FINDINGS OF THE COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS

PRESENTATION TO THE PORTFOLIO COMMITTEE

IMPLEMENTATION OF THE FINDINGS OF THE COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS

By: Prof. Muzamani Charles Nwaila
Director-General: Department of Traditional Affairs
Tuesday: 01 November 2011

Committee Room, M315, Third Floor, Marks Building, 10:00
Purpose of the presentation

- To brief the Portfolio Committee on the work of the Traditional Disputes and Claims Commission
- To further highlight the findings of the Commission
FINDINGS OF THE COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS

- Scope of the Presentation
  - Evolution of the Department
  - DTA Entities and Support provided
  - Establishment of the Commission
  - Mandate
  - Membership
  - Operations
  - Findings
  - Implementation of the findings
  - Conclusion
The Department of Traditional Affairs was promulgated on 1 December 2009 in terms of section 7(5)(a) of the Public Service Act.

Two DDGs and Accounting Officer assumed duty in August and in Sept 2010 respectively.

The Traditional Disputes and Claims Commission started its work in January 2011.

DTA also became functional in January 2011.

Most SMS members assumed duty in the last quarter of 2010/11 Financial Year.
Traditional Leadership
Chief Directorate Program 5

Department of Traditional Affairs

Branch: Institutional Support & Coordination

Branch: Research, Policy & Legislation

Branch: Management & Administration

NHTL Entity

CTLDC Entity

CRL Entity
Assessment on the State of Governance within Traditional Affairs to inform 2011-2014 Strategic Thrusts

Elements of Good Governance

- Structures
- Systems
- Budget
- Infrastructure
- Capacity
- Partnerships
- Community Engagement
- Coordination

Accountability

Level of Support

Assessment of the State of Governance
Assessment Process


2. STAKEHOLDER ANALYSIS: Main stakeholders and others have been identified and their roles clarified.

3. PROVINCIAL TASK TEAMS: between DTA and provinces established to organize the provincial assessment process.

4. CONSULTATION: Pre-engagements with National Departments, Provinces and other Stakeholders, where the full assessment process was outlined.

5. INPUTS & COMMENTS: Received from CONTRALESA, NHC, CRL, HRC, NHTL & CTLDC.

6. ACTUAL ASSESSMENTS: all provinces done with the exception of WC.

7. Analysis of data.

8. Feed-back & review.
DTA conducted assessment workshops with key partners and stakeholders in all eight provinces, as follows:

- 24-25 January 2011  Northern Cape
- 03-04 February 2011  Mpumalanga
- 08-09 February 2011  Free State
- 14-15 February 2011  Eastern Cape
- 22-23 February 2011  Gauteng
- 01-02 March 2011  Limpopo
- 19-20 July 2011  Kwazulu-Natal
- 03-04 August 2011  North West

The DTA and Provinces also worked together to develop province specific assessment reports, and the process to develop the national assessment report has commenced.
Concrete Steps after the Analysis

Findings of the Assessment will inform:

- Final Provincial Reports
- Final National Consolidated Report
- Capacity Building Strategy
- Partnership Model
- Strategic Plans: 2011-2014
- Annual Performance Plans
- Targeted Support that will yield high impact
- Improving Monitoring, Evaluation and Accountability
Honesty; Integrity; Respect; Collegiality; Commitment to service; Activist Approach; and Professionalism

To coordinate traditional affairs activities across government through:
- Development of appropriate policies, systems and regulatory framework governing traditional affairs
- Enhancement of organisational efficiency and effectiveness
- Establishment of capacity development systems and partnership models
- Undertaking periodic research and development on traditional affairs matters
- Monitoring and evaluation of the performance of DTA and its entities
Support to NHTL

**Department of Traditional Affairs (DTA)**

**Vision:** An effective and efficient institution of traditional affairs that enhances sustainable development and service delivery

**Mission Statement:** To Coordinate Traditional Affairs Activities across Government and with Partners

- **Human Resources**
- **Financial Resources**
- **Infrastructure & Training**
- **Accountability**

**National House of Traditional Leaders**

**Vision:** to ensure that the status and dignity of traditional leadership is enhanced and preserved in South Africa, Africa and the world and to promote the preservation of language & culture of the African people in line with Section 30 & 31 of the Constitution

**Mission Statement:** Act as custodians of African culture, customs and traditions

**Collaboration**
To Coordinate Traditional Affairs Activities across Government and with Partners

**Mission Statement**

**Support to CTLDC**

**Department of Traditional Affairs (DTA)**

**Vision:** An Effective And Efficient System Of Traditional Affairs That Contributes Towards Development And Service Delivery

**Human Resources**

**Financial Resources**

**Infrastructur e & Training**

**Accountability**

**COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS**

**Vision:** Restoration of the dignity of traditional leadership through resolution of claims and disputes

**Mission Statement**

To finalize claims and disputes through:
- Researching claims and disputes lodged
- Holding of public hearings
- Defending litigations against the CTLDC
Support to CRL Commission

**Department of Traditional Affairs (DTA)**

**Vision:** An Effective And Efficient System Of Traditional Affairs That Contributes Towards Development And Service Delivery

**Mission Statement**
To Coordinate Traditional Affairs Activities across Government and with Partners

**Chapter 9 Institution CRL Rights Commission**

**Vision:** A United South African Nation that Protects and Promotes the CRL Rights of all its Diverse Communities

**Mission Statement**
To Promote and Protect the Rights of Cultural, Religious, and Linguistic communities

**Collaboration**

Financial Resources

Accountability
Establishment of the Commission on Traditional Leadership Disputes and Claims

- The Commission was established as a result of continuous requests by, amongst others, traditional leaders, for the establishment of an Independent Commission to investigate the institution of traditional leadership with the aim of restoring it to its original form;
- It was established in terms of section 25 of the Traditional Leadership and Governance Framework Act, 2003;
- Its membership was made up of not more than fifteen persons; and
- All its members worked on a part-time basis.
The Mandate of the Commission

- The mandate of the Commission is located in section 25 of the Act.
- The Commission had the powers to investigate issues related to the institution on its own accord, or as requested by person where there was doubt as to whether a kingship, a senior traditional leadership or a headmanship / headwomanship was established in terms of the relevant customary law and customs;
- Section 26 of the Act empowered the Commission to make a decision, which had to be communicated to the President of the Republic of South Africa where the position of a King was affected, or to the Premier of the relevant Province where any position lower than that of a King was affected;
- The decision of the Commission was not reviewable by government, and the decision had to be immediately implemented.
FINDINGS OF THE COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS

Membership of the Commission

The Commission was announced to the public through the Government Gazette number 26927 as general notice number 2394 of 2004 published on 22 October 2004 as follows:

“The President has in terms of section 23(1) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), and with effect from 1 November 2004, appointed the following persons to be members of the Commission on Traditional Leadership Disputes and Claims:

1. Prof. R T Nhlapo - Chairperson
3. Ms P P Robinson
4. Dr R M Ndou
5. Prof. P P Ntuli
7. Ms S R Mdluli
8. Prof. M A Moleleki
10. Mr A S Hlebela
11. Adv. Z P Pungula; and
12. Prof. J B Peires.”

The term of office of the Commission ended on 31 January 2010.
FINDINGS OF THE COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS

Operations of the Commission

- The Commission was required to investigate the then existing Paramountcies and Paramount Chiefs first, before any other claim was investigated.
- In order for the Commission to realise its mandate and objectives, it developed its own procedures for its operations, which included research, public hearings and other methods of gathering information.
- In 2008 and 2010, the Commission produced two reports, the details of which are indicated below.
FINDINGS OF THE COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS

Legislative Amendment

- In 2010 government proposed an amendment to the Traditional Leadership Governance Framework Act, 2003 which amendment was approved by this Parliament.
- The amendment provided for a transitional period and a new position of traditional leadership.
- The transition is that irrespective of the decision of the Commission regarding those Paramountcies who did not qualify to be Kingships, they would continue until they pass on and their successors would be deemed Principal traditional leaders.
- A number of kings are deemed kings in terms of the provision of the amended section 28 of the Framework Act.
FINDINGS OF THE COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS

Findings of the Commission

- **AmaXhosa**
  - AmaXhosa in the past had two paramountcies namely:
    - AmaGcaleka and AmaRharhabe.
  - The Commission established in 2008 that AmaRharhabe were a junior house, which did not have a Kingship, whilst the Senior House did have a Kingship.
  - In 2010, the Commission further established that the Kingship of AmaXhosa/AmaGcaleka resided within the House of Xolilzwe, and that his son Mpendulo Calvin Sigcau, rightfully succeeded him.
  - The recognition certificate of King Mpendulo Calvin Sigcau was handed over to him in February 2011. However, AmaRharhabe approached the high Court to reverse the 2008 decision of the Commission and the subsequent announcement by the President of the Republic of South Africa.
Findings Commission (Cont)

AmaMpondo

- AmaMpondo had in the past two paramountcies namely:
  - AmaMpondo of Qaukeni and AmaMpondo of Nyandeni.
- The Commission established in 2008 that AmaMpondo of Nyandeni were a junior house without a Kingship, whilst the Senior House of Qaukeni had a Kingship.
- In 2010, the Commission further established that Kingship of AmaMpondo resided within the lineage of Zanozuko Tyelovuyo Sigcawu who was conceived through the ukungena custom. However, the current King Mpondombini Justice Sigcawu approached the High Court for an interdict to prevent his removal from the throne and the installation of Zanozuko as the King of amaMpondo. The interdict was granted in favour of the King Mpondombini Justice Sigcawu.
- The current King of AmaMpondo is still King Mpondombini Justice Sigcawu (Ah! Thandizulu) until the review case has been finalised.
- As part of the soft landing, the Kingship of AmaMpondo of Nyandeni is recognised only in terms of section 28(9)(b) of the Act, and his successor will be recognised as a principal traditional leader.
- The King of AmaMpondo of Nyandeni, King Ndamase kaNdamase also approached the High Court to reverse the 2008 findings of the Commission. However, King Ndamase was given his recognition certificate as a deemed King in February 2010.
Finding of the Commission cont, ...

- AbaThembu
  - AbaThembu had two paramountcies in the past, namely:
    - AbaThembu of Rhoda and AbaThembu of Dalindyebo.
  - The Commission established in 2008 that AbaThembu of Rhoda were a junior house, which did not have a Kingship, whilst the Senior House of Dalindyebo had a Kingship.
  - In 2010, the Commission further established that Kingship of AbaThembu resided with King Buyelekhaya Dalindyebo.
  - The Kingship of AbaThembu of Rhoda will continue to exist until the then King has passed on and the successor would be regarded to be a Principal Traditional Leader, in terms of section 28(9)(c) of the Traditional Leadership and Governance Framework Act, 2003.
  - The recognition certificate of King Buyelekhaya Dalidy’ebo has not been issued due to the demands he has put before government.
  - AbaThembu of Rhoda (Matanzima) are thus currently recognised as a Principal Traditional Leadership and not a Kingship.
Findings of the Commission cont....

AmaNdebele

- AmaNdebele had two paramountcies in the past, namely:
  - AmaNala and AmaNdzundza.
- The Commission established in 2008 that AmaNdzundza were a junior house, which did not have a Kingship, whilst the Senior House of AmaNala had a Kingship.
- In 2010, the Commission further established that the Kingship of AmaNdebele resided within the House of King Makhosoke II, and a certificate of recognition was handed to King MaKhosoke II in December 2010.
- As part of the soft landing, the Kingship of AmaNdzundza is recognised only in terms of section 28(9)(b) of the Act, and his successor will be recognised as a principal traditional leader.
- King Mabhoko III (Mbusi Mahlangu) was given his recognition certificate as a deemed King in February 2010.
- The delay of the recognition certificate was a Court interdict by one member of the royal family who had developed an interest into the position.
- He lost the case with costs hence the recognition certificate was issued in February 2011.
FINDINGS OF THE COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS

Findings of the Commission conti....

- AmaZulu
  - The Commission established that amaZulu did have a Kingship.
  - The Kingship of amaZulu resided under the lineage of Cetshwayo.
  - The King of AmaZulu, King Goodwill Zwelithini Zulu has been recognised as Isilo samaZulu.
  - A ceremony to hand over his recognition certificate is being arranged.
FINDINGS OF THE COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS

Findings of the Commission conti....

- **Batlokoa**
  - The Commission investigated the paramountcy of Batlokoa, and established that it was not a Kingship.
  - As part of the soft landing, the Kingship of Batlokwa is recognised only in terms of section 28(9)(b) of the Act, and the successor of the current King will be recognised as a principal traditional leader.
  - The recognition certificate of King Lekunutu Cavandish Mota was handed over to him in February 2011.
FINDINGS OF THE COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS

Findings of the Commission conti….

- Bakwena
  - The Commission investigated the paramountcy of Bakwena, and established that it was not a Kingship.
  - As part of the soft landing, the Kingship of Bakwena is recognised only in terms of section 28(9)(b) of the Act, and the successor of the current King will be recognised as a principal traditional leader.
  - The recognition certificate of King Mopeli Thokwana Mopeli was handed over to him in February 2011.
FINDINGS OF THE COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS

Findings of the Commission conti....

- **Bapedi Ba Marota**
  - The Commission investigated the paramountcy of Bapedi headed by Sikhukhune, and established that the paramountcy of Bapedi did exist, but that it did not reside with the House of Sikhukhune.
  - The Kingship of Bapedi resided with the House of King Thulare Victor Thulare.
  - The recognition certificate of King Thulare Victor Thulare has not yet been issued to him due to the fact that there is a review Case in the North Gauteng High Court.
FINDINGS OF THE COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS

Findings of the Commission conti....

- VhaVenda
  - The Commission investigated the claim of VhaVenda, including the claim of five claimants to the throne, namely:
    - Azwidowi Tshidziwelele Nephawe on behalf of Vhangona;
    - Azwianewi David Mutshinvalo Ravhura on behalf of the House of Ravhura;
    - Midiavhathu Prince Kennedy Tshivhase;
    - Gordon Mphaphuli; and
    - Toni Peter Ramabulana Mphephu.
  - The Commission found that the Kingship for the VhaVenda as a whole resided with Toni Peter Ramabulana Mphephu.
  - A recognition certificate could not be handed over to him due to a Court interdict that has prevented government from recognising him.
Findings of the commission cont….

- The Commission further investigated other claims and found that the following did not have any kingships at all:
  - AmaHlubi;
  - AmaShangane;
  - AmaKwayi;
  - AmaKhonjwayo;
  - AmaSwati akaMlambo; and
  - AmaMpondomise.
- All these claims were dismissed.
FINDINGS OF THE COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS

Implementation of the findings of the Commission

- The Department of Traditional Affairs has already issued recognition certificates to several Kings as part of the implementation of the findings of the Commission and the decisions of the President of the Republic of South Africa.
- The issuing of the certificates was done in partnership with the relevant Provincial Governments, due to the concurrent responsibility on matters of traditional Leadership.
- The Department is furthermore defending all the High Court litigation matters, which emanate from the findings of the Commission and the decisions of the President of the Republic of South Africa.
FINDINGS OF THE COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS

Implementation of the findings
- The following Kings have received their certificates

<table>
<thead>
<tr>
<th>Kingship</th>
<th>King</th>
<th>Province</th>
</tr>
</thead>
<tbody>
<tr>
<td>AmaXhosa</td>
<td>Mpendulo Calvin Sigcau</td>
<td>Eastern Cape</td>
</tr>
<tr>
<td>AmaMpondo of Nyandeni</td>
<td>Ndamase KaNdamase</td>
<td></td>
</tr>
<tr>
<td>AmaNdebele</td>
<td>Makosoke Enock Mabhena</td>
<td>Mpumalanga</td>
</tr>
<tr>
<td>AmaNdebele of Ndzundza</td>
<td>Mbusi Mahlangu</td>
<td></td>
</tr>
<tr>
<td>Batlokwa</td>
<td>Lekunutu Cavandish Mota</td>
<td>Free State</td>
</tr>
<tr>
<td>Bakwena</td>
<td>Mopeli Thokoana Mopeli</td>
<td></td>
</tr>
</tbody>
</table>
FINDINGS OF THE COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS

The following Kings have **not** received their recognition certificates as yet:

<table>
<thead>
<tr>
<th>Kingship</th>
<th>King</th>
<th>Reasons</th>
<th>Province</th>
</tr>
</thead>
<tbody>
<tr>
<td>AmaZulu</td>
<td>Zwelithini Goodwill Zulu</td>
<td>The province is arranging a function for the certificate of recognition to be handed over</td>
<td>KwaZulu-Natal</td>
</tr>
<tr>
<td>AbaThembu</td>
<td>Zwelibanzi Dalindy’ebo</td>
<td>He has set conditions to be met by Government before accepting the certificate of recognition</td>
<td>Eastern Cape</td>
</tr>
<tr>
<td>Bapeli</td>
<td>Thulare Victor Thulare</td>
<td></td>
<td></td>
</tr>
<tr>
<td>VhaVenda</td>
<td>Toni Peter Mphephu</td>
<td>High Court Interdicts</td>
<td>Limpopo</td>
</tr>
</tbody>
</table>
### Litigation cases

<table>
<thead>
<tr>
<th>Kingship</th>
<th>Province</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. VhaVenda</td>
<td></td>
<td></td>
</tr>
<tr>
<td>II. Bapedi Ba Marota</td>
<td></td>
<td></td>
</tr>
<tr>
<td>III. AmaShangane</td>
<td>Limpopo</td>
<td>These Applicants have all approached the High Court to set aside the decision of the President of the Republic of South Africa as announced on 29 July 2010.</td>
</tr>
<tr>
<td>I. AmaPondo of Nyandeni</td>
<td>Eastern Cape</td>
<td></td>
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<tr>
<td>II. AmaMpondomise</td>
<td></td>
<td></td>
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<tr>
<td>III. AmaRharabe</td>
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<td></td>
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<tr>
<td>I. AmaNdzundza (Litho)</td>
<td>Mpumalanga</td>
<td></td>
</tr>
</tbody>
</table>
FINDINGS OF THE COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS

Conclusion

- The Commission on Traditional Leadership Disputes and Claims did a wonderful job under the circumstances taking into consideration that it was deciding on something that happened centuries ago.
- The Department of Traditional Affairs is confident that it will win all the litigation cases with cost.
- All the the remaining recognition certificates will be issued to all Kings before the end of this financial year.

Thank you