

# A Call to Civil Courage:

From the Royal House of amaMpondo, Qaukeni.

12 August 2010

## *For immediate release.*

We address this statement to the Traditional Leaders of AmaMpondo under the jurisdiction of the Royal House at Qaukeni concerning the statements by His Excellency President Jacob Zuma, in response to report of the Commission on Traditional Leadership Disputes and Claims.

It is released to the media with an appeal to assist in ensuring widespread distribution. The institution of Traditional Leadership together with the media, faith communities, NGO's and voluntary organizations, is an integral part of the fabric of civil society. By acting with civil courage, together we shall move forward in the further democratic transformation of our society.

The Commission for Traditional Leadership Disputes and Claims, appointed by the State President in terms of the Traditional Leadership and Governance Framework Act 41 of 2003, has concluded that in terms of the customary law of amaMpondo and the Framework Act, that Zanuzuko Tyelovuyo Sigcau is the rightful successor to the throne of amaMpondo.

His Excellency President Jacob Zuma has accepted this decision and urged all communities to accept the findings "in the spirit of correcting the wrongs of the past, and as part of the country's nation building efforts".

After taking extensive legal advice we have decided that it would be wrong for amaMpondo to accept the finding of the Commission. The attached legal commentary of attorney Richard Spoor provides a thorough analysis of the matter. Following his recommendation we shall approach His Excellency President Zuma with a request that he afford the Royal House of AmaMpondo the opportunity to make recommendations before he makes any decision in relation to the Commissions report.

From its inception of the Commission in 2005 the Royal House has cooperated to the fullest extent possible to realize the objective of restoring the integrity of the institution of Traditional Authority after the manipulations and conquests of firstly British colonial and then by Apartheid forces. Under Professor Nhlapo a constructive working relationship ensued, but subsequent to his resignation in 2008 we became alarmed by the absence of subject matter experts in anthropology and customary law. It appeared that instead of a rigorous and impartial approach to assessing the evidence of claimants and respondents the reconstituted commission became distinctly less transparent and accessible.

We are particularly concerned that, whereas the Commission was established “to restore the dignity of traditional leadership, remove historical tensions and locate its role within the democratic order in the country”, its determination in respect of succession to King Mandlonke of amaMpondo will have precisely the opposite effect, if left unchallenged.

The Commission for Traditional Leadership states that because King Botha Sigcau’s ascendancy to the throne was recommended by the a Commission appointed in 1938 by Governor General Sir Patrick Duncan, the representative of the British colonial government of the time, this made King Botha to be a creature of the previous colonial statute. The recommendation of the 1938 Commission is also attached. A correct reading of the historical record shows that the Royal House of amaMpondo decided to accept the 1938 Commissions recommendation to appoint King Botha. It was not obliged to do so, but in the absence of any other means of filling the void in Pondo customary law, opted to accept the recommendation of the colonial power – a government that notwithstanding its lack of legitimacy among the black majority of South Africa, was itself subject to customs of Traditional Leadership forged over centuries.

Ironically a year before the 1938 Commission the British Royal House was itself faced with a crisis of succession when Edward V11 abdicated the throne in favour of his younger brother George V1, because he wanted to marry a woman considered unsuitable for the King of England. The Colonial government was experienced and competent to advise amaMpondo on our own difficulties with succession.

The Commission apparent ignorance of historical circumstance may in fact contribute to further distortions of history if left unchallenged.

Further, in terms of generally accepted legal procedure, the Commission fails to explain why it has chosen to believe the verbal testimony of Zanuzuko Sigcau and two relatives who testified in support of his claim instead of accepting the verifiable actions of his grandfather Chief Nelson: actions indicating that, after a long but ultimately unsuccessful court challenge to have the appointment overturned, he eventually came to accept the decision as having been correct, and in the best interests of amaMpondo. Chief Nelson and not King Botha sought recourse to the courts of law of the colonial government to have the decision overturned. Thus, by the logic of the Commission it was in fact Chief Nelson not King Botha who was invoking colonial statutes when he sought redress from such powers.

This statement is given to assure the Traditional Leaders of amaMpondo and all whose identity has been formed by the customs and traditions of amaMpondo, including Zanozuko and his followers that we look forward to the restoration of unity with himself and his supporters, as occurred with Chief Nelson who proposed the appointment of Mpondombini Sigcau to succeed King Botha when he died in 1978.

Although at the time of Chief Nelsons court challenge there may have been supporters of King Botha who may have acted with hostility toward him and his supporters, but with the benefit of history we do now understand that it was most helpful and probably important for Chief Nelson to have mounted his court challenge, so that the disputed matter could be thoroughly tested. His actions, although not understood as such at the time, has provided us with a good example of why it is necessary to put any legal ruling and appointment to the test by recourse to higher courts of law.

Should President Zuma not review his decision to accept the Commissions report in respect of this matter, and proceed to appoint Zanzuko as King, we shall follow Chief Nelsons example taking the matter to the High Court and beyond, because failure to do would amount to an injustice to amaMpondo and an aggravation and disturbance of our unity.

We are however confident that the tide of history is much more firmly flowing with us today, because our legal system is based on an internationally admired democratic Constitution which includes a Bill of Rights. Our ultimate rule is now that Constitution which obliges the President and all other organs of state including Traditional Leaders to govern according to founding provisions that state as follows.

The Republic of South Africa is one, sovereign, democratic state founded on the following values:

- a. Human dignity, the achievement of equality and the advancement of human rights and freedoms.
- b. Non-racialism and non-sexism.
- c. Supremacy of the constitution and the rule of law.
- d. Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.

From the moment that King Sigcau was forced to sign the Treaty of Annexation by Prime Minister Cecil Rhodes of the Cape Colony in 1894, amaMpondo became known for their passive resistance and at times civil disobedience in resisting the forces which sought to dispossess us of our land, heritage and identity as Africans. Even though they no longer manifest themselves in the guise of apartheid and colonial conquest, such forces continue to threaten to undermine African culture through a globalised economic system that thrives on consumerism and greed.

These forces need to be confronted, but, thanks to our democratic freedoms it is no longer necessary to do so in campaigns of defiance and civil disobedience, but by displays of Civil Courage. This means Traditional Leaders should exercise their power and influence with integrity, acknowledging that ultimately we are all accountable to a Higher power.

With the upcoming local government elections Traditional Leaders must to seek the long term interests of all, beyond the short term interests that preoccupy politicians engaged in party political

contests for power. We must stand above such contests and endeavor to serve as a unifying and healing force to counter the rivalries and ructions that characterize such contestations.

Finally in respect to the current controversy over the proposed Media tribunal, we have ourselves been subjected to malicious media reports prior to the announcement by President Zuma of his acceptance of the Commissions report. Some have interpreted this as a deliberate strategy by certain interests to create a climate of public sentiment more conducive to accept the Commissions report. If the proposed media tribunal affords Traditional Leaders recourse to promote fairness and transparency in the way the media reports on issues of concern, it may have some merit. We would however urge Traditional Leaders to consult with their subjects on their views on the matter.

Our duty in this and in all matters of political controversy, is not to take a position but to encourage and facilitate for our subjects the means to state their interests fairly, and to encourage all to be “hard on the problem and gentle on the people”.

It may be instructive to provide copies of both the recommendations of the 1938 Commission and the Commission for Traditional Leadership in respect of the AmaMpondo succession crisis and to encourage our subjects to compare the measure of transparency in the two reports, asking themselves this question;

*“How may amaMpondo traditions and customs promote transparency in public life and the maturation of the media as an essential institution for the ever more democratic ordering of our society?”*

We look forward to further dialogue.

**Ends.**

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