



**NORTH WEST
NOORDWES**

EXTRAORDINARY • BUITENGEWOON

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PROCLAMATION • PROKLAMASIE

PROCLAMATION 46 OF 2016**COMMISSION OF INQUIRY INTO THE TRADITIONAL LEADERSHIP
DISPUTES IN RESPECT OF THE BAKGATLA BA KGAFELA COMMUNITY
DISPUTE, BATLHAKO BA LEEMA AND BAPO I AND II COMMUNITY
DISPUTES RESPECTIVELY**

I, Supra Obakeng Ramoeletsi Mahumapelo, hereby in my capacity as Premier of the North West Province and in terms of section 127(2)(e) of Act 108 of 1996 (Constitution of the Republic of South Africa), hereby appoint a Commission of Inquiry to investigate traditional succession disputes and claims around:-

- (1) Bakgatla ba Kgafela traditional dispute and claim;
- (2) Batlhako ba Leema succession and dispute; and
- (3) Bapo I and II traditional disputes.

1. Bakgatla ba Kgafela

Succession dispute broke at the time of Kgosi Tidimane Ramono Pilane, on or about 1993. Certain members of the Community have approached the High Court to seek various orders.

Furthermore Mr Merafe Ramono during 2013 referred the leadership dispute to the North West Provincial Committee of the Commission, where recommendations were not approved as per reasons advanced on 24/02/2016 hence this Commission to investigate and find solution and settlement to the matter.

2. Batlhako ba Leema

Since the death of Kgosi Leema Batleng In October 2005 and the subsequent appointment of his widow Kgosigadi Nkibi Batleng as regent for her then teenage daughter Semodieng, there has been discontent amongst members of the royal family and the Khuduthamaga. This has led to a split

in the Khuduthamaga which has culminated in a number of court cases wherein the Premier was cited as a party. The daughter being of age has not been throned.

With the last court matter, an order of court was made to refer the matter to the Commission hence this appointment to look into the crux of the dispute and find solution and settlement to the matter.

3. Bapo I and II

There was also a High Court matter in this regard under case No. M9/14 whereby a number of orders were sought, even subsequent interventions were unsuccessful hence this Commission with the following terms of reference:-

- 3.1 To investigate whether the bogosi of the Bapo I and II traditional community is properly constituted and in accordance with the customs of the traditional community and determine the rightful successor to the bogosi of the Bapo I and II traditional community.
- 3.2 To determine the relationship amongst the Mogale clan, the Maimane sub-clan and the Moerane sub-clan.
- 3.3 To identify the legitimate members of the Royal Family and the Khuduthamaga of the Bapo I and II traditional community.

4. The Commissioner shall be made of the following persons:-

4.1 Commissioners:

- 4.1.1 Judge GSS Maluleke – Chairperson
- 4.1.2 Advocate Sesi Baloyi – Member
- 4.1.3 Professor Mahlomi Moleleki – Member (replacing Prof. P. Sithole)

- 4.2 The evidence leaders shall be:
 - 4.2.1 Advocate Thembeke Nqckukaitobi
 - 4.2.2 Advocate Benny Makola
 - 4.2.3 Adv. K. Mokotedi

- 4.3 To assist the Commission as and when required are the following
 - 4.3.1 Advocate M. Moagi
 - 4.3.2 Advocate S. Kabelo
 - 4.3.3 Advocate Pontsho O Mosiane
 - 4.3.4 Advocate M. Matlapeng

- 5. The Commission shall make recommendations to the Premier (including interim report).

- 6. In considering all the terms of reference relating to specific tribes, the Commission shall be enjoined to apply section 39(2) and 212 of the Constitution and any relevant case laws, in relation to all terms of reference.

Given under my hand and seal at **Mahikeng** on**June 2016**

PREMIER: NORTH WEST PROVINCE

MEC: ARTS CULTURE AND TRADITIONAL AFFAIRS

Schedule 4

REGULATIONS

1. In the regulations, unless the context otherwise indicates –

“**Chairperson**” means the Chairperson of the Commission;

“**Commission**” means the Commission of Inquiry into Traditional Claims and Disputes within the North West Province and also claim and dispute of Bakgatla Ba Kgafela senior traditional leader, Chieftainship of Batlhako Ba Leema and investigation of Bogosi of Bapo I and II .

“**document**” includes, whether in electronic form or otherwise, any book, pamphlet, record, list, circular, plan, poster, publication, drawing, photograph, picture or data, and also any disc, harddrive recording or the other device by means of which information or data is recorded or stored;

“**inquiry**” means the inquiry conducted by the Commission;

“**member**” means a member of the Commission;

“**Premier**” means the Premier of North West Province;

“**MEC**” means Member of the Executive Council;

“**officer**” means a person in the full-time service of the State who has been appointed to designated to assist the Commission in the execution of its functions; and

“**premises**” includes any land, building, structure, part of a building or structure, vehicle, conveyance, vessel or aircraft.

2. The proceedings of the Commission shall be recorded in the manner determined by the Chairperson.

3. (1) Any person appointed or designated to take down or record the proceedings of the Commission in shorthand or by mechanical or electronic means or to transcribe such proceedings which have been so taken down or recorded shall at the outset take an oath or make an affirmation in the following form:

I, A.....B....., declares under oath/ affirm and declare –

- (a) That I shall faithfully and to the best of my ability take down/record the proceedings of the Commission of Inquiry into Traditional Claims and Disputes within the North West Province in shorthand/ by mechanical/ by electronic means as ordered by the Chairperson of the Commission; and;

- (b) That I shall transcribe fully and to the best of my ability any shorthand notes/ mechanical record/ electronic record of the proceedings of the said Commission made by me or by any other person.

- (2) No shorthand notes or mechanical or electronic record of the proceedings of the Commission shall be transcribed except by order of the Chairperson.

4. (1) The Chairperson may designate one or more knowledgeable or experienced persons to assist the Commission in the performance of some of its functions, in a capacity other than that of a member;

- (2) Notwithstanding the composition of the Commission, the proceedings thereof shall not be affected by the absence of any member. It shall be competent for two Commissioners to proceed with the business of the Commission.

- (3) The Commission shall, where necessary be assisted by officers of any Department of State seconded to its services or persons in the service of any public or other body who are by arrangement with the body concerned seconded to the service of the Commission.

5. Any person designated or seconded under regulation 4 who is not an employee in the public service, may be paid such fees or travelling and

subsistence allowance, while engaged upon the business of the Commission, as the responsible Member of the Executive Council for Traditional Affairs may with the concurrence of the responsible Member of the Executive Council for Finance.

6. Any officer or person designated thereto by the Chairperson may be present at any stage of the inquiry or the gathering of information or the hearing of evidence at the inquiry.
7. Any person appearing before the Commission may be assisted by an advocate or an attorney, at own cost.
8.
 - (1) No person appearing before the Commission may refuse to answer any question on any ground other than the privilege contemplated in section 3(4) of the Commissions Act, 1947 (Act No. 8 of 1974).
 - (2) No evidence regarding questions and answers contemplated in sub regulation (1), and no evidence regarding any fact or information that comes to light in consequence of any such questions or answers, shall be admissible in any criminal proceedings, except in criminal proceedings where the person concerned is charged with an offence in terms of section 6 of the Commissions Act, 1947 (Act No. 8 of 1947), or regulation 14.
 - (3) Any witness appearing before the Commission may be cross-examined by a person only if the Chairperson permits such cross-examination by such person because the Chairperson deems it necessary in the interest of the functions of the Commission.
 - (4) Any witness may be re-examined by his or her legal representative for the purpose of explaining then evidence given by the witness during his or her examination.
9. Where, at the time of any person presenting information to or giving evidence before the Commission, members of the general public are or have been excluded from attendance at the proceedings of the Commission, the Chairperson may, on the request of such a person, direct that no person shall

disclose in any manner whatsoever the name or address of such person or any information likely to reveal his or her identity.

10. Whenever the Commission is satisfied upon evidence or information presented to it that the Commission's inquiry may adversely affect any existing, instituted or pending legal proceedings or any inquiry instituted in terms of any law, evidence which is relevant to such legal proceedings or inquiry shall be dealt with by the Commission in such a manner as not to adversely affect such legal proceedings or inquiry.
11. (1) Any officer may, with a warrant, for the purposes of the inquiry, at any reasonable time and without prior notice, or with such notice as he or she may deem appropriate, enter and inspect any premises and demand and seize any document or article which is on such premises.

(2) Any entry upon or search of any premises or person thereon in terms of this regulation, shall be conducted with strict regard to decency and order, including –
 - (a) a person's right to, respect for and the protection of his or her dignity;
 - (b) the right of a person to freedom and security; and
 - (c) the right of a person to his or her personal privacy.
- (3) The premises referred to in sub-regulation (1) may be entered only by virtue of a warrant issued in chambers by a magistrate, regional magistrate or judge of the area of jurisdiction within which the premises is situated.
- (4) A warrant referred to in sub-regulation (1) may be issued by a judge in respect of premises situated in another area of jurisdiction, if he or she deems it justified.
- (5) A warrant referred to in sub-regulation (1) may be issued only if it appears to the magistrate, regional magistrate or judge from information revealed under oath or affirmation that there is a need for a

warrant authorising a search and seizure and that there are reasonable grounds to believe that any document or article referred to in sub-regulation (1) is on or at such premises or suspected to be on or at such premises.

12. (1) No person shall communicate to any other person any matter or information which may have come to his or her knowledge in connection with the inquiry or allow or permit any other person to have access to any of his or her duties in connection with the functions of the Commission or by order of a competent court.

(2) Every person in the service of the Commission and every officer, but not the Chairperson or member, shall, before performing any duty in connection with the Commission, take and subscribe before the Chairperson an oath in the following form:

"I, A,B, declare under oath/ affirm and declare that, except in so far as it is necessary in the performance of my duties in connection with the functions of the Commission of Inquiry into Traditional Claims and Disputes within the North West Province, I shall not communicate to any person any matter or information which comes to my knowledge in connection with the inquiry, or allow or permit any person to have access to any records of the Commission, including any notes, record or transcription of the proceedings of the Commission in my possession or custody or in possession or custody of the Commission or any officer".

13. No person shall insult, disparage or belittle the Chairperson or any member of the Commission or prejudice the inquiry or proceedings or findings of the Commission.
14. No person shall without the written permission of the Chairperson –
- (a) disseminate any document submitted to the Commission by any person in connection with the inquiry or publish the contents or any portion of the contents of such document; or

- (b) peruse any document , including any statement, which is destined to be submitted to the Chairperson or intercept such document while it is being taken or forwarded to the Chairperson.
15. No person shall, except in so far as shall be necessary in the execution of the terms of reference of the Commission, publish or furnish any person with the report or any interim report of the Commission or a copy or a part thereof or information regarding the consideration of evidence by the Commission, unless the Premier has authorised the publication.
16. (1) Without derogating from the provision of the Commissions Act, a person is guilty of an offence of he or she –
- (a) wilfully hinders, resists or obstructs any officer in the exercise of any power contemplated in regulation 11; or
- (b) contravenes regulation 8(1), 12(1), 14 or 15; or
- (c) contravenes regulation 13.
- (2) A person convicted of an offence in terms of sub-regulation (1) is liable-
- (i) in the case of an offence referred to in paragraph (a) or (b), to a fine not exceeding two hundred rand, or to imprisonment for a period not exceeding six months; and
- (ii) in the case of an offence referred to in paragraph (c), to a fine not exceeding one thousand rand, or to imprisonment for a period not exceeding 12 months
17. These regulations may be added to, varied or amended from time to time.

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