

**DETERMINATION ON AMAMPONDO ASENYANDENI AND
AMAMPONDO ASEQAUKENI PARAMOUNTCIES**

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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 (“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 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 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 herein above, 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 amaMpondo aseNyandeni and the paramountcy of amaMpondo aseQaukeni.

2.4 The investigation is to determine whether the paramountcies of amaMpondo aseNyandeni and amaMpondo aseQaukeni 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 amaMpondo aseNyandeni and amaMpondo aseQaukeni as their history and existence is substantially intertwined. They are collectively known as amaMpondo.

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 amaMpondo aseNyandeni and amaMpondo aseQaukeni.

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 amaMpondo aseNyandeni and amaMpondo

aseQaukeni 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 The historical origins of amaMpondo as presented by the royal houses of Sigcau of Qaukeni and Ndamase of Nyandeni are mostly common cause;

- 4.1.1 Sibiside is said to be the common patriarch of a number of Nguni communities. He had three sons, Njanya, Dlamini and Mkhize.
- 4.1.2 Njanya fathered twins, Mpondo and Mpondomise. Mpondo established amaMpondo whilst Mpondomise established amaMpondomise.
- 4.1.3 After Mpondo had established amaMpondo, they were led by their successive traditional leaders namely, Sihula, Santsabe, Mkhondwane, Sukude, Hlambangobubende, Siqelekazi, Hlamandana, Tahle, Msiza, Ncindise, and Cabe.
- 4.1.4 Cabe fathered five sons, Qiya, Cwera and Gangatha, from the great house, and Gwaru and Njilo from the minor house.
- 4.1.5 Although Qiya was the rightful heir and successor to his father, Gangatha was

favoured by his father Cabe and the people at large.

4.1.6 As a result, a fight ensued between Qiya and Gangatha. Qiya was forced to retreat across the Mthatha river, leaving Gangatha to ascend the throne.

4.1.7 After Gangatha, amaMpondo were led by successive traditional leaders namely Bhala, Chithwayo, Ndayeni, Tahle, Nyawuza, Ngqungqushe and Faku, respectively.

4.1.8 Faku fathered amongst others Mqikela from the great house and Ndamase from the right hand house.

4.1.9 Faku was the most significant ruler in the history of amaMpondo. He ruled from 1824-1867. His Great Place was at Qaukeni.

4.1.10 During the 19th Century he successfully defended amaMpondo in the Mfecane wars,

round about 1824-1828 against Shaka, the king of amaZulu. It was at this time that Faku crossed to the west of Mzimvubu river and established his Great Place near the Mngazi river.

4.1.11 He expanded the sphere of influence of amaMpondo traditional leadership through accommodating refugees from the Mfecane wars like amaBhaca, amaXesibe and amaCwera¹.

4.1.12 Faku consolidated under his authority several neighbouring communities such as imiZizi, amaNgutyana and amaTshangase.

4.1.13 Thus the kingship of amaMpondo emerged.

4.1.14 Faku later returned to Qaukeni, leaving Ndamase, his eldest son, to rule on his behalf on the west of Mzimvubu river.

¹Reaction to conquest; Monica Hunter, David Phillip Rex Collin's (1979)

CUSTOMARY LAW OF SUCCESSION

5.1 Succession to the Kingship of amaMpondo

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

5.1.2 A king usually has more than one wife. Upon marriage each wife is assigned status by being allocated a house.

5.1.3 The wife whose *lobola* is derived from contributions made by the community assumes a higher status of great wife (*undlunkulu*).

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

5.1.5 The structure of the “houses” is as follows:

- (a) The great house (*indlunkulu*)
- (b) The right hand house (*ikunene*)
- (c) The great house *iqadi* (*iqadi lendlunkulu*)
- (d) The right hand house *iqadi* (*iqadi lekunene*)

5.1.6 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. There may be as many *amaqadi* houses as there are wives married to a king.

5.1.7 The first born son of the great house succeeds his father, whereas the first born son of the right hand house may establish a separate “tribe”. Such a community would be semi-independent of the great house, but not of equal status to the great house.

5.1.8 The son of *iqadi* to the great house succeeds his father if there is no male issue in the great house. The same procedure is followed if there is no male issue in the right hand house that is the son of *iqadi* of the right hand house succeeds.

6.

THE SPLIT

6.1 Faku was the last principal leader to rule over a united amaMpondo.

6.2 Ndamase and Mqikela, the two sons of Faku, played a pivotal role in the history of the kingship of amaMpondo. It was during their time that the split occurred.

6.3 The events which led to the split as presented by amaMpondo aseQaukeni royal house and amaMpondo aseNyandeni royal house are mostly common cause:-

6.3.1 The mother to Ndamase was married as an ordinary wife. In that her *lobola* was not derived from contributions made by the traditional community.

6.3.2 When Faku realized that he was too old to rule, he asked Ndamase to take over.

Ndamase refused. He stated that he was still fighting and protecting the land.

6.3.3 Ndamase suggested that he would find an *indlunkulu* for Faku. An *indlunkulu* was indeed married. She gave birth to Mqikela.

6.3.4 One day Ndamase killed a lion and he was expected to hand over the skin to Mqikela, his senior, as was customary practice. Ndamase refused. A fight ensued between supporters of Mqikela and those of Ndamase.

6.3.5 Following the fight, there were tensions between Mqikela, Faku and Ndamase. Ndamase left Qaukeni and settled west of Mzimvubu river, with the blessings of Faku.

6.4 There are two versions, however, with regard to the status of Ndamase, as he settled west of the Mzimvubu river:-

6.4.1 According to Qaukeni royal house, Ndamase was to remain forever subordinate to the Great House, as he had been sent there by Faku to look after his people on the west of Mzimvubu river.

6.4.2 Nyandeni royal house, presented two contradictory versions:-

(a) The version by Bishop Khobo was as follows:-

(i) Ndamase went across the Mzimvubu river and discovered land. He fought the communities who were there and subjugated them.

(ii) He returned to the Great Place, and reported to Faku about his conquest.

(iii) Faku congratulated him on his conquest and gave him his blessings to settle across Mzimvubu independently.

(iv) He occupied the land between west of Mzimvubu river and east of Mthatha river.

(v) Later Faku visited Ndamase across Mzimvubu river. He instructed that all skins of animals killed be taken to Nyandeni, instead of Qaukeni. This was a sign of handing over kingship to Ndamase.

(b) On the other hand the version by Mlamli Ndamase was that:-

(i) Ndamase was born of the Great House and not Mqikela.

6.5 Exploits by Ndamase across Mzimvubu river resulted in the division of amaMpondo into two, a situation which was taken advantage of by the colonialists;

6.5.1 The Maitland Treaty of 1844 was signed with Faku as king of amaMpondo as a whole.

6.5.2 Mqikela did not co-operate with the White government, consequently, his powers were curtailed by the colonialist regime and Pondoland was divided into two, with the promise to elevate Nqwiliso (the son and successor to Ndamase) to paramountcy.

6.5.3 Nqwiliso was ambitious and aspired to be paramount chief. Consequently he sold land at Port St. Johns to the White on the promise of being recognised as paramount chief of Western Pondoland.

6.5.4 In 1878 Nqwiliso was recognised by the Cape Colony as paramount chief of Western Pondoland as a reward for ceding Port St.

Johns to the British. This matter is explained by John Henderson Soga in his book *The South - Eastern Bantu* (pp.319-320):

“On his accession to power Nqwiliso made it clear that, while recognizing Mqikela’s house as the Great House of the Pondos, yet he intended to follow in Ndamase’s footsteps and owe allegiance to no one, and maintain his position as an independent chief. That meant he would suffer no interference from Mqikela. In this declaration he was supported by the Government. In 1869, The Governor, Sir Phillip Woodhouse, desired to secure the mouth of the St Johns River for the Cape Colony. Ndamase, who was then ruler of Western Pondoland refused to accede to this. When, however, Nqwiliso became chief the subject was again mooted. This time the Government proposal was agreed to, on the strength

of a promise made to Nqwiliso to recognize his claim to the paramountcy of Western Pondoland. This was in 1878. For a distance of nine miles inland from the mouth of the St John's River a narrow bit of land on the western bank was purchased by the Government for £1000 from Nqwiliso".

7.

IMPACT OF LEGISLATION

7.1 Colonial Era

- 7.1.1 Before the advent of colonization the basic political unit of amaMpondo was the traditional community. The institution of traditional leadership was regulated mainly by a customary law and practices of a traditional community. The king ruled by popular mandate. He took decisions with his councillors, who were usually members of the extended royal family.

- 7.1.2 During the colonial era, traditional authorities were either ignored or played a marginal role. Colonization, and later apartheid, had a profound impact on traditional leadership institutions. The following is a brief outline of how it affected the amaMpondo.
- 7.1.3 It is alleged that prior to colonial intervention and during the reign of Faku, the boundaries of Pondoland consisted of Mzimkhulu river in the East, Khahlamba Mountains in the north and the Indian Ocean in the South.
- 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 gave the Cape Governor unfettered power of edictal legislation. This power was reaffirmed by the Cape Act 29 of 1897.
- 7.1.5 Pondoland was annexed to the Cape Colony in terms of Act 5 of 1894 by Proclamation 339 of 25 September 1894.

7.1.6 This era was characterized by direct rule of white magistrates. They were three and each in charge of the following areas:-

- (a) Transkei (including the Idutywa Reserve, Fingoland and Gcalekaland);
- (b) Tembuland (including Emigrant Tembuland, Tembuland Proper, Pondoland and Bomvanaland; and
- (c) Griekwaland East (which included Mount Ayliff).

7.1.7 In 1902 the areas were united under a single chief magistrate for the whole territory. Traditional leaders had very 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.

7.1.8 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, and a district council for the administration of local affairs in the whole Glen Grey district. Traditional leaders and authorities were, however, left out.

7.1.9 The Glen Grey Council system was introduced from one Transkei district to another until eventually they were amalgamated with effect from 1 January 1931 to form the Transkeian Territories General Council. The traditional leaders however, still played second fiddle. Predominantly White officials (magistrates) participated. 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 Council. Chiefs asked for higher status, but did not succeed (Carter et al²)

7.1.10 Separate district councils were established for Western Pondoland in 1911 and for Eastern Pondoland in 1927. The Pondoland General Council was amalgamated with

²Carter GM et al *South African's Transkei : The Politics of Domestic Colonialism* 19(17) 103-105

the Transkeian Territories General Council to form the United Transkeian Territories General Council (“Bunga”) in 1931. White officers ruled the roost.

7.1.11 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 chiefs had to be officially appointed. Provision was made for the appointment of paramount chiefs. In addition tribes could be established or disestablished.

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

7.1.13 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 and Homeland Era**

7.2.1 In 1957 matters took another turn. The National Party literally 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 was adopted. It provided for:-

- (a) The activation 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 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.

7.2.2 Those were the underlying structures for the Transkei.

7.2.3 The Traditional Authorities Act, 68 of 1951 did not apply in Transkei. However, in 1955 the Transkeian Territories General Council adopted a report recommending the establishment of a slightly modified form of traditional authorities, 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.

7.2.4 This system was followed by the Transkei Constitution Act, of 1963 conferring self-government on Transkei. The Transkei consisted of nine regional authorities, for present purposes including the Eastern Pondoland and Western

Pondoland Regional Authorities. A legislative Assembly was created, composed of 64 chiefs (including all the paramount chiefs) including Eastern and Western Pondoland, retained their seats indefinitely.

7.2.5 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.

7.2.6 This was followed by the Transkei Constitution Act, 15 of 1976 which provided for:-

(a) The creation of the Republic of Transkei which comprised amongst others the following areas;

(i) Eastern Pondoland Regional Authority, comprising the districts

of Bizana, Mount Ayliff, Lusikisiki,
Flagstaff and Tabankulu.

(ii) Western Pondoland Regional
Authority comprising the districts
of Libode, Ngqeleni and Port St
Johns³.

(b) The legislative assembly consisted of the
five paramount chiefs 70 chiefs and 75
elected members⁴.

(c) The designation and appointment of chiefs
by the Regional Authority.

(d) The creation of five paramountcies the
designation and appointment of chiefs⁵ by
the Regional Authority.

(i) Eastern Pondoland;

(ii) Western Pondoland;

(iii) Thembuland;

³Section 1 read with Schedule 1 of the Transkei Constitution

⁴Section 22(1) of the Constitution.

⁵ Section 66

- (iv) Western Thembuland;
- (v) Gcalekaland;

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.

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 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, in a nutshell, is mandated to regularise and restore the dignity of the institution of traditional leadership.
- 7.3.5 The Framework Act requires 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. This Act repeals all existing laws on traditional leadership. The repeal would however, not affect this

inquiry because the paramountcies were in existence when the Framework Act, was passed.

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 AmaMpondo have two officially recognised paramountcies:-

8.2.1 Mpondombini Justice Sigcau is the paramount chief of Eastern Pondoland;

(a) There are 28 officially recognised senior traditional leaders under him.

(b) Eastern Pondoland comprises of the districts of Mount Ayliff, Flagstaff, Bizana, Tabankulu, Lusikisiki;

8.2.2 Fikelephi Doris Ndamase is the acting paramount chief of Western Pondoland.

(a) There are 13 officially recognised senior traditional leaders under her.

(b) Western Pondoland comprises of the districts of Port St. Johns, Libode and Ngqeleni.

9.

DETERMINATION

9.1 Issues to be Determined

9.1.1 The issues are:-

(a) whether in the course of history of amaMpondo a kingship 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 amaMpondo;
- (d) whether at the split:-
 - (i) Mqikela, retained kingship of amaMpondo as a whole; or
 - (ii) Ndamase left to establish his own kingship independent of Qaukeni and Great Place.
- (e) whether the positions of the two paramount chiefs 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 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.

9.3. **Analysis of Evidence**

9.3.1 On the evidence gathered as well as research undertaken by the Commission, the following emerges:-

- (a) Mpondo established amaMpondo.
- (b) Amongst the amaMpondo kings, Faku was the most significant, in that:-
 - (i) he successfully repelled the attacks by Shaka.
 - (ii) he absorbed refugees from the Mfecane wars into the traditional community of amaMpondo, thereby expanding the sphere of influence of amaMpondo; and
 - (iii) consolidated various neighbouring chiefdoms under his authority.
- (c) Therefore, Faku could be regarded as the most prominent king of amaMpondo. It was

under his reign that the kingship of amaMpondo was fully established.

9.3.2 Faku had two sons, Ndamase and Mqikela. Mqikela was from the great house and Ndamase from the right hand house.

9.3.3 Mlamli Ndamase claims that Ndamase was born of the Great House. The Commission rejects this version as it is not corroborated by the Nyandeni royal house, which he represented. Furthermore, the Commission could not find any authority in support of this contention.

9.3.4 These two sons played a pivotal role in the history of amaMpondo kingship in that it was during their time that a split occurred.

9.3.5 It is common cause that Mqikela was the rightful heir and successor to the kingship of amaMpondo as a whole before the split.

9.3.6 According to Qaukeni royal house, Ndamase crossed the Mzimvubu river to create a new community which was to

remain part of the existing kingship. This is disputed by Nyandeni royal house, which contends that Ndamase left to establish a kingship independent of Qaukeni, with the blessings of Faku.

9.4. The Commission finds that:-

9.4.1 It was customary for the great house to bear an heir to the throne.

9.4.2 It was not unusual for any other house to establish a separate and semi-independent traditional community, which remained subordinate to the great house.

9.4.3 Apart from the version of Mlamli Ndamase, Nyandeni royal house does not dispute the seniority of Qaukeni royal house.

9.4.4 When Faku gave Ndamase his blessing to settle across Mzimvubu river, he did not necessarily bestow upon him a status similar to his, in that:-

- (a) According to its version, Nyandeni royal house stated that Ndamase returned to the Great Place

to report to Faku that he had discovered land west of Mzimvubu river.

- (b) After the deaths of both Faku in 1867, and Ndamase in 1875, Mqikela and Nqwiliso were their respective successors.
- (c) According to the custom of amaMpondo the king is born of the great house and does not come from the right hand house. The great house in the present matter is the house of Sigcawu at Qaukeni. Since the time of Faku, kingship of amaMpondo rested with Qaukeni house and this position has not shifted.
- (d) The right hand house of Ndamase at Nyandeni could not establish an independent kingship as this is contrary to custom and tradition.

9.4.5 In *The Southeastern Bantu*, 1931, (page 319) J.H. Soga states that:-

“Ndamase had actual control of the western section of Pondoland for some time before his father’s

death, yet he was nevertheless his father's subordinate."

10.

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 amaMpondo 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, primogeniture and the performance of specific rituals.

10.1.3 In this case, the areas of jurisdiction will be those populated by the amaMpondo 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 amaMpondo exists. It was established and expanded by Faku through assimilation of neighbouring communities around 1820 to 1830.

10.2.2 Since the reign of Faku, the kingship has been passed on from one generation to another according to the custom of amaMpondo.

10.2.3 After the alleged split, Mqikela retained kingship of amaMpondo as a whole.

10.2.4 In the circumstances, amaMpondo kingship exists under the lineage of Mqikela.

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