

Traditional Leadership

In this short clip, we have not included a history of traditional leadership in South Africa. We only cover the basics of the current context.

It is also important to note that it is difficult to generalise about traditional leadership in South Africa. There are many diverse traditional communities with different structures of customary law. Indeed, this is one of the problems with the applicable legislation, the Traditional Leadership and Governance Framework. It does not recognise the variations in customary law.

The Act sees traditional leadership as being dominated by chiefs, supported by traditional councils. Chiefs have authority over headmen and women. There may also be sub-headmen and women. A royal family often sits above chiefs but has a less active role in the day-to-day decision making or administration of traditional affairs. They are involved in transfers of leadership and leadership disputes and may provide a check on the power of chiefs.

The Act has a number of transformative requirements regarding traditional councils. Traditional councils are required to be established by the community if it has been recognised as a traditional community by the Premier of the applicable Province.

Traditional councils must have 40% of their membership elected by democratic means and a third of the membership of traditional councils must be women.

Most traditional councils do not comply with measures and, therefore, their decisions and actions may be invalid.

A previous Act, called the Communal Land Rights Act, tried to transfer land administrative authority to chiefs but this Act was declared unconstitutional. Currently, chiefs do not have the power to decide on their own what happens to their community's land. They do not have the power to assent, by themselves, to mining deals. They may only do so with the community's consent. They must comply with the community's wishes, in accordance with the decision-making procedures of the community and in line with the Interim Protection of Informal Land Rights Act.

A mining company must consult with the general community and cannot consult with the traditional leadership in order to fulfil consultation requirements in mining and environmental legislation. Mining companies must consult with the whole community in order to fulfil their consultation obligations in terms of the law.