

DRAFT TRADITIONAL AND KHOI-SAN LEADERSHIP BILL, 2024

Submit your comments by 28 February 2025



What is the TKLB?

The Traditional and Khoi-San Leadership Bill (TKLB/ the Bill) is proposed legislation aimed to formally recognise and regulate Traditional and Khoi-San leadership structures in South Africa.

Why is it important?

The TKLB seeks to address historical exclusions, particularly of Khoi-San communities, from formal governance structures. It further aligns Traditional leadership with constitutional values of democracy, equality and human rights.

What is its purpose?

The Bill establishes a legal framework for the recognition of Traditional and Khoi-San leaders. It defines the roles and powers of Traditional and Khoi-San leaders in local governance and aims to ensure accountability and transparency in leadership structures. It further aims to protect community land rights and promote inclusive decision making.






2021: The Traditional Khoi-San Leadership Act 3 of 2019 came into effect.



May 2023: Constitutional Court declared the Act 3 of 2019 unconstitutional and invalid.



29 Nov 2024: Department of Cooperative Governance and Traditional Affairs (CoGTA) published the draft Traditional and Khoi-San Leadership Bill 2024 for public comment.



28 Feb 2025: Deadline for comments to be submitted.

Constitutional Court Decision about the Traditional and Khoi-San Leadership Act of 2019



Mogale v Speaker of the National Assembly

The Constitutional Court in 2023 found that the Act of 2019 was unconstitutional. The Act faced great opposition from marginalised communities, civil society groups and other interested parties.

*The main reasons for the court challenge were that the **Act lacked adequate public participation, enabled dispossession of land without consent for affected communities, that it entrenched old Bantustan boundaries and unconstitutionally strengthened the powers of traditional councils.** The Court found the TKLA to be unconstitutional and invalid. Parliament was also found to have failed to ensure sufficient public participation, which is a violation of sections 59 and 72 of the Constitution. The Court allowed Parliament 24 months to rectify these parts. This means the old Act of 2019 remains in effect until the new Bill is enacted as law. Parliament has until May 2025 to re-enact the Bill.*

The New TKL Bill of 2024

The TKLB was introduced in 2024 to address gaps in the Act of 2019. Through the TKLB of 2024, Parliament attempts to address the findings of the Court.

Key provisions:



Recognition of Traditional and Khoi-San Leadership

Section 8 of the Bill now outlines the process for recognising Traditional and Khoi-San leadership and Section 10 sets out the process for recognising a senior Khoi-San leader or branch head. Chapter 3 sets out the criteria and processes for recognition.

* Think about: Does the recognition process and required evidence align with my community's traditional recognition process?

* Think About: How can communities challenge decisions made about the recognition of their Traditional and Khoi-San leaders?

Challenging and withdrawing recognition

While the Bill lacks a specific provision for directly challenging the recognition of leaders, it does empower the President, Premier, and the Commission on Khoi-San Matters to initiate investigations into recognition applications.

Decision-Making Powers of Traditional and Khoi-San Leaders

Traditional and Khoi-San leaders are allowed to advise and participate in municipal councils but lack voting rights or decision-making authority.

* Think About: What decision-making powers should Traditional and Khoi-San leaders hold in local government?

- *Think about: How should the views of the community be meaningfully considered in final decisions?
- *Think About: How should consultation at municipal and local levels be conducted?

Meaningful consultation

It is not clear how all community members, particularly those in remote or marginalised areas can access the consultation sessions. The format and depth of consultations are largely dependent on government or municipal structures, rather than direct community agency.

The Bill does not provide explicit guidelines on the methods and extent of community engagement and there is therefore uncertainty how participation will be facilitated across provinces.

Gender representation

The Bill acknowledges the need for gender representation in leadership (one in three representatives in councils must be women), however lacks clear enforcement mechanisms to ensure that women and other marginalised groups are adequately represented in consultations and decision-making platforms and processes.

- *Think About: How should equal participation for women and marginalised groups be ensured in decision-making processes?

- *Think About: What can be done to ensure that public participation requirements are complied with by decision makers?

Public participation

The Court stated that 'public participation is a crucial part of participatory democracy and the law-making process as it affords the public a meaningful opportunity to participate in the legislative process'. This means that the government has an obligation to facilitate public participation in an accessible, free, meaningful, informed manner.

Community Land Rights

Security of tenure for informal and communal land rights holders is one of the important concerns addressed by the Bill. Section 16(5) of the Bill requires the Premier to recognise traditional councils and define their jurisdiction in the

Provincial Gazette and the portions of land forming part thereof.

* Think About: Does the Bill provide adequate protection for community land rights?

* Think About: Do the provisions of this Bill address the needs and rights of your community?

The Traditional and Khoi-San Leadership Bill 2024 is a significant step toward recognising Traditional and Khoi-San communities in governance. The Bill aims to align with constitutional principles and human rights obligations. This requires enhanced decision-making and accountability mechanisms,

the strengthening of community-driven consultations and greater protections for marginalised groups.

How Do I Get Involved?

Participate in the consultation processes.

Step 1: Understand the Bill

Read the Bill and attend community workshops or information sessions organised in your community. If you are not aware of any, look online and see if there are any online workshops.

Step 2: Share your views

Submit written comments in the prescribed format or attend public hearings to voice your opinion.

Step 3: Engage with Traditional and Khoi-San Leaders

Discuss the Bill with your leaders and councils to ensure your concerns are represented.

Step 4: Collaborate with other communities

Work with neighbouring communities, organisations, campaigns or local forums to strengthen your collective voice.

Submit your Views and Comments on the TKLB



The deadline of **Friday 28 February 2025** to submit comments on the Draft Traditional and Khoi-San Leadership Bill, 2024 is approaching.

Comments must be submitted in the prescribed format.

Name and contact details

Please provide the name of the person or body who submits the comment and contact details, preferably email address.

Clause commented on

Please indicate which particular clause should be amended.

Proposal

Please provide a clear proposal on how the particular clause should be amended.

Motivation

Please provide detailed motivation for the proposed amendment.

Where to submit your comments:

a. Via post: Director-General,
Department of Traditional Affairs,
Private Bag X22
ARCADIA, 0083
(Attention: Ms R S Mogaladi)

OR

b. Via email: legislation@cogta.gov.za

