polity, composed of several communities who may be said to have lived in a loose confederation.

8.3.3 When Shaka ascended the throne in 1816, he united the amaZulu communities under him as king, *ingonyama* (the lion) or *isilo* (the leopard).

8.3.4 He attacked, defeated and subjugated most communities whilst others simply submitted and paid tribute and allegiance to the new king.

8.3.5 Having thus consolidated amaZulu and expanded their sphere of influence, Shaka created the kingship of amaZulu. Shaka was the first king of amaZulu.

8.3.6 From the information presented and gathered it is evident that, since its expansion by Shaka the kingship has been passed on from one generation to the next through customary law of amaZulu and at times through usurpation.

8.3.7 Shaka was succeeded by Dingane, Mpande and Cetshwayo. Both Dingane and Cetshwayo became the target of colonial onslaught. The objective was to deprive amaZulu of their sovereignty over the land and to destroy their independent administration and socio-political system.

8.3.8 The colonialists succeded to the extent that their version of history has it that Cetshwayo was the

last king of amaZulu to be recognised as an independent ruler.

8.3.9 The line of succession and the existence of a kingdom nevertheless perpetuated itself through custom and tradition. Shepstone was artificially elevated to “supreme chief” of amaZulu, thereby pretending to assume the role and functions of the king. The king of amaZulu was later designated “paramount chief”. It was no more than a colonial-apartheid stratagem to avoid recognition of the kingship.

8.3.10 All the kings that followed Shaka maintained the status, traditional role and functions of a monarch, albeit at times under difficult circumstances.

8.3.11 There were some succession disputes, but they were resolved by the inner family council. The disputes never resulted in a fissure. There was always only one king.

9.

CONCLUSION

9.1 The official recognition of the institution of *ubukhosi* (*ubungwenyama)* was in line with customary law and customs of the traditional community of amaZulu in that:-_

9.1.1 The status of a traditional leader should be determined by the rank that he occupies within the traditional community as a whole.

9.1.2 The rank is determined by well established customary laws common to most of the indigenous people of South Africa, being the status of the mother, male primogeniture and the performance of specific rituals.

9.1.3 In this case, the areas of jurisdiction will be those populated by amaZulu traditional communities and headed by senior traditional leaders who owe allegiance to *ubukhosi* (*ubungwenyama)*.

9.2 In conclusion, the Commission finds that:-

9.2.1 The kingship of amaZulu was established by Shaka.

9.2.2 Since the reign of Shaka the kingship has been passed on from one successor to another.

9.2.3 In the circumstances, the kingship of amaZulu exists.

9.2.4 The kingship resorts to the lineage of Cetshwayo.