

**DIKAKANYO MO MOLAO KAKANYWA WA SETSO LE MERAPE YA MAKHOI-SAN
(TRADITIONAL AND KHOISAN LEADERSHIP BILL - TKLB)
[B23-2015]**

LWETSE 2016

LEMORAGO

Molao kakanywa wa Setso le Merafe ya ma Khoi-San (TKLB) o ile wa ntshiwa mo phatlhalatseng ka kgwedi ya Lwetse 2015. Lefapha la tsa Setso le ile la itsise molao kakanywa o ka kuranta ya puso (government gazette) ka 18 Lwetse 2015, me la kaya gore Letona la Puso ya Kgolagano le tsa Setso (Cooperative Governance and Traditional Affairs) e tla itsise Palamente ka molao kakanywa o. Ka letsatsi la 23 Lwetse 2015 palamente e ile ya fa molao kakanywa o ile wa itsesiwe ke Letona mme wa fitisediwa ko komiting e mabapi le Puso ya Kgolagano le tsa Setso.

TKLB e filwe nomoro ya semmuso, e leng B23-2015, mme batho ba ba nang le kgalhego batla lalediwa mo nakong e e sa fediseng pelo go tshwaela. Go tsaa karolo go go buletsweng batho botlhe go tla diragala ko palamenteng mo batho batla kopiwang go kwala le go romela dikakanyo le go tsa karolo mo puong e e buletsweng botlhe. Assembly ya bosetshaba (National Assembly), Council ya diprofensi ya bosetshaba (National Council of Provinces) le di provincial legislature di tshwanetse tsa fa batho botlhe tshono ya go nna le tshwaelo mo molao kakanywa o (Bill).

Molao kakanywa o o latela mo morago ga o mongwe, o o bidiwang Molao Kakanywa wa tsa Setso (Traditional Affairs Bill)(TAB) o oneng wa itsisiwe ke lefapha la puso ya kgolagano le tsa setso ka 2013. Lefapha le fetotse dingwe tsa dintlha tse di neng dile mo molaong o mme ba fetola le leina go o bitsa TKLB. Dingongorego tse di neng tsa tlhagisiwa mabapi le TAB di santse di tlhagelela le mo TKLB. Go ipaakanyetsa go tsaa karolo go tshwaela mo molaong o go botlhokwa go thaloganya dingwe tsa dintlha tsa TKLB tse di gatelelang dithata tsa batho, segolo ba ba dulang mo metse selegaeng ya kgale. Setlankana se se leka go thalosa seo.

MAIKAELELO A MOLAO KAKANYWA

Le fa e le gore go setse go na le melao e e laolang puso ya setso mo nageng, lefapha la tsa setso (Traditional Affairs department) le kaile fa e le gore molao o o tlhokega mo mabakeng a mabedi:

- Go leka go dira molao o le mongwe o o laolang dipuso tsa setso le go rarabolola mathata a a leng teng mo melaong e e teng, le
- Go fa merafe ya ma Khoi-San tetla ya semolao ka gonne ba ne ba sa fiwa matla o go nna ka fa molaong.

- Mme fela gona le matshwenyego a gore puso e na le maikaelelo a mangwe ka go ntsha molao kakanywa o, e e tsenyeletsang go thibela dingongorego tsa batho tse di saleng tsa tlhagelela ka Molao wa tsa Mafatshe a Setso (Communal Land Rights Act) o o ileng wa kgaphelwa ko thoko ke kgotla ya molaotheo (Constitutional Court), mme sa dira gore palamente e seke ya kgona go ka fetisa molao kakanywa wa Dikgotla tsa Setso (Traditional Courts Bill) go nna molao. Go tlaelelsa puso e paletswe ke go fa batho tshireletso go ya ka molao wa Puso ya Setso le Boeteledipele (Traditional Leadership and Governance Framework Act 41 of 2003, e re tla e bitsang Framework Act). TKLB ga e rarabolole bothata jwa puso mo go palelwa ke go fetola dipuso tsa setso go ya ka fa molaong. Batho ba tshwanetse go ela tlhoko gore TKLB ga e tlise kgatelelo e magosi a neng a fiwa yona ke puso ya kgatelelo.

DINTLHA TSA BOTLHOKWA TSA TKLB

1. Ga e fetolwe melolwane e e beilweng ke Molao wa Puso ya Batho Bantsho ya 1951 (1951 Bantu Authorities Act)

Ka ngwaga wa 2003 Palamente e ile ya fetisa molao wa Puso ya Setso le Boeteledipele (Traditional Leadership and Governance Framework Act) e e amogelang le go konetelela merafe e e bopilweng go ya ka Molao wa Tsamaiso ya Bantsho ya 1927 (Native Administration Act of 1927) jaaka metsana ya setso le go lemoga dipuso tsa setso tse di bopilweng go ya ka Bantu Authorities Act ea 1951. TKLB e dirisa melolwane e, e e leng kgale e losa merafe go tlhalosa gore e tla dira mo dikarolong tse fe tsa naga. Se se raa gore molao o o tla dira fela mo metse selegaeng ya kgale, go sa tsenyeletse merafe ya maKhoi-San.

Puo e e tlwaelegileng ya gore “Kgosi ke Kgosi ka morafe” e bontsha fa Kgosi e tsa tetla ya go busa mo morafeng mme TKLB yona e tshimolola ka gore tetla ya Kgosi ya go busa o e fiwa go tswa mo melolwaneng e saleng e beilwe ke puso ya kgatelelo. TKLB e gatelela le gore batho ba ba dulang mo metse ea selegae ya kgale ba tshwanetse go nna le kgosikgolo ja ka melao ea kgethollo pele ga ba ka fiwa dithata tsa semolao. TKLB e fetola bogosi go nna botlhokwa mo eleng gore morafe e nna morafe ka Kgosi.

Melelwane e e pateleditsweng mo bathong ke puso ya kgatelelo e nyenyefatsa tirisano mmogo e batho ba neng bana le yone le bogosi e bile e dira gore Kgosi e seke ya nna le boikarabelo mo bathong ebile ka gore ba duelwa ke puso ba sheba dikgatlego tsa puso pele ga tsa batho. Se se dira gore magosi a gatake ditshwanelo tsa batho le go dira bogwenegwene ka ntlha ya matla a ba a fiwang ke molao o.

2. E pateletsa Batho go nna se eseng sona.

TKLB e dirisa tlhaloso ya batho go ya ka melao ya puso ya kgatelelo. Se ga se tsee



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tsebeng ntlha ya gore merafe e mentsi e ile ya patelediwa mo bathong ke puso ya kgatelelo go e kgontsha go laola batho. E palelwa ke go ela tlhoko gore merafe e mentsi e ile ya bopiwa ke puso ya kgatelelo fa e fetsa go tseela batho mafatshe le go pateletsa merafe dikgosi tse puso ya kgatelelo e dithlopileng go gatelela batho.

Mo mafatsheng a le mantsi go na le dikgotlhang mabapi le melelwane e e beilweng ke puso ya kgatelelo, kgotsa kgotlang ya batho ba ba sa ipone ba wela mo bogosing bo bo rileng. Mo mabakeng a mangwe batho ba ba itheketseng mafatshe ba ile ba patelediwa go wela mo bogosing bo bo riling ke puso ya kgatelelo mme TKLB e konotelela melelwane e le go pateletsa batho go wela mo bogosing bo ba sa bo amogeleng.

3. E buseletsa bosemorafe le go kgaoganya batho

Ka 1994 morago ga puso e ntsha le go ganana le dipuso selegae, maafrika borwa a ile a tshepisiwa tekatekano le naga e le nngwe ya Afrika Borwa go ya ka molaotheo. Mme fela TKLB e busetsa batho ko morago ka go tlisa go aroganya batho go ya ka melao ya apartheid le go gatelela kgethololo e e tlisitsweng ke puso ya kgatelelo ka go aroganya batho go ya ka metse selegae le Afrika borwa. TKLB e tlisa molao o o dirang fela mo metse selegaeng mme e sa dire mo metse setoropong.

4. E leka go kgapela thoko go palelwa ga Framework Act go tlisa ditswelopele.

Framework Act e nna le tsela tse pedi tse e le kang go fetola melao ya apartheid le bo koloniale go e lepalepanya le puso ya botlhe (democratic values). Palamente e ile ya tlhalosa gore e tla fetola melao e e laolang bogosi go e lepalepanya le molaotheo wa naga le go tlisa democracy mo go yona. Tsela ya ntlha e ne e le gore bogosi bo tsenyeletse 40% ya batho ba ba tlhopilweng ke morafe le go tsenyeletsa gore nngwe tharong ya batho ba ba tlhopilweng e nne batho ba bo mme mo nakong e e rileng. Tsela ya bobedi e ne e le go tlhoma komishini ya go rarabolola dingangisano tsa bogosi (Commission on Traditional Leadership Disputes and Claims) kgotsa yone Nhlapo Commission jaaka e itsege. Commission e e ne e tshwanetse go lebelela dikopo tsa batho kgatlhanong le magosi a a pateleditsweng mo go bone le go supa magosi a a tshwanetsweng ke ditulo tsa bogosi.

Ditsela tse pedi tse di paletswe ke go fitlhella maikaelelo a molao o go tlisa democracy mo bogosing. Diprofensi di le di ntsi di paletswe ke go go nna le ditlhopo go ya ka semolao mme ko Limpopo ga go aka ga nna le ditlhopo le eseng. Di profensi di paletswe ke go matlha a a neng a beilwe go nna le ditlhopo e bile batho ba bo mme ga ban a kemedi mo di khanseleng tsa bogosi (traditional councils). Nhlapo commission e paletswe ke go rarabolola dikgotlang mo bogosing ka ntlha ya dikopo tse di ntsi tse di tsentsweng ke batho, mo go ileng ga tlhamiwa dikomiti mo di profensing go leka go tswelotse pele tiro. Dikgetsi tse e leng gore commission e tshotse tshwetso ka tsone di fa pele ga kgotla tshekelo ka gore batho ga ba itumelela ditshwetso tsa yona. Go fan aka sekai, ka kgwedi ya Seetebosigo 2013 kgotla ya molaotheo e ile ya swetsa gore go pagolola Kgosi ya amaMpondo mo bogosing go latela tshwetso ya Nhlapo commission go ne go se ka fa molaong.



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Le fa go ntse go na le mathata a, karolo (clause) ya 70 ya TKLB e dumelela: (a) bogosi bo neng bo le teng pele ga go nna le molao wa Framework Act; le (b) magosi a a saleng a tlhomiwa go latela Framework Act morago ga ngwaga wa 1994. Se se nyemisang mooko ke gore tlhaloso ya karolo ya 70 ga se e tlhapileng mo elng gore motho a ka ipotsa gore e tla tsenngwa tirisong jang. Se se botlhokwa ke gore diphetogo tse di tshwanetseng di tliwise ke Framework Act ga di a fetolwa le fa ele gore puso e paletswe ke go di tsenya mo tirisong. TKLB e tsenya tirisong tsela e ncha ya go latela go netefatsa ditulo tsa magosana. Se sengwe gape ke gore TKLB fetola molao wa Framework Act o o neng o bua gore magosi a a palelwang ke go tshwara ditlhopo le go netefatsa gore nngwe tharong ya batho ba ba tlhopiwang ke bo mme ga a kitla a fiwa tetla ya go busa. Le fa e le gore TKLB e bua gore ditlhopo di tshwanetse go tshwariwa ga gona ditlamorago le fa magosi a ka palelwa ke go dira seo. Se e se buang ke fela gore Letona la tsa Bogosi (Minister of Traditional Affairs) a ka tsereganya fa a bona go tlhokega go netefatsa gore ditlhopo di a tshwarwa e bile di tsenyeletsa le bo mme.

5. E letlelela puso go fa magosi dithata dingwe le dingwe tse e batlang go ba fa tsone

Framework Act e letlelela puso go fa magosi dithata dingwe mo section 20 ya molao. Se se ile sa fitlhelela mo e leng gore puso e ile ya tlhagisa melao e e itepanyang le melao ya apartheid jaaka Communal Land Rights Act ea 2004 (CLRA) le Traditional Courts Bill (TCB) e puso e paletsweng ke go e tsenya tirisong ka ntlha ya gore batho ba ne ba le kगतलhanong le yona ko kगतल tshekelo, Palamenteng le mo diyalemoyeng kgotsa dikuranta.

TKLB le yona e letlelela puso go fa magosi dithata tse (clause 25) e bile e fa dipuso tsa bo masepala tetla ya go rebolela magosi dithata tse, mme ga e tlhalose gore ke dithata tse feng tse di ka fiwang magosi le tsefeng tse di ka se fiweng magosi. TKLB e bua gore puso e ka fa magosi dithata tsa go tseweletsa tiro ya puso pele (sekai, puso e ka fa bogosi dithata tsa go tseweletsa tsa maphelo, matlo, temo le dithuto) mme go tla tswa mo mafapheng gore ba tseweletsa se jang. Go na le kगतलgalo ya gore magosi a ka fiwa dithata ko ntle ga go itsise batho le go ya ka fa semolaong jaaka e le tlhokego go ya ka CLRA le TCB, mme se se ka dira gore go nne thata gore batho ban ne kगतलhanong le se ka go nne bat la be bas a itsisiwa ka se. TKLB ga e tlhalose gore karolo ya batho ba ba tsenetseng ditlhopo le ya magosi e tla nna e feng fa magosi a ka fiwa dithata tse.

Se e tla nna bothata go latela tshwetso ya kगतल ya molaotheo ka 1996 ya gore molaotheo wa naga ga o letle magosi gore a nne le dithata tse e leng tsa puso (governmental powers and functions). Molaotheo o bua le gore magosi a letleletswe fela go ya ka melao ya setso le fa ele gore ga ba kगतलhanong le molaotheo wa naga. Fa e le gore puso e leka go fa magosi dithata tse e leng tsa puso se se tlile go nna kगतलhanong le molaotheo. Se ke ka dira gore go nne le kala ya bone ya puso, le fa ele gore go ya ka molaotheo, go na le makala a le mararo fela.



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TKLB e e ntshitsweng gone jaanong e leka go bipa botlhaswa mo magosi a fiwang dithata tsa bomasepala ba kgethilweng ke setjhaba mo metseselegaeng ya kgale ka gore magosi ga a letlelelwa go nna le dithata tsa go tsaya ditshwetso, mme se se thata go tlhaloganya gore o ka fiwa dithata jang mme o be o sa letlelelwe go dira ditshwetso. TKLB ga e tlhalose gore puso e tla netefatsa jang gore magosi ga a na dithata tseo. Se se dira gore magosi a kgone go itirela jaaka a rata ka gonne ga gona ka mo ba ka tlhokomelwang ka teng.

6. Ga e letle go morafe/motse go tsa karolo pele ga go tswewa ditshwetso

Molaotheo wa naga o sireletsa tekatekanyo ya batho le batho go itlhopela gore ba buisa jang ke mang, mme se ga se felele fela mo go tlhopeng baemedi ka nako tsa ditlhopo morago ga dingwaga di le tlhano. Se se tsenyeletsa le go tsa karolo ga batho mo ditshwetsong dingwe le dingwe tse di tsewang. Se se batla gore batho ba itse ka ditsamaiso go tloga tshimilogong go ya pheletsong le gonna le maikarabelo a baetapele fa ba sa latele molao.

Molao wa setso (customary law) o tsenyeletsa go tsa karolo ga batho le democracy. Se se tsenyeletsa ditshwetso tsa ditlhopa tse di ka fag are ga morafe gore di itlhopele gore di batla go buswa jang le gore bat see karolo pele ga ditswhetso tse di tla nnang le ditlamorago mo go bone di tswewe. TKLB yone e letlelela fela gore bahumi e nne bone fela ba tsayang karolo ka gore ga e letle gore batho ba itsesewe ka se magosi a batlang go se dira pele ba a tsaya tshwetso, mme se se kgatlhanong le molaotheo le molao wa setso.

7. E sireletsa bahumi ba mo metseng le go ba humisa le go feta

Diminerale tse di botlhokwa di ntse di fitlhelwa mo metseselegaeng yak gale mme se se tliša dikgotlang tsa tiriso ya dichelete tse merafe e e patelwang go tswa mo meepong, le dikgotlang tsa tsamaiso ya tikologo, le maikarabelo a magosi mo go tseo. Go dikgetsi tse di ntsi tse di bontshang gore magosi ga a tseye dikopo kgotsa ditlhokego tsa batho tsiya fa ba tsa ditshwetso le meepo mo mafatsheng a morafe. Se se diragalang ke gore magosi e nna bone fela baemedi ba merafe mo dikomiting (boards) tsa meepo ko ntle ga go nna le maikarabelo. Mo Bokone-Bophirima batho ba ba ileng ba nna kgatlhanong le se ba kopane le mathata a go duela madi a mantsi a dituelo tsa ko kgotla (court orders) mme se ga se ba kgontshe go tsa karolo e e maleba.

TKLB e tla kgontsha magosi gore ba itirele jaaka ba rata ka gore e ba fa dithata e bile ga e ba rwese maikarabelo ko morafeng. E dumella dikhansele tsa bogosi go kenya mo ditumellanong le dikhamphani kapa masepala ntle le tsebo ea morafe.

8. Ga e latelele molaotheo mo go tlhaloganyeng melao ya setso

Karolo kana Section 211(1) ya molaotheo e dumelela go nna teng ga magosi go ya ka melao ya setso. Lefa Kgotla ya molaotheo e ile tlhalosa molao wa setso jaaka molao o o phelang o o tsamayang o itepanya le di nako, melao e e tsshwanang le Framework Act, TCB, CLRA le TKLB e re busetsa ko morago ka gore e dirisa tlhaloso



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ya puso ya apartheid le y abo koloniale jaaka tshimilogo.

Kgotla ya molaotheo e tlhalositse gore molaotheo ga o sireletse tlhaloso e ya apartheid le bo koloniale mme e sireletsa molao o o phelang o o tsamayang o fetoga le dinako le go itepanya le histori ya batho le dikgatelelo tse ba fitileng mo go tsona, mme eseng fela se se kwetsweng mo bukeng. Le fa gontse go le jalo TKLB e ntse e bontsha mokgwa wa Framework Act e e tsenyang tirisong melao ya setso e e tletsitweng ke puso ya apartheid.

Le fa molaotheo o letla palamente go dira le go tsamaisa melao ya setso, e tshwanetse ya netefatsa gore se ga se gatake ditshwanelo tsa botho le go paledisa melao ya setso go tsamaya le dinako. Palamente ka jalo e tshwanetse ya dira bojotlhe ba gore dithata tsa batho di a sirelediwa le gore TLKB ga e tlise kgatelelo.

Molaotheo o letla gore melao ya setso e tshwanetse ya dirisiwa le go tsamaisa go ya ka fa molaotheong wa dithata tsa batho (Bill of Rights). Go ya ka mo TKLB e fang magosi dithata tse di seyong ka teng go na le kgonagalo ya gore se gase tsamaisane le molaotheo wa naga. Se se tliša gape potso ya gore a go siame go nna le molao o o dirang fela mo bathong ba le dimilione di le 16 ba ba dulang mo metseselegaeng mme e sa dire mo nageng ka bophara.

9. Ga e tshware Magosi a maAfrika le magosi a maKhoi-San ka go tshwana

TKLB e farologanya magosi a ma Khoi-San le magosi a mangwe. Mo metseselegaeng yak gale TKLB e tlotlomatsa bogosi go ka tulo e ba leng mo go yona, se se raying gore magosi a a na le tletla ya go busa mo mafatsheng a a rileng a ba dulang mo go ona.

Ka mo letlhakoreng le lengwe magosi a ma Khoi-San ga ban a tetla ya go busa mo mafatsheng a a riling, mme ba dumelelwa go busa batho b aba itlhalosang jaaka ma Khoi-San fela fela. Se se raya gore magosi a ma Khoi-San ba tliše go tlhoka mafatshe a b aka busang mo go ona mme bat la nna fela le dikantoro, fa magosi a bantsho a tla busa mo mafatsheng a a riling go ya ka melao ya apartheid.

Jaaka go tlhalositswe puso e batla go tsenya tirisong TKLB go tsenyeletsa dipuso tsa ma Khoi-San mo semolaong mme fela TKLB e tlhalosa gore ga gona mafatshe a bat la busang mo go one. Se se botlhokwa ka gore puso e solofeditse ma Khoi-San gore e tla ba busetsa

Go botlhokwa go lemoga gore TKLB e tshimolola bogosi ba maKhoi-San bo bo emeng mo gore batho ba itlhalosa jaaka e leng beng ba morafe o. se se raya gore batho ba tshwanetse ba ikwadise gore ke bangwe ba morafe o pele b aka fiwa tetla. Le fa e le gore se se tliša mathata, puso e bontsha gore go na le kgonagalo ya gore merafe e ka itlhalosa go ya ka go ithlopa go na le gore ba tswa ko lefatsheng lefeng. Se se ka nna sa tsenngwa mo tirisong mo metseselegaeng mme se se tliša kgontsa batho gore ba se ke ba itlhalosa go ya ka melelwane ya apartheid e e leng gore e konotelelwa ke TKLB.



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10. E letlelela magosi go tsa karolo go dira melao ya naga

TKLB e bonela pele gore magosi a tla fiwa tshono ya go tshwaela mo melaong fa palamente e dira melao e e ka tsa setso.

Go ya ka molaotheo palamente, dipuso tsa diprofense le bo masepala ke bone fela ba tshwanetseng ba dire melao. Le fa ele gore magosi a ka tsaya karolo mo go direng melao jaaka batho ba ba amegang, potso ke gore goreng ba tshwanetse ban ne le dithata tse di fetang batho ba bangwe b aba amegang. Nako e e filweng batho ka kakaretso go tshwaela mo melaong e ke e khutshwane fa e le gore magosi o ne a tla fiwa matsatsi a le 60 go tshwaela. Se sengwe gape ke gore TKLB o kare e tsa gore magosi ke bo maitseanape fa go tla mo dilong melao ya setso. Mme kgotla ya molaotheo e ile ya tlhalosa gore melao ya setso e fitlhilwa mo tsamaisong ya letsatsi le letsatsi e bile e tlhompale histori ya batho mme ga e ye ka gore Kgosi ke ene a bayang molao. Se ka jalo se tshwanetse sa elwa tlhoko.

Go tshwanetse ga dirwa eng?

Jaaka TKLB e setse e itsisitswe ko palamenteng ka kgwedi ea Lwetse 2015, komiti e kopanetsweng ya palamente ya bosetshaba (joint committee of the National Assembly) le Counisele ya diprovince (National Council of Provinces) e tswere kopano ya maleba ya tlhophilweng (stakeholder hearing) ka Tlhakole 2016. Lenane la go ea sechabeng (schedule of public hearings) le phatlaladitswe mme batho ba ba nang le dikgatlhego ba lalediwa go tshwaela ko palamenteng ya bosetshaba (National Assembly). Counisele ya Diprovince (National Council of Provinces) e lebeletswe go mema setjhaba mo bathong le go tshwara dikopano naga e ikadile. Dipalamente tsa bosetshaba tsa diprovince (Provincial Legislatures) le tsona di lebeletswe go mema setjhaba ka kakaretso naga ee eotlhe go tla bua ka TKLB. Go fitlhelela dipitso tse di tshwarwa batho ba rotloediwa go ipaakanya go tsa karolo. Kopano (workshop) ee e botlhokwa thata go simolola go sale gale ka gonne nako e e fiwang batho go tshwaela ke e khutshwane.



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