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PRESIDENT SIGNS TRADITIONAL AND KHOI SAN LEADERSHIP BILL INTO LAW

Press Statement issued by Land and Accountability Research Centre, University of Cape Town

President Cyril Ramaphosa has signed the Traditional and Khoi San Leadership bill into law. This shock announcement was made in Parliament on Thursday 28 November. Civil society had anticipated that the President would refer the Bill back to Parliament after two Panel reports warned that provisions of the Bill are in breach of fundamental Constitutional rights. The first report, in 2017, was by a High Level Panel created by the Speakers of Parliament, and chaired by former President Kgalema Motlanthe. The second was by the President's own Advisory Panel into Land Reform which reported earlier this year.

Numerous submissions warned that the Bill undermines the customary and informal property rights protected by section 25(6) of the Constitution, and abrogates the decision-making authority that is the hallmark of citizenship for the 18 million South Africans living in the former homelands. The President therefore had strong legal grounds on which to refer the Bill back to Parliament. He chose to ignore these.

The Bill provides that traditional leaders and Councils can sign deals with investment companies without obtaining the consent of those whose land rights are directly affected. No prior law in South African history, even during colonialism and apartheid, has enabled traditional leaders to dispossess people of their land rights without either their consent, or expropriation.

While civil society has repeatedly lauded that the Bill takes steps to recognise Khoi-San leaders and structures, there is a concern about the cost at which this recognition has come. Khoi-San communities, too, will be subject to the rights abrogations enabled by the Bill.

Why now?

- Because many existing investment deals, particularly for mining, are legally precarious as the traditional councils that signed them were not legally compliant with the requirement to include some women and elected members. The bill attempts to remove the consequence of legal invalidity for councils that fail to 'transform'.
- Because two landmark judgments in 2018 uphold the right to tenure security in the context of mining in the former homelands. They provide that deprivation of informal land rights requires either the consent of those affected, or expropriation through due process of law. The TKLB was amended shortly after the Maledu Constitutional Court judgment of October 2018 to attempt to get around this crucial new precedent.

What is at stake?

The Motlanthe High Level Panel report detailed how the traditional leadership laws that the TKLB will repeal and replace already enabled dispossession and deepening inequality. They shatter any hope of social cohesion by defaulting to the racially inscribed boundaries of the former homelands. Access to land rights, justice and decision-making is segregated based on the notion that those living within the former Bantustans are tribal subjects, as opposed to equal citizens.

The TKLB seeks to provide a veneer of legality to partnerships of extraordinary greed and complicity that already exist between government and the mining sector. Instead of regulating mining to ensure that basic rights and the environment are protected, this Bill signals that government is happy to jettison the most basic rights of the poorest South Africans in order to maintain the precarious status quo.

That the status quo is precarious is illustrated by the ever-increasing scale of violent protest around mining in the former homelands. Daily Maverick reported this week that the Minerals Council reported 330 incidents of violent protest in the first 6 months of this year in a relatively small part of Limpopo. The same area saw 260 protests in 2018. In response, the Minerals Council and the police plan to set up a joint operations centre in the region (the Eastern Limb of the Platinum Belt). In the Eastern Cape the police have been rolling out police stations located in the palaces of traditional leaders.

When law enables dispossession without consent or expropriation, as the TKLB permits, violence, including state violence, is the inevitable consequence. In the case of the TKLB, it is a consequence that the President could have prevented.

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