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PRESS STATEMENT BY STOP THE BANTUSTANS CAMPAIGN, 30 MAY 2023

Victory for rural democracy as Constitutional Court strikes down Traditional and Khoi-San Leadership Act

Constitutional Court Judgment: *Constance Mogale and Others v Speaker of the National Assembly and Others*, CCT 73/22

Today the Constitutional Court of South Africa handed down judgment in the legal challenge to the Traditional and Khoi-San Leadership Act 3 of 2019 (TKLA). The case was brought by an alliance of land-rights activists, land-rights organisations and communities directly affected by the Act who challenged the way Parliament conducted public participation during the legislative process. The applicants argued that the National Assembly, National Council of Provinces and Provincial Legislatures failed to fulfil the constitutional obligation to facilitate reasonable and meaningful public participation while making the law. The applicants asked the Constitutional Court to declare the Act invalid and unconstitutional. Oral arguments were heard on 23 February 2023.

The applicants are: Constance Mogale, National Coordinator of the Alliance for Rural Democracy (ARD); the Land Access Movement of South Africa (LAMOSA); Duduzile Baleni (iNkosana/headwoman of the Umgungundlovu community) and Victor Modimakwane (a member of the Bakgatla ba Kgafela community).

The Court has found in the applicants' favour and has ordered that the Act is invalid and must be referred back to Parliament to re-enact the statute in a manner consistent with the Constitution. The period of invalidity has been suspended for 24 months to enable Parliament to do its work.

We are elated with the court order and recognise the impact and importance of this historic moment – rural voices must be heard on issues affecting their lives, as well as their constitutional and customary rights. While the TKLA provides overdue recognition of Khoi-San communities and leaders, it threatens rural democracy and the rights of those residing in the former bantustans. Where rural people, community-based organisations and civil society actually managed to make submissions during the law-making process, they were ignored. The Act that came into effect on 1 April 2021 did not reflect the various concerns raised. Despite efforts by the Stop the Bantustans Campaign (an initiative of the ARD created to spread awareness about the dangers of the TKLA, the Traditional Courts Bill of 2017 and other laws affecting tenure security), which included a march to the Union Buildings in June 2019,

the legislation was brought into force. Since then, the provinces have failed to hold democratic elections for 40% of traditional council members.

This judgment confirms the relevant constitutional requirements for how public participation must be conducted by Parliament. The applicants call on Parliament and the Provincial Legislatures to do better.

Constance Mogale says, *“we are pleased to learn about the judgment and the suspension of TKLA of 2019 today. It brought hope for the rural masses, and courage to scream louder in defence of rural democracy, irrespective of how hard the rural voices are ignored by Parliament. We hope that this victory is a lesson to the current and future policy makers.”*

The applicants are represented by Richard Spoor Inc Attorneys, the Legal Resources Centre, and Henk Smith. The applicants were assisted in the monitoring of public hearings by the Land and Accountability Research Centre (University of Cape Town), individual activists, community-based organisations, and volunteer law students of the Students for Law and Social Justice. The team of advocates for the applicants were led by Geoff Budlender SC.

[END]

Useful links

Constitutional Court record:

<https://collections.concourt.org.za/handle/20.500.12144/38246>.

Stop the Bantustans Campaign: <https://stopthebantustanbills.org/>.

Alliance for Rural Democracy: <https://ardt.org.za/>.

Legal Resources Centre: <https://lrc.org.za/>.

Custom Contested: <https://www.customcontested.co.za/>.

Land and Accountability Research Centre: <https://law.uct.ac.za/larc>.

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