

**BAPO BA MOGALE II**

**TRADITIONAL SUCCESSION DISPUTES AND CLAIMS**

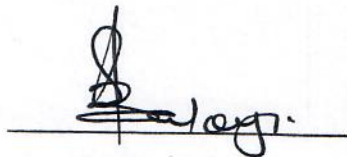
**FINAL REPORT**

TO THE PREMIER

MAY IT PLEASE YOUR HONOURABLE PREMIER:

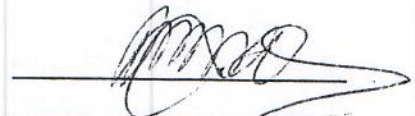
WE HAVE THE HONOUR TO SUBMIT HERewith THE FINAL REPORT OF  
THE COMMISSION AS IT PERTAINS TO THE COMMUNITY OF BAPO BA  
MOGALE II

SIGNED AT JOHANNESBURG ON 28 AUGUST 2019



**MS BALOYI SC**

(CHAIRPERSON)



**HOSI AK MAHUMANI**

(MEMBER)

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## **CHAPTER 1**

### **INTRODUCTION**

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".*

#### **Establishment of the Commission**

2. There is presently a dispute about the chieftainship of Bapo Ba Mogale II, in particular, who the rightful heir is following the death of Kgosi Thomas Semetsa in 2011. There is also a dispute about the constitution of the Khuduthamaga. It is against this background that the Premier has asked the Commission to investigate, determine and make recommendations on the questions raised in the Terms of Reference.



3. On establishing the Commission, the Premier appointed Commissioners –
  - 3.1. Retired Judge GSS Maluleke (Chairperson).
  - 3.2. Advocate MS Baloyi SC (Member).
  - 3.3. Professor P Sithole (Member).
4. To assist the Commission, the Premier appointed evidence leaders Advocates Benny Makola, Tembeka Ngcukaitobi, Morongwe Moagi, Naledi Mothapo and Pontsho Mosiane. We are deeply grateful for their assistance.
5. Following the resignation of Professor P Sithole from the Commission, the Premier reconstituted the Commission as follows –
  - 5.1. Retired Judge GSS Maluleke (Chairperson).
  - 5.2. Advocate MS Baloyi SC (Member).
  - 5.3. Professor M Moleleki (Member).
6. 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 –

6.1. Advocate MS Baloyi SC (Chairperson).

6.2. Professor M Moleleki (Member).

6.3. Hosi Advocate AK Mahumani (Member).

7. 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.

8. 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"*.

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

9. 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.

10. The ToR require the Commission to –

10.1. *“To investigate whether Bogosi (of) Bapo 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 Bapo II traditional community.*

10.2. *To determine the relationship amongst the Mogale sub-clan, the Maimane sub-clan and the Moerane sub-clan.*

10.3. *To identify the legitimate members of the Royal Family and the Khuduthamaga of the Bapo II traditional community”.*

11. In terms of paragraph 5 of the Proclamation, the Commission is required to make recommendations to the Premier on the questions under investigation.



12. In terms of paragraph 6 of the Proclamation, the Commission is required to have regard to sections 39(2) and 212 of the Constitution.

#### **The Rules of the Commission**

13. 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 -

- 13.1. 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.

- 13.2. 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.

- 13.3. 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.



13.4. 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**.

13.5. 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.

13.6. 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.

### **Public Hearings**

14. By public notice to the community of Bapo Ba Mogale II, in 2016, the Commission invited the community and other interested persons to participate in the Commission and to present evidence. Following the invitation to the community, 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.

15. 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 and by the Secretariat, Guy Gumbo Attorneys. We could not have discharged our mandate as well as we did without their assistance. We must make particular mention of our appreciation for the difficult and sometimes complicated role that the Evidence Leaders often had to play of assisting present the evidence of witnesses with competing claims and accounts, such witnesses lacking the financial means to procure the services of legal representatives to assist them present their evidence and cross-examine witnesses. This complexity of the role of the Evidence Leaders was not lost on us and yet they professionally discharged their difficult task without bias to any of the witnesses.
16. Witnesses presented written and/or oral evidence and documents. Some of the written evidence was presented by way of affidavit and other by way of unsworn statement. In the light of the fact that most of the persons who sought to present evidence were without legal representation, the chairperson decided that the Commission will also have regard to unsworn statements presented by unrepresented members of the community. All persons that presented oral evidence were required and did so under oath. Whilst some witnesses who



presented written statements did not testify, we have considered their written statements in arriving at our findings and recommendations that we make. The oral evidence was mechanically transcribed and the complete record of evidence considered by us is available.

17. 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.

### **The Evidence**

18. Understandably, the witnesses before us relied mainly, if not entirely, on what they say has been passed down to them by their elders by way of oral history.
19. In addition to evaluating the evidence before us, we have also had regard to the writings of Dr P-L Breutz's, *The tribes of Rustenburg and Pilanesberg districts by P-L Breutz, Department of Native Affairs, Ethnological Publications No 28, 1953* whilst mindful that the correctness



of some of Breutz's recordal of historical facts is disputed by some witnesses on the basis that it is in conflict with the oral history that has been passed on to them by their elders and/or that the recordal is a deliberately biased account of Breutz's informants, this was not the case with respect to Bapo Ba Mogale II. We have nonetheless taken the contestations into account but note also that on the evidence before us, Breutz's account is the primary, if not only, recorded source of the history of bogosi of Bapo Ba Mogale and is relied upon by other writers on the subject; Professor Freddie Samuelson Khunou, "*Bapo Traditional Community (Executive Summary?) Bapo Ba Mogale Traditional Community: A Review and Validation of Traditional Structures and Succession Patterns*"; CJ Van Vuuren & CC Boonzaaier "*The Bapo Ba Mogale: Origin, Migration, Settlement and Dispute, August 2013*"; Expert affidavit of Professor Khunou.

20. In considering the questions raised in the ToR, and evaluating the evidence available to us, we have taken into account the customary law, practices and customs, and the traditions of Bapo Ba Mogale II; the relevant provisions of the Traditional Leadership and Governance Framework Act 41 of 2003 (the "Framework Act"); the North West Traditional Leadership and Governance Act, 2005 (the NW Act") and the applicable provisions of Constitution.

## CHAPTER II

### HISTORY OF BAPO BA MOGALE II

1. At the outset we must acknowledge Professor Khunou's observation and caution that "*The problem in reconstructing the past (or history) from the 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*". As with the other communities that we were mandated to investigate, this is true in respect of the Bapo Ba Mogale II where accounts relied upon by competing witnesses are not corroborated by any persons or historical records. The challenge that this presents can never be over-stated. Nonetheless, we have endeavoured, and hope that we succeeded, to remain vigilant to this caution in evaluating the evidence available to us and arriving at the conclusions that we reach.
2. Bapo Ba Mogale were originally one community before they split into two communities, resulting in what is today referred to as Bapo Ba Mogale I and Bapo Ba Mogale II. Bapo Ba Mogale II occupy the farm Bultfontein 714, also known as Phorotlhwane, in the Pilanesberg District. The present-day community of Bapo Ba Mogale II has a population estimated around 30 000 and live in a cluster of 8 villages.
3. The first Chief of Bapo Ba Mogale is recorded as Kgosi Lotsane, succeeded by the following (we do not include regents) – Majaka,



Tshwene, Mekhise, Maruatona, Tsiepe, Moerane, Mogale Mogale, Frederick Maruatona and Darius Mogalenyana Mogale.

4. According to Breutz, *"The Tribes of Rustenburg and Pilansberg Districts"* 1953, paragraph 479, Bapo Ba Mogale split about 1896, into what is now Bapo Ba Mogale 1 and Bapo Ba Mogale 2, as a result of a dispute between Darius Mogalenyana Mogale, then the Chief of Bapo and his nephew Diederick Moerane, born of the fourth house of Mogale Mogale. As a result of the dispute, Diederick Moerane left Bapo Ba Mogale with a large portion of the tribe, including some of his brothers, and settled first on Bokfontein 328, Rustenburg District, and then on Bultfontein 714, also known as Phorotlhwane, in the Pilanesberg District. Some of the members of the tribe that settled with Diederick Moerane at Bokfontein remained when he left and relocated in Bultfontein 714 and others returned to Bapo I.
5. There is disagreement among the witnesses in support of the competing claims how Bapo II acquired the land on which they are settled. The significance of the competing evidence is that it is asserted especially in support of the claim for entitlement to chieftainship. Diederik Moerane's descendants, Mr Lebogang Mogale and Mr Thabo Jacob Mogale state that the land was acquired by Diederick Moerane as appears from the title deed whilst the competing claimants assert that the land was collectively acquired by the Diederick and his brothers and that his name appears on the title deed only because of all his brothers, he was the educated one.



6. Due to the historical origins of Bapo Ba Mogale II, and that 2 of the claimants to Bogosi claim on the basis of the status of the houses from which they originate before the separation of the original Bapo Ba Mogale tribe, it is necessary and appropriate that we briefly discuss the evidence about the hierarchy of houses as they were before the separation of the tribe into Bapo Ba Mogale I and Bapo Ba Mogale II.
7. According to the customary law of Bapo Ba Mogale, the house that ranks the most senior is the house of the great wife. The wife accorded the status of great wife is not always the wife married first and may be a wife married later but accorded the status of great wife for reasons that are recognised in the custom and tradition of the tribe. According to custom, the great house bears the chief.
8. We discuss the houses of the four wives of Mogale Mogale - Mmamakwa, Mmathejane, Mmatladi and Mmatswaidi. We do so because, (i) from the evidence before us and that we have considered, not much, if anything is known of the other wives of Mogale Mogale or their standing in the chronology of marriage (Breutz, and the witness Mr Stankana Mogale state that Mogale Mogale had 12 wives); and (ii) 2 of the claimants for chieftainship claim on the basis that they descend from the houses of 1 of the 4 wives. Our decision not to deal with the 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.

9. According to the evidence, the house of Mmamakwa became the senior house by virtue of the fact that she was of the Bafokeng royal family, notwithstanding that she was married third in line. She accordingly became the great wife by virtue of her status as princess of Bafokeng, evidence which is not disputed by any of the witnesses.
10. The house of Mmathejane, the second wife of Mogale Mogale, was the second of Mogale Mogale.
11. The third house was the house of Mmatladi. Whilst Mmatladi was the first wife to be married by Mogale Mogale, she was displaced from position of senior wife by the subsequent marriage and elevation of Mmamakwa to great wife.
12. The fourth house was the house Mmatswaidi. Diederik Moerane is the eldest son born of this house and his descendants are the senior house in the house of Mmatswaidi.



## CHAPTER III

### A. THE RIGHTFUL HEIR TO CHIEFTAINSHIP

1. According to RD Coertze and FC De Beer "*Succession to Bogosi among Batlhako ba Matutu in a changing dispensation*", Anthropology Southern Africa 2007 40, a kgosi is the most senior male born to the senior royal house. In terms of the customary law, a chief is succeeded by his eldest son.
2. The last chief of Bapo II was Kgosi Semetsa Mogale. He was chief from 1987 until 2011 when he died.
3. Section 13(2) of the NW Act prescribes that the designation of a kgosi shall be made by the Royal Family in accordance with its customary law and customs. Section 13(3) provides that the Premier may recognize a person designated as Kgosi by the Royal Family, and section 13(4) that the Premier shall issue the person recognised as chief with a certificate.
4. Following the death of Kgosi Semetsa Mogale, some members of the Mogale royal family have disputed the legitimacy of his chieftainship and the appointment of his grandson as successor, including by legal action. As a result, Bapo II presently do not have a chief appointed in terms of section 13 of the North West Traditional Leadership and Governance Act of 2005.
5. There are 3 claimants to bogosi -



5.1. **Mr Didimalang Mogale of Magosi clan** – the claimant Didimalang Mogale passed away during 2017 after the Commission commenced its work and placed his claim to the Commission (we refer to the claim as the Magosi claim). Magosi claim chieftainship on the basis that they descend from the house of Mmatswaidi, which they say is the senior house of Mogale Mogale in Phorotlhwane.

5.2. **Lenkeme Moerane of Moerane clan.** She is the most senior surviving descendant of Dokobe Jacob Moerane and claims bogosi on the basis that her father, Ikalafeng Jacob Moerane, was the eldest son of Abisai Moerane, the eldest son of Dikobe Jacob Moerane, the eldest brother of Diederick Moerane.

5.3. **Lebogang Meso Mogale.** He is the grandson of Semetsa Mogale, son of Kgosi Frank William Agonkitsi Mogale, son of Diederick Moerane Mogale. Lebogang Meso Mogale is the eldest son of Semetsa's eldest son, Gobakwang Mogale, who predeceased his father. The claimant is accordingly a descendant of Diederick Moerane.

*Claim of Magosi claim*

6. There is no claimant before us to replace the deceased Mr Didimalang Mogale at the time of writing this report. Mr Stankana Mogale, who gave evidence before us in support of the claim of the Magosi, lives in Bapo I. He told us that the deceased Didimalang Mogale is survived by 2 children, a son who is in Botswana with his mother, and a daughter in Phokeng. Before us, none of the children claim chieftainship before us

and Stankana Mogale did not assert a claim on behalf of any of the surviving children. Other than that Didimalang Mogale is survived by 2 children according to Stankana Mogale, there is no information before us about Didimalang Mogale's descendants and their interest in the claim to chieftainship.

7. According to Mr Mogale, Magosi descend from the house of Matswaidi and Diederick Moerane descends from a junior house, Mothomong. Diederick Moerane left the Bapo Ba Mogale together with his brothers Ramakakara and Ramagae who moved with him to Phorotlhwane but later returned to Bokfontein (the evidence varied between Bokfontein and Bapo I) where they remained. Ramakakara and Ramagae are senior to Diederick Moerane and as a result, he and his descendants could not be chiefs ahead of Ramakakara and Ramagae and their descendants who remained in Phorotlhwane after Ramakakara and Ramagae went back to Bokfontein and their children remained in Phorotlhwane. The seniority of the houses of Ramakakara and Ramagae in the pre-separation Bapo Ba Mogale applies in Bapo II even if Diederick Moerane is accepted to be the founder and first chief of Bapo II. This is so because of the seniority of the house of Matswaidi.
8. Mr Mogale's account of the history of chieftainship of Bapo II varies from an outright denial that Diederick Moerane was the first chief of Bapo II – according to him, Diederick Moerane was only a leader or representative and not a chief, to stating that Diederick Mogale was selected by the



royal family to be a leader because among his brothers, only he was educated.

9. Mr Mogale considers Bapo II to be one with Bapo I. He said as much in his evidence and it is also implied in his assertion that by virtue of the seniority of the house of Matswaidi in the houses of Mogale Mogale, the descendants in that house are the rightful chiefs of Bapo II.
10. The claim of the Magosi clan as represented by the family of Didimalang Mogale is based on the seniority of the house from which they descend in the houses of Mogale Mogale. The claimants recognize that Bapo II is a new tribe that was created with the separation from the original single tribe of Bapo Ba Mogale and yet seek assert a right to chieftainship on the basis that of the houses of Mogale Mogale in Phorotlhwane, theirs is the most senior. They seek to be awarded chieftainship notwithstanding that Diederick Mogale is accepted to be the founder of Bapo II.
11. The basis of the Magosi claim is untenable if it is accepted that a new tribe was created when Diederick Mogale, Ramakakara, Ramagae and others left the original and now Bapo I. Acceptance of this separation and independence is not consistent with a chieftainship of Bapo II by persons who remained in Bapo I. The Magosi do not assert a claim based on Ramakakara and or Ramagae being founders and first chiefs of Bapo II. It is based solely on the seniority of the house of Matswaidi in the houses of Mogale Mogale. We point out that Mr Mogale appeared to be uncertain in his position whether he regarded Bapo II to be one with



Bapo I or separate and independent from Bapo I. His position changed in the course of his evidence.

12. Bapo II are a properly constituted tribe separate from and independent of Bapo I. We did not come upon evidence that after 1896 when Diederick Mogale and other settled in Phorotlhwane, any of the houses of Mogale Mogale that remained in Bapong have had any role or say in the selection of the chief of Bapo II.
13. It is accordingly our finding that the claim of Magosi on the basis presented to us is without merit. It therefore cannot be upheld.

*Claim of Lenkeme Moerane*

14. Ms Lenkeme Moerane descends from Dikobe Jacob Moerane whom she says was the eldest brother of Diederick Moerane. According to Ms Moerane, Diederick Moerane invited Jacob Moerane to join him in Bokfontein. He bought land in Bultfontein where the tribe settled and appointed himself as chief. According to Ms Moerane, Diederick Moerane's first house and eldest son is in the Eastern Cape and Diederick's Moerane's son, Frank Agonkitsi Mogale, was from the second house and accordingly did not qualify to be chief.
15. Whilst Ms Moerane stated that Diederick Moerane appointed himself chief, she also stated that he was appointed by his brothers, including Dikobe Jacob Mogale, "*because he was more educated than the others*".

16. Historical records show that the following were recognized as chiefs -
- 16.1. Deed of Transfer, Farm Bultfontein No. 712, 20 October 1913 records the purchaser as Diederik Moerane Mogale "*in his capacity of Chief and in trust for the Bapo Tribe II of Natives*".
- 16.2. Deed of Transfer, certain Portion "A" of Portion of the Freehold Farm Syferfontein No. 625, situate in the District of Rustenburg, 21 November 1932, records that the land is sold to the Minister of Native affairs "*in trust for the Bapo Tribe of Natives under Chief Frank Mogale*".
- 16.3. Deed of Transfer No. 35913 of 1946 records Frank Mogale as the Chief of the Bapo Tribe of Natives acquiring certain Remaining extent of the same Farm.
- 16.4. Thomas Semetsa Mogale was issued with a recognition certificate as Kgosi by the government of the Bophuthatswana.
17. Ms Moerane does not claim that Dikobe Jacob Moerane founded Bapo II. Neither does she dispute that Diederick Moerane founded Bapo II. Her claim to chieftainship is founded solely on Dikobe Jacob Moerane's seniority over his brother Diederick Moerane and the wavering assertion that he (Diederick) was not a chief (we say wavering because her position changes from him appointing himself chief and his brothers appointing him because he was the more educated of them).



18. In the absence of a claim that Dikobe Jacob Meorane founded Bapo II, we are unable to find that solely by virtue of being the older brother of Diederick Moerane, Dikobe Jacob Moerane was the rightful claimant to chieftainship when Bapo II was founded and that therefore his descendants are accordingly the rightful claimants to chieftainship. On this basis alone, the claim cannot succeed.
19. We agree with the submission of the evidence leaders that even if it were so that Diederick Moerane was appointed chief by arrangement with his brothers for the reasons stated by Ms Moerane, the arrangement has persisted for a far too long period of 100 since he was appointed until the death of Thomas Semetsa in 2011 and for that reason should not be undone.
20. We find that the evidence available to us does not support the claim of Ms Moerane. She therefore cannot succeed with her claim.

*Claim of Lebogang Meso Mogale*

21. Lebogang Meso Mogale is the grandson of Kgosi Thomas Semetsa Mogale. His father, the eldest son of Thomas Semetsa, pre-deceased his father. Diederick Moerane is his great great grandfather.
22. He claims chieftainship on the basis that his great-great grandfather became Kgosi on the basis of the custom of sebetlela which is a recognition that a person can found a new tribe by leaving their tribe

and its chieftainship and pay no homage to that chieftainship whilst retaining blood and familial relations. It is on this basis that Diederick Moerane became chief of Bapo II and that his descendants the rightful claimants to bokgosi.

23. According to a letter submitted with the evidence of Mr Lebogang Meso Mogale, the claim is supported by his uncles, Dr Bogosi Mogale; Agonkitsi Mogale.
24. It is not disputed that according to the customary law of Bapo Ba Mogale, the eldest son of the chief succeeds his father. It is also the customary law position that where the chief is predeceased by his eldest son, the surviving eldest son of the predeceased son succeeds his grandfather.
25. In the absence of evidence that supports the claims of the contesting claimants that Diederick Mogale was not the rightful chief of Bapo II, it must follow that Lebogang Meso Mogale is the rightful heir to chieftainship. We have found that the claims of Magosi and Lenkeme Moerane cannot be upheld.
26. We find that as the eldest surviving grandson of Kgosi Semetsa, Lebogang Meso Mogale is the rightful heir to succeed him.



**B. THE RELATIONSHIP OF THE MOGALE SUB-CLAN, THE MAIMANE SUB-CLAN AND THE MOERANE SUB-CLAN**

1. We understand the Premier to require us to investigate the nature of the relationship between the Mogale, Maimane and Moerane clans.
2. According to the evidence available to us, Mogale, Maimane and Moerane clans are all directly related or descendant from Lotsane. None of the evidence before us disputes this historical origins of the relationship and the recordal of Breutz that Moerane was the grandfather of Mogale Mogale and chief at some point and that Maimane was the father of Moerane. Breutz lists the Moeranes and Maimanes respectively as the second and third clans of Bapo Ba Mogale, after Bakgosing clan.
3. Whilst the 3 clans are patrilineally connected, the Moerane and Maimane clans are nonetheless outside the "circle" of the Mogale clan and therefore distant relatives of the bakgosing clan and therefore the ruling family. They rank further than other members of the Mogale clan in their relationship with the ruling family, who themselves (Mogales) enjoy varying degrees of proximity to the Kgosi and ruling family).
4. In the light of the absence of controversy about the historical nature of the relationship, we do not consider it necessary to discuss any any more detail the history of the relationship of the 3 clans.
5. According to the witnesses who appeared before us, the Moerane and Maimane clans have been and are considered and treated by the ruling

Mogale clan as members of the royal family. They also participate in the decision-making structures of the tribe and have been members of the Khuduthamaga (we discuss their status in the Royal Family and Khuduthamaga further in this report).

6. From the evidence before us, the claimant Lebogang Meso Mogale, and those who support his claim, appear to be content with continuing this relationship with the Moerane and Mogale clans.
7. Accordingly, we find on the evidence that the relationship between the 3 clans is one in which the Mogale clan considers the 2 clans as members of the broader royal family and that they qualify to be considered for membership of the Khuduthamaga.



### C. THE LEGITIMATE 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*". Section 1 of the of the Immigration Act No. 13 of 2002, gives the following definition "*immediate family*" means persons within the second step of kinship, where marriage or a spousal relationship is counted as one of such steps, but any common antecedent is not so counted" - (where first level kinship would be the wife and husband, their child or parent, while second level kinship includes the siblings and their children, grandparents or grandchildren). This definition accords with Professor Khunou's definition of who is included in "immediate relative". He 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*"). He states that this definition excludes the Maimanes, the Moeranes and other distant members of the Mogale family, because of their distance from the Kgosi. Collins Dictionary of

English defines “close relatives” as “the members of your family who are most directly related to you, for example your parents and your brothers or sisters”.

3. Whilst there appears to be no real difference between “immediate family” and “close relative”, it is apparent that the NW legislature intended to draw a distinction between the two. The distinction that the legislature appears to have sought to draw is that with “close relatives”, persons who are not “immediate relative” and yet are still closely related to the ruling family would be considered members of the Royal Family. It is our view that this would include only members of the Mogale family who fall within a circle closer to the immediate family and exclude those who fall further away from the immediate family. The Moerane and Maimane families fall even further away from the immediate family of the Kgosi and therefore do not fall within the Royal Family as defined in section 1 of the Framework Act and the NW Act.
4. According to the evidence before us, the Moerane and Maimane clans have as a matter of practice been regarded by the Mogale Family as members of the Royal Family notwithstanding their familial distance from the Kgosi. There is no reason that the ruling family should not continue in this arrangement if they so wish, provided that it is understood that according the NW Act, the Moerane and Maimane are not regarded as of the Royal Family because they are not sufficient close to the Kgosi to meet the definition. They do not have the right to be included in the



Royal Family unless they show that they are "*close relatives*" of the ruling family.

5. Notwithstanding the standing of the Moerane and Maimane clans as we describe, it is to be commended that the ruling family elects to include them as members of the Royal Family – this is a prerogative of the ruling family and should aid the cohesion of the tribe and of the broader family of the descendants of Kgosi Lotsane.
6. In the event, we find that the legitimate members of the Royal Family comprises the descendants of Diederick Moerane as defined in section 1 of the NW Act, and may include such members of the Moerane and Maimane clans as the Kgosi and his immediate family may choose to include.

#### D. THE LEGITIMATE MEMBERS OF THE KHUDUTHAMAGA

1. A Khuduthamaga is not a structure that is expressly provided for or required by the Framework Act and the NW Act. However, section 1 of the Framework Act recognises a "*customary institution or structure*", defined as "*those institutions or structures established in terms of customary law*". Section 211(1) of the Constitution recognizes the institution, status and role of traditional leadership according to customary law, subject to the Constitution.
2. A Khuduthamaga is a traditional leadership institution that is recognized by and established in terms of customary law. A Khuduthamaga therefore enjoys recognition by the Constitution and the Framework Act.
3. RD Coertze and FC De Beer "*Succession to Bogosi among Batlhako ba Matutu in a changing dispensation*", *Anthropology Southern Africa*, 2007 30, describe a Khuduthamaga as 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 chief, he may also appoint temporary or permanent members of the community who have special knowledge or expertise.
4. Professor Khunou describes a Khuduthamaga as an advisory council of the chief which, among others, considers matters to be presented before a gathering of the community and deals with disputes about governance before a matter is presented to the tribe. Senior members of the



immediate relatives of the Kgosi who make up the Royal Family also make up the Khuduthamaga – the Kgosi's siblings, paternal uncles and aunts and paternal cousins. Like RD Coertze and FC De Beer referred to above, Professor Khunou states that the Kgosi may include in the Khuduthamaga, members of the community for their special or expert skills relating to the affairs or customs of the community.

5. Considering the purpose of the Khuduthamaga to advise the Kgosi on matters of the community, it is in our view important that the Khuduthamaga must comprise persons of sufficient seniority, authority and competence that the Kgosi will have confidence to seek and take advice and counsel from. Otherwise the object of the institution will be defeated, and the institution will become ineffective. The size of the Khuduthamaga is also important to effectively achieve its object and we consider that a large Khuduthamaga may not be able to meet its object. This is especially true for Bapo II who are not a large community.
6. Bapo II presently do not have a Khuduthamaga. From documents submitted with evidence before us, it appears that the last time Bapo II had a Khuduthamaga was about 2012 when it imploded following the resignation of members who were contesting the legitimacy of the chieftainship of Kgosi Semetsa and his successor.
7. It does not appear that there is an established practice or custom for the constitution of the Khuduthamaga of Bapo II and we did not come upon any. However, the evidence shows that members of the Maimane and

Moerane clans have been included in the Khuduthamaga. The Magosi and Moerane claimants to chieftainship do not accept that all three clans qualify for membership of the Khuduthamaga.

8. The Khuduthamaga serves to advise the Kgosi. It is constituted by the Kgosi. According to Professor Khunou, the senior members of the ruling family are expected to be members of the Khuduthamaga. However, no one has a right to be included in the Khuduthamaga – the decision is the prerogative of the Kgosi and he may take advice as he deems. Members join and serve at the pleasure of the Kgosi.
9. We have not come upon any reason why the prevailing arrangement in which the Moerane and Maimane clans have been included in the Khuduthamaga should not be preserved – afterall, the decision who constitutes the Khuduthamaga is that of the Kgosi.
10. It is our view that an appropriately constituted Khuduthamaga should be made up of representatives of senior members of the Ruling Family, *i.e* the Kgosi, the Kgosi's paternal uncles and aunts and sibling, and such other members as the Kgosi deems.
11. In the absence of an established custom of the constitution of the Khuduthamaga, it is not appropriate that the Commission recommend to the Premier to prescribe to the Kgosi how to constitute the Khuduthamaga, save to require that it must include representatives of senior members of the Royal Family. The Royal Family should be



encouraged to include representatives of the Moerane and Maimane clans, selected by the 2 clans.

12. The Premier should call on the Kgosi to appoint members of the Khuduthamaga and should require that the Royal Family report to the Department of COGTA, NW, the names and particulars of persons who constitute the Khuduthamaga.

## **CHAPTER IV**

### **FINDINGS AND RECOMMENDATIONS**

#### **FINDINGS**

On the evidence available to us, we make the following findings:

1. Diederick Moerane founded Bapo II and became the first Kgosi of Bapo II. In accordance with the customary law, his descendants are the rightful claimants to bogosi.
2. Lebogang Meso Mogale is the eldest surviving descendant of Diederick Moerane and the rightful heir to bogosi of Bapo II.
3. The seniority of the houses of Mogale Mogale does not apply in the determination of the chieftainship of Bapo II.
4. The Mogale, Maimane and Moerane clans all descend from the same ancestor, Kgosi Lotsane.
5. The legitimate members of the Royal Family are Lebogang Meso Mogale, his sibling, his paternal uncles, aunts and cousins and their descendants and members of the Mogale clan who are close relatives of the Kgosi. This is prescribed by section 1 of the NW Traditional Leadership and Governance Act No. 2 of 2005 and section 1 of the Traditional Leadership and Governance Framework Act 41 of 2003.



6. The Maimane and Moerane clans are considered and included by the ruling Mogale clan as members of the Royal Family.
7. The NW Traditional Leadership and Governance Act No. 2 of 2005 and the Traditional Leadership and Governance Framework Act 41 of 2003 do not preclude the ruling Mogale clan from including the Moerane and Maimane clans in the Royal Family if they wish to do so.
8. The legitimate members of the Khuduthamaga are the Kgosi and such persons as he may choose to include.
9. The Royal Family considers that representatives of senior members of the Moerane and Maimane clans should be included in the Khuduthamaga.
10. The Moerane and Maimane have been included in the Khuduthamaga previously.
11. Nothing in the custom and practices of Bapo II precludes the inclusion, at the instance of the Royal Family, of the Moerane and Maimane clans in the Khuduthamaga.

## **RECOMMENDATIONS**

We make the following recommendations:

12. The Premier take note that Lebogang Meso Mogale is the rightful heir to bokgosi of Bapo ba Mogale II.
13. The Premier appoint Lebogang Meso Mogale as chief of Bapo Ba Mogale II and issue him with a certificate in terms of section 13 of the North West Act Traditional Leadership and Governance Act 2 of 2005.
14. The Premier take note the members of the Royal Family as we describe in paragraphs 5, 6 and 7 above.
15. The Premier take note the constitution of the Khuduthamaga as we describe in paragraphs 8, 9 and 10 above.
16. The Premier call on the Kgosi, after he is appointed, to provide the names and particulars of members of the Khuduthamaga within such period as the Premier may determine.
17. The Premier take note of the relationship of the Mogale, Moerane and Maimane clans as we describe in paragraphs 4, 6, 7, 9, 10, 11 above.



## **CHAPTER V**

### **CONCLUSION AND ACKNOWLEDGEMENTS**

1. We must express our appreciations and gratitude to members of the community who attended the public hearings and patiently allowed us to carry out our task and in so doing unintentionally reminded us of the importance to the community of the issues raised in the ToR and all the witnesses who presented evidence before us. We include in our acknowledgment and appreciation Khanyisa Mogale Attorneys who represented some of the claimants. Without the participation, assistance and patient support of all these people, our task would have been the harder.
2. We must further mention and express our utmost gratitude to the Commission Secretariat, Guy Gumbo Attorneys, Rustenburg, in particular, Mr Guy Gumbo and the staff in his office. They ably ensured that interested members of the community, most of whom appeared without legal representation, received assistance to make written submissions to the Commission. They managed to run a largely efficient operation with minimal disruption where matters were within their control. The hard work they were required to invest in the task did not go unrecognised.
3. It is appropriate also that we extend our special gratitude to Mrs Yvonne Mosiane of the Department of COGTA, NW, for diligently ensuring that we were provided with the necessary provisions for sustenance and was always prepared to offer any assistance we asked of her. She always

ensured that our stay in the Rustenburg Civic Centre was as best comfortable as was within her control. Mr Simon Ruthoane of COGTA, NW also warrants special mention for ensuring that we had the tools to carry out our task with minimum disruption. We thank both for their support without which we would not have managed.

4. Finally, but not least, we must and do thank the Rustenburg Local Municipality for availing to the Commission the Civic Centre where we conducted our public hearings. The Municipality did not complain about the presence of large numbers of members of the public over the many months it took to complete public hearing. The staff of the municipality was always at hand to assist when requested and did their best to make us all comfortable. We cannot thank them enough.



## APPENDIX

The following persons presented written and or oral evidence:

**Madames:**

Lenkeme Moerane

Morwa Senna Mogale

**Messrs:**

Agonkitsi Mogale

Thabo Jacob Moerane

Lebogang Meso Mogale

Itumeleng Elliot Maimane

Lekgotla Frans Mogale

Stankana Mogale

Meleko Alfred Matlala

Kohalle Mabyane

## **ADDENDUM**

1. On 28 April 2019, a claimant to the chieftainship of Bapo Ba Mogale I, Mr Julius 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.
2. The Order of Court interdicting the release of the Final Report was discharged on 4 March 2020. We accordingly present this Final Report to the Premier.



## ANNEXURE "A"

The Recommendations as contained in the Report are approved with the following amendments:

1. Paragraph 2 at Chapter II is corrected in respect of number villages.  
"live in a cluster of 8 villages to be deleted"
2. Paragraph 8 at Chapter IV should read Kgosi, senior paternal uncles and aunts and senior representative of Moerane and Maimane clans (to exclude any person as Kgosi may choose to include to be deleted).
3. Paragraph 8 of the findings at page 35 should exclude "such persons as may choose to include"
4. Under the recommendations the Premier "recognise" and not appoint.
5. Khuduthamaga members names and particulars should be provided to the Premier within 30 days from the issuing of the Certificate.

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

*Approved subject to annexure A  
in respect of Bulch 2*

PROF. T.J MOKGORO

PREMIER: NORTH WEST PROVINCE

DATE: 12/8/2020