

**DETERMINATION ON AMARHARHABE AND AMAGCALEKA
PARAMOUNTCIES**

I N D E X

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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 section 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, and which were still in existence and recognised, before the commencement of the 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 take into cognisance the following into 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 recognised 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 the paramountcy of amaRharhabe and the paramountcy of amaGcaleka.
- 2.4 The investigation is to determine whether the paramountcies of amaGcaleka and amaRharhabe were 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 paramountcies of amaGcaleka and amaRharhabe; as their history and existence is substantially intertwined. They are collectively known as amaXhosa.

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. The Commission conducted separate hearings for the Paramountcies of amaGcaleka and amaRharhabe.

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 parties 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. During this stage the hearing was held jointly.

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

3.3.1 Public hearings in which selected members of amaRharhabe and amaGcaleka royal houses 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 versions of the two royal houses 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 narratives and written sources, the history of amaXhosa starts with Ntu in North East Africa. Ntu begot Mnguni who begot Xhosa, Luzumane (Zulu), Swazi and Ndebele. Xhosa moved from North East Africa and settled

on the land between Mzimkhulu and the then Cape Colony.

4.2 Xhosa was succeeded by Malangana and Nkosiyamntu respectively.

4.3 After the death of Nkosiyamntu a division took place as a result of a succession struggle.

4.4 Tshawe, the son from *iqadi*¹ fought and defeated his brother Cira from *indlunkulu*² and Jwara from *indlu yasekunene*³ to usurp *ubukhosi*⁴.

4.5 Cira became a subject of Tshawe, whereas Jwara fled to his mother's people, amaBhele. He established his own traditional community.

4.6 Tshawe established AmaXhosa kingship through conquering various traditional communities including the Khoisan. These communities acknowledged Tshawe to be their leader and king. They were absorbed to form the nation of amaXhosa and shared isiXhosa customs, language and culture.

¹ Supporting house

² Great house

³ Right-hand house

⁴ Traditional leadership

- 4.7 Tshawe was buried at Ntsibakazi in Umzimkhulu. He was succeeded by Ngcwangu and later Sikhomo who led amaXhosa in a south westerly direction towards the sea. He was buried beside the Cumngce, a tributary of the Mthatha river in the Ngqeleni district.
- 4.8 Sikhomo was succeeded by Togu. Togu was succeeded by Ngconde, and Tshiwo respectively. AmaXhosa therefore lived in Ngqeleni for three generations. However, during the rule of Tshiwo, they lived west of Mthatha river in the Mqanduli district.
- 4.9 Tshiwo was succeeded by Phalo who settled beside the Tongwana, a tributary of the Gcuwa river.
- 4.10 Phalo had two sons who played a significant role in the history of amaXhosa: Gcaleka, heir and son from the great house and Rharhabe from the right hand house. Their respective roles will be explained in more detail in chapter 6, "The split" hereunder.

CUSTOMARY LAW OF SUCCESSION

5.1 Succession to the Kingship of amaXhosa

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

5.1.2 A king usually has five to seven royal wives matching the structure of the “houses” in a traditional isiXhosa household. The *lobola* of the great wife is derived from contributions made by the community.

5.1.3 Upon marriage, each wife is assigned status by being allocated a house.

5.1.4 The status of a wife within a polygamous marriage determines succession to the throne.

(a) The structure of the “houses” is as follows:-

- i) The great house (*indlunkulu*)
- ii) The right-hand house (*indlu yasekunene*)
- iii) *Iqadi* of the great house (*iqadi lendlunkulu*)
- iv) *Iqadi* of the right-hand house (*iqadi lekunene*)
- v) The seed-bearer house (*ixhiba*)
- vi) *Umsengi* of the great house (*umsengi wendlunkulu*)
- vii) *Umtshayelo* of the great house (*umtshayelo*)

5.1.5 The most important of these, are the great house and the right hand house. Additional wives (each belonging to *iqadi*) are regarded as support for these two houses. *Ixhiba* is a seed-bearer house, which has no allegiance to either of the main houses.

5.1.6 The first-born son of the great house succeeds his father, whereas the first born son to the right hand house may establish a separate “chieftainship”.

Such chieftainship would be semi-independent, but not of equal status to the great house.

5.1.7 The son of a seed bearer (*ixhiba*) succeeds his father if there is no son of the great wife, and assumes a rank higher than that of the sons of the *qadi* houses. If, however, there are sons of the great wife, whether born before or after the seed-bearer was introduced into the house, the sons of the seed-bearer, are regarded as brothers of lower rank,

5.1.8 A successor is only eligible to ascend the throne after he has been initiated.

6.

THE SPLIT

6.1 Events leading to the split revolve mainly around the two sons of Phalo, Gcaleka and Rharhabe. There are two versions with regard to how the events unfolded.

6.2 The version of amaGcaleka as presented by Mr Mda Mda is as follows:-

6.2.1 Gcaleka and Rharhabe lived peacefully side by side, without evident rivalry between them.

6.2.2 When Rharhabe became of age, his father, Phalo, gave him authority over the territory west of the Kei river. No significance was attached to the Kei river as a boundary. This territory was already inhabited by several amaTshawe “tribes”, namely amaGqunukhwebe, amaNtinde, amaGwali, amaHleke, imiDange, amaMbalu and others. Most of these “tribes” were established by the right hand houses.

6.2.3 Although Rharhabe had authority to rule over these tribes, he did not establish a separate kingship. He was always under King Phalo and subsequently King Gcaleka.

6.2.4 Phalo had several royal palaces throughout his kingdom, but his favourite was at Zeleni, west of the Kei below the mountain range of amaThole, in the

present-day King Williamstown district. Phalo died in 1775 and was buried at Thongwana in Butterworth.

6.2.5 Phalo was succeeded by Gcaleka who had his Great Place at Qumrha. Gcaleka died in 1778 and was buried in Qumrha district.

6.2.6 Shortly after the death of Gcaleka, his successor Khawuta returned across the Kei river and settled in the district of Butterworth. He left Rharhabe as principal ruler over his people west of the Kei river.

6.2.7 Rharhabe did not live long after the death of Phalo, he died in 1782. Mlawu, his heir apparent had predeceased him. Ngqika, the son of Mlawu, was a minor at that time, and therefore Ndlambe, the younger son of Rharhabe, became regent for Ngqika.

6.2.8 Khawuta, like his father, was king of amaXhosa on both sides of the Kei river. He installed Ngqika as principal ruler over his people on the west side of the Kei. The seniority of Rharhabe, west of the Kei river, was due to his status as the son of Phalo. Rharhabe

was obedient and recognised Phalo as king (*ukukhahlela*⁵). His successors, Mlawu and Ndlambe followed suit. It was only Ngqika who unsuccessfully fought to assert his independence from the Great House. The successors of Ngqika did not harbour such ambitions.

6.2.9 Khawuta was succeeded by Hintsá. During the Frontier war of 1835, Hintsá assisted amaRharhabe, and the British imprisoned and killed him. It was for this reason that this was called the Hintsá War.

6.2.10 According to amaGcaleka, amaXhosa were never a divided nation.

6.3 On the other hand, the version of amaRharhabe as presented by Prince Siqithi Maqoma, is as follows:-

6.3.1 There was a split. It occurred due to the difference in character between Gcaleka and Rharhabe.

6.3.2 Rharhabe was intelligent, articulate and brave. He was a warrior and a hunter. He would go hunting

⁵ ukukhahlela is to pay homage as a sign of respect to a king

lions, leopards and elephants, the skins of which were sought-after as important kingship regalia. He was liked by councillors for his bravery. Gcaleka on the other hand, was rather docile, in that he liked staying at home with his father and councillors. He never showed any signs of bravery.

6.3.3 The prominence of Rharhabe resulted in conflict between Phalo and Gcaleka on the one hand, and Rharhabe and the councillors on the other.

6.3.4 The councillors therefore advised Phalo to let Rharhabe cross the Kei river and establish his kingdom there. Rharhabe left with his father.

6.3.5 In establishing his kingdom, Rharhabe fought and defeated the Khoisan. After reaching an agreement with them, he bought their land and paid them a herd of cattle.

6.3.6 There were other communities of amaXhosa which had earlier settled across the Kei river including, amaGwali, amaNtinde, amaGqunukhwebe,

amaBhalu, amaHleke and imiDange. They objected to the authority of Rharhabe as king. He however, went on to assert himself as king over them.

6.3.7 AmaRharhabe engaged in frontier wars with the British without the assistance or prior approval of amaGcaleka. The Hintsa War in 1835, for example, was fought between the British under the command of Sir Harry Smith and amaRharhabe who were led by Maqoma and Tyali. The British were unable to defeat amaRharhabe. They appealed to Hintsa the then king of amaGcaleka to stop the war. Hintsa declared that he was unable to do so, as he was not king of amaRharhabe.

6.3.8 Traditionally amaGcaleka kings are installed by amaRharhabe kings, and vice versa. For example Sandile of amaRharhabe was installed by Xolilizwe of amaGcaleka, whilst Xolilizwe had been installed by Bazindlovu of amaRharhabe.

6.3.9 AmaRharhabe respect and recognise amaGcaleka as kings of the great house. However that does not

diminish their status as kings of the right hand house.

6.3.10 The land of amaRharhabe did not belong to Phalo, as the land of Phalo was between the Kei and Mbhashe rivers.

6.3.11 Siqithi Maqoma described the crossing of Rharhabe over the Kei river as...

“a dynastic schism that shattered the main body of amaXhosa into two distinct nations, with two independent kings”.

7.

IMPACT OF LEGISLATION

7.1. Colonial Era

7.1.1 Before the advent of colonization the basic political unit of amaXhosa was the traditional community. The institution of traditional leadership was

regulated mainly by the customary law and practices 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.

7.1.2 During the colonial era, traditional authorities were either ignored or they played a marginal role. Colonisation, and later apartheid, had a profound impact on the institution of traditional leadership.

7.1.3 According to the colonial boundaries the area known as the Transkei stretched between Mzimkulu and the Kei rivers. The Ciskei homeland originated with the crown Colony of British Kaffraria founded in 1847 which extended from the Kei river in the east to the Keiskama and Tyhume rivers in the west. Due to frontier wars white-owned farmland and black communal areas became intermingled with each other until the 1970s. The apartheid government embarked on a massive programme of land purchase coupled with forced removals which

consolidated the Ciskei homeland within the same general area in the 1980s.

7.1.4 In Transkei, the frontier wars led to annexation of the territories under the pretence of safeguarding the frontiers. There were no less than six acts of annexation of different parts of the area. The various acts of annexation were re-affirmed by the Cape Act 29 of 1897 which concentrated legislative power in the hands of the Cape Governor.

(a) Colonial Transkei was initially divided into three Chief Magistracies, namely Transkei (Butterworth), Thembuland (Mthatha) and East Griqualand (Kokstad). After annexation in 1894, western Mpondoland was placed under Mthatha and Eastern Mpondoland under Kokstad. In 1903, the three Chief Magistracies were consolidated as the United Transkeian Territories under a

single Chief Magistrate based in Mthatha.

(b) Ciskei was never annexed as a single territorial block and the term had no legal status until the 1930s. This was due to the prolonged frontier wars in the area which resulted in a geographical intermingling of black rural areas with white commercial farms. In 1923, the then Native Affairs Department appointed a Chief Native Commissioner for the Cape based in King Williams Town. The areas between the fish and the Kei rivers which fell under his jurisdiction constituted the basis of the future Ciskei homeland

(c) Traditional leaders had little or no say in the administration of their areas. They did not have real authority, but were expected to maintain law and order and were granted jurisdiction to

hear civil cases under customary law.
Appeals lay to the magistrates.

Maylam⁶: comments as follows:-

“the effect of this system was to curtail drastically the powers of chiefs, especially in the judicial sphere.”

(d) Matters took a turn with the introduction of the Glen Grey Act 25 of 1894. It provided for the establishment of Location Boards for the control of individual administrative areas, an “elected” district council for the administration of local affairs in the whole Glen Grey district. Traditional leaders and authorities were, however, left out.

(e) The Glen Grey system was introduced from one district to another

⁶ Maylam, P A *History of the African People of South Africa: from the Early Age to the 1970's* (1986) 47

until eventually these district councils were amalgamated with effect from 1 January 1931 to form the Transkeian General Council. The traditional leaders however, still played second fiddle. The council was dominated by White officials, who were mainly magistrates. They were members and chairmen of their district councils and also members of the General Council. Four of them were members of the Executive Committee of the Council⁷. Chiefs asked for higher status, but did not succeed (Carter et al⁸).

7.1.5 In Ciskei a similar council system was established in terms of the Bantu Affairs Act, 23 of 1920. Local Councils were established in different districts in Ciskei. A Ciskeian General Council was established in 1934. Its powers were similar to those of the United Transkeian Territories General Council. As

⁷ Jackson *op at* 3

⁸ Carter GM *et al* South African's Transkei : The Politics of Domestic Colonialism (1917) 103-105

was the case in Transkei, White officials, who were mainly magistrates dominated.

7.1.6 The Black Administration Act re-affirmed the colonial “recognition” of chiefs and headmen. In terms of section 1 the Governor-General (later State President) was declared paramount chief of all Blacks in the country. Other chiefs had to be appointed. Provision was made for the appointment of paramount chiefs. In addition, tribes could be established or disestablished (sections 3 to 12).

7.1.7 From 1927 to 1951, traditional leaders and their councils played a minor role in district administration.

7.1.8 Chiefs 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,
Proclamation No. 110 of 1957.

7.2 **Apartheid Era and Homeland Era**

7.2.1 In 1957 matters took another turn. The National Party re-discovered and re-designed traditional authorities to form the building blocks of its homeland constitutional structures. With that end in view the Black Authorities Act, 68 of 1951 (“Black Authorities Act”) was adopted. It provided for:-

- (a) The activation (virtually recreation) of traditional authorities, consisting of a group of administrative areas (formerly called locations) owing allegiance to a chief.
- (b) Where there was no coherent traditional leadership, contiguous administrative area were grouped together into community authorities,

thereby 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 to form a territorial authority for the homeland concerned.

7.2.2 Those were the underlying structures for both Transkei and Ciskei areas but the Transkeian legislative process from traditional tribal authorities to independence was somewhat different from the legislative process in Ciskei. The two will be dealt with separately.

(a) **Transkei Independence**

(i) The Black Authorities Act did not apply in Transkei. In 1955 the Transkeian Territories General Council adopted a

report recommending the establishment of a slightly modified form of traditional authorities arguing, mainly for the retention of the old district councils. This recommendation was implemented by Proclamation 180 of 1956 which provided for tribal and community authorities, district authorities, regional authorities and a territorial authority.

- (ii) This system was followed by the Transkei Constitution Act, 48 of 1963 conferring self-government on Transkei. The state of Transkei consisted of nine regional authorities, which included the Gcaleka Regional Authority. The latter comprised the districts of Elliotdale, Idutywa, Centani and Willowvale. A Legislative Assembly was created, composed of 64 chiefs (including all the paramount chiefs) and 45 elected members. The paramount chiefs,

including Xolilizwe Sigcau were to retain their seats indefinitely.

(iii) Thereafter, the South African Parliament passed the Status of Transkei Act 100 of 1976 to provide, *inter alia*, for the transfer of sovereignty from the Republic of South Africa to the government of Transkei as a fully sovereign and independent state. This was followed by the Transkei Constitution Act, 15 of 1976 constituting the Republic of Transkei.

(iv) The legislative assembly consisted of the paramount chiefs (including Sigcau), 70 chiefs and 70 elected members.

(v) The Constitution Act of 1976 moreover provided for the designation of appointment of chiefs (section 66) by the Regional Authority, subject to

confirmation by the President. It, moreover created five paramountcies, namely:-

- Eastern Pondoland
- Western Pondoland
- Thembuland
- Western Thembuland
- Gcalekaland

(vi) Gcalekaland was comprised of the following districts; Centane, Gatyana (Willowvale), Idutywa and Xhora (Elliotdale).

(b)Ciskei Independence

(i) In Ciskei, the process was set in motion by the implementation of the Black Authorities Act. Traditional or Community Authorities were established for most of the communities between 1957 and 1959. Eight regional authorities were established between

1958 and 1961 which replaced the Ciskeian General Council.

(ii) By Proclamation 141 of 1968 new and more comprehensive powers were granted to the Ciskeian Territorial Authority. This was the so-called legislative assembly phase, provided for in sections 1 to 25 of the National States Constitution Act, 21 of 1971. The Assembly consisted of 84 chiefs and councillors who elected an Executive Council of six members (Proc R118 of 1971).

(iii) A feature of the Ciskei Homeland was the artificial creation of chiefs in order to increase the number of representatives in the Ciskei Assembly. The victory of Ciskei National Independence Party (CNIP) of L.L.W. Sebe over the Ciskei National Party (CNP) of Chief Justice Mabandla in the 1973 Ciskei elections was very narrow giving Sebe a razor-thin majority of 26 to 24 in the Ciskei

Assembly. The situation was rectified by CNIP Minister and noted historian SM Burns-Ncamashe. He drew up applications for nine new chiefships, eight Rharhabe and one Mfengu. All were supporters of the CNIP led by Sebe.

7.3 **Post-Apartheid Era**

7.3.1 Section 211(1) of the Constitution provides for the status role and recognition of the institution of traditional leadership according to customary law and subject to the constitution.

“the institution status and role of traditional leadership according to customary law are recognised, subject to the Constitution.”

7.3.2 To this end national legislation may provide for the status and role of traditional leadership as an institution at local level on matters affecting local communities. This culminated in the promulgation of the Traditional Leadership and Governance Framework Act 41 of 2003 (The Framework Act).

7.3.3 The objective of the Framework Act is:

“To provide for the recognition of traditional communities; to provide for the establishment and recognition of traditional councils; to provide a statutory framework for leadership positions within the institution of traditional leadership, the recognition of traditional leaders and the removal from office of traditional leaders; to provide for houses of traditional leaders; to provide for the functions and roles of traditional leaders; to provide for dispute resolution and the establishment of the Commission on Traditional Leadership, Disputes and Claims; to provide for a code of conduct; to provide for amendments to the Remuneration of Public Office Bearers Act, 1998; and to provide for matters connected therewith.”

7.3.4 The Commission on Traditional Leadership Disputes and Claims in particular, is mandated to

regularise and restore the dignity of the institution of traditional leadership.

7.3.5 The Framework Act enjoins the government of the provinces (including of course Eastern Cape) to enact legislation to provide for matters peculiar to the provinces. The Legislature of the Eastern Cape has accordingly enacted the Traditional Leadership and Governance Act, 2005.

8.

CURRENT STATUS

8.1 In terms of section 28(1) 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.

8.2 AmaXhosa have two officially recognised paramount chiefs, namely, Mpendulo Calvin Sigcawu, who was appointed in March 2006 as the paramount chief of amaGcaleka. The paramount chief of amaRharhabe is Maxhobayakhawuleza Bangilizwe Sandile who was appointed in July 1991.

8.3 Under the authority of amaGcaleka:-

8.3.1 There are 23 senior traditional leaders.

8.3.2 The area of jurisdiction is: Idutywa, Elliotdale, Willowvale, and Centane.

8.4 Under the authority amaRharhabe:-

8.4.1 There are 31 senior traditional leaders.

8.4.2 The area of jurisdiction is: Magqesha, the Great place, Kingwilliamstown, Zwelitsha, Victoria East (Alice), Middledrift, Peddie, Keiskammahoek, Mdantsane, Seymour, Ntabethemba, and Whittlesea.

DETERMINATION

9.1 Issues to be Determined

9.1.1 The issues are:-

- (a) whether in the course of the history of amaXhosa, a kingship of amaXhosa was established;
- (b) if it was established, by whom, how, and when;
- (c) whether the kingship has since been passed on from one generation to another according to the custom of amaXhosa; and
- (d) whether at the split and after the death of Phalo:-
 - i) Gcaleka retained kingship of amaXhosa as a whole, or
 - ii) Rharhabe left to establish his own kingship independent of amaGcaleka.

(e) whether the position of the two paramount chiefs were established in terms of customary law and customs.

9.1.2 If it is found that the two kingships exist independently, whether the two kingships should continue to exist as such.

9.2 **Analysis of Issues**

9.2.1 In pursuit of uniformity in the Republic as envisaged by 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.

9.3 **Analysis of Evidence**

9.3.1 Mnguni had four sons namely, Xhosa, Luzumane (Zulu), Swazi and Ndebele. Xhosa broke away to create amaXhosa round about 1525. AmaXhosa moved from North East Africa and settled on the land between Mzimkhulu and the then Cape Colony. Xhosa was succeeded by Malangana, Nkosiyamntu and Tshawe who reigned around about 1600.

9.3.2 Tshawe went about establishing the amaXhosa kingship by conquering and subjugating distinct and independent communities. According to one source:-

“There were various nations,(izizwe), who were distinct in their greatness and their kingship. These used to rule themselves over there, like amaTipha, amaNgwevu, amaQocwa, amaCete, amaNgqosini and the amaNkabane. These nations stood alone, and were ruling themselves long ago. They were abolished by fighting (bagqugqiswa ngokulwa) by Tshawe, they were overcome so that they became one nation⁹.”

9.3.3 In the process of intergration, the formely independent traditional communities adopted the language and culture of amaXhosa. The successors of Tshawe spread as far as Mthatha river in the Ngqeleni district, Mqanduli and Tongwana under the leadership of Phalo.

9.3.4 Having thus consolidated amaXhosa and expanded their sphere of influence, Tshawe created the kingship

⁹ William Kekale Kaye 19th Grey collection 172c South African Library, Cape Town.

of amaXhosa and was elevated to the status of king¹⁰.
See genealogy.

9.3.5 AmaXhosa were previously known as amaNguni after their leader Mnguni. The traditional community adopted the name “amaXhosa” after its progenitor Xhosa during the reign of Tshawe in the 17th century.

9.3.6 Tshawe therefore was the first king of amaXhosa. From the information presented, it is evident that since its establishment by Tshawe, the kingship has been passed on from one generation to the next through the customary law of amaXhosa, right up to Phalo.

9.3.7 Phalo had two sons, Gcaleka and Rharhabe. Gcaleka was from the great house and Rharhabe was from the right hand house.

9.3.8 It is common cause that Gcaleka was the rightful heir and successor-in-title to the kingship of amaXhosa as a whole before the split.

¹⁰ see geneology annexed hereto “xkl”

9.3.9 AmaGcaleka claim that Rharhabe left the Great Place to create a new community which was part of the kingdom of amaXhosa. However, this is disputed by amaRharhabe who contend that Rharhabe left to establish a kingship independent of amaGcaleka with the blessings of Phalo.

9.3.10 It is evident from the presentations, both written and oral history, that it was customary for the great house to bear an heir to the throne. It was also not unusual for a right hand house to create a new traditional community independent of, but subordinate to the great house, in respect of family, and ceremonial matters and those affecting the community of amaXhosa as a whole. The only contention by amaRharhabe is that this custom was not absolute.

9.3.11 During the oral presentation AmaRharhabe conceded that they are junior to amaGcaleka, the great house, in terms of isiXhosa custom.

9.3.12 It is the finding of the Commission that Phalo accompanied Rharhabe, his son from the right hand

house, in his capacity as a father, and a king of amaXhosa. Phalo wanted to see Rharhabe settled and installed as an overseer of his people, west of the Kei. This is supported by the following:-

(a) There were many traditional communities living west of the Kei, including amaTshawe, who recognised Phalo as their king.

(b) Phalo himself resided at Zeleni as one of his palaces, which was west of the Kei.

9.3.13 The Commission finds that, the successors to Phalo continued to exercise authority over amaXhosa both east and west of the Kei. This is evidenced by the following:

(a) The successor of Phalo, Gcaleka, lived at Qumrha, west of the Kei and his grave is at Ngxingxolo, which is also west of the Kei.

(b) It is recorded history that during the reign of Gcaleka most of amaXhosa lived West of the

Kei and returned east around 1800, under the leadership of Khawuta, the successor to Gcaleka.

- (c) When Ngqika committed adultery with the wife of his uncle Ndlambe, the chiefs of amaNdlambe appealed to Hintsa, the successor of Kawuta to settle the matter. He did intervene, to resolve the crisis.
- (d) Hintsa died assisting Maqoma and Tyali in fighting the British.
- (e) When Sarhili, the successor of Hintsa, became involved in the Ngcayichibi War (1877-1888), he called on Sandile for support, which was readily granted.
- (f) After the defeat in the Ngcayichibi War, amaRharhabe were forced to return to Centane. Most of amaRharhabe chiefs and their followers continued to live in Centani.

(g) Archie Velile Sandile¹¹, the head of amaRharhabe was born and circumcised in Centane. He lived there up until the creation of the homeland system round about 1959. He became the first paramount chief of amaRharhabe in 1961.

9.3.14 There is no confusion nor dispute amongst amaXhosa with regard to the seniority of the descendants of Gcaleka, over those of Rharhabe. Zwelidumile Sigcau was the principal leader of all amaXhosa. It was only upon the creation of the homelands, of Transkei and Ciskei that the confusion arose. Zwelidumile Sigcau was appointed by the apartheid regime as paramount chief of only amaGcaleka in the Transkei. On the other hand, Archie Velile Sandile, the principal leader of amaRharhabe was appointed by the apartheid regime as paramount chief of amaRharhabe in the Ciskei, independent of amaGcaleka.

9.3.15 At the time, Zwelidumile was king of amaXhosa in terms of customary law. He was also officially recognised as a titular head of amaXhosa. Archie Velile Sandile, principal leader of amaRharhabe was officially recognised only as a chief of

¹¹ Sandile- sixth generation of Rharhabe

amaNgqika. AmaNgqika were a sub-section of amaRharhabe as were amaNdlambe, amaNtsusa and imiDushane.

9.3.16 The correspondence cited herein under clearly shows that the intention of the apartheid regime was to create two pseudo-independent states.

9.3.17 In order to do so, the regime had to give an impression of two distinct tribes. The tribes were the founding blocks for the apartheid homelands. In order for the Ciskei to exist, amaRharhabe had to be recognised as a tribe distinct from the amaGcaleka. The principal leader of amaRharhabe had to be elevated to a status similar to that of the principal leader of amaXhosa.

9.3.18 This was in keeping with the apartheid policy of divide and rule. In so doing, the apartheid regime had to use traditional leaders who were trusted and respected by the people, and who could persuade the general populace to accept their point of view.

9.3.19 The correspondence between the Native Affairs Commissioner (Eastern Cape), the Department of Native Affairs (Pretoria) and the chiefs, shows that Zwelidumile Sigcau, of the amaGcaleka lineage was recognised as king over amaXhosa as a whole.

- (a) A letter dated 1 August 1954 issued out of the office of Zwelidumile to the Government and signed by both Zwelidumile Sigcau and Archie Velile Sandile, discusses homogeneity of amaXhosa and seniority of their traditional leadership.

“...By Xhosa law of succession and perhaps also European law of primogeniture, Zwelidumile is at present head and ruler of Xhosa speaking peoples of the Cape...”

“...the failure of the government to recognise the fact of homogeneity of Xhosa’s, wherever there may be in the Transkei or Ciskei all of them bound by a common language, common customs and a common heritage ...”

“...It is desirable as soon as possible to disestablish the present geographical barrier between Transkei and Ciskei and for purposes of the wider application of Bantu Authorities to view the whole of the Cape as coming under one Paramountcy, i.e the Paramountcy of Chief Zwelidumile of the Xhosa’s...”

“...It is respectfully requested that in keeping with their status and office the Government seriously consider raising stipends of both the Chiefs to £1000 and £900 per annum respectively...”

“...For the information of the Government we have to state that it is now settled in everyone’s mind that there is no cause for acrimony over claims of whatever nature regarding seniority. Chief Velile accepts the seniority of his brother Chief Zwelidumile, in recognition of which fact both chiefs have

appended their signatures to this document...”

- (b) In another letter dated 27 September 1958 from the office of the Chief Magistrate and (Chief Native Commissioner), in the Transkeian Territories to the Secretary for Native Affairs in Pretoria; The Chief Native Commissioner, in paragraph 4 debates the meaning of the word “paramount”...”

“The Xhosa equivalent is perfectly clear “Ingotya” is the supreme chief of a tribe or group of tribes. Ask any Xhosa in the Ciskei who his chief is and he will reply “Velile Sandile” or possibly some other chief. Ask him who his “ingotyia is and he will name Zwelidumile Sigcau...”

- (c) Minutes of a meeting on 4 November 1959 in Pretoria between C.B Young, Deputy Secretary Bantu Affairs and Development, Zwelidumile Sigcau Chief of Gcaleka Tribe and Titular Head of amaXhosa, Archie Velile Sandile, Chief of the Ngqika Tribe, and their respective councillors, seniority again is emphasized.

“...there was no doubt that Zwelidumile Sigcau and Velile Sandile are the contemporary most senior members of the Great House and Right Hand House, respectively, and that Zwelidumile Sigcau as Chief of the Gcaleka tribe is traditionally the titular head of the amaXhosa...”

- (d) Correspondence dated 5 March 1960 from the Chief Native Commissioner of The Transkei Territories to the Secretary of Bantu Administration and Development, illustrates the calculating manner in which customary law was to be tampered with;

“...Zwelidumile’s legal appointment as paramount chief of the Xhosa and his ceremonial installation as such should precede the appointment of Archie Sandile’s appointment. Otherwise it would be, in effect, the Government, which was creating the division, instead of the paramount chief of the tribe...”

- (e) Minutes of a meeting of 4 August 1960, between the Bantu Affairs Commissioner, Chief Zwelidumile

Sigcau, 15 councillors the authority of both paramountcies were clearly defined. The discussion is recorded as follows:-

M.Salakupatwa: *Yes, Archie will become paramount chief and control his own people independently of the paramount chief in Willowvale.*

Supervisory Officer: *In matters of custom, ceremonial or the affairs of the Xhosa tribe as a whole, would Archie consult with Zwelidumile?*

M. Salakupatwa: *Yes – he was agreed to this.*

Chief Zwelidumile: *He is my “younger brother”.
He will consult me. (sic)*

9.3.1 In order for the above mentioned correspondence to be understood the Commission deems it necessary to place it in perspective:-

- (a) Initially, traditional leaders were reluctant to become part of the Bantu Authorities created by the Bantu Authorities Act, the objectives of which were clearly sinister.
- (b) However, many relented for fear of losing their traditional leadership status, Zwelidumile Sigcau was no exception.
- (c) The Bantu Authorities Act, created the position of paramount chief. In order to be recognised as such, traditional leaders were obliged to make application to Pretoria.
- (d) It is a considered opinion of the Commission that when Zwelidumile Sigcau applied, the circumstances were such that he would only be appointed as a paramount chief, on condition that he in turn appointed Archie Velile Sandile as a

paramount chief. The letter dated 4 March 1960 lends credence to this.

- (e) In the correspondence dated 1 August 1954, it is clear that Zwelidumile Sigcau and Archie Velile Sandile sought the appointment as paramount chiefs of amaXhosa.
- (f) Although the titles were the same the status was not, Zwelidumile Sigcau envisaged that Archie Velile Sandile would be paramount chief of amaRharhabe only and he would remain titular head of amaXhosa as a whole and paramount chief of amaGcaleka.
- (g) These sentiments were later to be reiterated in a future meeting with the Secretary of Native Affairs, Young, in 1954, where it is recorded that Archie Velile Sandile will consult Zwelidumile Sigcau on customary matters.

CONCLUSION

10.1 Whilst official recognition of the institution of *ubukumkani* was laudable and in line with the historical and customary evidence presented, the creation of dual kingship was irregular. This was because it was not in line with the customary law and customs of the traditional community of amaXhosa in that:-

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

10.1.2 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.

10.1.3 In this case, the areas of jurisdiction will be those populated by the amaXhosa traditional communities

and headed by senior traditional leaders who owe allegiance to *ubukumkani*.

10.2 In conclusion, the Commission finds that:-

10.2.1 The kingship of amaXhosa exists and it was established by Tshawe through conquests and subjugation in the period around 1600.

10.2.2 Since Tshawe the kingship has been passed on from one generation to another, according to the custom of amaXhosa as stated above.

10.2.3 At the split, Phalo was still king of amaXhosa as a whole. After the death of Phalo, Gcaleka ascended the throne. Gcaleka therefore retained the kingship of amaXhosa as a whole.

10.2.4 In the circumstances, the kingship of amaXhosa exists under the lineage of amaGcaleka.

10.2.5 In terms of customary law and the Framework Act, the amaRharhabe paramountcy is not a kingship.