

Chapter Nine

The Restoration of *Vhuhosivhuhulu* in the Democratic South Africa:

The Ralushai and Nhlapo Commissions of Inquiry

This chapter critiques the way in which the post-apartheid South African government tried to rearrange the position of traditional leaders (specifically those of the Vhavenda) in South Africa after 1994. This was done through the appointment of Commissions of Inquiry to help the government address the negative aspects in the role of traditional leaders which were brought about by the apartheid government's policies. The apartheid government caused confusion in the traditional leadership system in the country. The new government's attempt was to restore the status of traditional rulers in South Africa. However, I need to highlight that the outcomes of these Commissions did not bring finality to the question of chieftainship in South Africa as there are still disputes going on around the status of certain 'chiefs' and 'kings'. The Commissions demonstrated that the traditional leaders' sustainability in the new South Africa is reliant on the national government, as it was the case during apartheid.

The focus in this chapter will be on two Commissions of Inquiry at the centre of the restoration of *vuhosivhuhulu* of the Venda people. The Commissions in question are the Ralushai Commission of Inquiry and the Nhlapo Commission of Inquiry. My methodology in this chapter will be a close reading of the Commission reports, with regular reference to findings arrived at in the previous chapters of this thesis.

The Ralushai Commission

The loopholes in the Mushasha Commission of Inquiry report were soon exposed in the post-apartheid South Africa. The first attempt to repeal the report of the Mushasha Commission of Inquiry came when the then Premier of the then Northern Province (now Limpopo), Advocate Ngoako Ramatlodi, established a Commission of Inquiry on 2 February 1996 in terms of Proclamation No. 2 of 1996.¹ The Premier Ramatlodi appointed the late

¹ *Ralushai Commission of Inquiry I*, 1998, p. 3.

Professor Nkhumeleni Victor Ralushai to chair the Commission; thus the Commission became famously known as the Ralushai Commission of Inquiry.

The Commission was given a mandate to investigate the claims by certain traditional leaders that they were irregularly deposed by the previous government or that they were not duly recognised by the previous government when they were entitled to be recognised. It was also tasked to investigate the alleged disputes and complaints by certain traditional leaders that some traditional leaders have been irregularly appointed. The Commission was also expected to look at malpractices or irregularities, including non-compliance with any statutory provision regarding the appointment or recognition of traditional leaders which may have occurred. In the end the Commission was required to make recommendations regarding steps to be taken to resolve such alleged disputes or to deal with such matters in such a way as would permanently address the said problems.²

The Commission was appointed in February 1996 but because of logistical problems in the office of the Premier, it only commenced its work in April 1996.³ The Commission was able to submit its interim report to Premier Ramatlodi in 1997, and it was made public. However, the final report presented to the Premier was never made public. It is important to highlight that it had to take the efforts of traditional leaders from Sekhukhune in Limpopo to have the final report made public. This happened after the traditional leaders had taken the then Minister of Provincial and Local Government, Dr. Sydney Mufamadi, to court to force him to give them access to the final report of the Ralushai Commission of Inquiry. It is also important to emphasize that the final report of the Ralushai Commission remains elusive to scholars for research even though the courts declared that it had to be made public.⁴ One could argue that the reluctance of the government to release the final report of the Ralushai Commission was owing to the rather explosive nature thereof. The report seems to have come up with findings that are contrary to the narrative of the national government on how *vhuhosivhuhulu* of Venda disputes should be addressed.

² *Ralushai Commission of Inquiry I*, 1998, p. 3.

³ *Ralushai Commission of Inquiry III*, p. 6.

⁴ Even Buthelezi and Skosana did not seem aware of this as they concluded the matter with the words “but its report was never made public.” See M. Buthelezi and D. Skosana, *The Salience of Chiefs in Postapartheid South Africa. Reflections on the Nhlapo Commission*, in J. & J. Comaroff (eds.), *The Politics of Custom. Chiefship, Capital and the State in Contemporary Africa*, Chicago University Press, Chicago, 2019, p. 115.

It was a struggle for me to get hold of the report until the Department of Cooperative Governance and Traditional Affairs eventually allowed me access to it. It is important to note that I will only focus on aspects dealing with claims about the *vuhosivhuhulu* of Venda, since the scope of the Commission was broader than the focus of my study. I can also confirm that during my visit to the late Professor Ralushai at his Sibasa home sometime around 2001, he alluded to his conviction that *vuhosivhuhulu* of Venda should belong to the senior house of the Masingo; the house of the Ramabulana. Therefore, he implied that the Ramabulana are the sole *mahosimahulu* of the Venda people. One could reach a conclusion on the matter if the verbal admission of Prof. Ralushai were to be supported by the final report of his Commission submitted to the Premier of Limpopo in 1998. Such a conclusion would of course be highly contentious, making the careful analysis of the final report as undertaken in this chapter, all the more pertinent. It is my view that the sole reason the Ralushai Commission of Inquiry was never made public was because, although it was structured on the government's terms, it went beyond its given mandate.

In an attempt to resolve the conflicts in the *vuhosivhuhulu* of Venda, the Ralushai Commission of Inquiry decided to deal with the claims of *vuhosivhulu* of Mphephu, Tshivhase and Davhana and *vuhosi* of Mphaphuli together. The Commission Chairman, Prof. Ralushai, pointed out that the four claims would be treated together for reasons of expediency and convenience as they happened to be closely related in terms of the areas to which they applied and also the manner and chronology in which they were presented. The Commission also took into cognisance the fact that, in some respects, there were some points of contact amongst them. It was also noted by the Commission that the four claimants contradicted one another in some respects.⁵ This should not come as a surprise when considering that all the claimants were tailoring their narratives in conversation with a changing form of government administration. In the words of Buthelezi and Skosana:

The manner in which they have adapted their claims for recognition is to be observed in the way they present those claims – mobilizing aspects of the past that position them as rightful heirs of (often) revered historic leaders – as arguments for a

⁵ Ralushai Commission of Inquiry III, 1998, p. 749.

role in institutions of state. They assert that they would have been sovereign over their dominions had it not been for the violent imposition of colonial rule.⁶

This tendency will be noticed in the way historical sources, like the those of the Berlin Missionaries and Van Warmelo, will selectively be picked from where evidence can be cited in support of a particular argument.

Ramabulana

The Ralushai Commission of Inquiry first heard the claim of the restoration of the status of *vhuhosivhuhulu* to the Mphephu Ramabulanas as presented by one Mr David Mphephu. Mr Mphephu started by giving a narrative of the genealogy of *Mahosimahulu* of the Ramabulanas from Vele-la-Mbeu to Toni Peter Mphephu Ramabulana. According to the evidence presented by Mr Mphephu, Vele-la-Mbeu was the first founder and *khosikhulu* of the Venda nation and the heir to Vele-la-Mbeu, was Munzhedzi Mpofu. However, I find the narrative of Mr Mphephu about *vhuhosivhuhulu* of the Ramabulana to be full of distortion, for instance: his claim that the Mphephu dynasty commenced at the place called Dzata is short of facts. As illustrated in the first chapters of this study, *vhuhosivhuhulu* of Venda was created long before the Masingo had migrated to Dzata.

One important point that came out of Mr. Mphephu's testimony was his argument that, in the past, the Ramabulana were *mahosimahulu* of the whole of Venda, with the two houses, Tshivhase and Mphaphuli, supporting them as a senior house. This, he claimed, was also supported by the fact that the Ramabulana installed *vhothovhele* of Tshivhase and the latter regarded the former as a senior house. This assertion has not even been disputed before the Commission by the Tshivhase house,⁷ which indicates that there must be an element of truth in it. However, I found Mr. Mphephu's assertion about the Mphaphuli being a senior house of the Ramabulana contradicting the historical sources I cited earlier on in this study, where it was indicated that the Mphaphuli clan are not part of the Ramabulana. In fact, the Mphaphuli were regarded as *maine* – (healers) – of the Rambulana, with no relations to the latter whatsoever.

6 M. Buthelezi and D. Skosana, *The Saliency of Chiefs ...*, p. 111.

7 *Ralushai Commission of Inquiry III*, 1998, p. 750.

The Ramabulana also used their war prowess as evidence that they were above the other houses contesting *vuhosivhuhulu* with them. They cited Makhado's victory over the Voortrekkers at Schoemansdal in 1867 to show that they were the most respected and powerful house of the Masingo. It was not a surprise that Mr Mphephu also cited the fact that the Ramabulana were the first to rule the former Venda homeland when the late *Khosikhulu* P.R. Mphephu was the first President of the Republic of Venda in 1979. I hold the view that this was not a sign of superiority of the Ramabulana house over the Tshivhase, Mphaphuli, Davhana and Vhangona. This is supported by a general perception amongst the other houses that Mphephu became the head of the Venda State because both Tshivhase and Mphaphuli declined the offer of the apartheid regime because they were not in favour of the creation of homelands. Their stance on the homelands policy made both Tshivhase and Mphaphuli unpopular with Pretoria. Therefore, Mphephu was the option to advance the apartheid policy of segregation which enhanced the white supremacy over black South Africans.

The Commission was told by Mr Mphephu that it was the seniority of the Ramabulana that made it possible for the late P.R. Mphephu (who was the direct descendant of Mphephu I) to be appointed *khosikhulu* of all the Venda people. This evidence implies that all the Venda houses – Tshivhase, Mphaphuli, Davhana and even Vhangona – were all paying homage to the Ramabulana of Nzhelele. The Mphephu claim before the Commission was broad because it went beyond the borders of what is today known as Venda. The claim included Sekhukhuneland, Bolobedu of *Kgosikgadi* Modjadji and Ga-Malebogo which were claimed to be the original borders of the Ramabulana area. According to Mr Mphephu the Lobedu *Kgosikgadi* Modjadji, was *Khosikhulu* Dimbanyika's aunt. It was alleged by the Ramabulana that *Kgosikgadi* Modjadji used to stay at Tshavhalovhedzi near *nnduni ya vuhosivhuhulu* of the Venda people in Dzanani. This can be the reason her area today is known as Bolobedu and her people are called Balobedu: It is alleged by the Venda people that Bolobedu is derived from the Venda name Tshavhalovhedzi.

Mr Mphephu's claim to the Ralushai Commission of Inquiry regarding the issue of boundaries is supported by historical sources. It is important to highlight the fact that prior to Makhado's rule in Venda, his uncle Ramavhoya and even his father Ravele Ramabulana

had control over the Batlokwa and other people in the far north of (what is today) Limpopo.⁸

The Vhangona represented by Tshidziwelele Nephawe were given the opportunity by the Commission to pose questions to Mr Mphephu. It is important to note that the Vhangona wanted the Masingo to know that they, the Vhangona, and not the Masingo, owned the land and all the religious places in Venda. Mr Nephawe also emphasised that no relationships existed between the Vhangona and the Masingo. However, Mr Mphephu gave the Commission an impression that the Masingo were not aware if the claims made by Mr Nephawe were true. In closing his questions, Mr Nephawe made it clear to Mr Mphephu and the Commission that the Vhangona were opposing the Ramabulana claim for *vhuhosivhuhulu* in Venda. Vhangona opposition of the Ramabulana claim for *vhuhosivhuhulu* were quickly countered by Mr Mphephu's response. He told the Commission and Mr Nephawe that the Ramabulana were not given *vhuhosivhuhulu* but they had instead won it by conquest when they fought and vanquished the Vhangona. This raises serious questions about the authenticity of *vhuhosivhuhulu* of Venda. If the testimony given by Mr Mphephu for the Ramabulana were to be taken seriously, this could mean that *vhuhosi* and *vhuhosivhuhulu* were not hereditary as many among the royal houses would like us to believe through the idiom "*vhuhosi vhutou bebelwa*", meaning "leadership is hereditary."

In his final presentation for the Ramabulana, Mr Mphephu told the Commission that the Ramabulana wanted *vhuhosivhuhulu* of Ramabulana to be based on the current Venda boundaries. It is my view that the Ramabulana realised that claiming *vhuhosivhuhulu* of Venda beyond the current boundaries of Venda was not going to work in the present. The reason for a broader claim not to be feasible relates to the fact that Pedi, Tsonga and Lobedu traditional leaders who were historically under the control of the Ramabulana either through conquest or affinity during the reign of Ramavhoya or Ravele Ramabulana and later Makhado, had been independent for some time. One could also argue that the linguistic difference between the Venda people, Tsonga people and Pedi people of Sekhukhune is

⁸ Ralushai Commission of Inquiry III, 1998, p. 751.

another reason the claim was not going to work. While I admit that there are similarities between Kelobedu and the Venda language, this would not have made *Kgosikgadi* Modjadji and her people accept integration into Venda and abandon the Modjadji dynasty.

The proposal of the Ramabulana to the Commission was for *vuhosivhuhulu* of Venda to have three *mahosi*; (1) Tshivhase; (2) Mphaphuli; and (3) Davhana under *vuhosivhulu* of Ramabulana.⁹ This notion of three great royal houses correlates with a nineteenth-century missionary map indicating three separate Venda *Reiche* [realms], although the German missionaries had not concluded that the Ramabulana house was supreme over all others.¹⁰ Mr Mphephu claimed that *vuhosivhuhulu* of Ramabulana had 78 *mahosi* under *Khosikhulu* Makhado in the past, before most of these *mahosi* were demoted to the status of *magota* by the apartheid government.¹¹ The study cannot leave Ramabulana's claim of 78 *mahosi* unchallenged because there was no evidence – oral or written – which ever supported the idea that the Ramabulana had as many as 78 *mahosi* under a single *khosikhulu* at any period in time. This argument is supported by the fact that Venda as community is very small and it was a very small community during the period of Makhado's reign compared to the present day Venda community.

Tshivhase

The Tshivhase claim to *vuhosivhuhulu* was presented to the Commission by *Vhamusanda* Mr Gilbert Mbengeni Ligege.¹² The Tshivhase presentation started with the genealogy of their perceived *mahosihulu* and *mahosi*. According to Mr Ligege the first *khosikhulu* of Tshivhase was Raluswielo and his reign started before the house of Ramabulana had broken up in Dzata. It is important to highlight that when Raluswielo left Dzata, Munzhedzi Mpofu was *khosikhulu* there. However, Mr Ligege, representing the Tshivhase, made claims to the Commission that Raluswielo was not on par with Mpofu genealogically and according to the inheritance line. The Tshivhase people argued that Raluswielo was installed as *khosikhulu* of

9 *Ralushai Commission of Inquiry III*, 1998, p. 753.

10 This map from W. Gründler's *Geschichte der Bawenda Mission in Nord-Transvaal*, Berliner Mission, Berlin, ca. 1897, is reproduced and discussed in A. Kirkaldy, *Capturing the Soul. The Vhavenda and the Missionaries*. Doctoral Thesis, University of Cape Town, 2000, pp. 235-237.

11 *Ralushai Commission of Inquiry III*, p. 754.

12 *Ralushai Commission of inquiry III*, p. 755.

Venda before Mpofu and the two leaders ought not to have been perceived to be on the same level.

In support of their arguments, Mr Ligege provided the Commission with evidence that Munzhedzi Mpofu was installed as *khosikhulu* after Raluswielo who, according to the Tshivhase claims, was from the senior house in Dzata before his departure. According to Mr Ligege, it was factual that Raluswielo and Munzhedzi Mpofu never paid allegiance to each other. It was not disputed by the Tshivhase that Raluswielo left Dzata to create his own independent *vuhosi* and he never went back to Dzata. It is important to highlight that the Tshivhase made similar claims as the Ramabulana: that most of their *mahosi* were demoted to *magota*. Surprisingly, the Tshivhase cited some of the independent *mahosi* such as Rambuda, Netheengwe, Tshikundamalema and Mphaphuli as those they thought would in future be their *mahosi* if their *vuhosivhuhulu* claim were to be successful.

One could argue that Mr Ligege's presentation for the Tshivhase at the Commission was full of distortions. This came out when Mr Ligege was interrogated by the Ramabulana, Mphaphuli and Nephawe representing the Vhangona. The Tshivhase claim that Raluswielo was born of the *dzekiso*¹³ wife and that his mother came from the royal family was disputed by the Ramabulana. The Commission was told by Mr Mphephu (representing the Ramabulana house) that Raluswielo was not *mulaifa* to *vuhosivhuhulu* of Thohoyandou but that Mpofu was the rightful *mulaifa*.¹⁴ It is important to note that the assertion made by Mr Mphephu on the credibility of Raluswielo as a rightful successor to *vuhosivhuhulu* of Venda was factually correct and that it was supported by the arguments presented in the early chapters of this thesis.

It is also important to highlight that Raluswielo could not have left Dzata if he was indeed the heir to Thohoyandou's throne. Therefore, claims made by Mr Ligege at the Commission that Raluswielo had left Dzata because Mpofu and his supporters wanted to assassinate him, should be dismissed, as they were misleading. These claims cannot be supported by

13 For whom cattle had been paid.

14 *Ralushai Commission of Inquiry III*, p. 758.

any written sources (as the oldest records) available on the issue of *vuhosivhuhulu* of Venda. It will be enough for me to reach a conclusion that even if Raluswielo had replaced Thohoyandou after his death, it could have been in an acting capacity only and not as a permanent *khosikhulu*. Since both the Ramabulana and the Tshivhase were from the Singo clan, it was unlikely that one clan would have had two *khosikhulu*. However, Mr Ligege gave the Commission an impression that the Tshivhase were not aware that the Masingo could not have two *khosikhulu*. Had Mr Ligege been aware of the nineteenth-century Berlin Missionary maps indicating separate *Reiche* for the Ramabulana, Tshivhase and Mphaphuli, he could have employed this image to feed his rhetoric in favour of two *khosikhulu* (or three *khosikhulu*) for Venda, but this can hardly be considered to add up to conclusive evidence.¹⁵ What we can say with certainty, is that the Tshivashe did not have the arguments in their arsenal to assert *their* superiority over the Ramabulana, and thus, a narrative of different *khosikhulu* ruling separately, but equally, was the highest bid they could offer to the Commission.

The common thing that came out of the Mphephu and Tshivhase claims was that both contenders concurred with each other that the Vhangona were easily conquered by the Masingo. Therefore, this implies that the Vhangona represented by Tshidziwelele Nephawe had no basis to claim *vuhosivhuhulu* of the Venda people. The Mphaphuli were the last to put questions to Mr Ligege as representative of the Tshivhase. The Mphaphuli were represented by *Gota* Sumbana, who disputed the claims made by the Tshivhase that, at a meeting of *mahosi* held at the Mountain View Hotel outside Louis Trichardt in Limpopo, the Mphaphuli represented by one *Gota* Makhuvha recognised the status of the Tshivhase as eligible to *vuhosivhuhulu*.¹⁶ Mr Sumbana told Mr Ligege and the Commission that the Mphaphuli, the Tshivhase and the Ramabulana had their own respective territories and that no group paid homage to another.¹⁷ He also emphasised that there were certain areas of Mphaphuli which fell under Tshivhase territory. I view the presentation of the Mphaphuli as contradictory to their *vuhosivhuhulu* claim to the Commission. The Mphaphuli *vuhosi*

15 Two different nineteenth-century maps in the following publication indicate Vendaland as a single political entity: *Buchhandlung der Berliner evangelischen Missionsgesellschaft Karten über das Arbeitsfeld der Berliner Mission*.

16 *Ralushai Commission of Inquiry III*, p. 758.

17 *Ralushai Commission of Inquiry III*, p. 758.

claim gives away their equal status to the Ramabulana and the Tshivhase. It, therefore, gives credence to the Ramabulana claims that there is one *khosikhulu* in Venda which is the Ramabulana and all the other houses pay homage to Dzanani.

The Tshivhase were also interrogated by Acting Chief M.G. Nethengwe representing Vhatavhatsindi of Thengwe. *Thovhele-pfareli* Nethengwe made it clear to Mr Ligege that the Thengwe people would not fall under the perceived Tshivhase *vuhosivhuhulu* because they were independent from the Tshivhase. It is important to note that the Tshivhase wanted the Nethengwe to be one of the *mahosi* under their *vuhosivhuhulu*. However, it was surprising that the Tshivhase didn't even know who installed *mahosi* of Thengwe. It is clear that the Tshivhase didn't even know where their people had come from before settling in Dzata. This came out when Tshidziwele Nephawe asked Mr Ligege a question in that regard. Mr Ligege responded by saying the Tshivhase came "from Congo".¹⁸ I agree that the assumption of the Tshivhase might have some elements of truth and that the Masingo did originally come from central Africa, precisely the pre-colonial Congo, before they settled in Matongoni in what is today Zimbabwe. However, it would have been factually more correct for Mr Ligege to have said that the Tshivhase, like any other Singo community, came to Dzata after settling in the Soutpansberg Mountains for a while after migrating from Zimbabwe.

After listening to evidence presented by Mr Ligege and the questions asked by the other houses, the Commissioners decided to put some questions to Mr Ligege. The Commissioners put it to him that it appeared from evidence presented and the questions asked that Tshivhase was not independent at Dzata, and that he only became independent after the disintegration of Dzata. In response to the Commissioners' question, Mr Ligege concurred that Tshivhase was not independent at Dzata, but he still maintained that there was no one above him.¹⁹ This response showed a bit of confusion and contradiction on the side of Mr Ligege. It was clear to the Commissioners that the Tshivhase were originally subject to the authority of *vuhosivhuhulu* of Mpofo in Dzata before they left to declare an independent *vuhosi* in Dopeni.

18 *Ralushai Commission of Inquiry III*, p. 759.

19 *Ralushai Commission of Inquiry III*, p. 760.

Finally, Mr Ligege told the Commission that a single *vuhosivhuhulu* would not work in Venda because it had never worked before. He warned that a single *vuhosivhuhulu* claim in Venda would lead to bloodshed and lack of peace. The Commissioners asked Mr Ligege if the Tshivhase did not seek to rule over the Mphaphuli and the Ramabulana. He replied that they had no intention of ruling the Ramabulana but they strongly felt that the Mphaphuli ought to be under their jurisdiction. The Tshivhase proposed that Venda should have two separate *vuhosivhuhulu* ruled over by the Ramabulana and the Tshivhase as brothers. It was put to Mr Ligege by the Commissioners that Ramabulana was the senior house compared to Tshivhase, Mphaphuli and Davhana. It was also put to him that the Ramabulana seniority was shown when they were the ones who installed *mahosi* of Tshivhase. One example cited by the Commission was the late *Khosikhulu* Patrick Ramaano Mphephu installing *Thovhele* Midiyavhathu Tshivhase to the throne of Tshivhase.²⁰ Out of ignorance Mr Ligege claimed he did not recognise the Ramabulana as a senior house and that he had never said Midiyavhathu Tshivhase was installed by the Ramabulana.

The arguments presented by the Tshivhase for their claim are not supported by any written or oral sources in the Venda history except themselves. Most scholars reached the conclusion that the Ramabulana are the senior house, not the Tshivhases. The Commissioners quoted a few Venda scholars: Nemudzivhadi, Dzivhani, and Motenda, all of whom concluded that Ramabulana was the senior house of the Masingo. However, Mr Ligege dismissed Prof Nemudzivhadi as a sympathiser of the apartheid regime who had also worked in the office of the late Venda President *Khosikhulu* P.R.Mphephu. This implies that the Tshivhase were of the view that Prof Nemudzivhadi was not impartial in his writing.²¹ Mr Ligege also dismissed the writings of Dzivhani and Motenda as incorrect, even though they had written up their narratives before the National Party came to power in

²⁰ *Ralushai Commission of Inquiry III*, p. 761.

²¹ For that matter, Mr Ligege would in all probability also not have been comfortable with Prof Ralushai as chair of the committee. With the Ramabulana having controlled Venda Homeland politics throughout the apartheid era, it made sense that the eminent professors of Venda History at the Venda 'national' university would not have been ones that were disputing Ramabulana supremacy. And yet, the fact that the supremacy of the Ramabulana was affirmed by a discredited colonial authority, does not imply that this supremacy may not have had older historical roots. As Mr Ligege had pleaded in his testimony, for the Tshivhase to recognise a single *vuhosivhuhulu* in Venda (well knowing that it would not have been in favour of themselves) would not have been conducive to peaceful twenty-first century politics. There was no reason for Mr Ligege to construct a historical narrative that would have supported Ramabulana supremacy.

1948. One can agree that before Mphephu became the Venda homeland President, *mahosi* of Venda were operating as independent from each other. However, this development did not take away the fact that historically the Ramabulana were the senior house of all *mahosi* of the Singo clan and that they were the most powerful of all other houses. This was demonstrated during the reign of Makhado and later on during the reign of his son Mphephu I.

To justify the claims that the Tshivhase would not recognise the Ramabulana as a senior house, Mr Ligege cited the work of N.J. van Warmelo, whom the Tshivhase acknowledged as a respected writer with regard to matters of the Venda people. It is important to highlight that Mr Ligege quoted from Van Warmelo's book, *Contributions Towards Venda History, Religion and Tribal Rituals*: "Up to now they had gotten on well together, as long as Thohoyandou lived. When he died, they said Tshivhase shall be chief". Mr Ligege emphasised that it was never said that Mpofu should be a *thovhele*. However, one finds Mr Ligege's quotes to be insignificant on the issue of seniority. The same Van Warmelo in his other work, entitled, *The Copper Miners of Musina* (consulted extensively in a previous chapter of this thesis) gives one the same impression: that the Ramabulana lineage went through Mpofu, Mphephu I and right down to Toni Mphephu Ramabulana.²²

It is interesting that Mr Ligege did not believe in Venda scholars because he held the view that they were influenced by the apartheid narrative when writing about their own people. Ironically, he did not see anything wrong believing the white scholar who had worked as a government ethnologist. The Tshivhase ended their presentation by saying they wanted *vuhosivhuhulu* of Tshivhase to be restored only in the Tshivhase territory and Ramabulana should rule as *khosikhulu* in his territory. One finds the claims of the Tshivhase to be ambitious and based on distortion of Venda traditions and customs when it comes to Venda *vuhosivhuhulu* succession. And yet it is understandable when considering that the dominant historical narrative was inconvenient for the Tshivhase. The purpose of the study is to ask what the Tshivhases wanted, because, knowing this, we can understand the story they told the Commission. It is clear that the Tshivhase did not want to be under the

22 Ralushai Commission of Inquiry III, p. 162.

Ramabulana. They wanted their autonomy, and the protection thereof by the South African Republic. It is my view that the truth about who the rightful *mahosimahulu* of Venda people are, lies with the Masingo themselves, and to some extent, with the Vhangona. This plays itself out with the concession by the Tshivhase and Mphaphuli after the Commission has found that the Ramabulana are their senior *mahosimahulu*.

Mphaphuli

On the question of the Mphaphuli claim to *vuhosi*, it must be noted that their evidence at the Commission led by *Gota Sumbani* was not disputing that the Mphaphuli had never been *mahosimahulu*. It is important to reiterate what has been mentioned before in the early chapters of the thesis, namely that the Mphaphuli affinity to the Masingo is questionable. Pastor Lalumbe alleged that the Mphaphuli were of Swati or Ndebele origin. However, it should be noted that there is no single trace of Swati or Ndebele culture in Mphaphuli beliefs and practices today.²³ There is a scholarly train of thought that the Mphaphuli were traditionally the priests and announcers of information of national importance at Dzata, that they were involved in sacred ceremonies at Dzata – and therefore this implied that the Mphaphuli were servants of *Khosikhulu* at Dzata.

According to *Gota Sumbana*, the genealogy of Mphaphuli started with the first ruler Nelungundu, followed by Tshilala, Ratsimbi, Ranwedzi, Makwarela, Phaswana, Magwedzha, Mpandeli through to the current *Thovhele* Musiwa Mphaphuli. It is important for the thesis to highlight that *vuhosi* of Mphaphuli started at Tshitomboni where they performed their religious ceremonies called u *pembela*. By the time Andries Hendrik Potgieter and his Voortrekkers established Soutpansberg *dorp* in 1848, both Mphaphuli and Tshivhase had already left Dzata to become independent *mahosi*.²⁴ However, it is important to emphasise that the Ramabulana – more especially during the reign of Makhado – demonstrated that they were powerful, and the two independent *mahosi* were forced to submit to the authority of Makhado in fear of attack. The notion that the Mphaphuli were not *mahosi* historically did not restrict them from acquiring a vast track of land in the eastern part of Venda. With the numbers in their favour, the Mphaphuli created *vuhosi* which allowed

23 *Ralushai Commission of Inquiry III*, p. 769.

24 *Ralushai Commission of Inquiry III*, p. 770.

them to rule over their followers from Dzata, including some Tsonga-speaking people from Mozambique who settled in the south-east of Venda. The Tsonga clans who were given permission by the Mphaphuli to settle in their land are those of Xikundu, Mhinga and Xigalo.

The Bantu Authorities Act of 1951 was a blow to the Mphaphuli as they lost many areas as well as their Tsonga subjects. Mphaphuli lost some of the Tsonga *magota* under his jurisdiction, like Mkhabele of Mbahe and Bevula of Tshilungom. These *magota* were forcibly removed by the apartheid government during the 1969 mass removals. According to the testimony of the Mphaphuli to the Commission, those *magota* were not originally traditional rulers, but they were members of the South African Police Force. Mphaphuli appointed both men as *magota* of Mbahe and Tshilungoma respectively after their retirement from the police force. The relationship between Mphaphuli and the Tsonga people seemed to have been a cordial one, because it was unusual to appoint people from outside to such positions of authority. The Ralushai Commission was informed that both Mkhabele and Bevula were still *magota* in the former Gazankulu areas which the Mphaphuli claimed historically belonged to them.²⁵ The elevation of Tsonga men to *tihosi* who were retired members of the South African Police Force showed that during the apartheid era people who were not traditional leaders were just given titles as traditional leaders.

The question of the significance of the Mphaphuli traditional authority compared to that of Ramabulana, Tshivhase and Davhana has already been dealt with in the earlier chapters of the thesis. There is no doubt that the Mphaphuli created their own *vuhosi* after they left Dzata where they were servants *nnduni ya vuhosivuhulu*. It is also factual that neither the Ramabulana nor the Tshivhase were disputing that the Mphaphuli are now the third-most respected traditional leaders after the two Singo rulers. If numbers were to be used to determine who should be *khosikhulu* of Venda, the Tshivhase were going to win the title without a contest and the Mphaphuli were going to be the second in seniority ahead of the Ramabulana. According to population statistics taken in the census of 1991, the Mphephu Territorial Council had 63 333 households with a population of 74 002. The Tshivhase Territorial Council had 108 647 households with a population of 133 183. Lastly, the

²⁵ Ralushai Commission of Inquiry III, p. 772.

Mphaphuli Territorial Council had 76 671 households with a population of 76 400.²⁶ I must emphasise that the population of these Territorial Councils might have increased by now for 25 years have passed since the census cited by the Mphaphuli at the Commission. This goes to show that traditional leadership was a creation of the government of the day and the communities themselves. This trend is continuing even today with the current government deciding who should be a traditional leader or not, hence the appointment of the Commissions to advance the government plan on traditional leaders.

The Mphaphuli tried hard to convince the Commission that their seniority and political significance was even recognised by the South African Republic. They cited an incident prior to the Mphaphuli-Boer War of 1898 when Reverend Beuster of the Berlin Missionary Society in Maungani was persuaded by President Paul Kruger to appeal to *Thovhele* Makwarela Ranndongwana Mphaphuli to use his influence to convince Tshivhase, Rambuda and other *mahosi* of Venda to fight on the side of Pretoria to isolate Mphaphuli. The Mphaphuli also invoked an even earlier event, the meeting between Theophilus Shepstone, who was the new Governor of the Transvaal representing the British Government, and *Thovhele* Mphaphuli in 1877. Shepstone invited the *Thovhele* Mphaphuli to participate in political discussions to end hostilities between Mphaphuli and Tshivhase in eastern Venda.²⁷ One can argue that the attempt by the government to use some *vhothovhele* of Venda like Mphaphuli in their fight against Mphaphuli I to further isolate the latter, was a demonstration of the Ramabulana leadership prowess in Venda.

The Mphaphuli ended their presentation by arguing that it was clear that the Mphaphuli were not only politically and numerically significant, but they were regarded by their Venda, Lobedu and Tsonga neighbours as rulers with a very important history. It was therefore, based on those arguments, that they strongly believed that they deserved to be treated on the same basis as the other two senior *nndu dza vuhosi* of Venda, namely Ramabulana and Tshivhase.²⁸ However, I noted that despite the Mphaphuli's claims of equal status with the other two rulers, they still claimed for *vuhosi* rather than *vuhosivuhulu*, and this

26 Ralushai Commission of Inquiry III, p. 773.

27 Ralushai Commission of Inquiry III, p. 774. The extract is courtesy of N.V. Ralushai's 1976 fieldwork.

28 Ralushai Commission of Inquiry III, p. 774.

demonstrated some clear contradictions in the Mphaphuli's arguments. The study can reach the conclusion that the Mphaphuli claim to *vhuhosi* is a clear admission that their royal status came by default. If historical sources on the Venda *vhuhosi* discourse discussed in the previous chapters of the study about the origins of *vhuhosi* of Mphaphuli were to be taken seriously, then, factually, one can deduce that they didn't have the right to be *mahosi* or *mahosimahulu*. There is no trace in any early written records of the Mphaphuli having conquered other clans to attain their *vhuhosi* status as the Ramabulana had done.

Ralushai Findings

The Ralushai Commission of Inquiry concluded its findings by accepting the status of the Ramabulana, Tshivhase and Mphaphuli as senior Venda traditional rulers as beyond question. The Commission also acknowledged the fact that the Mphaphuli did not claim to be senior to the Ramabulana and Tshivhase, hence their claim for *vhuhosi* but not *vhuhosivhuhulu*. As far as the Davhana claim for *vhuhosivhuhulu* was concerned, the Commission noted that *vhothovhele* such as Masia, Mashau, Netshimbupfe and Nengwekhulu all denied that they were ever under Davhana nor were they prepared to be under him in future. All these *vhothovhele* claimed that *vhuhosi* of Davhana was strong because of the support he had from Paul Kruger, Joao Albasini and the Berlin Missionaries.²⁹ I hold the view that this is a distortion of facts in the sense that, historically, Davhana was *khosikhulu* after succeeding his father Ravele Ramabulana, before he was toppled by his younger brother Makhado. It is surprising that the Ralushai Commission failed to accord Davhana the status of *khosikhulu* of the Ramabulana as he was the eldest in that house. It might be that since Davhana was a fugitive from Tshiruluni he never had a chance to reclaim his *vhuhosivhuhulu* after he was dethroned by Makhado. For this reason, even today Davhana's role in the Venda *vhuhosi* is not significant as he is not a popular *thovhele* like Tshivhase and Mphaphuli.

The Commission took into cognisance whether it would be feasible to have three *mahosimahulu* for the Venda nation – in this case, the Ramabulana, Tshivhase and Davhana *vhuhosivhuhulu*. In the end the Commission realised that the option was neither feasible nor

²⁹ Ralushai Commission of Inquiry III, p. 776.

practical. There was another problem confronting the Commission: all the senior *mahosi* who put up claims for *vhuhosivhuhulu*, did not want Mphephu to be their *khosikhulu*. Finally, the Ralushai Commission of Inquiry used the general recommendations to reiterate the fact that Ramabulana was the most senior ruler among the Venda traditional leaders and that the two senior traditional rulers, Tshivhase and Mphaphuli ought to regain their previous status of *vhuhosi*.³⁰ The Commission decided not to change the status of Davhana as a *khosi* and on the Tshidziwelele Nephawe issue, the claim of *vhuhosivhuhulu* of the whole Venda including neighbouring Tsonga and Pedi territories, was dismissed on the grounds that Tshidziwele was not even a traditional leader.³¹

However, it is important for the thesis to highlight that there is a contradiction in the finding of the Ralushai Commission of Inquiry. The contradiction comes in the sense that both Professor Victor Ralushai and Advocate Jackson Mushasha were part of the Mushasha Commission into Venda *Vhuhosi* which was responsible for the erosion of the Venda *vhuhosi*. I find it hard to explain the contradiction because the findings of the Ralushai Commission expose the work both men did with the Mushasha Commission. I also hold the view that a space of four years between the two Commissions could not have made it possible for both Professor Ralushai and Advocate Mushasha to have forgotten their earlier work on the same Venda *vhuhosivhuhulu* discourse.

The lack of consistency in the findings of the Mushasha and Ralushai Commissions raises a lot of questions about the reliability and credibility of both Commissions on the Venda *vhuhosivhuhulu* discourse. It is also interesting that the evidence presented by both parties in dispute at the Ralushai Commission was mostly based on historical evidence provided by Van Warmelo, Nemudzivhadi, Tempelhoff, Mudau, Motenda and others. The arguments of these scholars had been analysed in detail in the previous chapters. It was perhaps never for the Ralushai Commission of Inquiry to decide who, historically, had the most convincing claim to *vhuhosivhuhulu*. The Commission had to determine how peace could best be observed amongst the Venda people within the Republic of South Africa.

30 Ralushai Commission of Inquiry III, p. 776.

31 Ralushai Commission of Inquiry III, p. 777.

The Nhlapo Commission

The study will finally focus on the last Commission relating to disputes about the *vuhosivhuhulu* of Venda, the Nhlapo Commission of Inquiry. Since the matter under investigation by the Nhlapo Commission is still the same as addressed by the Mushasha and Ralushai Commissions already analysed in this thesis, I will not go deeper into and repeat evidence presented at the Nhlapo Commission which is already familiar to the readers of the thesis. The point of departure will be to look at the Constitutional Provisions, the reasons for the establishment of the Nhlapo Commission, its functions and, lastly, its findings.

The Nhlapo Commission was established with reference to chapter 12 (sections 211 and 212) of the Constitution of the Republic of South Africa, which provided for the recognition of “the institution of traditional leadership, its status and role according to customary law, subject to democratic principles”. The Commission had to reckon with the fact that, over the years, the institution of traditional leadership had been undermined, distorted and eroded as a result of imperialism and colonisation. Reference was made to repressive laws like the Black Administration Act 38, of 1927 and the subsequent apartheid laws, under which “territorial authorities, self-governing states and pseudo-independent enclaves” were created.³²

The appointment of the Commission was related to the then State President of the Republic of South Africa, Mr Thabo Mbeki’s realisation of the extent to which the dignity of the institution of traditional leadership had been negatively affected. In 2008, in order to restore its dignity, he appointed The Commission on Traditional Leadership Disputes and Claims under Professor Thandabantu Nhlapo. The Commission was established in terms of section 23 of the Traditional Leadership and Governance Framework Act 41 of 2003. The mandate of the Commission was to operate nationally and it was given authority to decide on any traditional leadership dispute and claim arising from any province.³³ Accordingly, in terms of section 25 (2) (a) the Commission had the authority to investigate, either on request or of its own accord, a case where there [was] doubt as to whether a “kingship”,

³² *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 600.

³³ *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 601.

“senior traditional leadership” or “headmanship” (these are the concepts used by the commission) was established in accordance with customary law and customs. The Commission also had the authority to look at a traditional leadership position where the title or right of the incumbent [was] contested. It also had the power to determine claims by communities to be recognized as traditional communities and the legitimacy of the establishment or disestablishment of “tribes”. Furthermore, the Commission had to look at disputes resulting from the determination of traditional authority boundaries and the merging or division of “tribes”.

In case good grounds existed, any other matters relevant to the matters listed in the paragraph above, could be investigated, including the consideration of events that may have arisen before 1 September 1927.³⁴ It was the responsibility of the Commission to look at the possibilities of the restoration of the Vhavenda “kingship [*vuhosivhuhulu*] as a whole” under the leadership of the Vhangona under the Claimant Tshidziwelele Azwidowi Nephawe. It also had to look at the possibilities of the restoration of the Vhavenda “kingship as a whole” under the leadership of the house of Ramabulana under the Claimant Toni Peter Mphephu Ramabulana. Lastly but not the least the Commission had to look at the possibilities of the restoration of Vhavenda “kingship as a whole” under the Claimant Azwianewi David Mutshinyalo Ravhura.³⁵

The Commission also focused on claims which were related to new “kingship”, of Tshivhase and Mphaphuli. These claims were brought by Kennedy Prince Midiavhathu Tshivhase, who put up a claim for the Tshivhase “kingship”, which is a section of the Venda traditional community; and lastly by Phaswana Musiiwa Michael Mphaphuli, who claimed the Mphaphuli “kingship”, also a section of the Venda traditional community.³⁶

It is important for me to highlight that the Mphaphuli and Ravhura claims for *vuhosivhuhulu* and the absence of the Davhana *vuhosivhuhulu* claim is a bit surprising. I can’t comprehend the new reasons for Mphaphuli to lodge a *vuhosivhuhulu* claim when

34 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 602.

35 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 602.

36 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 602.

the Mphaphuli had lodged a claim for *vhuhosi* (“chieftainship”) with the Ralushai Commission instead of *vhuhosivhuhulu*, unless the change of tactics might be linked to raised political and monetary stakes linked to the winning of the claim for *vhuhosivhuhulu*.

For Ravhura to enter the fray of *vhuhosivhuhulu* disputes, it cannot be far-fetched to regard the claim as opportunistic. Davhana’s failure to submit another claim for *vhuhosivhuhulu* should be viewed in the context of trying to reach out to Dzanani and make peace as he is from the bloodline of Ramabulana, or it should be interpreted as conceding defeat in the disputes for *vhuhosivhuhulu*. I hold a view that many claims for *vhuhosivhuhulu* of the Vhavenda to the Nhlapo Commission of Inquiry were motivated by aspirations for money and infrastructure since that would give credence to the contesting parties’ status and authority claims. It may have been for this reason that the Mphaphuli still brought a claim for *vhuhosivhuhulu* after having admitted to the Ralushai Commission that all they needed was *vhuhosi* in their area.

The commission conducted public hearings in two stages. The first stage was used to gather evidence and information. Selected members of the claimants and others appointed by them testified under oath and referred the Commission to supplementary research material. The Commission also posed clarity seeking questions to the claimants and those appointed by them. The Commission also gave opportunity to each claimant to examine the evidence presented by the other claimants. To make the process fair and transparent the Commission allowed members of the public opportunity to pose questions to the presenters and make comments. As expected, the Commission allowed each party to present closing summaries of their evidence.³⁷

This procedure was only used in the first stage of the public hearings. It was a similar procedure as applied previously by the Ralushai Commission of Inquiry. The second stage was held after the Commission had conducted its own research. The Commission then gave each claimant a set of questions arising from their research. At this second hearing, the claimants were expected to respond specifically to the posed questions.

³⁷ Commission on Traditional Leadership Disputes and Claims, Government Gazette, 2008, p. 607.

During the first phase, the Commission decided to have joint hearings of all Venda claimants despite the fact that they all lodged separate claims. The reason for that was because the claimants' history was intertwined and collectively they were all known as Vhavenda. However, for the sake of classification, the Commission decided to divide the claimants into two groupings: Masingo and Vhangona. In my view the Commission's decision to divide the claimants might have been based on the fact that the Commission took into account that, although collectively the claimants were known as Vhavenda, reality suggested that they were two different clans who had different religious and cultural beliefs. This approach would have been supported, from the Ralushai Commission, by Tshidzuwelele Nephawe for the Vhangona. We have seen that, in his cross examination of Mr David Mphephu, he reminded the Ramabulana that the Masingo did not own any religious places in Venda and therefore, there were no relations between the Vhangona and the Masingo – this even though the language and land shared by these two groups might suggest that somehow they could be related.

Vhangona

The Commission started by hearing the presentation of Vhangona history and their claim for the whole *vuhosivhuhulu* of Venda. The presentation was made by Mr. Azwidowi Tshidziwelele Nephawe. The Vhangona claimed their origin from Matongoni in Central Africa which they alleged was a sacred place under their traditional leader, *Mwali*. They further claimed that they were the original inhabitants of the present-day Venda; as such they named the mountains and the trees and they were the "real Vhavenda".³⁸ Nephawe told the Commission that at that point the Vhangona had four traditional leaders: Vharuvhu of Mulima, Vhafamadi of Mashau, Ndou of Thengwe and Manenzhe, and Mutele of Nzhelele.³⁹

The claims of the Vhangona in their presentation to the Commission, that Matongoni was in Central Africa and that their traditional leader was *Mwali*, are a distortion of facts. In the

³⁸ This is a quote of what Mr Tshidziwele had told the Nhlapo Commission of Inquiry. By referring to the Vhangona as the "real Vhavenda" Mr Tshidzuwele may probably have wanted to imply that they were the indigenous and hence the most authentic community in the area known as Venda.

³⁹ *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 609.

earlier chapters of the thesis, I have indicated that Matongoni was described as a place in what is today Zimbabwe, where the Masingo were alleged to be hailing from, and *Mwali* was *mudzimu* of the Singo. It is also not true that Tshidziwelele was the first *khosikhulu* of Vhangona with his royal settlement in the Soutpansberg Mountains. Mr. Nephawe's claims for the Vhangona are not supported by any written records based on credible oral sources. However, the Vhangona claim of being the original Venda landowners, is not to be disputed as it has been illustrated elsewhere in the thesis that they were *vhongwaniwapo* – “the earlier settlers” in the area called Venda today, having arrived ahead of the Masingo. It is also a distortion of facts by Nephawe that traditional leaders of Mulima, Mashau, Thengwe, Manenzhe and Mutele were Vhangona traditional rulers. The interviews in the next chapter will demonstrate that Nephawe was disingenuous with the truth.

Masingo

The Commission later dealt with the first submissions of the Masingo⁴⁰ presented by Munyadziwa Alpheus Vusani Netshimbupfe on behalf of the Ramabulana house, Tshifhiwa Maumela Mphaphuli representing Mphaphuli house, Thambeleni Allan Budeli representing the Tshivhase house and Aaron Fulufhelo Nedzingahe on behalf of the house of Ravhura. All the Singo houses' presentations were about the genealogy of *mahosimahulu* of Masingo from Vele-la-Mbeu to the present-day claimants, as it was the case in the Ralushai Commission of Inquiry. However, I have found that there was a lot of distortion of facts in all the Masingo claimants' presentations which the Nhlapo Commission failed to take cognisance of.

I found that that there was a huge contradiction in the testimony from the houses of Ramabulana, Mphaphuli, Tshivhase and Ravhura about Thohoyandou as the leader who succeeded Vele-la-Mbeu. The version of Ramabulana about Thohoyandou was that he was the son of Vele-la-Mbeu and the brother to Tshisevhe from the third house, and Raluswielo Tshivhase from the fourth house. The Ramabulana alleged that Thohoyandou was from the second house and that the *dzekiso* house had Tshavhungwa who was a daughter of Vele-la-

40 The Masingo constitute all the Vhavenda, except the Vhangona. In the procedures of the Commission, “the Masingo” refers to the claimants Ravhura, Mphephu Ramabulana, Tshisevhe and Tshivase, which excludes Nephawe.

Mbeu. According to the Ramabulana's version at the Commission, the first house failed to produce *mulaifa* since Tshavhungwa was a daughter and, therefore, the son of the next senior house, Thohoyandou, succeeded his father Vele-la-Mbeu after his death and reigned as *khosikhulu*.⁴¹ However, there was a lot of distorted information provided to the Commission by the Ramabulana. For example, their presentation that the Voortrekkers arrived in Venda during the reign of Makhado Ramabulana between 1867 and 1895 was wrong and a misrepresentation of facts. Historical sources cited elsewhere in the thesis have indicated that by the time Makhado replaced his father Ravele Ramabulana, the Voortrekkers had already settled in Schoemansdal. In fact, 1867 was the year Makhado forced the Voortrekkers to evacuate Schoemansdal.

The Ramabulana version of Thohoyandou was contradicted by the three other claimants and this raises a question about the credibility of the information recorded by the Nhlapo Commission of Inquiry. According to the version of the Mphaphuli, Thohoyandou was a brother to Vele-la-Mbeu, not a son. The Mphaphuli also contested the version of the Ramabulana that Thohoyandou was *khosikhulu* and according to them, he was *khosikhulu-pfareli* for Tshisevhe, the son born of the second senior house of Vele-la-Mbeu. They testified that Thohoyandou succeeded Vele-la-Mbeu as a *khosikhulu-pfareli* of Tshisevhe because the latter was still a minor.⁴²

The Mphaphuli further testified at the Commission that, after the death of Vele-la-Mbeu, the main houses in order of seniority were the *dzekiso* house to which Tshavhungwa was born; followed by the house of Tshisevhe, Mpofo and Raluswielo Tshivhase respectively. The most junior house was that of Nelugunda (Kutama) also known as Tshibogo. Nelugunda was the one the Mphaphuli claimed affinity to. They explained to the Commission that the name Mphaphuli was a nickname which came about after Nelugunda was instructed by the royal council to accompany Ragavheli, the son of Tshisevhe, to a Ndebele traditional healer in order to prepare him for succession to the throne. According to the Mphaphuli, Ragavheli was assassinated on the way and during the skirmish, Nelugunda chopped off the arm of

41 Commission on Traditional Leadership Disputes and Claims, Government Gazette, 2008, p. 612.

42 Commission on Traditional Leadership Disputes and Claims, Government Gazette, 2008, p. 612.

one of the attackers, and with that came the name Mphaphuli.⁴³ Mr Tshifhiwa Maumela Mphaphuli told the Commission that Nelugunda was the favourite son of Vele-la-Mbeu and he was given the traditional instruments that guarded the whole *vuhosivhuhulu*. He left Dzata for Tshitomboni and never returned because he created his new *vuhosivhuhulu*.⁴⁴ The testimony of Mr Maumela cannot be factually correct because there was no way that Nelugunda could have created his new *vuhosivhuhulu* when he left *khosikhulu* in Dzata.

Mr Allan Budeli, representing the Tshivhase, alleged that Thohoyandou was not the son of Vele-la-Mbeu, but he was the son of Masindi, who was a younger brother to Vele-la-Mbeu. According to the Tshivhase's version, Thohoyandou and Tshivhase were cousins. The Tshivhase told the Commission that Thohoyandou was not *khosikhulu* but a *khosikhulu-pfareli* for Tshivhase.⁴⁵ They further told the Commission that after the disappearance of Thohoyandou, there were disputes between the three half-brothers, namely Tshisevhe, Mpofu and Tshivhase, who were all potential successors. However, the royal elders decided that Tshivhase should be installed as *khosikhulu* in Dzata. The Tshivhase claimed that Raluswielo Tshivhase had the support of *Khadzi* Tshavhungwa to succeed his father.⁴⁶ As indicated elsewhere in the thesis, it was customary for *nnduni ya vuhosivhuhulu* to consult the first-born daughter of the *dzekiso* house when choosing a successor to the throne.

The Ravhura represented by Mr Aaron Fulufhelo Nedzingahe held the view that Thohoyandou was the son of Dimbanyika who, they alleged, was a brother of Vele-la-Mbeu and therefore Thohoyandou had to be the uncle of Tshisevhe. According to the Ravhura, Tshisevhe was the son of Vele-la-Mbeu and he was next in line to succeed his father since the house of *dzekiso* did not produce *mulaifa*. The Ravhura supported the version that Thohoyandou was appointed *khosikhulu-pfareli* since Tshisevhe was still a minor. However, the Ravhura believed that Tshisevhe ascended to the throne after the disappearance of Thohoyandou, but he was later assassinated.⁴⁷ He had a son, Ravhura, who was supposed to have succeeded him, but he fled to Makonde on the advice of *Mwali*. According to

43 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 619.

44 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 620.

45 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 622.

46 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 623.

47 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 627.

Mr Nedzingahe, Ravhura fled with his *vuhosivhuhulu* title to Makonde and he continued to rule from there as *khosikhulu* over the Venda people as a whole. The Ravhura claimed that various traditional leaders came to Makonde to pay homage to him and ask for rain and blessings because *Mwali* communicated with the Venda people through Ravhura as *khosikhulu*.⁴⁸ Mr Nedzingahe's claim that Ravhura went to Makonde as a *khosikhulu* and ruled the whole of Venda there, is another distortion of fact. It is common knowledge in Venda lore that you cannot run away from *nndu ya vuhosivhuhulu* to settle in another area and remain *khosikhulu*.

It is thus clear that all the Masingo houses concurred on one common aspect of the Venda history: that Vele-la-Mbeu's wife of *dzekiso* could not produce *mulaifa* for *vuhosivhuhulu*. However, there are contradictions as to who Thohoyandou was, as the different versions presented by each of the houses – Ramabulana, Mphaphuli, Tshivhase as well as Ravhura – had proven at the Nhlapo Commission's hearings. It will be difficult with this confusion around Thohoyandou's historical background to be able to say who exactly was the man (this was also confirmed by the discussion on Thohoyandou from various historical sources in chapter 3 of this thesis). One thing is certain though, that Thohoyandou was never a *khosikhulu*, but as a *khosikhulu-pfareli* he was most powerful, and respected, by the Venda people until his death.

Nhlapo Findings

In conclusion the study will interrogate the findings of the Nhlapo Commission and will also try to critique the findings. Before releasing its final findings on both claims to *vuhosivhuhulu*, the Commission had to deal first with the current status of the Venda traditional set-up. At the time of the Nhlapo Commission of Inquiry hearing, Venda had 28 officially recognized traditional leaders, as already indicated elsewhere in the thesis. To deal with the current status of *vuhosivhuhulu* of the Venda people, the Commission had to analyse the current status of all the claimants.

48 Commission on Traditional Leadership Disputes and Claims, Government Gazette, 2008, p. 628.

It was decided to start with Azwidowi Tshidziwelele Nephawe of the Vhangona. It found out that he was officially recognized as a *gota* of Domboni Ward Village under the jurisdiction of the Tshivhase Traditional Authority.⁴⁹ The claimant, Midiyavhathu Prince Kennedy Tshivhase, was officially recognized as a senior traditional leader. The Commission further found that he was *thovhele* of the Ha-Tshivhase Traditional Authority with eighty *magota* under his jurisdiction.⁵⁰ The status of Azwianewi David Ravhura at the time of the hearing was that of an officially recognized *gota* of Makonde Ward Village under the jurisdiction of the Tshivhase Traditional Authority.⁵¹ There was also Toni Peter Mphephu Ramabulana, who was officially recognized as a senior traditional leader at the time of the Commission hearing. Toni Mphephu, as he is commonly known in Venda, was *thovhele* of the Ha-Mphephu Traditional Authority in Makhado Local Municipality and there were fifty recognized *magota* under his jurisdiction. The last claimant the Commission was dealing with, was Phaswana Musiiwa Michael Mphaphuli. The Commission noted that he was officially recognized as a senior traditional leader and he was *thovhele* of the Ha-Mphaphuli Traditional Authority in the Thulamela Local Municipality and he had 57 officially recognized *magota* under his jurisdiction.⁵²

The Commission was confronted with a number of challenges to reach a conclusion to its work on all the above-mentioned claims. It wanted to ascertain whether at some point in the history of the Vhavenda the Vhangona had created *vhuhosivhuhulu*. They also pursued the question who the founder of their *vhuhosivhuhulu* was, and when they had lost it. The Commission also wanted to ascertain whether, at some point in the history of Vhavenda, Masingo had created *vhuhosivhuhulu*, and who the founder was and how they had lost it. Finally, the Commission was confronted with the challenge of whether, with the split, the Masingo houses of Tshivhase and Mphaphuli left and established their independent *vhuhosivhuhulu* separately from the senior house of Ramabulana. It also tried to find out if Ravhura, the son of Tshisevhe, left Dzata and continued to be *khosikhulu* of the whole of Venda outside the main *nduni ya vuhovhuhulu* in Dzata. The Commission was also

49 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 638.

50 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 639.

51 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 639.

52 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 639.

grappling with a question of whether *vuhosivhuhulu* of Vhavenda should be restored and in which house it should be restored.⁵³ These questions were all opened up regardless of the fact, as stated elsewhere in the thesis, that historically, it had been accepted that the Ramabulana were the senior house of all the Masingo. These were challenges confronting the Nhlapo Commission of Inquiry in its effort to resolve the disputes of *vuhosivhuhulu* of Vhavenda.

In pursuit of uniformity in the Republic of South Africa as envisaged by the Framework Act, the Commission took into cognisance the following principles in their findings on *vuhosivhuhulu* of Venda as a whole: It envisaged the establishment of an independent traditional community under one leader. It also called for uniting diverse cultural and linguistic elements; or communities each with its own recognisable traditional leader under one principal traditional leader. Furthermore, it asserted that the community should not have lost its independence through indigenous political processes which had resolved themselves during the centuries before colonial intrusion. Finally, the Commission believed that the principal traditional leader should rule over the entire traditional community with all its linguistic and cultural affinities.⁵⁴

It was these principles which informed the decision of the Commission in reaching its findings about the possibility of restoring *vuhosivhuhulu* of Vhavenda. The Commission analysed all the evidence presented by all the claimants to the Venda or part of *vuhosivhuhulu* of Venda. It is important that I highlight that the Commission took cognisance of the application of customary law and customs of Vhavenda and the Framework Act. The Commission acknowledged the fact that the Vhangona were known as the earliest known *vhongwaniwapo* of the present-day Venda and beyond and as such they named the rivers and mountains. It was the Commission's view that the Vhangona's claim to *vuhosivhuhulu* was based on them having been *vhongwaniwapo* of the area currently occupied by the Vhavenda. There was no evidence in written sources or oral sources which indicated that the Vhangona had subjugated or conquered the Masingo or any other

53 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 641.

54 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 642.

community with a precolonial presence. To the contrary, the Vhangona conceded that they had been subjugated by the Masingo as indicated in the early chapters of the study.⁵⁵

It is not in dispute that the Vhangona were an independent traditional community with their own cultural and linguistic elements. However, the Commission found that they had lost their independence and identity when they were conquered, absorbed and assimilated by the Masingo and the Bapedi.⁵⁶ In my estimation the Commission's view on this matter was contrary to what most scholars had concluded about the Vhangona's situation. In the early chapters of the thesis it was indicated that the Vhangona did not lose their language when they were subjugated by the Masingo. In fact, the Masingo were the ones who abandoned the language they spoke north of Limpopo and adopted the Vhangona language. This implied that the Vhangona were conquered with their language and not the other way. The assertion by the Commission that the Bapedi had conquered, absorbed and assimilated the Vhangona is not supported by any early written or oral sources. Historically, the Vhangona lived side by side with other communities in the Soutpansberg including the Bapedi – without any problem. The Commission found that there was no evidence which supported the Vhangona establishing *vuhosivhuhulu* at any point in time.⁵⁷

The Commission finally analysed the Masingo *vuhosivhuhulu* claims and interrogated the splits which occurred from the house of Thohoyandou. The Commission found that *vuhosivhuhulu* of Venda was established by Dimbanyika around 1600. To decide on *vuhosivhuhulu* of Venda as a whole, the Commission had to find out if, during the course of the split, the descendants of Vele-la-Mbeu established new *vuhosivhuhulu*. This was because almost all these claimants were insisting that after the split from Dzata, they all formed their own *vuhosivhuhulu*. The Commission found the claims about Tshivhase succeeding Thohoyandou after his disappearance, to be untrue, as it was not supported by the facts presented before the Commission, or any other material researched.

55 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 643.

56 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 644.

57 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 644.

The Commission also found that it was highly unlikely that having been so honoured, Raluswielo would have left Dzata to create an independent *vhuhosivhuhulu*. It was also commonly accepted that Raluswielo twice had tried to attack Munzhedzi Mpofu at Dzata and at Songozwi without success. According to the Commission it was evidence enough to suggest that Tshivhase had not relinquished the fight for *vhuhosivhuhulu* of the Vhavenda as a whole. It is also a fact that it was not Tshivhase who subjugated the Vhangona, as they had already been conquered by his forefathers.⁵⁸

The Commission also found that the house of Tshivhase did not establish a traditional community with a new identity through conquering and subjugation either similar to or distinct from that of Vhavenda as created by Dimbanyika.⁵⁹ The claim by Tshivhase that the house of Ramabulana was wrongly promoted to *vhuhosivhuhulu* by the apartheid regime because they were in agreement with the creation of homelands was dismissed by the Commission as baseless. The Commission found that the promotion was in line with custom in that the house of the Ramabulana was the most senior of the descendants of Vele-la-Mbeu. It was based on the evidence before the Commission that there was no reason to suggest that the Tshivhase house established a *vhuhosivhuhulu*.⁶⁰ It is ironic that a Commission in the post-apartheid South Africa was seen endorsing what the apartheid leaders had done with traditional leadership in South Africa. I hold the view that the claim of Tshivhase might have some legitimacy because *vhuhosivhuhulu* of Ramabulana was aided by their political power during the reign of P.R. Mphephu. In a way apartheid helped with the restoration of *vhuhosivhuhulu* of Ramabulana as stated in the earlier chapters of this thesis.

The Commission dealt with the claim by Mphaphuli the same way it dealt with the Tshivhase claim. It found that Mphaphuli's claim was based on the fact that he established a new *vhuhosivhuhulu* after he had left Dzata for Tshitomboni. However, the Commission found that the house of Mphaphuli's claim that they had conquered the Vhangona was a distortion of facts, as the Vhangona had already been conquered by Dimbanyika before. There was also no evidence that Mphaphuli established a new traditional community with a

58 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 644.

59 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 647.

60 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 648.

new identity through conquering and subjugation similar to that created by Dimbanyika. The Commission found that there was no evidence of the house of Mphaphuli having established a new *vuhosivhuhulu*.⁶¹ It will suffice to argue that Mphaphuli's admission to the Commission that he was from the junior house of Vele-la-Mbeu also helped the Commission to realise that he was far away from the line of successors to Vele-la-Mbeu. One can argue that it was quite surprising that the Commission did not interrogate the relationship of Mphaphuli and the Ramabulana more than it did. The issue of Mphaphuli not related to the Ramabulana and his work as *maine* at Dzata was not looked at by the Commission either.

The claim of Ravhura was based on the fact that his father, Tshisevhe, was next in line as the son from the most senior house since the house of *dzekiso* had failed to produce *mulaifa*. As indicated elsewhere in the thesis, Thohoyandou was appointed as *khosikhulu-pfarele* for Tshisevhe because he was still a minor. However, after Thohoyandou's disappearance, Tshisevhe ascended to his father's throne only for him to be assassinated as the royal disputes became intense. His son Ravhura fled to Makonde on the instructions of *Mwali*. He claimed to have ruled the whole of Vhavenda from Makonde as *khosikhulu*. The Commission found that Ravhura ascended to the throne for a short period after the death of his father, Tshisevhe, but he later fled to Makonde. It was the view of the Commission that by running to Makonde; Ravhura effectively abandoned his right as the successor to his father. Therefore, the Commission found that at the split Ravhura did not retain *vuhosivhuhulu*.⁶² I hold the view that Ravhura's claim might have been the easiest that came before the Nhlapho Commission of Inquiry. This is supported by the fact that the Ravhura were never key players in the Venda traditional politics in my time as a young boy growing up in the homeland of Venda. In fact, no one in Venda knew about them except in their village. Another aspect that weakened the Ravhura case was the fact that they had not submitted a claim with the Ralushai Commission of Inquiry that preceded the Nhlapho Commission of Inquiry.

61 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 651.

62 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 653.

The house of Ramabulana based its claim to *vuhosivhuhulu* on genealogical seniority. The Commission found that *vuhosivhuhulu* at Dzata under Munzhendzi Mpofu who later relocated the great *pfamo* to Songozwi for strategic reasons, remained strong. He expanded and consolidated *vuhosivhuhulu* of Vhavenda by offering refuge to persons displaced by the wars of turmoil and he successfully repelled several attacks from Tshivhase.⁶³ According to the presentation by the Ramabulana, Munzhendzi Mpofu was succeeded by Makhado, Mphephu I, Mbulaheni George Mphephu, Patrick Ramaano Mphephu, and Toni Peter Mphephu Ramabulana respectively. The study has found this succession line of Ramabulana to be distorted. As indicated elsewhere in the thesis, Munzhendzi Mpofu was Makhado's grandfather, not father. Munzhendzi Mpofu was in fact succeeded by his son Ravele Ramabulana, who was Makhado's father. It is also important to reiterate that before Makhado became *khosikhulu*, *vuhosivhuhulu* was shared between his father, Ravele Ramabulana, uncle Ramavhoya and his brother, Davhana. This implied that the Ramabulana had three *mahosimahulu* before Makhado. There was also Tshimangadzo Dimbanyika Mphephu Ramabulana between his father, P.R. Mphephu, and his half-brother, Toni Mphephu.

The Commission felt, because of the confusion around who Thohoyandou was, that it was not going to make a finding as to whether Thohoyandou was the brother or son of Vele-la-Mbeu. Regarding the status of Mpofu, the Commission was not sure whether Munzhendzi Mpofu was enthroned as a *khosikhulu* of Vhavenda according to customary succession or by usurpation, as it was not clear from the evidence. The Commission further noted that after Munzhendzi Mpofu had been installed as a *khosikhulu* at Dzata, he was able to defend his position against any attacks. The Commission found that at the split it was Munzhendzi Mpofu who remained at Dzata with the *khosikhulu*.⁶⁴

Finally, the Commission was confronted with the question: Can *vuhosivhuhulu* of Vhavenda be restored as claimed? In determining whether *vuhosivhuhulu* existed, the Framework Act enjoined the Commission to consider the need to establish uniformity in the Republic of South Africa, in respect of the status afforded to a *khosikhulu*. With regard to Vhangona, the

63 Commission on Traditional Leadership Disputes and Claims, Government Gazette, 2008, p. 655.

64 Commission on Traditional Leadership Disputes and Claims, Government Gazette, 2008, p. 656.

Commission found that they had lost their independence through indigenous political processes. Subsequently, their claim to *vhuhosivhuhulu* was unsuccessful.⁶⁵

The Commission acknowledged that at the split the descendants of Vele-la-Mbeu – Ravhura, Tshivhase, Ramabulana and Mphaphuli – emerged and developed separately. However, the Commission found that good grounds existed for the restoration of *vhuhosivhuhulu* of Vhavenda.⁶⁶ The Commission noted that even though the houses of Tshivhase, Mphaphuli and Ramabulana continued to exist independently, such independence did not constitute separate *vhuhosivhuhulu*. It is important to highlight that the claims by Tshivhase and Mphaphuli were effectively for independent *vhuhosivhuhulu*.⁶⁷ If *vhuhosivhuhulu* of Vhavenda was to be restored, it had to be done under one *khosikhulu* following the customary law and customs of the Vhavenda.⁶⁸ It was the view of the Commission that previously traditional leaders of Vhavenda ruled independently in that each of them were responsible for their daily administrative duties. However, they paid allegiance to the *khosikhulu* who reigned over all Vhavenda. His role was that of a unifying figure, the father of the nation (*muzwale*). The traditional leaders of Vhavenda would seek advice and wisdom from time to time on a variety of issues that affected their territorial authority, culture and tradition.⁶⁹

The conclusion by the Commission that in the past Venda traditional leaders were independent and they paid allegiance to the *khosikhulu* is debatable and not factual. The traditional system of the Venda people had been fractured with no *thovhele* paying allegiance to another *thovhele*. This was the case even during the days of the powerful *mahosimahulu* of Ramabulana such as Ravele Ramabulana, Ramavhoya, Makhado and Alilali Tshilamulele Mphephu I. Independent *vhothovhele* such as Tshivhase, Davhana, Mphaphuli and others never paid allegiance to those powerful *mahosimahulu* of Ramabulana. It was for this reason that during Mphephu I's war with the Boers, the other traditional rulers like Tshivhase, Mphaphuli, Sinthumule and Maemu sided with the Boers against Mphephu I.

65 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 657.

66 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 657.

67 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 658.

68 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 660.

69 *Commission on Traditional Leadership Disputes and Claims*, Government Gazette, 2008, p. 661.

Therefore, then, it is correct for one to conclude there was never senior leadership for the Venda people after the death of Tshisevhe. It is clear that the Venda traditional leaders were forced to pay allegiance to the Ramabulana after the creation of the homelands by the apartheid government. The apartheid government recreated the Venda *vuhosivhuhulu* in 1979 after *Thovhele* P.R. Mphephu was installed as the homeland President.

The Commission in closing had to deal with the question under whose lineage *vuhosivhuhulu* of Venda should resort. It was clear that there was no dispute in *vuhosivhuhulu* of Vhavenda from Dimbanyika to Vele-la-Mbeu. The succession disputes started after the death of Vele-la-Mbeu. It is also common cause that the house of *dzekiso* failed to produce *mulaifa* because Tshavhungwa was a female. There was also confusion around the status of Thohoyandou, whether he reigned as a *khosikhulu-pfareli* or a *khosikhulu*. The Commission found that *vuhosivhuhulu* of the Vhavenda had been passed on *nnduni khulu* of Ramabulana from one generation to the next in terms of the customary law and customs of the Vhavenda. It was for this reason that the Commission found that *vuhosivhuhulu* had to be restored under the lineage of Ramabulana.⁷⁰

Aftermath

The final decision of the Commission was that *vuhosivhuhulu* of Vhavenda as a whole was to be restored under the lineage of Ramabulana.⁷¹ As I indicated elsewhere in the chapter, there are some contradictions and some distortion of facts in almost all the testimonies to the Commissions under review. It is also important to note that the findings of the Nhlapo Commission did not resolve *vuhosivhuhulu* of Venda disputes. Soon after their ruling, the other Venda senior traditional leaders, Vhangona, Tshivhase and Mphaphuli challenged the recommendations of the Nhlapo Commission at the High Court of South Africa. The case remained in court for almost four years until the house of Mphaphuli decided first to accept the authority of the Ramabulana as *mahosimahulu* and therefore withdrew the court case.

70 Commission on Traditional Leadership Disputes and Claims, Government Gazette, 2008, p. 663.

71 Commission on Traditional Leadership Disputes and Claims, Government Gazette, 2008, p. 664.

The Tshivhase followed later when they decided to give up their court challenge of *vuhosivhuhulu* on Friday, 15 August 2014.⁷²

The court challenge started immediately after the announcement of the Nhlapo Commission findings by President Jacob Zuma in July 2010. He stated that the Ramabulana house was the rightful *mahosimahulu* of Venda.⁷³ The court challenge of the Vhangona, Tshivhase and Mphaphuli was dismissed by Judge Francis Legodi and they were ordered to pay the costs for the lawsuit. Judge Francis Legodi gave his judgement on Thursday 13 September 2012 in the Northern Gauteng High Court in Pretoria. He ruled that Toni Mphephu was the rightful *mulaifa* to *vuhosivhuhulu* of Venda.⁷⁴ His ruling was just emphasising the findings of the Nhlapo Commission.

It is important to emphasise that the withdrawal from court cases by the Vhangona and the two senior traditional houses did not end the Venda *vuhosivhuhulu* disputes. The problems, which were not within the scope of the work of the Nhlapo Commission, still persisted. The Nhlapo Commission only decided on which house of Masingo the custodianship of the Venda *vuhosivhuhulu* rested. However, it failed to address the issue of who amongst the Ramabulana should be *khosikhulu* or *khosikadzikhulu*. It is a fact that the Nhlapo Commission and President Zuma concluded that Toni Mphephu had to be the *khosikhulu* of Vhavenda as a whole. This conclusion was merely based on the foundation that Toni Mphephu had been the claimant for the Ramabulana at the Commission.

It is my view that in its decision the Commission relied mostly on the customary laws and customs of the Vhavenda people, thereby ignoring one of the most important aspects of the Constitution of the Republic, which places both men and women as equals. The Commission did not even conduct research to find out if Toni Mphephu was the legitimate *mulaifa* to *vuhosivhuhulu* of Venda. It is based on these gaps that the issue of *vuhosivhuhulu* of Venda is still not settled. In the middle of the Vhangona, Tshivhase and Mphaphuli court

72 *Capricorn Voice*, 19 August 2014

73 *Capricorn Voice*, 19 August 2014.

74 *ZoutNet*, 18 September 2012.

cases the Ramabulana were soon confronted with another court case not far from home. More about that follows in a subsequent section.

Differences between Mushasha and Ralushai Commissions

The differences between the Mushasha and Ralushai commissions are interesting: The first focused on procedure within the Venda Republic; the second was working with the assumption that history should provide the answer as to whether there should be a *khosikhulu* or not. As a result of that, in the arguments of the witnesses, where history did not serve them, the actual concern of people's coexistence in the new South Africa came to the fore. It is clear that *vuhosivhuhulu* in the post-apartheid South Africa came with a lot of financial benefits and power and whoever was declared as *khosikhulu* stood a lot to gain in bargaining mineral deals with the national government and the private sector.⁷⁵ This was demonstrated by active participation of Toni Mphephu in a deal involving an Australian mining company, Coal of Africa, and the South African government in the mining of coal in the Vele Colliery in Mapungubwe and the Makhado Colliery in Mudimeli, Makhado. A lot was at stake, hence the loss of Tshivhase, Mphaphuli, Davhana, Ravhura and Nephawe meant they would not have financial power and authority over the people of Venda.

Venda *Vuhosivhuhulu* Battles Continue within the Ramabulanas' House

In December 2012, the daughter of the late *Thovhele* Dimbanyika Tshimangadzo Mphephu, 24-year-old Masindi Clementine Mphephu and her uncle Mbulaheni Charles Mphephu, served court papers on "*Khosikhulu*"⁷⁶ Toni Peter Mphephu Ramabulana, the Co-Operative Governance and Traditional Affairs Minister, the Limpopo Premier, President Jacob Zuma, and the National and Provincial Houses of Traditional Leaders. In the court papers it was argued that the first applicant, Masindi Mphephu was the only *mulaifa* to *vuhosivhuhulu* of Venda. The second applicant, Mbulaheni Charles Mphephu, argued that should Masindi not

⁷⁵ M. Buthelezi and D. Skosana, *The Saliency of Chiefs ...*, p. 111.

⁷⁶ *Khosikhulu* is an invented name to highlight the fact that the status of Toni Mphephu Ramabulana is being questioned.

be considered for the *vuhosivhuhulu*, partly due to gender discrimination, he would be the next in line for *vuhosivhuhulu*.⁷⁷

The applicants wanted the court first to set aside the decision to appoint Toni Mphephu as *khosikhulu* of the Vhavenda. Secondly the applicants wanted the court to declare the practice of only installing males as traditional leaders to be declared unconstitutional. Thirdly the applicants held the view that should the court not rule that Masindi is the sole *khosikadzikhulu* of the Vhavenda (or alternatively Mbulaheni as second in line); the Commission on Traditional Leadership Disputes and Claims had to be ordered by court to make a definite ruling on the matter.⁷⁸

The applicants put a very detailed genealogy of P.R. Mphephu and the houses in terms of succession line in an affidavit to the court. It was stated in the affidavit that Mbulaheni Mphephu was the remaining eldest son of P.R. Mphephu. It was also stated that Masindi Mphephu was the only child of the late Dimbanyika Mphephu who was the *thovhele* of the Vhavenda and also the second eldest son of *khosikhulu* P.R. Mphephu. Dimbanyika succeeded his father P.R. Mphephu because the first born of the *dzekiso* house died before his father's death.⁷⁹

Both Mbulaheni Mphephu and Masindi Mphephu held the view that proper procedure was not followed when Toni Mphephu was appointed as *khosikhulu* of the Vhavenda. They argued that because Toni Mphephu was appointed *ndumi* to Masindi's father, Dimbanyika Mphephu, he should not have been considered for the position of *khosikhulu*. The two applicants further argued that Toni Mphephu did not come from the right house of *dzekiso*. The applicants wanted the court to rule on several legal issues, which included the High Court's jurisdiction in the matter, whether claims had been prescribed in terms of certain Acts and whether there was an investigation pending with the Commission on Traditional Leadership Disputes and Claims. The court was also asked to determine whether the

⁷⁷ *Limpopo Mirror*, 21 December 2012.

⁷⁸ *Limpopo Mirror*, 21 December 2012.

⁷⁹ *Limpopo Mirror*, 21 December 2012.

President's decision to acknowledge Toni Mphephu should first be challenged and whether the legislation was in place to cause it to be a lawful decision.

It was the view of the *Limpopo Mirror* that the outcome of the case might depend on the court's interpretation of the rule of male primogeniture. The applicants argued that the Bill of Rights placed an obligation on the government to develop customary law in line with the Constitution. Mbulaheni Mphephu stated in the affidavit to the court that as a woman, the first applicant, Masindi Mphephu's claim to *vuhosivhuhulu* would be barred by the rule of male primogeniture. In that case the only claim to the title to be determined would be that of second applicant, Mbulaheni Mphephu.⁸⁰

The case was heard for the first time at the High Court in Thohoyandou on 31 August 2015. The case was finally heard in December 2016 at the same Court. Judge President Ephraim Makgoba dismissed Masindi's case and stated that he would provide his reasons for dismissal of the case in 2017.⁸¹ Masindi wanted the court to set aside a decision made by President Jacob Zuma in 2012 recognising Toni Mphephu as *khosikhulu*. She declared that she was the only *mulaifa* to *vuhosivhuhulu* of the Venda people and that she was merely fighting for what was rightfully hers. In contrast, the Ramabulana royal family argued that succession to *vuhosivhuhulu* was not automatic. They further argued that Masindi was born three years before her father was installed as *thovhele*, which made her ineligible for the throne. They also claimed that no *lobola* or dowry was paid for Masindi's mother, which also made her ineligible, and, one last reason which was predictable, *nndu ya vuhosivhuhulu* of the Ramabulana claimed that in Vhavenda tradition a woman does not reign.⁸² Masindi claimed that soon after she had begun asking to be made *khosikadzikhulu* in 2012, she and her mother Fulufhelo Mphephu were kicked out of *pfamo*, and her mother died a year later.⁸³ I can confirm that Judge President Ephraim Makgoba still has not given his reason even today for dismissing Masindi Mphephu's case.

80 *Limpopo Mirror*, 31 August 2015.

81 *Limpopo Mirror*, 16 December 2016.

82 *Sunday Times*, 5 June 2016.

83 *Sunday Times*, 5 June 2016.

On Thursday, 25 May 2017, Judge President Makgoba dismissed the application to appeal by Masindi Mphephu against the ruling he made in December 2016 claiming that the appeal had no reasonable prospect of success. He also believed no court would come to another conclusion. Masindi's lawyer, Mr Johan Hamman, had since applied to the Supreme Court of Appeal in Bloemfontein and he reckoned that they had a very strong case and that a full bench of judges might very well arrive at a different conclusion.⁸⁴ The Appeal Court was still going to hear the case of Masindi Mphephu and meanwhile the court interdict of Toni Peter Mphephu's crowning still stands. Masindi had indicated to *News24* that she was ready to take the case to the highest court in the land, the Constitutional Court, if she received negative results in Bloemfontein.⁸⁵

It is clear that the fight for *vuhosivhuhulu* of Vhavenda is not yet over and the tension *nnduni ya vuhosivhuhulu* of the Ramabulana clearly shows that customs and traditions were thrown out of equation when Toni was installed as *khosikhulu*. I hold the view that *nndu ya vuhosivhuhulu* of the Ramabulana did not take cognizance of the country's constitution as a challenge to their traditional beliefs which harboured on distortion rather than reality to make a choice for successors. It is for this reason that in their defence to the challenge posed by Masindi and Mbulaheni Mphephu, they argued that succession was not automatic and that a woman does not reign the Venda nation. The latter cannot be factual as there is a woman *khosikadzi* at Tshaulu tsha ha Bowana in Venda. Furthermore, Makhadzi Phophi Mphephu was *khosikadzikhulu-pfareli* for almost seven years before Masindi's father, Dimbanyika Mphephu ascend to *vuhosivhuhulu*. She is currently *khosikadzi* in Dzanani and this shows that a woman can ascend to the highest traditional authority in Venda.

In conclusion, the study wishes that the courts of this country guided by the Republic's Constitution can bring a solution to the question of gender-based succession and also advise traditional houses to transform in order to bring reform to their long-held traditions which had seemed to remain static in this age of evolution. It is unfortunate that in this latest *vuhosivhuhulu* of Venda disputes the High Court in Thohoyandou was not impartial in their

⁸⁴ *Limpopo Mirror*, 3 June 2017.

⁸⁵ P. Tau, *News24*, 13 August 2017.

handling of Masindi Mphephu's case. Judge President Makgoba did not seem interested in using the Constitution of the Republic and interrogating the inconsistency in the Venda traditions and customs when he made his findings on Masindi's case. This view is supported by the Judge President's reluctance to give reasons on 15 December 2016 for his infamous ruling.

One is compelled to conclude that Judge President Makgoba's handling of Masindi Mphephu's case seemed to be politically motivated. This view casts doubt on the independence of the judiciary in South Africa. Masindi Mphephu told the *Sunday Times* that (now former) President Zuma traded on his patronage of a disputed claimant to the Venda throne to secure a loan of R8.5 million from the Venda Building Society (VBS) Mutual Bank which he used to pay back the money for upgrades at his Nkandla homestead.⁸⁶

Zuma's mortgage agreement with the bank is among the court papers filed with the Supreme Court of Appeal by Masindi Mphephu. She alleged that Zuma tried to hold Toni Mphephu's coronation just three days after the loan was granted. She also highlighted that Toni Mphephu was a shareholder in Dymbeu Investments, a company that, together with the Public Investment Corporation, is the majority shareholder in VBS bank.⁸⁷ It is my view, in light of this revelation by Masindi, that it cannot be coincidental that Zuma wanted to hold the coronation of Toni Mphephu only three days after his loan had been granted. This shows a great conflict of interest between the President and Toni Mphephu. One can argue that the announcement by Zuma to declare Toni Peter Mphephu Ramabulana as *khosikhulu* of the Venda was a political and financially motivated decision and it had nothing to do with Venda traditions and customs.

The Supreme Court of Appeal of South Africa had since heard the Case (948/17) of Mphephu v Mphephu-Ramabulana & others and gave a judgement on 12 April 2019 in Bloemfontein, South Africa. The judgement proved wrong the assertion by Judge President Ephraim Makgoba made on 25 May 2017, when he was dismissing Masindi Mphephu's application of appeal against the ruling he had made in December 2016.

86 K. Cowan, and Mzilikazi wa Africa, *Sunday Times*, 11 February 2018.

87 K. Cowan, and Mzilikazi wa Africa, *Sunday Times*, 11 February 2018.

The Supreme Court of Appeal (SCA) of South Africa judgement.

The SCA upheld with no order as to costs the appeal of Masindi Mphephu against the ruling by Judge President Makgoba in the Limpopo Division of the High Court in Thohoyandou. After going through the presentations of the appellant, the SCA decided to refer the matter back to the Thohoyandou High Court in Venda. The order was given on the understanding that another judge should do further adjudication on the merits of the case. In so doing, the SCA set aside Judge President Makgoba's ruling which dismissed Masindi Mphephu's case.

The SCA declared the decision of 14 August 2010 by the Ramabulana Royal Council, identifying Toni Mphephu Ramabulana as suitable *mulaifa* to *vhuhosivhuhulu* of the Venda, as unlawful, unconstitutional and invalid. It was therefore reviewed and set aside. The SCA further dealt with the decision of former President of the Republic of South Africa, Mr Jacob Zuma, dated 14 September 2012,⁸⁸ to recognise Toni Mphephu-Ramabulana as *khosikhulu* of Venda. It was declared unlawful, unconstitutional and invalid. It was reviewed and set aside.

The SCA further concluded that the decision of the Ramabulana Royal Council, and that of former President Mr Jacob Zuma, to recognise Toni Mphephu-Ramabulana as *khosikhulu* of the Venda, were based on criteria that promoted gender discrimination. The decisions were reviewed and set aside on the basis that the discrimination impeded compliance with the provisions of section 2A(4)(c) of the Traditional Leadership and Governance Framework Amendment Act 23 of 2009, to progressively advance gender representation in the succession to the position of *khosikhulu* or *khosikadzikhulu* of Vhavenda. The SCA finally instructed the current President of South Africa, Mr Cyril Matamela Ramaphosa and the Limpopo Province Premier, Mr Stanley Mathabatha, to refer the following issues of customary laws and custom to the National House of Traditional Leaders and the Limpopo

⁸⁸ Published in Traditional Leadership and Governance Framework Act 41 of 2003:it reads as follows: "Recognition of Mr Toni Peter Mphephu (Ramabulana) as King of Vhavenda Community GNR 766, GG, 53705, 21 September 2012."

House of Traditional Leaders respectively for opinion and advice to be submitted to the High Court in Thohoyandou:

The SCA wanted the National House of Traditional Leaders and Limpopo House of Traditional Leaders to advise on whether a child born before the parent is recognised as a traditional leader, qualifies to be the successor of the parent to that position of traditional leadership. The last important thing the two Houses of Traditional leaders had to advise President Ramaphosa and Limpopo Premier Mathabatha on, was whether, in the Vhavenda custom, the *ndumi* qualifies to be identified and recognised as a successor to a position of traditional leadership. In the end the SCA declared that the withdrawal of the certificate of recognition of Toni Mphephu-Ramabulana as “*khosikhulu*” of Venda would remain in place pending the final determination of the matter.⁸⁹

The order of the SCA dealt with the merit of the case but it stopped short of determining whether Masindi Mphephu or Toni Mphephu is the rightful *mulaifa*. The SCA was right to refer the matter back to the Thohoyandou High Court. I hold the view that the decision by the SCA was also another opportunity for the Mphephu-Ramabulana to sort out their internal problems *nnduni ya vuhosivhuhulu*. I certainly did not find the SCA’s instruction to the President of the Republic, Mr Ramaphosa, and the Limpopo Premier, Mr Mathabatha, to be a practical contribution to a solution for the Masindi Mphephu / Toni Mphephu duel. This is because the National House of Traditional Leaders and the Limpopo House of Traditional Leaders cannot be expected to advise on the issues of whether a child born before a parent becomes a *khosikhulu* can be a successor and whether a *ndumi* can be a successor to the *khosikhulu*, more especially in the Venda case. I hold the view that these two traditional leaders’ authorities were not well placed to give sound advice, because leaders from other communities in the Limpopo Province or elsewhere in South Africa are not able to preside over the customs and traditions of the Vhavenda community. It is against this background that one is compelled to agree that only the Mphephu-Ramabulana can resolve their problems internally without involving the courts.

⁸⁹ The Supreme Court of Appeal of South Africa Judgement, Case No: 948/17.

It appears that soon after the SCA judgement, *nndu ya vuhosivhuhulu* of Mphephu-Ramabulana had a meeting to bring peace in the *nnduni khulu ya vuhosi*. The Ramabulana Royal Council spokesperson Mr Ntsieni Ramabulana issued a media statement in which the family stated it would not be dragging the matter of *vuhosivhulu* to the courts anymore as per direction of the SCA. The Ramabulana further confirmed that they had accepted the SCA order which set aside the decision to make Toni Mphephu-Ramabulana *khosikhulu* of Venda.⁹⁰ It is clear that the end is not near for the disputes around the *vuhosivhuhulu* of the Ramabulana. One could have trusted the veracity of the Ramabulana Royal Council media statement if it had been issued jointly by both warring factions. In contrast, the Masindi Mphephu faction is not willing to accept anything other than her ascending to *vuhosivhuhulu* left by her father, *Thovhele* Dimbanyika Mphephu. If I were to take sides, I would be saying that if the custom and tradition of patriarchy within the Vh Venda community were to be changed, then Masindi Mphephu-Ramabulana is the rightful *khosikadzi* of the Vh Venda community.

My position on the issue of who should ascend to *vuhosivhulu* of Venda has since been confirmed by the Limpopo House of Traditional Leaders and National House of Traditional Leaders who pronounced late in 2019 that Masindi Mphephu should be *khosikadzi* of Vh Venda people, and not her uncle Toni Mphephu.⁹¹ However, the resolution taken by the two houses of traditional leaders was met with some resistance from some *vhothevhele* of Masingo, like *Thovhele* Nthumeni Mbangiseni Masia and others who threatened to withdraw their membership from both the Limpopo House of Traditional Leaders and the National House of Traditional Leaders. As I conclude this chapter, the matter is still to be heard at the High Court in Thohoyandou by another judge.

90 *Sowetan*, 15 May 2019.

91 *City Press*, 9 November 2019.