

**BAPO BA MOGALE I**

**TRADITIONAL DISPUTES AND CLAIMS**

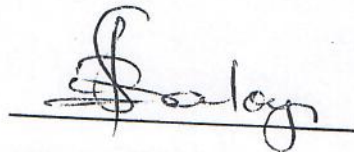
**FINAL REPORT**

TO THE PREMIER

MAY IT PLEASE YOUR HONOURABLE PREMIER:

WE HAVE THE HONOUR TO SUBMIT HERewith THE FINAL REPORT OF  
THE COMMISSION AS IT PERTAINS TO THE COMMUNITY OF BAPO BA  
MOGALE I

SIGNED AT JOHANNESBURG ON 28 AUGUST 2019



**MS BALOYI SC**  
(CHAIRPERSON)



**HOSI AK MAHUMANI**  
(MEMBER)

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## CHAPTER I

### INTRODUCTION

#### A. Background

1. By Proclamation No. 19 of 2016, Provincial Gazette Extraordinary No.7656, 15 June 2016, (the "Proclamation"), the Premier established the Commission  
  
*"to investigate traditional succession disputes and claims around*
  - 1.1. *Bakgatla Ba Kgafela traditional dispute and claim.*
  - 1.2. *Batlhako Ba Leema succession and dispute.*
  - 1.3. *Bapo I and II traditional disputes".*
2. In terms of clause 5, the Commission is required to make recommendations to the Premier.
3. On 28 April 2019, a claimant to bogosi of Bapo Ba Mogale obtained an Order in the matter Julius Mogale v The Premier, NW Province and others (North Gauteng High Court Case No. 30417/19) interdicting the release of the report of the Commission to the Premier. In the light of the Order of Court, the Commission did not release the Final Report which was to be



presented as one composite report on the four communities. The Final Report would be submitted to the Premier upon the discharge of the Order of Court.

4. On 30 July 2019, the court granted an Order directing that the report on Bakgatla Ba Kgafela be released to the community. In the light of the Order, it became necessary that we reconsider the format of the Final Report and to restructure it so that we report on each community that is not affected by the Order of 28 April 2019. In doing so, we have endeavored to reconstruct the Final Report without compromising the cohesiveness and completeness of each part of the Final Report as it pertains to each community.
5. We accordingly present this Final Report to the Premier dealing only with Bapo Ba Mogale I (Bapo I).

#### **B. Establishment of the Commission**

6. There is presently a dispute about bogosi of Bapo I. There is also a dispute about the constitution of the Khuduthamaga.
7. On establishing the Commission, the Premier appointed Commissioners –
  - 7.1. Retired Judge GSS Maluleke (Chairperson).

7.2. Advocate MS Baloyi SC (Member).

7.3. Professor P Sithole (Member).

8. To assist the Commission, the Premier appointed evidence leaders Advocates Benny Makola, Tembeka Ngcukaitobi, Morongwe Moagi, Naledi Mothapo and Pontsho Mosiane who were later assisted by Advocates Michael Matlapeng and Lerato Phasha.

9. Following the resignation of Professor P Sithole from the Commission, the Premier reconstituted the Commission as follows –

9.1. Retired Judge GSS Maluleke (Chairperson).

9.2. Advocate MS Baloyi SC (Member).

9.3. Professor M Moleleki (Member).

10. By Proclamation No.49 of 2017 (Provincial Gazette No.7838, 20 December 2017), and following the untimely death of Retired Judge GSS Maluleke, the Premier reconstituted the Commission as follows –

10.1. Advocate MS Baloyi SC (Chairperson).

10.2. Professor M Moleleki (Member).



10.3. Hosi Advocate AK Mahumani (Member).

11. Proclamation No. 49 of 2017 prescribes that all evidence presented before the Commission chaired by Retired Judge GSS Maluleke shall be deemed to be evidence presented before the reconstituted Commission.

12. In the course of the writing of this Final Report, Professor Moleleki unavoidably became unavailable to continue with the work of the Commission. As a result, the Commission continued its work with the Chairperson and Hosi Advocate Mahumani as permitted by clause 4(2) of the Regulations governing the Commission. Clause 4(2) reads *"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"*.

### **C. The Terms of Reference (ToR)**

13. The ToR were published in Proclamation No. 19 of 2016 and did not change in the period since the Commission was established in June 2016.

14. The ToR require the Commission to –

- 14.1. *"The hierarchy of the houses constituting the Bapo Ba Mogale Royal Family.*
- 14.2. *The rightful ruling house of Bapo Ba Mogale.*
- 14.3. *The rightful heir to the Bogosi of Bapo Ba Mogale.*
- 14.4. *The rightful members of the Bapo Ba Mogale Royal Family.*
- 14.5. *The rightful members of the Bapo Ba Mogale Khuduthamaga".*
15. In terms of paragraph 5 of the Proclamation, the Commission is required to make recommendations to the Premier on the questions under investigation.
16. In terms of paragraph 6 of the Proclamation, we are required to have regard to sections 39(2) and 212 of the Constitution.

**D. The Rules of the Commission**

17. The Chairperson issued Directives to regulate the business of the Commission (Provincial Gazette Extraordinary No.7656, 15 June 2016).  
The most pertinent directives and steps taken in terms thereof are -



- 17.1. In terms of **directive 4**, which provides that the Commission shall determine whether evidence presented to the inquiry or a representation to the inquiry is to be in writing or oral, the Commission determined that evidence will be presented in writing and orally.
- 17.2. In terms of **directive 5**, which provides that the Commission shall determine a person can participate in the inquiry and the manner and extent of their participation, the Commission invited members of the public with an interest in the matters before the Commission to make written and/or oral submissions.
- 17.3. In terms of **directive 8**, which provides for the filing of written submissions, including statements under oath; documents; legal submissions or any expert opinion, the Chairperson determined dates for the submission of written submissions to the Commission's Secretariat.
- 17.4. In terms of **directive 10**, which provides for oral evidence, the Commission directed that persons who wished to present oral evidence must submit a written summary of the evidence and an explanation of why they should be permitted to participate, taking into account the factors in **directive 5**.

17.5. In terms of **directive 20**, which gives the Chairperson the discretion to permit cross-examination and re-examination of witnesses, the Chairperson permitted persons presenting evidence to cross-examine and re-examine witnesses, on application to the Chairperson.

17.6. In terms of **directive 21**, which prescribes that the Commission will hold hearings open to the public, the Commission held public hearings at which it received evidence. The public hearings were held at the Rustenburg Municipality, Civic Centre, Rustenburg.

#### **E. The Participants**

18. By public notice to the community of Bapo Ba Mogale, the Commission invited members of the community and other interested persons to participate in the Commission and to present evidence. The Commission convened public hearings at which it received written, oral and documentary evidence, and received written and oral arguments from the evidence leaders and from the persons who appeared before us.

19. In conducting the inquiry and gathering evidence, we were greatly assisted by evidence leaders Advocates B Makola, M Matlapeng and L Phasha to whom we are profoundly indebted especially for the able manner in which they assisted those witnesses who did not have legal representation and yet sought to present evidence and to ask questions of



other witnesses. The complexity of their task was not lost on us and yet they professionally discharged the task without bias to any of the witnesses.

20. Witnesses presented written and/or oral evidence and documents. Whilst some witnesses who presented written statements did not present oral evidence, we have considered their written statements in arriving at our findings and recommendations that we make.

21. The oral evidence was mechanically transcribed and the complete record of evidence considered by us is available.

#### **F. The evidence**

22. The Commission held hearings open to the public in which received evidence. The evidence includes documents, written and/or oral evidence, evidence in support of some of the contending parties and evidence intended to put relevant facts to us. We are greatly appreciative of and thankful for their participation. They have lightened our task of collecting evidence relating to the issues arising from the terms of reference and provided useful information, however small. The complete list of witnesses and their representatives, where applicable, appears in **Appendix A.**

23. The evidence presented to us included, among others, historical accounts

passed on through families by word of mouth, the writings of authors Dr P-L Breutz A History of Batswana and Origin of Bophuthatswana, A Handbook of a Survey of the tribes of Batswana, S-Ndebele, Qwaqwa and Botswana; Breutz, History of the Batswana; Transvaal Native Affairs Department "Short History of the Native Tribes of the Transvaal, 1905", and expert evidence of Professors Samuel Freddy Khunou and CC Boonzaaier.

24. We have also considered the reports of – (i) Viviers, Sechoaro and Stopford Commission of Inquiry, established in 1982 (commonly referred to as the "Viviers Commission") – Report of the Commission of Inquiry into Chieftainship of Bapo Ba Mogale Tribe District Odi; Advocate LME Mabiletsa and Mr PP Ramoenyane, established in 1997 (the "Mabiletsa Commission") – The Report of the Commission into the Disturbances amongst Bapo Ba Mogale Tribe; and (iii) the Commission established in terms of sec 26A(1) of the Framework Act chaired by Mr BJ Tolo (the "Tolo Commission") – Recommendations on the Headmanship Claim of Bapo Ba Mogale Wonderkop Community. All three commissions, and the sources referred to in their respective reports, were referred to and relied upon by some of the witnesses.

25. In evaluating the evidence to answer the questions that we are mandated to investigate and to make recommendations in respect of, we have taken into account, in addition to the Constitution Act, 1996, the Traditional Leadership and Governance Framework Act of 2003 ("the Framework



Act”), the North West Traditional Leadership and Governance Act of 2005 (“the NW Act”), the customary law, traditions and practices of Bapo Ba Mogale I.

26. It is not the purpose and intention of this report to reproduce a run-down of all the evidence. If we did so, this report would unnecessarily run into hundreds of pages without adding any value to the report and the conclusions we arrive at. We must mention however that in arriving at the conclusions that we reach, and the recommendations we make, we have considered all the evidence and where we do not make reference to specific evidence and documents, or mention any witnesses by name, it does not mean that we have not considered or had regard to the evidence. We have done so.
27. Lastly, it is necessary that we mention that for convenience only, we refer to the role players by name only without reference to title. Our doing so should not be regarded as a sign of disrespect or slight to any person, past or present, and we tender our apology to any person who may be offended by this and assure them that we do so without any ill-will. Where we refer to any party by title, we do so either to distinguish them from another person with the same name or because it is convenient to do for other reasons.

## CHAPTER II

### HISTORICAL BACKGROUND

1. Professor Khunou cautions in his evidence that *"(T)he problem in reconstructing the past (or history) from oral traditions and interviews is that the further away in historical time the subject-matter is, the more problems a researcher has in finding people close enough to the events under survey"*. This is especially the case in the present matter which involves accounts of what transpired over 200 years ago and which mainly conveyed by word of mouth and is often not corroborated by other independent evidence. It is with this warning that we consider the evidence presented and available to us.
2. The following are recorded as the chiefs of Bapo Ba Mogale –
  - 2.1. Lotsane - first Kgosi.
  - 2.2. Majaka – Kgosi. Son of Lotsane.
  - 2.3. Tshwene – Kgosi. Son of Majaka.
  - 2.4. Mekhise – Kgosi. Son of Tshwene's predeceased eldest son from the first house, Maje. Mekhise died without issue and was succeeded by Maje's brother, Maruatona.



- 2.5. Maruatona – Kgosi. Son of Tshwene.
- 2.6. Tsiepe – Kgosi. Son of Maruatona (Breutz writes that it is uncertain whether he became Kgosi because he died a young man).
- 2.7. Maimane – Regent. Brother of Maruatona and Tsiepe's uncle. He raised seed for Tsiepe and a son, Moerane was born of this. Maimane acted for Moerane, a minor but refused to hand over bogosi when Moerane came of age. As a result, he and Moerane fought and Maimane left or was expelled from the tribe by Moerane.
- 2.8. Moerane – Kgosi.
- 2.9. Masite – Acting Kgosi during his father's lifetime. Son of Moerane.
- 2.10. Semetsa Botlhoko – Regent. Son of Moerane. He acted for Masite's son, Mogale Mogale, a minor at the time of Moerane's death.
- 2.11. Moruri - Regent. He acted for Mogale Mogale after the death of Semetsa.
- 2.12. Mogale Mogale – Kgosi. Son of Masite

- 2.13. Frederick Maruatona – Kgosi. Son of Mogale Mogale from the 1<sup>st</sup> house.
- 2.14. George Rangena Mogale – Regent. He acted for Frederick Maruatona's son, Edward Darius Mogalenyana, who was not of age at the time of his father's death.
- 2.15. Darius Mogalenyana Mogale – Kgosi. Son of Frederick Maruatona who succeeded in the place the first son Mogale who died young. He was deposed by the government in 1908. In is in this period (about 1896) that Diedrick Moerane, son of Mogale Mogale from the 4<sup>th</sup> house and uncle to Darius, left to establish what is now called Bapo Ba Mogale II.
- 2.16. Filius Rakgatla Mogale – Regent. Breutz records that he died in 1936). He was Darius Mogalenyana's younger brother from the second house and held bogosi for Edward Mogale, a minor at the time his father Darius was deposed and left the tribe with him to live in Heidelberg. Daniel Busang Mogale (from the fourth house).
- 2.17. Daniel Busang Mogale – Acting Kgosi. Brother of Filius Rakgatla from the fourth house.
- 2.18. Edward Darius Mogalenyane – Kgosi. Son of Darius Mogalanyane.



- 2.19. Daniel Busang Mogale – Acting Kgosi. He was appointed after Edward Darius Mogalenyana was deposed.
- 2.20. Fred Sekgotlhane Mogale – Kgosi. Son of Filus Rakgatla. He was “elected” Kgosi by the tribe after Edward Darius Mogalenyana died without issue.
- 2.21. Jeffrey Ramogae Mogale – Acting Kgosi.
- 2.22. Bob Edward Mogale - Kgosi.
3. Following the death of Bob Edward Mogale, Bapo I, the Royal Family has not identified a Kgosi for appointment by the Premier.
4. All the witnesses and claimants are agreed that the Mogale, Maimane and Moerane are directly related in their ancestry. They all descend from Lotsane. This is also apparent from the evidence. Bruetz lists the Maimane and Moerane as the second and third clans of Bapo Ba Mogale, after Bakgosing clan.
5. Professor Khunou records that present day Bapo Ba Mogale I (Bapo I) has an estimated population of about 30 000 who live in a cluster of villages, collectively referred to as Bapong. Historically, Bapo I were part of a larger Bapo Ba Mogale tribe which separated into Bapo I and Bapo Ba Mogale II about 1896.

### CHAPTER III

#### A. THE HIERARCHY OF THE HOUSES CONSTITUTING THE BAPO BA MOGALE ROYAL FAMILY

1. According to Bapo Ba Mogale customary law, the house that ranks the most senior is the house of the great wife. It is the great wife that bears the Kgosi. The wife accorded the status of great wife is not always the wife that was married first by the Kgosi and may be a wife married later but accorded the status of great wife for reasons that are recognized in the custom and tradition of the tribe.
2. The current claimants for bogosi all claim on the basis that they are descendants of Mogale Mogale.
3. Breutz records that Mogale Mogale had 12 wives and lists the following – Mabau (great wife); Mmamoitume; Matswaili; Matalle; Makgerepi; Masetulwe; Mapuleng; Dimakatswa; Dikilane and Mmamitsabanyane. None of the claimants have asserted a claim on the basis that they were born of Mabau, recorded by Breutz as the great wife, and none of the witnesses testified to Mabau being the great wife of Mogale Mogale. Other than Breutz, none of the documents that we have considered make reference to Mabau or that she was the great wife of Mogale. Accordingly, we do not say any more about Mabau. Significantly, we note that all the chiefs who descend from Mogale Mogale that we have discussed above



(we exclude regents and acting chiefs), descend from the house of Mmamakwa.

4. Of the reported 12 wives of Mogale Mogale, the claimants rely on Mmamakwa; Mmathejane; Mmatladi and Mmatswaidi in their claims for bogosi. Notwithstanding that Mmatswaidi is the only name that appears in Breutz's list of wives, all the claimants are agreed that Mmamakwa, Mmathejane, Mmatladi and Mmatswaidi were among Mogale Mogale's wives and are his first four wives. We have not found other evidence that contradicts the claimants or that explains the differences in the names listed by Bruetz and those relied upon by the claimants. On the evidence before us, we accordingly accept that the four names relied upon by the claimants are Mogale Mogale's known first four wives.
5. According to the evidence, Mmatladi was the first wife that Mogale Mogale married, followed by Mmathejane, Mmamakwa and Matswaidi. Notwithstanding that she was only the third wife to be married, Mmamakwa obtained the status of great wife, and therefore first house, because she was from the royal family of Bafokeng. The according of the status of great wife, and therefore first house, to Mmamakwa was in accordance with custom and tradition. Andrew Nkwane Mogale, son of Bob Edward Mogale, and George Joroso Mogale, a claimant, accept that Mmatladi was the first wife to be married Mogale Mogale and that Mmamakwa was accorded status of great wife.

6. Mogale Mogale bore the following sons who, Breutz records, were to play a notable role in the tribe –
- 6.1. Frederik Maruatona - born of Mmamakwa (great wife).
  - 6.2. Gert Thejane - born of Mmathejane (second wife).
  - 6.3. George Rangena - born of Mmatladi (third wife).
  - 6.4. Diederik Moerane - born of Mmatswaili (fourth wife).
7. We deal with the question raised in the ToR only in respect of the four wives of Mogale Mogale referred to by the claimants. We do so, because from the evidence available to us, not much, if anything is said about the other wives and their standing in the chronology of marriage. Most importantly for our purposes, none of the claimants assert bogosi on the basis of any of those wives. Our decision not to deal with these other wives is not in any way a denial of their existence or a reflection of the standing of their houses in the house of Mogale Mogale.
8. From the evidence, of Mogale Mogale's houses, the house of Mmamakwa was the senior house. She was accorded the status of great wife, and therefore first house, because she was married from the Bafokeng royal family. This was notwithstanding that she was married third in line. The claimants are agreed on this, although George Joroso Mogale now seeks



that we correct the "*wrong*" that resulted in Mmamakwa gaining the status of great wife over Mmatladi who was the first to be married.

9. As the great wife, the children of Mmamakwa and their descendants are senior to all of the other houses of Mogale Mogale. As the eldest son of the great wife, Frederik Maruatona and his descendants are senior to all his siblings and their descendant, from the same house of Mmamakwa and from the other houses of Mogale Mogale. Darius Mogale, Edward Mogalenyane, Henry Nkwane Schoeman Mogale, Bod Edward Mogale, and the claimant Andrew Nkwane Mogale descend from Marutaona. They are therefore of the senior house. According to Bapo Ba Mogale custom and laws of succession, the Kgosi is selected from this senior house before consideration of the other and junior houses.
10. The second house of Bapo Ba Mogale derives from Mmathejane, the second wife. Gert Thejane is the most senior of Mmathejane's sons. Accordingly he and his descendants are the most senior house of Mmathejane. The house of Gert Thejane and his descendants is senior to the houses of his siblings from the house of Mmathejane and from the third and following houses of Mogale Mogale.
11. The third house of Bapo Ba Mogale is the house of Mmatladi. Whilst she was the first wife to be married by Mogale Mogale, she was displaced from position of senior wife, and therefore senior house, by the subsequent marriage and elevation of Mmamakwe to great wife. Of her children,

George Rangena, is the eldest son, and he and his descendants are the senior house of Mmatladi. George Rangena and his descendants are senior to his siblings born of the same mother and of the fourth and following houses of Mogale Mogale.

12. The fourth house of Bapo Ba Mogale is the house Mmatswaidi. Diederick Moerane is the eldest son born of this house. Diederik Moerane and his descendants who remained in Bapo I after he left the tribe to establish Bapo Ba Mogale II are the senior house in the house of Mmatswaidi and are senior to his siblings born in the same house and of the fifth and further houses.



## **B. THE RIGHTFUL RULING HOUSE**

1. It follows from the discussion in the preceding paragraph that the rightful ruling house must be and is the house of Mogale Mogale, and his descendants from the great wife. These are Frederik Maruatona, Darius, Edward, Nkwane and Bob Mogale.
2. In the present day, the rightful ruling house is the house of Edward Bob Mogale and his descendants. This is by reason of the fact that Edward Nkwane Mogalenyane did not bear any male children to succeed him and by operation of the customary law of Bapo Ba Mogale, his chieftancy devolved to the house of his younger brother, Henry Nkwane Schoeman Mogale.
3. Whilst Henry Nkwane Schoeman Mogale, the rightful heir in the light of his older brother Edward Mogalenyane not having borne male children and as a result of which his line of bogosi became extinct in accordance with customary law, did not become Kgosi, his son, Bob Edward Mogale was the rightful heir to succeed Edward Mogalenyane.
4. Bob Edward Mogale's house is accordingly the ruling house.

### C. THE RIGHTFUL HEIR TO THE BOGOSI

1. Bob Edward Mogale was appointed Kgosi from 1 July 1982 until his death in 2017. Questions and challenges to the legitimacy of his chieftainship have reared their heads from the time of his appointment, at the latest, until his death, and has contributed to continuing instability and strife in the community. At least 3 commissions, excluding ours, have been tasked with investigating the legitimacy of Bob Edward Mogale's chieftainship and each found that he was the legitimate Kgosi. And yet, the challenges to his chieftainship continue, notwithstanding that the findings, recommendation and acceptance thereof first by President Lucas Mangope and later by Premier Popo Molefe have not been set aside by a court.
2. The question of the rightful ruling house, and therefore the rightful heir to bogosi, was previously considered by the the Viviers Commission and by the Mabiletsa Commission. Julius Mogale also says that the commission of JM Mafereka (the "Mafereka Commission") also considered the issue. Whilst we have had sight of and considered the reports of the Viviers and Mabiletsa commission, we have not had sight of the report of the Mafereka Commission, if one was submitted to the Premier.
3. Both the Viviers and Mabiletsa commissions issued final reports in which they found that Bob Edward Mogale was the rightful heir to bogosi. The Mabiletsa Commission also accepted that a resolution of the royal house (Khuduthamaga) that Bob Edward Mogale would be succeeded by his son



Nkwane Andrew Mogale, accorded with the customary law of Bapo Ba Mogale. The findings and recommendations of the two commissions, and the principals' decision to accept them have not been set aside. They the decisions to accept the recommendations and to comply therewith therefore remain valid.

4. Breutz records the following chiefs who ruled after the death of Mogale Mogale, with the first two ruling before Bapo Ba Mogale separated into Bapo Ba Mogale I and Bapo Ba Mogale II -

- 4.1. Frederick Maruatona (1874–1880) - Chief. Eldest surviving son in the house of the great wife Mmamakwa (first house).

- 4.2. George Rangena (1880 – 1893) - Regent. Born of Mmamatlili (the third house) of Mogale Mogale and holding for Darius Mogale, the eldest surviving son of Frederick Maruatona. Darius was a minor at the time that his father, Frederick Maruatona, died.

- 4.3. Darius Mogale (1893– 908) - Kgosi. Son of Frederick Maruatona born of the great wife. He was deposed in 1908.

- 4.4. Filius Rakgatla Mogale (1908–1936) - Acting Kgosi. He was born of the second house of Maruatona and therefore half-brother of Darius Mogale. He was appointed Acting Kgosi after Darius Mogale was deposed and left the tribe. As Acting Kgosi, Filius Rakgatla held on

behalf of Edward Mogalenyane, the son of Darius Mogale, who left Bapo I as a minor when his father was deposed and left the tribe to live elsewhere and returned later..

4.5. Daniel Busang (1936–1937) - Acting Kgosi. Born of the third house of Maruatona and therefore half-brother of Darius Mogale. He was appointed Acting Kgosi in the absence of Edward Mogalenyane who had not yet returned to the community after his father Darius was expelled in 1908.

4.6. Edward Mogalenyane (1937–1949) – Kgosi. Son of Darius Mogalenyana born of the great wife. He did not bear any male children to succeed him. There are contesting accounts whether Edward Mogalenyane was deposed in 1949 or simply became unable to discharge his role as Kgosi. We do not consider that anything of significance turns on this for the purposes of our ToR and therefore do not make any finding on the issue.

4.7. Daniel Busang (1949–1951) - Acting Kgosi. This is the same person as in paragraph 4.5 above who was re-appointed Acting Kgosi/Regent.

4.8. Frederik Stanko Mogale (1952–1980) – Kgosi. He is the son of Filius Rakgatla Mogale and was appointed, some witnesses say elected, to take the place of Edward Mogalenyane. The appointment of Frederik



Stanko Mogale was contrary to the customary law of Bapo in that he did not come from the house of the great wife and was appointed or "elected" by the tribe to the position of Kgosi.

4.9. Jeffrey Ramagae (1980-1982) - Acting Kgosi.

4.10. Bob Edward Mogale – (1982-2017) – Kgosi. Breutz records that his relationship, presumably to the preceding chiefs, is unknown. However, from the other evidence before us, Bob Edward Mogale is recorded as the eldest son of Henry Schoeman Nkwane Mogale, the younger brother of Edward Mogalenyane. Henry Schoeman Nkwane Mogale did not become chief, having been overlooked and Frederik Stanko Mogale "elected" to the position instead.

15. There are 6 claimants to bogosi. The claimants accept that succession to bogosi is based on the principle of male primogeniture. The "rule" has been described as follows in Tswana Law of Succession, Schapera "A handbook of Botswana Law and Custom. Also BJ van Niekerk: Opvolging By Die Kwena van Molepolole, published in Huminatas, RSA, Vol 24 State v Law of Succession,

*"Chieftainship is hereditary in the male line, passing normally from father to son. In these days of monogamy, the first heir to the chieftainship is the chief's eldest son. If his wife dies without male issue, he marries again and the eldest son from the second marriage will be the heir. Seniority is determined by priority of birth. An elder son is always senior to a second son. The descendants of the first son are always senior to a second son. The descendants of the*

*first son are always senior to the second son and his descendants.*

*In a polygamous marriage of the chief, the order of succession is governed by the ranking of the wives. The first heir is the chief's eldest son by his great wife and his male descendants after him in sequence of seniority. Failing a direct heir by the great wife, the right of succession falls to the house of the wife second in order, and so forth."*

16. It is also accepted by all the claimants that according to customary law, where a Kgosi does not bear male children to succeed him, bogosi devolves laterally to his male sibling in order of their seniority.

17. Professor Boonzaaier states that there are, in addition, other preconditions that an aspirant Kgosi must meet to be appointed, including his mental state, character, loyalty to the tribe, physical state and that he must be an adult and free from physical and mental defects. Coertze (1987:255-256) also writes that if the rightful heir is stubborn, born and raised outside the tribal area and became alienated from custom and shows no interest in tribal affairs, this may disqualify him from bogosi (Coertze). However, as Viviers and Stopford say, these additional factors do not in themselves disqualify a legitimate candidate. They are simply matters that the Royal Family may take into account in identifying a Kgosi. We consider that it is factors that the Premier, when acting in terms of section 13 of the NW Act to appoint a Kgosi, should and must have regard to.



18. Applying the above rules of succession, a Kgosi is accordingly appointed on the basis that he is the senior male descendant of the house of the great wife. For present purposes, the senior male descendant is Maruatona.
19. The last Kgosi, Bob Edward Mogale, was officially recognized as Kgosi following the recommendations of the Viviers Commission which then President Lucas Mangope accepted. That Commission found that as the son of Schoeman Nkwane Mogale, Bob Edward Mogale was the rightful heir to bogosi.
20. Whilst from the evidence it appears that the recognition of Bob Mogale was at different times accepted and sometimes challenged, the findings and recommendation of the Viviers Commission and the decision of President Mangope to accept the recommendations and to appoint him have nonetheless never been challenged in a court of law or sought to be set aside. Ordinarily, this should be the end of the matter of determining the legitimate or rightful successor to Bob Mogale. However, that was not the case.
21. In 1997, then Premier, Popo Molefe appointed the Mabiletsa Commission to investigate, including, *"whether the chieftainship of the tribe is properly constituted and in accordance with the customs of the tribe"*. On the evidence, including the evidence of government ethnologist SA Ruthoane and the *"royal house (Khuduthamaga)"*, including a resolution of the

Khuduthamaga that *"If Kgosi Bob Mogale died (sic) Anias Mogale would act on behalf of Bob Mogale's son Edward who is of a minor age"*, which the Commission found, *inter alia*, that it accorded with the customary law of Bapo Ba Mogale, that commission found that Bob Edward Mogale was the rightful incumbent. Again, this should have been the end of any dispute about the legitimate successor to bogosi but it was not to be. This notwithstanding that the findings and recommendations of the Mabiletsa Commission and their acceptance by the Premier have not been set aside by a court of law.

#### **THE CLAIMANTS TO BOGOSI**

22. Some claimants claim bogosi on the basis that they are the legitimate heirs on the basis of seniority over the lineage and family of Bob Edward Mogale and yet others, like the Moeranes, claim on the ground that the Mogales have mismanaged the affairs of the tribe and should relinquish bogosi to them so they administer the affairs of the tribe properly for the benefit of the tribe.

#### **Billy Lucas Mogale**

23. Billy Lucas Mogale is a member of the Matuma clan and claims bogosi on the basis of the seniority of the Matuma clan. He is a descendant of Gert Thejane Mogale, whom he says was the father of Mogale Mogale. He told us that his father, Hendrik Matlhepe, was the son of William Nkwati in whose favour George Rangena renounced his seniority and bogosi. He



alleges that Frederik Maruatona was the brother of Mogale Mogale and not his son and was therefore not born of the great house.

24. According to Professor Khunou, the Matuma fall under the Bakgosing clan which is headed by the Kgosi. They therefore cannot be rightful claimants to bogosi. He disputes that the Matuma constitute a clan apart from Bakgosing and says that there cannot be a clan within a clan, which would be the case if Matuma were a clan under Bakgosing. He describes Matuma as a sub-clan. We note that Breutz lists Kgosi, Matuma, Mokgato and Kgarepa or Mosadi-mogolo under the Bakgosing clan (kgoro), with Professor Khunou noting that Breutz's is the only archival mention of Matuma in the list of clans of Bapo. From this evidence, and in accordance with customary law, it appears that the rightful heir to the Kgosi would be his descendant or descendant in his house. Matuma are not descendants of the Kgosi.
25. With respect to the evidence that Rangena renounced his seniority and claim to bogosi in favour of William Nkwati, Professor Khunou points out that *"the issue of succession is the prerogative of the royal family"*. Only the royal family has the authority to appoint a successor to bogosi. It cannot be single-handedly decided and transferred to another by a person who does not wish to be Kgosi. We find that this accords with the customary law of succession that bogosi is hereditary and in accordance with the principle of male primogeniture.



26. The claim of Billy Lucas Mogale is supported by Moses Matlakala Mogale, son of Martin Joroso Mogale, who was the son of William Nkwati Mogale. Herminah Manamela Mogale, Francinah Basadifela Tlhoale and he also relies on the expert evidence of Professor CC Boonzaaier.
27. Professor Bonzaaire presented both oral evidence and a report "*The Bapo ba Mogale: Origin, Migration, Settlement and Dispute*" compiled by CJ Van Vuuren and CC Boonzaaier, August 2013. He states that the sources of his account of the history of Bapo Ba Mogale are members of the "royal house" at a meeting on 26 July 2013 and lists the following as his sources - Hermina Mogale (aged 72 years); Mabe Mogale (70 years); Manto Supeng (95 years); Moses Morokoane (60 years); Billy Lucas Mogale; Mokwase Mogae; Matlakala Moses Mogale; Francinah Tlwaela Mogale and Tokie Tiekie Mogale. He acknowledges that Breutz concluded his research into Bapo I closer to the events *i.e* in the 1940's as against to his later day version of his consultants, the claimants before us and that this fact places greater reliability on Breutz's recordal than the information provided by recent sources. We accept this to be the case.
28. None of the source of Professor Boonzaaier are alleged to be members of the Royal Family. We also point that the genealogy sketch that he relies on is dated 23 August 2013 and does not acknowledge its author. For these reasons, we do not place any reliance on the sketch. We consider the reliability of the accounts of his sources against other evidence, including archival records.



29. In his testimony, Professor Boonzaaier states that, according to Matuma, Gert Thejane was the father of Mogale Mogale. This evidence is inconsistent with the genealogy sketch presented in support of the claim, places him in the second house. In disputing this account, Professor Khunou points out that before bogosi of Mogale Mogale, Bapo Ba Mogale had not had contact with the Dutch and as a result his father could not have been named Gert. We find this to be compelling reasoning against the evidence that Gert Thejane was the father of Mogale Mogale. In any event, we have not come upon archival evidence that supports this evidence. Professor Boonzaaier does no more than state that this is what the Matuma contend as a historical fact.
30. The Matuma also say that the Maruatona lineage from which the Bapo chiefs have descended were regents holding for the Matlhephi lineage. Apart from the oral evidence, there is no other evidence that corroborates this evidence.
31. Significantly, Professor Boonzaaier does not conclude that Matuma are the rightful heirs to bogosi. In the event, we find that there is no merit to the claim.

**George Rangena Mogale**

32. George Rangena Mogale is a member of the Matuma clan. He claims bogosi on the basis of his ancestry from Rangena, son of George

Rammopane Rangena, son of Matlepi, son of Mogale Mogale. He claims ancestry to George Joroso Mogale who he says renounced bogosi in favour of William Nkwati. He also says that Maruatona was Mogale Mogale's brother and not his son, and that Mogale Mogale's father was Mekhise, and not Masite, as recorded by Breutz.

33. George Rangena Mogale claims bogosi ahead of Billy Lucas Mogale because, he says, he is senior to Billy Lucas Mogale.
34. According to Breutz, George Rangena Mogale acted as regent for Darius Mogale, the eldest surviving son of Frederick Maruatona.
35. The claim is supported by Ms Modisane who supports the claim ahead of Billy Lucas Mogale on the basis that George Rangena Mogale is of the senior house and the eldest surviving son of the line of Mogale Mogale. She does not agree with Billy Mogale that George Rangena Mogale renounced bogosi in favour of William Nkwati.
36. For the same reasons that we hold that, on the evidence before us, the claim of Billy Mogale is without merit and therefore cannot be upheld, the claim of George Rangena is without merit.

**Julius Cyril Mogale**

37. It is necessary to mention at the outset that Julius Cyril Mogale did not complete his evidence before us. Just before the resumption of the public



hearings in March 2017, he was informed of the resumption of the hearings, and he indicated by letter from his attorneys, Ramphela Attorneys dated 24 March 2017, that he would no longer participate in the Commission because the Nhlapo Commission had previously investigated and determined the issue of bogosi in his favour and submitted a final report to former Premier Popo Molefe, and the Mafereka Commission investigated and delivered a final report to former Premier, Thandi Modise. He recorded that as a result, the investigation of the issues mandated in our ToR was unlawful.

38. Notwithstanding Julius Mogale's decision not to further participate, and having received his evidence and no submissions about the contents of the letter of Ramphela Attorneys, we considered it appropriate that we must consider his evidence that he presented before us and to make a determination on his claim for bogosi.

39. Julius Cyril Mogale is a member of the Mokgethong clan. He asserts a claim on the basis that he is the senior surviving male in the house of Mmatswaidi, the fourth house of Mogale Mogale. When asked whether it was his case that Matswaidi was the great wife of Mogale Mogale, he answered frankly that *"Because now you get to the mains and things like that and I did indicate at the beginning that my great grandfather's wife is Mmatswaidi but as to whether Mogale Mogale's fourth wife was Mmatswaidi I do not know and therefore I would not like to commit myself and speculate"*. Whilst this answer from a claimant may be most



perturbing because it undermines his claim and we would therefore have expected that he would have been ready to provide evidence in support of his claim, it is nonetheless understandable in the absence of any record or evidence otherwise that records Matswaili as great wife.

40. According to Julius Mogale, his uncle Ramagae Jeffrey Mogale was a Acting Kgosi between 1980-1982 before Bob Mogale was appointed. Like the Moeranes, he also relies on statements attributed to President Mangope to Bob Mogale at his installation that when the owners of bogosi demand it from him, he must not refuse to hand it back.
41. The reliance on membership of the Mokgethong clan is not helpful. This is not helpful in circumstances where marriages were polygamous, including within clans, and the right to bogosi fell upon the most senior male child in the great house. In the absence of evidence that the forebear on whom Julius Mogale relies for bogosi is a descendant of the great house, we are unable to uphold his claim and his claim cannot succeed.
42. In further support of his claim, and as the reason for his decision not to participate further in investigation before us, and his assertion that our investigation as mandated by the ToRs is unlawful, Julius Mogale relied on the investigation of his claim by the Nhlapo Commission and on an exercise conducted by ethnologist SA Ruthoane. We have considered the report of the Tolo Commission. From that report, it is clear that SA Ruthoane was tasked only to review the genealogy of Bapo Ba Mogale.



He was not required to consider or to make any determination of the rightful chief and does not do so. His report is accordingly of no assistance to us.. The commission that investigated his claim is in fact the provincial committee, the Tolo Commission. That commission investigated and considered his claim for headmanship of Wonderkop as appears from the report of that commission. It did not investigate and determine a claim of bogosi.

43. In the event, on the evidence before us, we are unable to find that Julius Cyril Mogale is the eligible person to succeed Bob Edward Mogale on the basis claimed.

**George Joroso Mogale**

44. George Joroso Mogale descends from the house of Mmatladi. He claims bogosi on the basis that Mmatladi was the first wife to be married by Mogale Mogale and yet he accepts that Mmamakwa became the great wife and the one who would bear a chief, even though she was married after Mmatladi. He calls this change in the status of the wives a "*thulagano*" (arrangement) which he seeks us to correct by acknowledging Mmatladi as the great wife, and find that he is the rightful heir. Implicit in what he seeks us to do is that if we find that we do not have the power to change the practice and custom as it then was, he must fail in his claim for bogosi.

45. The customary law and tradition that applied to change the status of Mmatladi and Mmamakwa applied in the 1820-40s, *i.e* about 200 years ago. Our ToR enjoin us to have regard to the Constitution, applicable customary law and any other applicable law in discharging our functions. We must accordingly exercise our functions and powers in accordance with the prescribed law.
46. Section 25(3)(a) of the Framework Act prescribes that in resolving disputes of bogosi, the Commission must apply custom and tradition as it was at the time. On this basis alone, we cannot disregard or purport to undo what customary law permitted at the time, *viz.* the elevation of the status of Mmamakwa to great wife and the wife who bore the Kgosi.
47. The claim of George Joroso Mogale can accordingly not succeed and must fail.

**Charles Chere Mogale**

48. He claims bogosi on the basis that Gert Thejane, born of the house of Mmathejane, was senior in the house of Mogale Mogale. According to Breutz, Gert Thejane was born in the second house. Neither Gert Thejane nor any of his descendants have ruled as chiefs of Bapo.
49. There is no corroborating evidence which shows that Mmathejane was the senior wife and Charles Chere Mogale has not presented any to us.



50. In the event, there are no facts before us that support the claim of Charles Chere Mogale on the basis he asserts. Accordingly, on the evidence before us, the claim for bogosi cannot succeed.

#### **Moerane Clan**

51. The claim is supported by Morongwe Moerane and Simon Sello Moerane. Their claim for bogosi is based on 3 grounds.

52. First, the Moeranes claim bogosi on the basis that they descend from Moerane, Mogale's grandfather and the son of Seepa (referred to by Breutz as Tsiepe). According to the Moeranes, Mogale Mogale commenced the regency of the Mogales holding on behalf of the Moeranes. However, notwithstanding the claim of regency and the alleged basis for it, the claimants accept that Mogale Mogale became Kgosi because he was the eldest son of Masite, son of Moerane, and that this was in accordance with customary law. We hold that having conceded that according to customary law Mogale Mogale was the legitimate kgosi, the claim on the basis of the alleged regency of the Mogales is without merit and cannot succeed.

53. Second, the Moeranes claim bogosi because, they allege, the Mogales have failed to properly administer the affairs of the tribe in the best interest of the tribe and should hand bogosi over to someone else because they have failed to safeguard the interests of the tribe. We note that the Moeranes do not assert that a transfer of bogosi on this basis is in



accordance with the customary law of Bapo Ba Mogale. We also did not find any support for the transfer of bogosi on this basis. Accordingly, the claim on this basis cannot succeed.

54. Third, the Moeranes claim bogosi on the basis that Bob Edward Mogale was not the legitimate Kgosi. In support of the allegation, they and others who submitted evidence before us in support of this allegation say that when Bob Edward Mogale was installed as Kgosi, then President Mangope said to him at the installation that when the rightful owners of bogosi come to claim it, he must not refuse to hand it over. They also allege that at the installation, President Mangope did not adorn Bob Edward Mogale with a genuine leopard skin but rather one that was lined with a black fabric. This was because he did not consider him the legitimate successor to bogosi.

55. We are unable to place any reliance on the evidence of what allegedly transpired at the installation of Bob Edward Mogale for the following reasons –

42.1 There is no evidence before us why President Mangope made the statements attributed to him, if he did. None of the witnesses have said whom did President Mangope say that he considered as the rightful chief. The witnesses to these events at the installation of Bob Edward Mogale also do not give any explanation why it was not sought from President Mangope that he explains his statements.



That opportunity was missed during his lifetime and the witnesses to the alleged events and the Commission are poorer for it. In the absence of an explanation, we cannot reasonably place any reliance on the alleged events. In any event, it has not been alleged that the adorning of bogosi is determinative of the legitimacy of the incumbent. If that were the case, it would be contrary to the customary law principle that a Kgosi is born, which all the claimants agree is the rule of succession.

42.3 President Mangope's decision to appoint Bob Edward Mogale followed upon the investigation and recommendations of the Viviers Commission that Bob Edward Mogale was the rightful heir to bogosi. President Mangope accepted the recommendation to appoint Bob Mogale. It is in our view improbable that, having accepted the recommendations of the Viviers Commission, President Mangope would make the statement attributed to him that Bob Edward Mogale was not the legitimate Kgosi. We are therefore unable to accept this evidence in the absence of corroborating evidence. We note that the Viviers Commission noted that the persons who disputed the legitimacy of Bob Mogale were members of the Moerane clan and that there is no merit in their allegation and complaints against the appointment of Bob Mogale.

56. We note that at the heart of the claim of the Moerane family is the complaint that the Mogale family have mismanaged the affairs of Bapo Ba Mogale and have provided incompetent of no leadership to the



community. They, as descendants of Moerane and Tsiepe, consider themselves duty bound to act in the interest of the community which duty includes taking over bogosi from what they describe as the incompetent Mogales.

57. However, notwithstanding the position adopted by the Moeranes to assert a claim for bogosi, Simon Sello Moerane fairly and rightly accept that Mogale Mogale became Kgosi in accordance with custom of Bapo because he was the son of Masite, son of Moerane. According to custom and tradition, the person eligible for bogosi is the eldest son descending from the great house. Bob Mogale descends from that house and was accordingly the rightful Kgosi when he was appointed.

**Andrew Nkwane Mogale**

58. Andrew Nkwane Mogale is the eldest son of Bob Edward Mogale. He claims bogosi on the basis that he descends from the house of Mmamakwa, the great wife of Mogale Mogale. He is a descendant of Frederick Maruatona from whom his great-grandfather Darius Mogale and father Bob Mogale descend. Bob Mogale succeeded Henry Schoeman Nkwane after his (Schoeman's) brother, Edward Mogalenyane did not bear male children which resulted in bogosi shifting to the house of Henry Schoeman Nkwane in accordance with customary law.
59. William Toiki Maimane supports the claim. He is a senior member of the royal family and a member of the Traditional Council.



60. There are assertions in the evidence before us that Bob Edward Mogale was not the son of Henry Schoeman Nkwane and that his origins are unknown. In the course of his evidence, George Joroso Mogale withdrew his evidence that Bob Mogale used the surname Seloa before he was appointed Kgosi.
61. We agree with the evidence leaders that these assertions and allegations are not supported by any facts available to us. The Viviers Commission conducted an investigation into who is the rightful Kgosi and conducted interviews with members of Bapo Ba Mogale. It also had regard to historical records on bogosi of Bapo Ba Mogale. Its finding and conclusion that Bob Mogale was the son of Henry Schoeman has not been contradicted by corroborating evidence before us. Neither has the evidence that Edward Mogalenyane was the rightful heir of Darius Mogale and that he was the brother of Henry Schoeman. The Mabiletsa Commission also found that Bob Mogale is the rightful Kgosi, albeit sick at the time and represented by an Acting Kgosi.
62. For all these reason, we find that Bob Mogale was the son of Henry Schoeman, and therefore the rightful successor after Edward Mogalenyana died without male children.
63. Applying the above principles, we find that Bob Edward Mogale was the rightful heir to bogosi of Bapo I. It follows that in accordance with

customary law, his eldest son, Andrew Nkwane Mogale, is the rightful person to succeed him.

64. Sec 38(4) of the NW Act sets out the powers of the Premier with pertaining to the findings and recommendations of a commission of inquiry relating to, *inter alia*, a dispute concerning the recognition of a Kgosi. It provides that on consideration of the report of the commission, the Premier may settle or decide the matter in dispute in such manner as he deems fair and equitable (sec28(4)(a)); or recognize or confirm as Kgosi a person qualified for that purpose (sec 38(4)(c)). In the event, notwithstanding sec 13 which provides that the Royal Family shall identify a Kgosi, the Premier may, accept the finding and recommendation of the commission to appoint Andrew Nkwane Mogale. We recommend accordingly.

65. With our conclusion, we are mindful of Edward Mogalenyane's adult surviving granddaughter, Mamosa Malaza who presented evidence before us. Ms Malaza testified that she does not contend for bogosi but seeks only that her family be acknowledged as part of the Royal Family and to be included in matters concerning the Royal Family. In the light of this, we are accordingly not required and do not express any view about her entitlement, if any, to bogosi.



#### D. MEMBERS OF THE ROYAL FAMILY

1. Section 1 of the Framework Act defines "Royal Family" as *"the core customary institution or structure consisting of immediate relatives of the ruling family within a traditional community, who have been identified in terms of custom, and includes, where applicable, other family members who are close relatives of the ruling family".* Section 1 of the North West Act contains similar wording.
2. Neither the Framework nor the North West Act define the terms "immediate relative" and "close relative".
3. Professor Khunou states that the immediate relatives of the Kgosi who make up the Royal Family are the Kgosi's siblings, his paternal uncles and aunts and paternal cousins (bo-monna-kgosi). This excludes the Maimanes, the Moeranes and other distant members of the Mogale family, because of their distance from the Kgosi. He also says that the senior descendants of Darius, Radikobonyana (younger brother of Darius) and Edward are close relatives of the Kgosi. The senior descendants of Filius Rakgatla and Daniel Busang may be selectively included as members of the royal family depending on purpose of such inclusion.
4. According to Ms Modisane, the Royal Family should be made up of members of the Matuma clan, to the exclusion of the Mokgethong clan and

all the Maruatona descendants. The Matuma clan include Rangena, Mkwatsi, Mathubuthubu and Nkwati houses in the Royal Family.

5. Leslie Maimane holds that the Royal Family comprises the Maimane, Moerane and Mogale houses. Toiki Maimane holds that the Royal Family comprises the Mogale, Moerane and Maimane houses, represented by the eldest child of each, with the Kgosi, and the paternal uncles and aunts.
6. George Joroso Mogale says that the royal family consists of Kgosi, his children, the paternal uncles and aunts. The Moeranes hold that the Royal Family comprises Kgosi, his children, wife and paternal uncles but also hold that it should comprise the Moeranes, Maimanes and Mogales. We do not agree that "*immediate relatives*" and "*close relatives*" as contemplated in the definition of Royal Family, sec 1 NW Act and Framework Act, includes the Maimane, Moerane and distant Mogale families.
7. The ruling family is the family of the now deceased Bob Edward Mogale and his children. According to Professor Khunou, his immediate relatives as contemplated in section 1 of the NW Act comprises his children, siblings, paternal uncles and aunts, and paternal cousins. We agree.
8. We consider that the descendants of Edward Mogalenyane, who is the brother of Bob Edward Mogale's father, Henry Schoeman Mogale, whilst not immediate relatives for the purpose of section 1, are close relatives for



the purpose of that section. Elizabeth Mamosa Malaza is the daughter of of Masetutsa, daughter of Edward Darius Mogale (deposed in 1949). She seeks only that her family is acknowledged as part of the Royal Family. The family of Andrew Nkwane Mogale accepted before us that descendants of Edward Mogalenyane are members of the Royal Family.

9. We accordingly hold that the Royal Family comprises Kgosi and his descendants, his siblings and their descendants, the paternal uncles and aunts and the paternal cousins. It should also include the descendants of Edward Mogalenyana. It does not include the Moerane and Maimane clans and Mogale relatives who are not part of the persons we describe in the preceding sentence.

## E. MEMBERS OF THE KHUDUTHAMAGA

1. A Khuduthamaga is not a structure that is expressly provided for or required by the Framework Act and/or the NW Act. However, the Framework Act recognize a "customary institution or structure" which is defined as "*those institutions or structures established in terms of customary law*" – sec 1. Sec 211(1) of the Constitution gives recognition to the institution, status and role of traditional leadership, according to customary law, subject to the Constitution. A Khuduthamaga is an traditional leadership institution that is recognized and established in terms of customary law. It therefore enjoys recognition by the Framework Act and by the Constitution.
2. RD Coertze and FC de Beer, "*Succession to Bogosi among Batlhako ba Matutu in a changing dispensation*", Anthropology Southern Africa, 2007 30(1 &), explain that a Khuduthamaga is an inner council of advisors appointed by Kgosi, usually chosen from the uncles (borangwane) of Kgosi and to which senior members of the ruling family could expect to be members. Depending on the intention and wishes of the Kgosi, he may also appoint temporary or permanent members of the community who have special knowledge or expertise.
3. The Khuduthamaga is described as an advisory council of the Kgosi, which, according to Professor Khunou, *inter alia*, considers matters to be



presented before a gathering of the community and deals with disputes about governance before the matter is presented to the tribe.

4. Professor Khunou states that the senior members of the immediate relatives of the Kgosi who make up the Royal Family also make up the Khuduthamaga. These are the Kgosi's siblings, his paternal uncles and aunts and paternal cousins. The Kgosi may elect to include selected members of the community because of the skill that they possess about the affairs and customs of the community. Professor Khunou warns that the Kgosi may not abuse the power to appoint members of the Khuduthamaga to include his friends or preferences who do not possess any special skills to contribute to the Khuduthamaga. He points out that during the bogosi of Fred Mogale, there was dissatisfaction from the tribe because of accusations that he had appointed his friends to the Khuduthamaga.

5. Some time before 30 March 1987, then President of Bophuthatswana, President Lucas Mangope constituted a Commission of Inquiry with Mr AM Boikanyo as chairperson and Mr GHT Sebitloane as member. The Commission was required to investigate, among other questions, the constitution of the Khuduthamaga. After taking oral and documentary evidence, the Commission issued a report dated 30 March 1987, in which it found that the Khuduthamaga was constituted by the paternal uncles of Kgosi and that their number was sufficient to form a reasonably strong and effective Khuduthamaga. Notwithstanding, and due to disputes about the



functioning of the Khuduthamaga, the Commission recommended to the President that a determination be made by the ethnological section of the Department of the President to determine the members of the Khuduthamaga. We did not come upon evidence that this recommendation was implemented and/or who was identified as members of the Khuduthamaga.

6. George Joroso Mogale says that the Khuduthamaga is made up of senior members of the Moerane, Maimane and Mogale houses, a view also held by the witnesses of the Moeranes. It is also the view held by Julius Mogale. The Moerane witnesses include the paternal aunts in the Khuduthamaga. Leslie Maimane holds that the three most senior houses of the Moeranes, Maimanes and Mogales, the Kgosi and paternal uncles constitute the Khuduthamaga.
7. It does not appear that there is an established custom of Bapo Ba Mogale who is eligible for membership of the Khuduthamaga that has developed and remained consistent over time. In the circumstances, it is our view that regard must be had to the primary purpose of the Khuduthamaga in order to identify persons who should be members of the Khuduthamaga. In so far as the Khuduthamaga's primary purpose is to advise the Kgosi about matters of the Royal Family and the community, we consider that the Khuduthamaga should include senior members of the senior houses of Mogale (Maruatona, Thejane, Rangena), Moerane and Maimane clans. Such seniority should assist in the relationship with the Kgosi who must



take serious counsel of the advise of the Khuduthamaga. In order not to unduly create a large Khuduthamaga that will defeat its purpose, we support that the Moerane and Maimane clans should each appoint a maximum of two senior members of the senior houses to be a member of the Khuduthamaga. The Kgosi should appoint representatives from the members of the Royal Family. The Kgosi should also have the discretion to appoint such members of the tribe as he may deem appropriate for the purposes of the Khuduthamaga.

## **CHAPTER IV**

### **FINDINGS AND RECOMMENDATIONS**

#### **FINDINGS**

On the evidence we find that:

1. The order of seniority of the houses of Bapo Ba Mogale 1 is as follows in descending order –
  - 1.1. The house of Frederik Maruatona and his descendants.
  - 1.2. The house of Gert Thejane and his descendants.
  - 1.3. The house of George Rangena and his descendants.
  - 1.4. The house of Diederik Moerane and his descendants.
2. The rightful ruling house is the house of Frederik Maruatona, represented in present day by the house of Bob Edward Mogale.
3. The rightful heir to bogosi is Andrew Nkwane Mogale.



4. The members of the Royal Family are Andrew Nkwane Mogale and his descendants, if any, his sibling, the paternal uncles, aunts and cousins, and the descendants of Edward Mogalenyana.
5. The members of the Khuduthamaga are Kgosi, his sibling, the paternal uncles and aunts, senior representatives of the houses of Gert Thejane and George Rangena; senior members of the senior houses of Maimane and Moerane, and any other members of the tribe that the Kgosi may choose to include.

## **RECOMMENDATIONS**

6. We make the following recommendations -
7. The Premier note the hierarchy of the house of Bapo Ba Mogale as we set out in paragraph 2 above.
8. The Premier appoint Andrew Nkwane Mogale as Kgosi and issue him with a certificate in terms of section 13 of the NW Act.
9. The Premier note the members of the Royal Family as we describe in paragraph 4 above.
10. The Premier note the constitution of the Khuduthamaga as we set out in paragraph 5 above.

11. The Premier call upon the Kgosi, after he is duly appointed in terms of section 13 of the NW Act, to call upon members of the senior houses of Moerane and Maimane to provide him with at least 2 names of senior members of each senior house identified as members of the Khuduthamaga in accordance with paragraph 5 above and should identify representatives of the Royal Family and any members of the tribe that the Kgosi may determine.
12. The Premier require that Kgosi notify him of the names of members of the Khuduthamaga within 30 days of his appointment, or such other period as the Premier may deem appropriate.



## **CHAPTER V**

### **CONCLUSION AND ACKNOWLEDGEMENTS**

1. We must express our appreciation and gratitude to all the witnesses, those who patiently attended the hearing, and the community at large for their patience as we conducted the investigation and for their support throughout the process. Without their participation and support, our task would have been the more challenging to complete.
2. We would be remiss if we did not mention and express our gratitude to the Commission Secretariat, Mr Guy Gumbo of Guy Gumbo Attorneys, Rustenburg and his firm. Without their support and able administration, our work would have been harder. We also must extend our special gratitude to Ms Yvonne Mosiane and Mr S Ruthoane of COGTA who both ensured that we had the necessary tools to discharge our task and that we were properly provided for as we conducted the investigation.
3. Finally but not least, we must acknowledge and thank the Rustenburg Local Municipality for availing to us its premises, the Civic Centre, for public hearings and accommodating the often large numbers of members of the public who attended the public hearings.

## APPENDIX A

The following persons presented oral, written and/or documentary evidence:

Andrew Nkwane Mogale, William Toikie Maimane, Professor SF Khunou on behalf of the Bob Edward Mogale family and Bapo Ba Mogale I, both represented by Advocate M Ramaili, later with Advocate N Ribane, instructed by Tim Sukazi Attorneys.

George Rangena; Billy Mogale; Matlakala Mogale represented by Advocate Silala instructed by Nyakale Attorneys

Julius Cyril Mogale, represented by Ms M Mokoena of Mendi Mokoena Attorneys until his decision to withdraw his participation in the Commission

Billy Lucas Mogale and Professor CC Boonzaaier, represented by Adv ME van Aswegen, instructed by AM Wentzel Attorneys.

Mamosa Elizabeth Malaza; Lenkeme Moerane; Herminah Manamela Mogale; Francinah Basadifela Tlhoale; Morongwe Moerane; Mesepidi Mabel Mogale; Hermina Tlhoale Mogale; Mabel Mogale; Salome Mabale; Salamina Mathubuthubu Modisane; Salamina Matshidiso Mogale; Gift Nanile (Mogale) Tshabalala; Thabo Thelma Mdluli; Puleng Moerane.



Moses Matlakala Mogale; George Rangena Mogale; Charles Chere Mogale;  
George Joroso Mogale; Leslie Solomon Thabo Maimane; Rapula Daniel  
Mola; Harry Moerane; Simon Sello Moerane; David Masite Mogale; William  
Nkwati; Ephraim Moralo; Steven Mokoka; Lawrence Mmekwa; Jan Willem  
Kgomo; Steven Mataboge; Zithulele Vilane; Kgomotso Morare; Prince  
Velekhaya Abraham Shange; Jan Willem Kgomo;

## **ANNEXURE "A"**

The Recommendations of Bapo I are approved as follows:

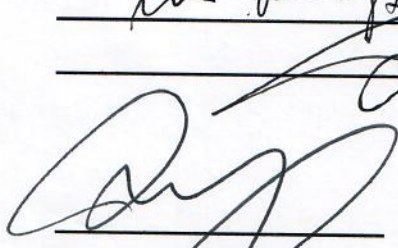
1. The Premier note the hierarchy of the House of Bapo Ba Mogale as set out under 19(1.1-1.4) under chapter IV.
2. The Royal Family is accepted as outlined under 6.1-6.4 on page 20 read with 2 in chapter IV on page 52.
3. The Premier recognize Andrew Mogale as Kgosi and shall issue the relevant certificate under Section 13 of the Act.
4. In line with paragraph 5 of the Report, members of Khuduthamaga are Kgosi, senior paternal uncles and aunts and most senior representative of the Houses as outlined under chapter IV under 1(1.1-1.4). Non Royal family members should not form or be part of Khuduthamaga, issue of discretion as contained in the Report in this regard is excluded.
  - 4.1 Subject to Mogale clan providing one senior member from each sub-clan as an addition to paragraph 7 of the recommendations of the Report.
  - 4.2 Furthermore, each clan member of Moerane and Maimane must provide a most senior representative from each clan.
  - 4.3 Khuduthamaga is as outlined herein above in the Annexure. The Premier requires that within 30 day from the issuing of Certificate to Kgosi, he must in conjunction with the Royal Family as outlined in this Annexure above and submit names of members of Khuduthamaga.



- 4.4 The descendants of Edward Mogalenyaneshould be acknowledged as children of paternal aunts and not members of the Royal family.

RECOMMENDATIONS APPROVED/ ~~NOT APPROVED~~ AS PER THIS ANNEXURE

*Approved subject to Annexure A  
in respect of Bayso!*

  
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PROF. T.J MOKGORO  
PREMIER, NORTH WEST PROVINCE  
DATE: 12/8/2020