

Press Statement on the Constitutional Court hearing in *Sigcau v President of the Republic of South Africa and Others*

by the

Centre for Law and Society at the University of Cape Town
(www.cls.uct.ac.za)

21 February 2013

The Centre for Law and Society has intervened as a friend of the court in *Sigcau v President of the Republic of South Africa and Others*, an appeal that is today before the Constitutional Court. The appeal involves a dispute as to the leadership of the amaMpondo, arising out of the findings of the Commission on Traditional Leadership Disputes and Claims. The Centre has intervened in this case in order to challenge the approach used by the Commission in making its findings.

The Commission, established in terms of the Traditional Leadership and Governance Framework Act 41 of 2003 is charged with resolving disputes about traditional leadership and the boundaries of “traditional communities”. The Framework Act entrenches the apartheid tribal boundaries created in terms of the Bantu Authorities Act of 1951.

In 9 years the Commission has made findings in only 139 of the estimated 1,400 claims and disputes that have been lodged. To date only the findings as to Kingship have been published. With its term of office expiring in 2015 it is highly unlikely that the Commission will be able to deal with the entrenched boundary disputes generated by the Framework Act’s confirmation of apartheid tribal boundaries.

The Centre’s key submission is that the approach adopted by the Commission mirrors the rigid, genealogical methodology used by government ethnologists under apartheid

to justify their decisions to appoint compliant chiefs, often at the expense of those who enjoyed popular support. As such, the Commission's approach to appointing chiefs undermines local accountability mechanisms that make chiefs accountable to their people.

An approach that relies exclusively on rule-bound genealogies is at odds with the jurisprudence of the Constitutional Court, which recognises living customary law as flexible, changing and dynamic and warns against the danger of entrenching distorted "official" versions of customary law, particularly those with colonial and apartheid origins. The Centre argues that any investigation into succession disputes should have regard to the support enjoyed by the rival contenders. This is what, in practice, determined leadership disputes prior to the advent of colonialism and apartheid.

The present case is just one of many challenging the findings of the Commission. Similar, is a dispute currently underway in Limpopo challenging the Commission's finding that the rightful incumbent of the "vhaVenda kingship" is to be found in the Mphephu-Ramabulana line. There are many who argue that this would entrench distortions that privileged the Mphephu line while Patrick Mphephu was President of the then Venda "homeland".

In all of these cases the stakes are high for the communities concerned. Legislation such as the Traditional Courts Bill seeks to vest extraordinary power in traditional leaders. Valuable minerals have been discovered in many former homeland areas – generating disputes concerning the accountability of traditional leaders to the people who have lived on that land for generations. Pondoland is mired in disputes concerning the proposed Wild Coast toll road and contested mining ventures. The deposed king has played an important role in community opposition to these processes. Some traditional leaders are known to take decisions that do not reflect the wishes of the community. In these contexts mechanisms that hold leaders accountable to their people are crucial. An intervention is necessary in this appeal because the findings of the Commission appear to have ignored the fact that leaders should be appointed on

the basis of the support they enjoy within their communities, rather than by government determination. Enforcing such a top-down approach to traditional leadership undermines the accountability of leaders to the community, and greatly impacts upon ordinary peoples' access to land, resources and basic services.

The Centre is represented by the Legal Resources Centre in its application to be admitted as a friend of the court. It seeks to introduce evidence of the actual dynamics of customary succession processes, in contrast to the rule-bound genealogical approach entrenched by the Commission.

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