

Four things that rural mining communities need to know about the Traditional and Khoi-San Leadership Bill:

- 1 - The TKLB does not say anywhere that Traditional Councils must consult communities or land owners about decisions affecting their land.
- 2 – The TKLB does say that a Traditional Council must keep proper records. The Council must have its financial statements audited by the Auditor General. And the Traditional Council must meet the traditional community at least once a year to report on its “activities and finances”.
This should include a report on the payment and use of community revenue from mining, but that report only has to be about what has already happened – it is not consultation about what should be done.
- 3 – The Bill does not say what should happen if Traditional Councils do not keep proper records, do not submit their accounts to the Auditor General or do not report to a community meeting once a year.
- 4 - Clause 24 is the most important part of the Bill for rural communities where mining is happening now or might happen in the future. This is why:
 - a. This clause says traditional councils - from Kingship and Queenship Councils right down to Traditional Sub-Councils - may enter into agreements or partnerships with municipalities, government departments and, most importantly, “any other person, body or institution”.
That could be a deal to build a toll road across communal land, put a cellphone mast up in a village or build a shopping mall over community graves. But it is most likely to be a deal to open or expand a mine;
 - b. Clause 24 says such deals must be “beneficial to the community”. But it is the Premier and not the people who decide whether they are;
 - c. The Bill says any such deal must be approved by the Premier of the province. It does not say that the community must approve the deal or be consulted about it, or even informed that it is happening;
 - d. The TKLB says the Premier must tell the minister of Cooperative Governance and Traditional Affairs about deals that are approved, but does not require the province to report to communities on the ground;
 - e. Clause 24 says the Premier must “monitor” agreements or partnerships, but does not require him or her to report to anyone about them.

The TKLB recognises traditional communities and says they must be under a traditional leader, but the only accountability built into the law is upwards from the Traditional Council to the province and the government. Councils do not have to report to people, land owners or communities.

the Premier of the province where the Khoi-San council is situated to ensure uniformity in the provisioning of such administrative support.

(b) The provincial government of a province where a branch of a Khoi-San community has been recognised is responsible for the financial expenditure in relation to the attendance of Khoi-San council meetings by the relevant branch head.

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Partnerships and agreements

24. (1) The national government and provincial governments may, through legislative or other measures, regulate partnerships and agreements as contemplated in this section.

(2) Kingship or queenship councils, principal traditional councils, traditional councils, Khoi-San councils and traditional sub-councils may enter into partnerships and agreements with each other, and with—

- (a) municipalities;
- (b) government departments; and
- (c) any other person, body or institution.

Added only in final draft.

(3) Any partnership or agreement entered into by any of the councils contemplated in subsection (2) must be in writing and—

- (a) must be beneficial to the community represented by such council;
- (b) must, in addition to any other provisions, contain clear provisions on the responsibilities of each party and the termination of such partnership or agreement;
- (c) is subject to a prior decision of such council indicating in writing the support of the council for the particular partnership or agreement;
- (d) is subject to ratification by the Premier of the province in which the relevant council is situated and will have no effect until such ratification has been obtained; and
- (e) may not bind the state or any person, body or institution who is not a party to such partnership or agreement.

(4) Any partnership or agreement contemplated in subsection (2) must—

- (a) be based on the principles of mutual respect and recognition of the status and roles of the respective parties; and
- (b) be guided by and based on the principles of co-operative governance.

(5) Any council contemplated in subsection (2), may enter into a service delivery agreement with a municipality in accordance with the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and any other applicable legislation.

(6) A Premier must—

- (a) monitor all partnerships and agreements as contemplated in this section and may take the necessary steps to ensure the effective and efficient implementation or termination thereof; and
- (b) provide the Minister with copies of all partnerships or agreements contemplated in subsection (3)(d).

(7) (a) A Premier, when considering the ratification of any partnership or agreement as contemplated in subsection (3)(d), must be satisfied that the provisions of subsection (3)(a), (b), (c) and (e) have been complied with.

(b) If a Premier is of the opinion that a partnership or agreement does not comply with the provisions of subsection (3)(a), (b), (c) or (e), the Premier must refer such partnership or agreement to the parties who entered into such partnership or agreement, together with his or her reasons for not ratifying the partnership or agreement, and request them to rectify any shortcomings as referred to in his or her reasons.

(8) The provisions of subsection (3)(d) are not applicable to any partnership or agreement between the parties referred to in subsection (2), entered into in terms of any other national law: Provided that any council who is a party to such a partnership or agreement, must provide copies thereof to the Minister and relevant Premier.

Allocation of roles to kingship or queenship council, principal traditional council, traditional council, Khoi-San council, traditional sub-council and traditional and Khoi-San leaders

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25. (1) A department within the national or provincial sphere of government, as the case may be, may, through legislative or other measures, provide a role for a kingship or queenship council, principal traditional council, traditional council, Khoi-San council, traditional sub-council and traditional and Khoi-San leaders in respect of any functional