



## CONSTITUTIONAL COURT ASKED TO PROTECT RIGHT TO BIRTH REGISTRATION OF CHILDREN BORN TO UNMARRIED FATHERS

FOR IMMEDIATE RELEASE:

01 September 2020

Today, the Constitutional Court will hear argument from the Centre for Child Law (“CCL”), represented by Lawyers for Human Rights (“LHR”). The CCL will ask the Court to confirm a finding of the Grahamstown High Court, sitting in Makhanda, that section 10 of the Births and Deaths Registration Act (“BDRA”) is unconstitutional because it creates insurmountable barriers to the birth registration of children of unmarried fathers. The High Court noted the impact of the barriers placed by section 10 as it currently reads:

*“Children without birth certificates are ‘invisible’. Their lack of recognition in the civil birth registration system exposes them to the risk of being excluded from the education system and from accessing social assistance and healthcare. They are effectively denied support and assistance considered necessary for their positive growth and development.”<sup>1</sup>*

The CCL, whose clients are all citizens with valid South African identity documents, argues that the matter deals with a legal provision and practice that has proven to be a fundamental hurdle to children being able to access their right to birth registration and ultimately their right to nationality. Section 10 of the BDRA regulates the provision of a surname to a child born to unmarried parents. The section provides for the child receiving:

- 1) the mother’s surname;
- 2) the father’s surname at the joint request of the father and mother; and
- 3) the mother’s surname, with the father’s details inserted onto the birth certificate, and with the consent of the mother.

The section **does not** make provision for a child to receive their father’s surname or details of their father on their birth certificate without the mother’s involvement. There are a number of reasons why a mother may not be involved in the birth registration process. The mother may be deceased, absconded, is undocumented herself or cannot be located.

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<sup>1</sup> Para 3 and 4 of the judgment.



The children are essentially left stateless if they cannot be registered by their unmarried father. The children are also deprived of the ability to access basic rights and services. The Centre notes this reality in its heads of argument:

*“Children are vulnerable members of society. Even more so are those children without birth certificates. The latter are at greater risk of exclusion from the education system, from accessing social assistance and healthcare, and crucially, to access to their nationality. Further, the effects of the impugned legislative provisions result in disproportionately more severe consequences for children from indigent families”<sup>2</sup>*

The children’s right to dignity is also severely affected by denying them their intrinsic worth that is connected to their sense of belonging. The social and psychological stigmas linked to not belonging are said to:

*“...significantly impair the ability of children to learn, grow, play and lead productive and fulfilling lives. Statelessness can create insurmountable barriers that prevent access to education and adequate health care and stifles job prospects. It reveals the devastating psychological toll that statelessness can take not only on [the children] but also their families, communities and countries”<sup>3</sup>*

The Centre asks the Constitutional Court to declare section 10 of the BDRA unconstitutional to the extent that it is inconsistent with the Constitution in not allowing unmarried fathers to register the births of their children under the father’s surname in the absence of the mother. The Centre further asks the Court to give Parliament time to correct the defects in the section and during this period asks that the Court order that an interim regime applies which will allow unmarried fathers to register the births of their children.

**Ends.**

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For more information, please contact:

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<sup>2</sup> Centre for Child Law heads of argument at para 11.

<sup>3</sup> Centre for Child Law heads of argument at para 15.



CENTRE FOR  
**CHILD LAW**

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**HUMAN RIGHTS**