

1.

ESTABLISHMENT

There is hereby established a Voluntary Association to be known as the

**COUNCIL FOR THE ADVANCEMENT OF THE SOUTH
AFRICAN CONSTITUTION**
(Abbreviation : **CASAC**)

in order to promote the Purpose and undertake the Sole Object hereinafter stipulated, upon the terms and conditions contemplated by this Constitution.

2.

DEFINITIONS AND INTERPRETATION

In this Constitution, unless the context clearly otherwise indicates:

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|-----|-----------------------------------|--|
| 2.1 | "Advisory Council" | means the Members of the Advisory Council in General Meeting. |
| 2.2 | "CASAC" | means the Voluntary Association established in terms of this Constitution, known as the "Council for the Advancement of the South African Constitution" |
| 2.3 | "Commissioner" | means the Commissioner for The South African Revenue Service ("SARS"). |
| 2.4 | "Executive Committee" | means the body vested with executive responsibility for the management of the affairs of CASAC. |
| 2.5 | "Members of the Advisory Council" | means initially the individual persons whose names are listed on the attached Schedule styled "Initial Members of the Advisory Council"; but the term shall thereafter include all such other persons as may from time to time be admitted to Membership |

of the Advisory Council, in accordance with clause 6.1.1 of this Constitution.

- 2.6 "The Office" means the Registered Office of CASAC referred to in clause 3 of this Constitution.
- 2.7 "The Republic" means the Republic of South Africa.
- 2.8 The masculine includes the feminine; the singular includes the plural; and terms referring to persons include juristic persons; and *vice versa*, in each instance.
- 2.9 Any reference to the Income Tax Act; the Nonprofit Organisations Act; or any other Act or Statute mentioned or referred to hereunder, including the Schedules and Regulations applicable thereto, shall be deemed to denote such Acts, Statutes, Schedules, and Regulations as enacted, and amended from time to time, including legislation constituting a re-enactment or substitution thereof.
- 2.10 By virtue of the substantive terms of this Constitution, and pursuant to registration of CASAC in terms of the Nonprofit Organisations Act as contemplated by clause 22 hereunder, CASAC shall be a separate juristic person distinct from its members and office bearers; and as such, it may in its own name, enter into contracts; sue or be sued; acquire and hold assets; undertake liabilities; and engage generally in other transactions deemed appropriate from time to time.

3.

REGISTERED OFFICE AND SECRETARIAT

CASAC shall be established as a separate legal entity with its registered office located at the Democratic Governance and Rights Unit (DGRU) of the Department of Public Law, University of Cape Town. The DGRU shall constitute the secretariat of CASAC for such period determined by the Executive Committee as may be mutually agreed.

4.

PURPOSE AND SOLE OBJECT

The Purpose and Sole Object of CASAC shall be to promote, develop, and affirm the rights and principles set out in the South African Constitution, in order to facilitate and advance progressive constitutionalism and deepen democracy in South Africa, which may include:

- 4.1 The initiation, funding and support of projects and programmes consistent with and conducive to the achievement of such Purpose and Object;
- 4.2 The sponsorship of relevant lectures, workshops, colloquia, public engagements, dialogue, research, publications, advocacy, and other similar activities;
- 4.3 The provision of information, counsel, and advice, and the initiation and conduct or support of relevant litigation and advocacy, in the public interest;
- 4.4 The conduct of a sustained engagement and dialogue with Government at all levels; and with political and advocacy bodies, labour unions, business organisations, faith communities, social movements, and other similar organisations within the Republic, and elsewhere;
- 4.5 The preparation and submission of representations and relevant information to Parliament, the Human Rights Commission, the Public Protector, and other statutory and independent bodies concerned with constitutional democracy within the Republic, or in an international context.

5.

GUIDING PRINCIPLES

Whilst acknowledging the interdependence and importance of all rights and values represented in the South African Constitution, the following Guiding Principles are recorded as having motivated the establishment of CASAC, viz:-

- 5.1 *That the idea of "progressive constitutionalism" should be seen as a pivotal founding principle.*
- 5.2 *That the Constitution as the supreme law of the land, provides a framework for the social and economic transformation of South Africa, and for a deliberative, participatory, and inclusive democracy. This framework together with its underlying values and founding principles needs to be protected and advanced.*
- 5.3 *That the Constitution must be subject to on-going critical appraisal, to assess its efficacy as the needs of the country change. There may be a need to debate and lobby for constitutional and legislative reform to enhance the legitimacy of the democratic political process. The Constitution must be a living, not a static document that evolves to deepen democracy.*
- 5.4 *That the Principle of the Rule of Law is a critical building block in seeking to pursue the concept of constitutionalism; public and private power must be exercised within the law in order to retain legitimacy, and to enhance a culture of responsibility and accountability to guard against the arbitrary use and abuse of power and authority.*
- 5.5 *That judicial independence is, in turn, an indispensable element, if not a pre-requisite for the Rule of Law and the integrity of the court system if it is to dispense justice that promotes substantive equality as well as procedural fairness.*
- 5.6 *That in order for people to organise lawfully to claim rights, and to participate meaningfully in democratic decision-making, civil liberties such as freedom of speech, access to information, and a free and tolerant political process are essential.*

- 5.7 *That the realisation of socio-economic rights is intertwined with civil liberties and political freedoms. Social and economic marginalisation deprives people of their fundamental right to live with security and dignity and is a betrayal of the Constitution. Endemic poverty and inequality renders South Africa a fragile society, where the poor and the vulnerable, especially women and children, are condemned to the fringes and easily exploited. There is an unacceptable and unsustainable gap between the vision of the Constitution and the lived reality for far too many citizens. This gap must be closed. Providing people with access to decent education, adequate housing, and health care, and with the protection of a social security net, is essential for a cohesive society and the future prosperity of the nation.*
- 5.8 *That as traditional orthodoxies are being questioned in the global economy, so too must the Constitution take into consideration the socio-economic context in which it exists and be responsive to the scale, urgency and interconnectedness of the challenges of globalization and sustainable development.*
- 5.9 *That the values that contribute to building a society with effective systems of open governance – ethical behaviour, accountability, competence, hard work, a spirit of public service with consequences for poor performance or corrupt conduct, non-violent resolution of disputes, and non partisanship – also need to be respected.*
- 5.10 *That a rights-based culture must also focus on the responsibilities and obligations that go with these rights, encouraging citizens to be active in improving their own lives and communities, in holding government to account through participative processes and sustained social dialogue. The goal is a deliberative democracy that celebrates diversity, where respect for the views and beliefs of others is the norm, and thus builds solidarity between people from different social groups*

6.

MEMBERSHIP

- 6.1 Upon initial establishment of CASAC there shall be only one category of Membership – viz: Membership of the Advisory Council - provided that provision is also made for the subsequent establishment of other categories of

Membership, as may be deemed appropriate by the Executive Committee from time to time, that is to say:-

6.1.1 Membership of the Advisory Council

This category of Membership shall comprise those individual persons who are admitted as such in terms of this Constitution upon initial establishment of CASAC, and whose names are reflected in the Schedule attached hereto. Such initial membership may be augmented from time to time to include such other individual persons as the Executive Committee may deem appropriate, at its discretion.

6.1.2 Associated Membership

This category of Membership shall comprise such institutions, organisations, and other juristic persons, as the Executive Committee in its sole and absolute discretion may deem appropriate from time to time.

6.1.3 Honorary Membership

This category of Membership shall comprise such eminent persons as the Executive Committee, in its sole and absolute discretion, may wish to acknowledge in this manner by the conferment of honorary membership status, in recognition of their personal contribution to the advancement of constitutionalism and democracy in South Africa.

- 6.2. Other categories of Membership may also be established at any time by decision of the Executive Committee, at its sole discretion may deem appropriate, in which event such further categories of Membership shall confer upon their constituent members such rights, and be subject to such conditions, as the Executive Committee may then stipulate with reference thereto.

7.

ADMISSION TO AND TERMINATION OF MEMBERSHIP

- 7.1 In admitting new Members to the Advisory Council, and new Members to any other category of Membership, the Executive Committee may at its sole and

entire discretion, determine the appropriate eligibility criteria and conditions attaching to such membership, as it may deem appropriate from time to time. Such criteria shall include that any new member shall subscribe to the Guiding Principles as outlined in clause 5 above.

7.2 Membership of, the Advisory Council, and Membership of any other category of Membership shall be terminable at any time at the sole and absolute discretion of the Executive Committee, should it deem this to be in the best interests of CASAC, provided such decision must be approved by a majority of all Members of the Executive Committee comprising not less than Two-Thirds ($\frac{2}{3}$) of their number at the relevant time,

7.3 Membership of CASAC shall also terminate *ipso facto*:

7.3.1 upon the death of a member who is a natural person; or upon the dissolution or final liquidation of any Member which is an organisation, or juristic person; or

7.3.2 upon receipt at The Office of the written resignation of the Member concerned.

7.4 For the avoidance of doubt, it is hereby confirmed that the Executive Committee shall have discretion with regard to the admission, suspension, or termination of Membership as the case may be. The Executive Committee shall if requested furnish reasons or maturation with respect to any such decision.

8.

RIGHTS OF MEMBERSHIP

Members of the Advisory Council set the strategic framework for the projects and other interventions of CASAC, making recommendations and assisting the Executive Committee to define CASAC's projects and priorities.

With respect to the rights and prerogatives of Members, it is hereby stipulated, notwithstanding anything to the contrary hereinbefore contained, as follows :-

- 8.1 That only Members of the Advisory Council shall have the right to attend, speak, and vote at General Meetings.
- 8.2 That Members in other categories, or their duly authorised representatives, may be invited to attend and speak – but they may not vote – at General Meetings.
- 8.3 That all Members, irrespective of their category of Membership, shall be entitled to receive copies of the Annual Financial Statements and Annual Reports issued by the Executive Committee from time to time.

9.

OBLIGATIONS OF MEMBERS

- 9.1 Subject to the prior approval of General Meeting of the Advisory Council, the Executive Committee may from time to time impose a membership levy or contribution to make provision for CASAC's operational costs and financial commitments, in which event there may be a differentiation in the amounts payable by different categories of Member, and by different Members within the same category.
- 9.2 In the event of a Member failing to remit payment of any such required membership levy or contribution as may be required at any time, and remaining in default for a period of not less than Thirty (30) days following a written request requiring payment thereof, the Executive Committee shall be entitled subject to the provisions of 7.2, to suspend or terminate such membership; provided that the Executive Committee shall be entitled at its discretion, to condone or compromise any such default.

10.

THE EXECUTIVE COMMITTEE

- 10.1 Responsibility for the executive management and governance of the organisation, including the determination of its budget and strategic direction, shall vest in the Executive Committee.

10.2 The Executive Committee shall comprise a minimum of Six (6) and a maximum of Eleven (11) persons, of whom one shall be chosen by the Executive Committee as its Chairperson. Other Office Bearers may be appointed from time to time by the Executive Committee as it may consider necessary, including:

10.2.1 A Deputy Chairperson; and/or

10.2.2 An Executive Secretary.

10.3 The initial members of the Executive Committee shall comprise those Members of the Advisory Council as are so designated in the Schedule to this Constitution. Such initial Members of the Executive Committee shall hold office until the second-occurring Annual General Meeting following the adoption of this Constitution, but they shall be eligible for re-appointment thereafter in terms of the succeeding provisions.

10.4 At the second-occurring Annual General Meeting, the Members of the Advisory Council shall elect from their number the persons who are to serve on the Executive Committee for the ensuing Two (2) year period; with the intent and purpose that at 2-year intervals a similar election shall take place (at alternate Annual General Meetings) in order to make due provision for the appointment of the persons who shall serve as Members of the Executive Committee for the ensuing 2-year period.

10.5 Subject to the maximum number of Members stated above, the Executive Committee may from time to time by majority decision co-opt other Members of the Advisory Council to serve with them as additional Members of the Executive Committee. Any such co-opted Members shall hold office until the next-occurring Annual General Meeting, but shall remain eligible for re-cooption or re-election thereafter.

10.6 Notwithstanding the foregoing, the Executive Committee may, by Resolution supported by no less than Seventy-Five percent (75%) of its members suspend or remove from office any member of the Executive Committee, whether elected or co-opted, if it shall consider this to be in the best interests of the organisation.

11.

VACATING OFFICE

Members of the Executive Committee shall vacate office in the event that any such member:-

- 11.1 dies or tenders her/his resignation in writing; or
- 11.2 completes the term of office for which she/he shall have been appointed, without subsequent re-election or reco-option; or
- 11.3 becomes of unsound mind; or otherwise unfit or incapable of acting in this capacity;
- 11.4 becomes disqualified in terms of The Trust Property Control Act, or The Companies Act, or any legislation substituted therefor from time to time, from acting as a Trustee, Director, or in another fiduciary capacity; or
- 11.5 is removed, in terms of a Resolution of the Executive Committee duly passed in accordance with the provisions of clause 10.6 above.

12.

PROCEDURE OF THE EXECUTIVE COMMITTEE

The Executive Committee shall conduct its meetings and regulate its proceedings, as it may find convenient from time to time, provided that:

- 12.1 The Chairperson, or in his/her absence, the Deputy Chairperson, if any, shall chair meetings of the Executive Committee. In the absence of both the Chairperson and Deputy Chairperson, the remaining members of the Executive Committee shall elect from their number an acting Chairperson.
- 12.2 The Chairperson or Deputy Chairperson, if any, may at any time requisition and convene a meeting of the Executive Committee, but they shall be obliged

to do so, if so requested in writing by any Two (2) Members of the Executive Committee.

- 12.3 The quorum necessary for the transaction of any business by the Executive Committee shall be a majority of its members.
- 12.4 At all meetings of the Executive Committee each of its members shall have ONE (1) vote.
- 12.5 Questions arising shall be decided by a majority of votes. In the event of an equality of votes, the Chairperson shall have a second or casting vote.
- 12.6 Written minutes shall be kept of all proceedings of the Executive Committee, including a record of all persons present and participating at each such meeting. The Minutes shall be signed by the person who chairs the relevant meeting, or the next-succeeding meeting, and shall be available for inspection or copying by any member of the Executive Committee.
- 12.7 The Executive Committee may delegate any of its powers and responsibilities to a special Sub-Committee, as it may deem appropriate from time to time. Any such sub-Committee to which a delegation is made shall conform to any directions and procedures as may be stipulated by the Executive Committee from time to time; and the Executive Committee shall not be divested of any of its powers and responsibilities by reason of such delegation. In effecting a delegation, the Executive Committee may also at its discretion :-
 - 12.7.1 Appoint, remove, and substitute any of the persons to whom such delegation is made, and include new appointees who need not necessarily be members of the Executive Committee; and
 - 12.7.2 Nominate the person/s who shall serve as Chairperson (and, if deemed necessary, as Deputy Chairperson) of any such sub-Committee; and
 - 12.7.3 Stipulate the period of notice; the quorum; the voting; and any other procedural formalities affecting meetings and decisions of such sub-Committee

13.

POWERS AND DISCRETIONS OF THE EXECUTIVE COMMITTEE

Subject to the **Prescribed Fiscal Conditions** referred to in clause 21, the Executive Committee shall have the undermentioned powers and discretions, viz :

- 13.1 The power to determine projects, programmes, and activities of CASAC, and generally the manner in which the resources of CASAC shall be deployed and appropriated from time to time.
- 13.2 The power to determine how the funds of CASAC shall be invested from time to time, with the intent and purpose that all such funds shall be available to the Executive Committee to appropriate in pursuance of the Purpose and Sole Object as the Executive Committee may deem appropriate, from time to time.
- 13.3 The General Investment and Administrative Powers, set forth in Schedule "A" hereto, subject to the provisions contained in the overriding Prescribed Fiscal Conditions referred to in clause 21.
- 13.4 The power to accumulate and capitalise any portion of its receipts, and to determine which of such receipts should be regarded as income, and which receipts should be regarded as capital; including liquidation dividends received, or any return of capital or capitalisation of profits (in the case of companies whose shares constitute a portion of the funds of CASAC); and the Executive Committee may generally decide any other question affecting the distinction between capital and income, as it may deem appropriate.
- 13.5 Any such further powers and discretions as the Executive Committee may find necessary to execute its mandate and responsibilities hereunder, and generally to promote the stated Purposes and Sole Object of CASAC.

14.

ADVISORY COUNCIL

A General Meeting of the individual voting members of CASAC shall be termed the Advisory Council, which may be convened and shall conduct its affairs in accordance with the following provisions, viz:-

14.1 Annual General Meetings

An Annual General Meeting of the Advisory Council shall be held in each year, the first of which shall be held within a period of fifteen (15) months after the adoption of this Constitution. Subsequent Annual General Meetings shall be held as soon as possible, but in any event within four (4) months after the end of each financial year. The business of an Annual General Meeting shall include, *inter alia*:

- 14.1.1 The presentation and adoption of the Executive Committee's Annual Report;
- 14.1.2 The consideration of the Annual Financial Statements;
- 14.1.3 The consideration of an annual Budget for the ensuing year/s;
- 14.1.4 The election at 2-year intervals, or as and when required, of persons to serve as members of the Executive Committee;
- 14.1.5 The appointment of Auditors; and
- 14.1.6 Such other matters as may be considered appropriate by the Meeting.

14.2 Other General Meetings

Other General Meetings of the Advisory Council may be convened from time to time as may be considered necessary, at the instance of:

14.2.1 The Executive Committee; or

14.2.2 The Chairperson (or Deputy Chairperson), if any; or

14.2.3 Ten (10) or more Members of the Advisory Council, or 20% of its Members (whichever number may be the greater).

14.3 General Meeting Notices

Annual General Meetings shall be convened on not less than twenty-one (21) days' prior written notice addressed to all Members of the Advisory Council. Other General Meetings shall be convened on not less than Fourteen (14) days' written notice to such Members. The notice shall state in broad terms the business to be transacted at the forthcoming Meeting.

14.4 Resolutions and Voting

14.4.1 A resolution put to the vote at a meeting of the Advisory Council shall be decided by a show of hands, unless the person chairing the meeting shall decide that a poll is required. A poll shall be taken in such manner as may be directed by the chair; and the result of the poll shall be deemed to constitute the resolution of the Meeting.

14.4.2 Each, Member of the Advisory Council present or represented, at the meeting shall be entitled to One (1) vote. Members in other categories may be invited to attend, but shall have no vote. Unless otherwise stipulated in terms of this Constitution, all matters arising shall be determined by simple majority, provided that in the event of an equality of votes, the Chairperson shall be entitled to exercise a second or casting vote.

14.5 Quorum

The quorum necessary for a meeting of the Advisory Council shall comprise at least Twenty percent (20%) of its members present or deemed to be present at such Meeting.

14.6 Adjournment

In the event of any meeting of the Advisory Council being duly convened but no quorum being present, the meeting may be adjourned to another date, which must be not less than Five (5) days thereafter, as may be determined by the Executive Committee. Written notice of such adjournment must be given to all Members of the Advisory Council. At such reconvened General Meeting, the Members of the Advisory Council then present or deemed to be present shall then be deemed to constitute a quorum.

- 14.7 Written Minutes shall be kept of all proceedings of the Advisory Council, including a record of all persons present or deemed to be present. The Minutes shall be signed by the person who chaired the meeting, or the person who chairs the next-succeeding meeting, and they shall be available for inspection or copying by any member of the Advisory Council.

15.

NOTICES

- 15.1 Notices of Meetings shall be delivered either personally, electronically, by prepaid registered post, or in such other manner as may be deemed appropriate by the Executive Committee, and they shall be directed to the last known address of the Members concerned.
- 15.2 The inadvertent, but *bona fide*, omission to address notices to any member shall not invalidate the proceedings of the ensuing meeting.
- 15.3 If delivered personally, notices shall be deemed to have been received on the date of delivery.
- 15.4 If despatched electronically, notices shall be deemed to have been received twenty-four (24) hours after data transmission.
- 15.5 If despatched by prepaid registered post to an address in the Republic, notices shall be deemed to have been received five (5) days after date of despatch.

16.

ANNUAL FINANCIAL YEAR, BOOKS OF ACCOUNT,
AND ANNUAL FINANCIAL STATEMENTS

- 16.1 Unless otherwise determined by Resolution of the Advisory Council, with the authority of the Commissioner, the Annual Financial Year of CASAC shall be from 1 March in each year to the last day of February in the succeeding year.
- 16.2 The Executive Committee shall ensure that CASAC keeps proper books of account. Financial Statements (including Capital and Revenue accounts) shall be prepared at least once a year, in accordance with generally accepted accounting practice in the Republic, and shall clearly reflect the affairs of CASAC. The books of account and Financial Statements shall be audited and certified by an independent practising Chartered Accountant, or in such other manner as may be deemed appropriate by the Executive Committee.
- 16.3 A copy of the Annual Financial Statements shall be made available to each Member of CASAC as soon as possible after the close of the financial year.

17.

BANKING ACCOUNT AND SIGNATURES

- 17.1 CASAC's financial affairs shall be conducted by means of a banking account.
- 17.2 All cheques, promissory notes, and other documents requiring signature on behalf of CASAC shall be signed by such one or more persons as may be authorised thereto by the Executive Committee from time to time.

18.

AMENDMENTS TO CONSTITUTION AND DISSOLUTION

- 18.1 The Members of the Advisory Council at a duly convened and quorate Meeting may at any time resolve that:-
- 18.1.1 the terms of this Constitution be amended; and/or

- 18.1.2 the name of CASAC be changed; and/or
- 18.1.3 CASAC be dissolved;

Provided that, in any such instance, written notice must be given to all Members of the Advisory Council not less than Twenty-Eight (28) days prior to the date of the Meeting at which the Resolution is to be considered, and the notice must state the nature of the resolution to be proposed.

Any such resolution shall be deemed to have been duly adopted only if it is supported by no less than a Seventy-Five percent (75%) majority of all the Members of the Advisory Council actually present or represented at a quorate Meeting.

- 18.2 A copy of the Amending Deed or Resolution, as the case may be, shall be submitted forthwith upon its adoption to the Commissioner, and if applicable, also to the Director appointed in terms of the Nonprofit Organisations Act.
- 18.3 In the event of the dissolution of CASAC, any net residue of funds remaining after provision for all its residual commitments, liabilities and expenses, shall be given or transferred to one or more other eligible institutions having the same or similar objectives to those of CASAC, as may be determined by Resolution of the Advisory Council, and approved by the Commissioner as required in respect of a tax exempt Public Benefit Organisation.

19.

INDEMNITY

- 19.1 Subject to the limitations of the applicable law, each member of the Executive Committee, and all other office bearers, shall be indemnified by CASAC for the consequences of acts done and decisions taken in good faith on CASAC's behalf; and it shall be the duty of CASAC to pay all costs and expenses which any such person may incur, or become liable for, as a result of contracts entered into, or acts done in such capacity, with the authority of the Executive Committee.
- 19.2 Subject to the provisions of any relevant statute, no member of the Executive Committee or other office bearer of CASAC, shall be liable for the acts,

receipts, neglects or defaults of any other member or office bearer, or for having joined in any receipt or other act for conformity, or for any loss or expense suffered by CASAC through the insufficiency or deficiency of title to any property acquired by CASAC; or for the insufficiency or deficiency of any security in or on which the monies of CASAC may be invested; or for any loss or damage arising from the bankruptcy, insolvency or delictual act of any person with whom any monies, securities or effects are deposited or for any loss or damage caused in any other way, which occurs in the execution of their duties, unless it arises in consequence of that person's dishonesty or failure to exercise that degree of care, diligence and skill which is required by law.

20.

AMBIT OF DISCRETIONS

Where discretions are vested in the Executive Committee or in the Members of the Advisory Council in terms of this Constitution, such discretions, shall be complete and absolute except where expressly limited.

21.

PRESCRIBED FISCAL CONDITIONS

Anything to the contrary hereinbefore contained or implied notwithstanding, the powers of the Executive Committee and of the Advisory Council, shall be subject to compliance at all times with the conditions stipulated in respect of Public Benefit Organisations in terms of section 30 of the Income Tax Act, as read with the Ninth Schedule thereto.

22.

REGISTRATION : NONPROFIT ORGANISATIONS ACT

The Executive Committee shall be required to procure that CASAC is registered in terms of the Non-Profit Organisation's Act, No. 71 of 1997. Accordingly, and having regard to the requirements of that Act, it is hereby recorded and stipulated with respect to CASAC (Hereinafter in this clause referred to as ("the organisation")), as

follows:

- 22.1 The organisation's name shall be as stated in clause 1;
- 22.2 The organisation's Purpose and Sole Object shall be as stated in clauses 4 and 5;
- 22.3 The organisation's income and property shall not be distributable to its Members or to its office-bearers, save insofar as they may be reimbursed for reasonable out of pocket expenses incurred in the execution of their duties, with the authority of the Executive Committee;
- 22.4 The organisation shall be deemed to be a body corporate, and shall have an identity separate and distinct from its Members, as envisaged by clause 2.8;
- 22.5 The organisation shall continue to exist notwithstanding periodic changes that may occur in the composition of its Membership, as envisaged by clauses 2.8 and 6;
- 22.6 The members and Office-Bearers shall have no rights in the property or other assets of the organisation by virtue of their Membership or office;
- 22.7 The powers of the organisation shall be as set forth in this Constitution, including clause 13, as read with Schedules A" and "B" hereto;
- 22.8 The organisational structure and mechanisms for the organisation's governance shall be as set forth in this Constitution, including clauses 6, 10 and 14;
- 22.9 The rules for convening and conducting meetings, including quorums required for, and the minutes to be kept of those meetings, shall be as stated in clauses 12 and 14;



- 22.10 The manner in which decisions are to be made shall be as stated in clauses 12 and 14;
- 22.11 The Organisation's financial transactions must be conducted by means of a banking account, as stated in clause 17.1;
- 22.12 The date for the end of the organisation's financial year shall be as stated in clause 16.1;
- 22.13 The procedure for changing the constitution shall be as stated in clause 18;
- 22.14 The procedure by which the Organisation may be wound up or dissolved shall be as stated in clause 18;
- 22.15 If the Organisation is wound up or dissolved, any asset remaining after all its liabilities have been met, must be transferred to some other eligible Public Benefit Organisation, having the same or similar objectives, as stated in clause 18.3, as read with Schedule "B".

23.

FURTHER MEETING FORMALITIES

- 23.1 A "round robin" resolution – that is a resolution in writing, supported and signed unanimously by all persons eligible to vote thereon – shall be as valid as if passed at a duly convened meeting; and, unless stated to the contrary, shall be deemed to have been passed as at the date of the last signature thereto. Any such "round robin" Resolution may be recorded in a single document, or in several documents, as may be found most convenient.
- 23.2 For the avoidance of doubt, it is further stipulated that general meetings of the Advisory Council, and meetings of the Executive Committee, may be held at any time or times, and at any place or places, subject to due notice having been given thereof; and such meetings may be held simultaneously in more than one place, provided that all persons involved are linked to each other by

telephone, video, teleconference or other facilities whereby they may communicate and participate effectively in the business of the meeting, as if actually present together at the same time and place.

24.

CONFLICTS OF INTEREST

In accordance with the law governing fiduciary responsibility, members of the Executive Committee shall be obliged forthwith to declare any self-interest or conflict of interest that may arise with respect to matters to be considered and/or decided by the Board. In any such event, after declaring their interest, the affected persons shall be obliged promptly to recuse themselves, and to take no further part in the deliberations concerning that matter. Such persons shall subsequently refrain from participating in further discussions or decisions affecting the relevant matter, unless the continued presence and participation of the persons concerned is unanimously requested and approved by all other members of the Board. The Minutes of the Meeting shall record any such declaration of interest, recusal, and (if applicable) the continued presence and participation of the persons concerned.

**THIS CONSTITUTION WAS DULY CONFIRMED AND ADOPTED BY THE
INITIAL MEMBERS OF THE ADVISORY COUNCIL AT A MEETING HELD AT
ON THE DAY OF 2010**

CERTIFIED,

CHAIRPERSON

DATE



SCHEDULE "A"

GENERAL INVESTMENT AND ADMINISTRATIVE POWERS

Subject to the limitations set forth in the **Prescribed Fiscal Conditions** (Annexure "B"), the Executive Committee shall have the following **General Investment and Administrative Powers**, in addition to those special powers and discretions as are set forth in the Constitution to which this Schedule is annexed, viz:

1. To invest and reinvest the funds of CASAC in a manner permitted by law, as they may deem appropriate, in their sole and absolute discretion; which may include, if deemed appropriate, the transfer and investment of funds off-shore.
2. To retain, or take over assets and investments constituting the subject matter of donations made to CASAC, and to retain them in the form in which they are received, or realise and re-invest the proceeds thereof.
3. To realise or vary any investments from time to time forming part of the funds of CASAC, and re-invest the proceeds thereof in any authorised investments.
4. To allow investments forming part of the funds of CASAC to remain uninvested, or in their original state of investment upon acquisition by CASAC.
5. Lend money to CASAC, with or without security, and with or without provision for interest, as may be deemed appropriate.
6. To borrow on such terms and conditions as The Board may consider fit for any of the purposes of CASAC; including the payment of liabilities of CASAC; the payment of capital to any other permitted beneficiary; the making of any loan in furtherance of the Sole Object of CASAC; the preserving or acquiring of any assets or investments; the subscription of any shares with powers from time to time to consent to any alteration or variation in the terms applicable thereto; and as security for any moneys so borrowed, The Board shall be entitled to mortgage, pledge, either generally or specifically, or otherwise encumber, all

or any portion of the funds of CASAC, in such manner and upon such terms and conditions as it may deem fit, with the right also to replace such borrowings or security.

7. To guarantee (either gratuitously or for a consideration) the performance of contracts or obligations of any third party in order to promote the sole object of CASAC, upon such conditions, and with or without security, as The Board in its sole and absolute discretion may deem fit; provided that such transaction is entered into for the benefit of CASAC.
8. To exercise the voting power attached to any shares forming part of the funds of CASAC, as The Executive Committee may consider appropriate in the best interests of CASAC; and to enter into arrangements as it may consider necessary for the purpose of causing the liquidation, reconstruction, or amalgamation of any company of whose capital the shares shall form portion.
9. To deal with, and turn to account, any of the assets forming part of the funds of CASAC, by way of exchange, sale, lease or otherwise and in exercising any powers of sale, The Executive Committee shall be entitled to cause such sale to be effected by public auction, tender, or private treaty as it may consider appropriate.
10. To purchase or acquire both movable and immovable property for use by CASAC itself in the conduct of its affairs, and in furtherance of the Specified Activities.
11. In respect of any immovable property donated to, or forming part of the funds of CASAC, at any time:
 - 11.1 to develop, maintain, exchange, sell, lease or otherwise deal with any such immovable property or any portion thereof, and to grant rights or options in respect thereof; to register mortgage bonds; and to procure the maintenance, repair, improvement, demolition or reconstruction of any buildings situated thereon;
 - 11.2 to execute any act or deed relating to alienation, partition, exchange, transfer, mortgage, hypothecation, or otherwise, in any Deeds Registry,

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL PROVINCIAL DIVISION, PIETERMARITZBURG**

CASE NO.

In the matter between:

**COUNCIL FOR THE ADVANCEMENT OF
THE SOUTH AFRICAN CONSTITUTION
RURAL WOMEN'S MOVEMENT**

First Applicant

Second Applicant

HLETSHELWENI LINA NKOSI

Third Applicant

BONGANI ZIKHALI

Fourth Applicant

ZAKHELE MALCOM NKWANYANA

Fifth Applicant

HLUPHEKILE BERTINA MABUYAKHULU

Sixth Applicant

BONGI GUMEDE

Seventh Applicant

KN

Eighth Applicant

SM

Ninth Applicant

and

THE INGONYAMA TRUST

First Respondent

THE INGONYAMA TRUST BOARD

Second Respondent

**THE MINISTER OF RURAL DEVELOPMENT
AND LAND REFORM**

Third Respondent

**THE MEC FOR CO-OPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS, KWAZULU-NATAL**

Fourth Respondent

**KWAZULU-NATAL PROVINCIAL HOUSE OF
TRADITIONAL LEADERS**

Fifth Respondent

Rural Women's Movement (RWM) Constitution

1. NAME

1.1 The organisation hereby constituted will be called: **Rural Women's Movement**

1.2 Its shortened name will be **RWM** (Hereinafter referred to as the non-profit organisation).

2. PROVINCIAL COMMITTEE

The organisation shall:

- Exist in its membership right, constituted by its own indigenous women and girls members.
- Continue to exist even when its membership changes and there are different office bearers.
- Be able to own property and other possessions.
- Be able to sue and be sued in its own name.

3. OBJECTIVES

The organisation's main objectives are to:

Fight for indigenous women and girls' independent land and other natural resources, property and inheritance rights and to contest policy and legislation that undermines the rights of indigenous women and girls living in former apartheid 'Bantustans' /which threatens to dispossess us of rights in our ancestral land.

- By challenging these undemocratic practices and discriminatory laws through campaigns, test cases brought before Constitutional court of South Africa, policies and practices that distort customary law; undermine security of tenure and rights for women and girls in land while entrenching the powers of the undemocratic traditional authorities.

b) The organisation's secondary objectives will be to:

Advocate for girls and women's land rights, eliminate discrimination against women and girls including Gender Based Violence, advancing women's capacities and leadership skills, promoting their participation in the decisions that affect their lives and amplifying their voices for peace and security at provincial and national levels.

- To work in collaboration with other organisations that mainly deals with women and girls independent rights to land and food sovereignty.

4. GOVERNING STRUCTURE AND MECHANISM OF GOVERNANCE

4.1 The Office Bearers will oversee the organisation. The Office Bearers will be

made up of indigenous women, young women and girls members. They are the Board of governance of

the organisation.

4.2 Term of office: Office bearers will serve for a period of two (2) years which has been agreed to by the general membership at an AGM, and which shall not exceeding three years. They can, however, stand for re-election for another term in office again and again after that, for so long as their services are needed and they are ready to give their services.

4.3 Vacancies: The Office Bearers must, as soon as reasonably possible, appoint someone to fill any vacancy that reduced the number of Office Bearers.

4.4 Resignation: An Office Bearer may resign from office in writing.

4.5 Disqualification or Removal If an Office Bearer does not attend three meetings in a row, without having applied for and obtaining leave of absence from the Board, then the Board will find a new member to take that person's place.

5. POWERS OF THE ORGANISATION

5.1 The Board shall carry out the powers on behalf of the organisation and they shall manage the affairs of the organisation in accordance with the resolutions of the members as shall be taken from time to time at General Meetings of the organisation.

5.2 The Board is responsible for making decisions, and acting on such decisions, which it believes it needs to make in order to achieve the objectives of the organisation as stated in point number 2 of this constitution. However, such decisions and their activities may not be against the resolutions of the members or be against the law of the Republic of South Africa.

5.3 The Board shall have the general powers and authority to:-

5.3.1 Raise funds or to invite and receive contributions.

5.3.2 Buy, hire or exchange for any property that it needs to achieve its objectives.

5.3.3 Make by-laws for proper governance and management of the organisation.

5.3.4 Form sub-committees as and when it is necessary for proper functioning of the organisation

5.4 If the Board thinks it is necessary, then it can decide to set up one or more sub-committees. It may decide to do this to get some work done quickly. Or it may want a sub-committee to do an inquiry, for example.

5.5 The Board may delegate any of its powers or functions to a sub-committee provided that:-

5.5.1 Such delegation and conditions are reflected in the minutes for a meeting

5.5.2 At least one Office Bearer serves in the sub-committee.

5.5.3 There are three or more people on a sub-committee.

5.5.4 The sub-committee must regularly report back to the Board on its activities.

5.6 The Board must in advance approve all expenditure incurred by the subcommittee, and may revoke the delegation or amend the conditions of the delegation.

6. MEETINGS

6.1 Annual General Meetings (AGM)

6.1.1 Stakeholders of the organisation must attend its annual general meetings.

6.1.2 The purpose of an Annual General Meeting (AGM) is to:

- Report back to stakeholders from the Office Bearers on the achievements and work of over the year.
- Make any changes to the constitution.
- Enable members to decide on the policies of the organisation.

6.1.2 The annual general meeting must be held once every year, towards the end of the organisation's financial year.

6.1.3 The organisation should deal with the following business, amongst others, at its annual general meeting:

- Agree to the items to be discussed on the agenda.
- Write down who is there and who has sent apologies because they cannot attend.
- Read and confirm the previous meeting's minutes with matters arising.
- Chairperson's report.
- Treasurer's report.
- Changes to the constitution that members may want to make.
- Elect new office bearers.
- General.
- Close the meeting.

6.2 Special General Meetings

6.2.1 The Special General Meeting (SGM) or any other special meeting is held outside of the normal or regular meetings.

6.2.2 Special or extraordinary meetings can take the shape of an Annual General Meeting (AGM) or any ordinary meeting of members.

6.2.3 The Board or not less than one-third of the members may call a Special General Meeting of the organisation.

6.2.4 Special meetings may be called when the Board needs the mandate or guidance of the general members of the organisation to take up issues that require urgent attention and cannot wait until the next regular AGM or ordinary meeting.

6.3 Ordinary Meetings

6.3.1 Ordinary members meetings are conducted to complete a standard order of business of the organisation. These are held once a quarter and are attended by the board.

6.3.2 The meetings of the Board will be held at least once a quarter or when a need arises from time to time to conduct the business of the Board.

6.4 Notices of Meetings

6.4.1 The Chairperson of the Board shall convene meetings. The Secretary must let all Board members know the date of the proposed meeting within a reasonable time, but not less than seven (7) days, before it is due to take place.

6.4.2 However, when convening an AGM, or a Special General Meeting, all members of the organisation must be informed of the meeting no less than fourteen (14) days before such a meeting.

6.4.3 Notices for all meetings provided for in this constitution must be given to relevant members in writing, either personally, by post or electronic communication or whichever manner it is convenient, to the address or other similar particulars provided by the members.

6.4.4 The notices for all meetings must indicate the reasons for the meeting and the matters that will be discussed in the meeting.

6.4.5 For confirmation of delivery, all notices sent to members at the latest known contact details shall be deemed to have been duly served on members, unless it can be proven otherwise.

6.4.6 All members present in person at any meeting shall be deemed to have received notice of such meeting.

6.5 Quorums

6.4.7 Quorums for all meetings of the organisation shall be a simple majority (50% + 1) of relevant members who are expected to attend.

6.4.8 However, for the purpose of considering changes to this constitution, or the dissolution of the organisation, then a two thirds ($\frac{2}{3}$) of the members shall be present at a meeting to make a quorum before a decision to change the constitution is taken.

6.4.9 All meetings of the organisation must reach a quorum before they can start.

6.4.10 If, however a quorum is not present within fifteen minutes of the appointed time of the meeting, the meeting must be adjourned or postponed to another date, within fourteen days thereafter.

6.4.11 If no quorum is present at the reconvened meeting within fifteen minutes of the appointed time, the members present shall be regarded to make up a quorum for that meeting and the meeting will continue as if a quorum is present.

6.6 Procedures at Meetings

6.4.12 The Board may regulate its meetings and proceedings as it deems fit, subject to the following:

- That the Chairperson shall chair all meetings of the organisation, including that of the Board.
- That, if the Chairperson is not present, the Vice-Chairperson shall chair such meeting. In the event both are absent, the Board members present at the meeting shall elect a chairperson for that meeting.

6.7 Making decisions in meetings

6.4.13 Where possible, the decisions of the organisations shall be taken by consensus. However, when there is no consensus, then members will discuss options for a while and then call for a vote.

6.4.14 All votes shall be counted and the majority votes on an issues shall be regarded as the decision of the meeting

6.4.15 However, if opposing votes are equal on an issue, then the chairperson in that meeting has either a second or a deciding vote.

6.4.16 All members must abide by the majority decision

6.4.17 Decisions concerning changes to this constitution, or of dissolution and closing down of the organisation, shall only be dealt with in terms of clauses 9 and 10 of this constitution.

6.8 Records of meetings

6.4.18 Proper minutes and attendance records must be kept for all meetings of the organisation.

6.4.19 The minutes shall be confirmed as a true record of proceedings by the next meeting of the Board, or of general members as the case may be, and shall thereafter be signed by the chairperson.

6.4.20 Minutes shall thereafter be kept safely and always be on hand for members to consult.

7. INCOME AND PROPERTY

7.1 The organisation will keep a record of everything it owns.

7.2 The organisation may not give any of its money or property to its members or the Board. The only time it can do this is when it pays for work that an Office Bearers or member has done for the organisation. The payment must be a reasonable amount for the work that has been done.

7.3 The Board or a member of the organisation can only get money back from the organisation for expenses that she or he has paid for or on behalf of the organisation, and for which authorisation has been granted.

7.4 The Board or members of the organisation do not have rights over things that belong to the organisation.

8. FINANCES AND REPORTS

8.1 Bank Account: The Board must open a bank account in the name of the organisation with a registered Bank.

8.2 Signing: Cheques and other documents requiring signature on behalf of the organisation shall be signed by at least two persons authorised by the Board.

Whenever funds are taken out of the bank account, the chairperson and at least two other members of the organisation must sign the withdrawal or cheque.

8.3 Financial year-end: The financial year end of the Organisation shall be end of February each year.

8.4 Financial Report: The Board must ensure that proper records and books of account which reflect the affairs of the organisation are kept, and within six months of its financial year a report is compiled by an independent registered Accounting Officer stating whether or not the financial statements of the organisation are consistent with its accounting policies and practices of the organisation.

8.5 The Treasurer is responsible for making sure that the money of the organisation is safe and is accounted for.

8.6 The Treasurer must also make regular reports to the Board on the finances of the organisation, which should include all incomes, expenditures and balances that remain according to accounting practices of the organisation.

8.7 If the organisation has funds that can be invested, the funds may only be invested with registered financial institutions. These institutions are listed in Section 1 of the Financial Institutions (Investment of Funds) Act, 1984, or as shall be amended. Or the organisation can get securities that are listed on a licensed stock exchange as set out in the Stock Exchange Control Act, 1985 (as amended). The organisation can go to different banks to seek advice on the best way to look after its funds.

9. AMENDMENTS TO THE CONSTITUTION

9.1 The constitution can only be changed by a resolution. The resolution has to be agreed upon and passed by not less than two thirds ($\frac{2}{3}$) (or at least 67%) of the members who are at the annual general meeting or special general meeting. Members must vote at this meeting to change the constitution.

9.2 For the purpose of considering changes to this constitution, a two thirds ($\frac{2}{3}$) of the members shall be present at a meeting to make a quorum before a decision to change the constitution is taken. Any annual general meeting may vote upon such a motion, if the details of the changes are set out in the notice referred to in clause 6 of this constitution

9.3 As provided for in clause 6, written notices must go out not less than fourteen

(14) Days before the meeting at which the changes to the constitution are going to be proposed. The notice must indicate the proposed changes to the constitution that will be discussed at the meeting.

9.4 No amendments may be made which would cause the organisation to close down or stop to function or die away.

10. DISSOLUTION/CLOSING DOWN

10.1 The organisation may dissolve or close down if at least two thirds ($\frac{2}{3}$) of the members present and voting at a meeting convened for the purpose of considering such matter, are in favor of closing down.

10.2 When the organisation closes down it has to pay off all its debts. After doing this, if there is property or money left over it should not be paid or given to members of the organisation. It should be given in some way to another nonprofit organisation that has similar objectives. The organisation's general meeting can decide what organisation this should be.

This constitution was approved and accepted by members of
Rural Women's Movement (RWM)

At a special (general) meeting held on 22-24 November 2016

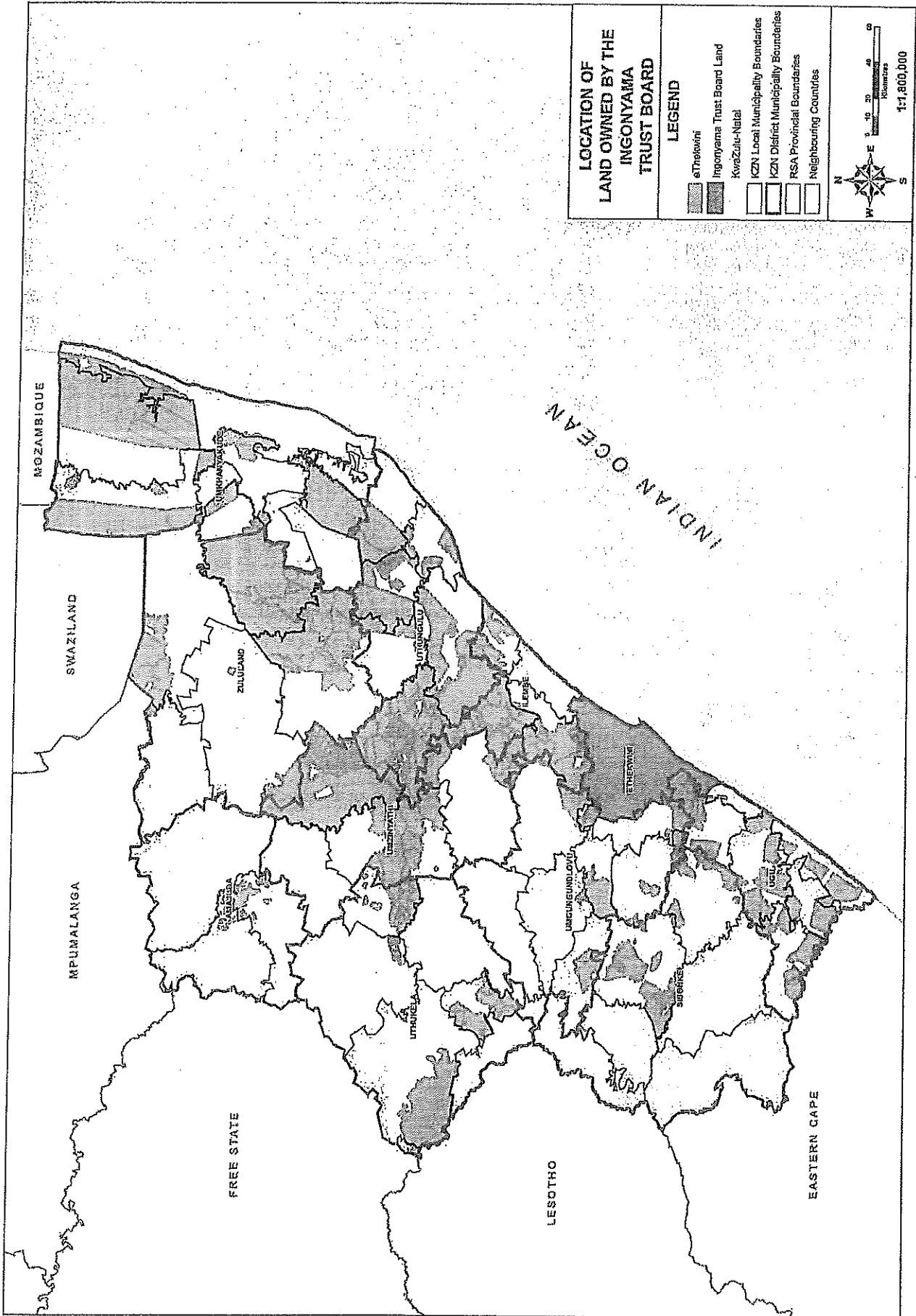
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Chairperson and or Secretary or PP: Director



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LAND

KWAZULU LEGISLATION

Kwaz.	G.N. 80 of 1993	KwaZulu Land Affairs Act, 1992 (Act 11 of 1992)
"	G.N. 26 of 1994	Ingonyama Trust Act, 1994 (Act 3 of 1994)
"	G.N. 27 of 1994	Land Disposal Regulations
"	G.N. 28 of 1994	Provisional Survey Area Regulations
"	G.N. 29 of 1994	Township Establishment Regulations
"	G.N. 30 of 1994	Town Planning Regulations
"	G.N. 31 of 1994	Conversion of Certain Tenure Regulations
"	G.N. 32 of 1994	Permission to Occupy Regulations
"	G.N. 33 of 1994	Land Titles Adjustment Regulations
*** <u>For Regs. in regard to Less Formal Townships established in terms of the Amakhosi and Iziphakanyiswa Act, 1990 see section entitled Local Government.</u>		

NATIONAL LEGISLATION

Proc. R. 9 of 1997	Amended KwaZulu Act 11 of 1992
Proc. R. 63 of 1998	Assignment KwaZulu Act 11 of 1992 to the Premier of KwaZulu Natal in an amended form.

KWAZULU LAND AFFAIRS ACT, 1992

(Act 11 of 1992 - G.N. 80 of 1993 as amended by Proc. R. 9 of 1997 and Proc. R. 63 of 1998)

1. First brought into operation wef 31 March 1994 (G.N. 22/94) excluding section 14 and section 39(1) insofar as it repeals Chapter 9 of Proclamation R.293 of 1962 and any law by or under which the said Chapter was amended).
2. Initially not assigned to the Province but amended by Proc. R. 9 of 1997 (National Minister of Land Affairs) to enable the registration of deed of grant rights bestowed or deemed to have been bestowed in terms of the Act.
3. Assigned to the Premier of KwaZulu-Natal on 19 June 1998 by the National Minister of Land Affairs (in an amended form) with the exclusion of sections 11, 24, 25, 26, 29, 30 and 36 by Proc. R. 63 of 1998. This amended version appears below.

Together with this assignment the following regulations promulgated in terms of the Act were also assigned to the Premier of KwaZulu-Natal:
Land Disposal Regs. KwaZulu GN. 28 of 1994
Provisional Survey Regs. KwaZulu GN. 28 of 1994
Township Establishment Regs. KwaZulu GN. 29 of 1994
Town Planning Regs. KwaZulu GN. 30 of 1994; and
Conversion of Certain tenure Regs. KwaZulu GN. 31 of 1994
4. Section 14 brought into operation wef 19 June 1998 National GN. 814 of 1998 - GG 16975

The State President has been pleased under by virtue of the powers vested in him by section 31(2) of the Self-Governing Territories Constitution Act, 1971 (Act 21 of 1971) to approve the following Act. (English text signed by the State President. Assented to on 8/11/1993).

ACT

To provide for the disposal of Government land; to provide for certain rights of tenure to land and for the registration of certain forms of title in respect of land; to provide for the development, use and subdivision of land; to provide for the removal of restrictive conditions; and to provide for incidental matters.
BE IT ENACTED by the KwaZulu Legislative Assembly, as follows:-

CHAPTER 1 ARRANGEMENT AND DEFINITIONS

Division of Act into chapters

This Act is divided into fifteen chapters which relate to the following matters respectively:-

- Chapter 1 Arrangement and Definitions;
Chapter 11 Disposal of Government Land;

L-3

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Chapter 111	Making Land Available;
Chapter 1V	Deed of Grant Rights;
Chapter V	Township Establishment;
Chapter VI	Land Use;
Chapter VI11	Conversion of certain Tenure;
Chapter 1X	Disposal of Farmland;
Chapter X	Letting of Township Erven;
Chapter XI	Occupational Rights;
Chapter XI1	Removal of Restrictions;
Chapter XI11	Land Titles Adjustment;
Chapter XIV	Restrictions on Ownership and Occupation;
Chapter XV	Powers of Ministers, Constitution and Powers of Board, Repeals and Title
SCHEDULE	Laws repealed or amended.

Definitions

1. In this Act, unless the context otherwise indicates :-

- "acquire", in relation to land, means to acquire in any manner whatsoever;
- "allotment" means a portion of Government land demarcated as contemplated in section 24;
- "approved township" means-
 - (a) a township which has been approved as a township under section 13, including a township deemed to be an approved township by virtue of the provisions of section 19(4);
 - (b) a township set apart or established under a law repealed by section 39(1);
- "authority" means-
 - (a) a local authority; or
 - (b) a tribal authority
- "board" means the deeds office regulations board established by section 9 of the Deeds registries Act, 1937 (Act 47 of 1937; [substituted by Proc. 9 of 1997]
- "citizen" [deleted by Proc. R.63 of 1998]
- "deed of grant rights" means the rights to land referred to in section 8;
- "deeds registry" means the deeds registry as defined in the Deeds Registries Act, 1937 (Act No. 47 of 1937);
- "diagram" means a diagram as defined in the Land Survey Act, 1997 (Act No. 8 of 1997); [substituted by Proc. R.63 of 1998]
- "erf" includes-
 - (a) a piece of land registered as an erf or lot in the deeds registry;
 - (b) a defined portion of land in a township, not intended as a public place;
- "general plan" means a general plan as defined in the Land Survey Act, 1997 (Act No. 8 of 1977); [substituted by Proc. R.63 of 1998]
- "Government" means the Government of the Province of KwaZulu- Natal; [substituted by Proc. R.63 of 1998]
- "Government land" means the land which was transferred to the Government of the former self-governing territory of KwaZulu in terms of Proclamation R232 of 1986 and includes any land acquired by the said Government thereafter and, subject to the provisions of the Ingonyama Trust Act, 1994 (Act 3 of 1994), land transferred to and held in trust by the Ingonyama as trustee of the Ingonyama Trust in terms of the said Act; [substituted by Proc. R. 63 of 1998]
- "investigator" means an investigator contemplated in section 29(1);
- "land" includes
 - (a) any real right in land;
 - (b) deed of grant rights;
 - (c) any right contemplated in section 11(4) in respect of deed of grant rights;
- "land surveyor" means a person registered as a professional land surveyor in terms of the Professional Land Surveyors' and Technical Surveyors' Act, 1984 (Act No. 40 of 1984) and whose name is entered in the register referred to in section 7(4)(a) of that Act; [substituted by Proc. R.63 of 1998]
- "local authority" means a township council as defined in Proclamation R293 of 1962;
- "Minister" means the Minister of Land Affairs in the National Government; [substituted by Proc. R.63 of 1998]
- "Official Gazette" means the Official Gazette of the Province of KwaZulu-Natal; [substituted by Proc. R.63 of 1998]

"owner", in relation to land, includes a township developer or local authority to whom the land has been made available under section 5(1) or (2);
 "Premier" means the Premier of the Province of KwaZulu-Natal;
 [inserted by Proc. R.63 of 1998]
 "prescribed" means prescribed by regulation under section 37;
 "prescribed by the board" means prescribed by regulation under section 36;
 "provisional survey area" means an area specified under section 10;
 "Registrar" means the Registrar of deeds appointed under section 2 of the Deeds Registries Act, 1937;
 "registration office"; [deleted by Proc. 9 of 1997]
 "registration officer"; [deleted by Proc. 9 of 1997]
 "regulation" means a regulation made under section 36 or 37;
 "scheme" means a town planning section contemplated in section 15(1);
 "settlement" means a group of pieces of land or of subdivisions of a piece of land used or intended for use mainly for farming purposes;
 "surveyor-general" means the surveyor-general appointed under section 4 of the Land Survey Act, 1997 (Act 8 of 1997); [substituted by Proc. R.63 of 1998]
 "tender board" [deleted by Proc. R.63 of 1998];
 "this Act" includes the regulations;
 "township" includes any land which is, or is intended to be, built on or divided or laid out as erven in close proximity to each other for residential, business, industrial or other non-farming purposes;
 "township developer" means a person or body who is or intends to become involved in township development or any related activity, whether or not township development or such related activity is the principal activity of such person or body;
 "township register" means a register contemplated in section 46(1) of the Deeds Registries Act, 1937;
 "tribal authority" means a tribal or community authority established under section 5(1)(a) of the KwaZulu Amakhosi and Headmen Act, 1990 (Act No. 9 of 1990).

CHAPTER II DISPOSAL OF GOVERNMENT LAND

Tender board may dispose of Government land

- (1) (a) The Premier may, subject to the provisions of this Act and the KwaZulu Ingonyama Trust Act, 1994, and in the manner prescribed, sell, exchange, donate, lease or otherwise dispose of any Government land which vests in the provincial government in terms of section 239 of the previous Constitution of the Republic of South Africa, 1993 (Act 200 of 1993) and in respect of which a certificate has been issued in terms of section 239(2)(a) of the said previous Constitution or item 28(1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) to any person, including an authority.
- (b) The Minister may, subject to the provisions of this Act and the KwaZulu Ingonyama Trust Act 1994, and in the manner prescribed sell, exchange, donate, lease or otherwise dispose of any Government land which vests in the national government in terms of section 239 of the previous Constitution of the Republic of South Africa, 1993 (Act 200 of 1993) and in respect of which a certificate has been issued in terms of section 239(2)(a) of the said previous Constitution or item 28(1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) to any person, including an authority.

[Section 2(1) substituted by Proc. R.63 of 1998]

- (2) [deleted by Proc. R.63 of 1998]

Minister may dispose of certain rights to private land

3. (1) The Premier may consent to the amendment or cancellation of any condition or servitude which was before or after the commencement of this Act embodied in or registered against a title deed in terms of any law or otherwise whereby any right, other than a right to mineral, was reserved to or acquired by the government in respect of land.
- (2) If the Premier has in terms of subsection (1) consented to the amendment or cancellation of a condition referred to in that subsection, he or she may authorise the Registrar in writing to endorse the amendment or cancellation, as the case may be, on the title deed of the land concerned, and the Registrar shall give effect to the said authorisation in such manner as may to he or her appear to be most practicable and convenient.

[Section 3 substituted by Proc. R.63 of 1998]

Government land not subject to acquisitive prescription

4. Government land shall not be capable of being acquired by any person by prescription.

CHAPTER III MAKING LAND AVAILABLE

Government or authority land may be made available

5. (1) Government land may be made available by-
- (i) by the Premier in respect of land which vests in the provincial government in terms of section 239 of the previous Constitution of the Republic of South Africa, 1993 (Act 200 of 1993) and in respect of which a certificate has been issued in terms of section 239(2)(a) of the said previous Constitution or item 28(1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996); or
- (ii) The Minister in respect of land which vests in the national government in terms of section 239 of the previous Constitution of the Republic of South Africa, 1993 (Act 200 of 1993) and in respect of which a certificate has been issued in terms of section 239(2)(a) of the said previous Constitution or item 28(1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996):
- subject to terms which he or she may determine.
- (2) Land of which an authority is the owner may be made available to a township developer, subject to such conditions as may be determined by that authority and approved by the Premier, to a township developer for the establishment of a township or the development of the land.

[Section 5 substituted by Proc. R.63 of 1998]

Disposal of land made available

6. Land which has been made available as contemplated in section 5-
- (a) shall not, subject to the provisions of this subsection and the regulations, in any way be alienated or further encumbered by the Premier or authority, as the case may be, while the land concerned remains so available; [substituted by Proc. R.63 of 1998]
- (b) may be burdened with a servitude by the owner of the land after consultation with the township developer or authority to which the land has been made available;
- (c) may be alienated by the township developer or authority to which the land has been made available as the duly authorised agent of the Premier or authority, as the case may be, and on the conditions on which the land has been made available; [substituted by Proc. R.63 of 1998]
- (d) may, in the event of a breach of the conditions on which the land was so made available by the person or body to whom the land was made available, be withdrawn by the Premier subject to the payment of compensation determined in accordance with those conditions to the township developer or authority in whom the land was made available. [substituted by Proc. R.63 of 1998]

CHAPTER IV DEED OF GRANT RIGHTS

Granting of deed of grant rights

7. (1) Deed of grant rights may be granted by or on behalf of the owner of the land, in respect of-
 - (a) an erf in an approved township, if such erf is-
 - (i) shown on a diagram or general plan, including a diagram or general plan approved by any Minister or other officer under a law repealed by section 39(1) where the township register in respect of the township has not been opened;
 - (ii) situated in a provisional survey area and identified as contemplated in section 10(2);
 - (b) a piece of land for farming purposes, including a lot in a settlement.
- (2) Deed of grant rights shall be granted against payment of such amounts as may be prescribed or agreed upon.
- (3) [deleted by Proc. R.63 of 1998]

Rights conferred by deed of grant rights

8. (1) The holder of deed of grant rights in respect of any land may with effect from the date of registration of such rights and subject to the provisions of this Act-
 - (a) occupy such land;
 - (b) erect a building on or otherwise improve such land and alter or demolish such building or improvement, subject to the provisions of any law relating to the erection, alteration or demolition of buildings;
 - (c) mortgage the deed of grant rights;
 - (d) dispose of the deed of grant rights to another person, including the right to bequeath the deed of grant rights;
 - (e) let such land;
 - (f) subdivide such rights by the substitution for them of deed of grant rights in respect of any portions of such land, subject to the provisions of any law relating to the subdivision of land or the vesting of streets or other public places;
 - (g) consolidate such rights with the deed of grant rights held by him in respect of a contiguous piece of land, subject to the provisions of any law relating to the consolidation of land;
 - (h) burden the deed of grant rights of such land with servitudal rights, or acquire such rights therefore.
- (2) Rights conferred under subsection (1) shall prevail in the event of conflict with the rights of the owner of the land or with other real rights registered in the deed registry.
- (3) The rights conferred under a deed of grant, certificate of right of leasehold or quitrent title registered before the commencement of this Act under the provisions of a law repealed by section 39(1) shall be deemed to be deed of grant rights.

Transfer of ownership of erf to holder of deed of grant rights

9. (1) The holder of deed of grant rights to an erf in a township in respect of which the township register has been opened may, subject to the provisions of any other law relating to the conversion or upgrading of such rights to ownership, obtain transfer of such erf by-
 - (a) applying to the Registrar for such transfer;
 - (b) lodging with such registrar-
 - (i) a deed of transfer prepared by a conveyancer in the form prescribed by Schedule II;
 - (ii) the deed of grant concerned; and
 - (iii) all mortgage bonds, leases, deeds of servitude and other deeds or documents which are registered and which relate to such deed of grant rights.

[para (b) substituted by Proc.9 of 1997]

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- (2) The registrar shall, after being furnished with the deeds and documents referred to in subsection (1) execute such deed of transfer and make the necessary endorsements and entries on the documents produced as well as in his or her registers and other documents to give effect to the application.
[subsection (2) substituted by Proc. 9 of 1997]
- (3) [deleted by Proc. 9 of 1997]
 (4) [deleted by Proc. 9 of 1997]
 (5) [deleted by Proc. 9 of 1997]
 (6) [deleted by Proc. 9 of 1997]
 (7) [deleted by Proc. 9 of 1997]

Grant of deed of grant rights in provisional survey area.

10. (1) The Premier may, with the consent of the owner of the land and of the holder of any real right registered in the deeds registry, by notice in the Official Gazette declare any area specified in the notice, in respect of which no general plan has been approved by the surveyor-general, as a provisional survey area.
[substituted by Proc. R.63 of 1998]
- (2) Deed of grant rights may be granted in a provisional survey area in respect of an erf which has been identified, in the manner prescribed by the Premier after consultation with the surveyor-general, by a land surveyor who has been appointed by or on behalf of the owner of the land to carry out the survey of such erf.
[substituted by Proc. R.63 of 1998]
- (3) The owner who has been granted deed of grant rights in respect of an erf referred to in subsection (2) shall within four years or such longer period as the Premier may in any particular case approve, after registration of such grant-
[substituted by Proc. R.63 of 1998]
- (a) cause the erven in the provisional survey area concerned to be surveyed by a land surveyor and the relevant general plan to be lodged with the surveyor-general for approval; and
 (b) obtain the opening of the township register in respect of such erven.
- (4) If an owner, other than the government, referred to in subsection (3) fails to comply with the provisions of that section, the Premier shall cause the provisions of that subsection to be complied with and may recover the cost from such owner.
[substituted by Proc. R.63 of 1998]
- (5) To enable the provisions of subsection (4) to be complied with-
 (a) the Premier shall be deemed to be the owner of the land;
 [substituted by Proc. R.63 of 1998]
 (b) the owner referred to in that sub-section shall furnish to the Minister the deeds, diagrams, plans and documents concerned;
 (c) in the event of failure by the owner to produce the title deeds as required by paragraph (b), the Premier shall produce to the registrar an affidavit that he has been unable to obtain possession of the deeds and the registrar shall thereupon make the necessary endorsements on the registry duplicate of such deeds, and if the original deeds are at any time lodged in his or her office for any purpose, he or she shall make a similar endorsement thereon.
 [substituted by Proc. R.63 of 1998]

Registration of deed of grant rights

11. (1) [deleted by Proc. 9 of 1997]
 (2) [deleted by Proc. 9 of 1997]
- (3) Deed of grant rights and mortgages and other real rights in respect of deed of grant rights shall be registered in a deeds registry referred to in section 102 of the Deeds Registries Act, 1937 (Act 47 of 1937; in such manner as may be prescribed by the board.
 [subsection (3) substituted by Proc. 9 of 1997]

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- (4) Unless it is otherwise provided in this Act or the regulations, the provisions of the Deeds Registries Act, 1937 (Act 47 of 1937), shall mutatis mutandis apply in relation to all documents registered or filed or intended to be registered or filed in relation to deed of grant rights or any registrable transaction in respect of deed of grant rights. [subsection (4) substituted by Proc. 9 of 1997]
- (5) [Repealed by Proc. 9 of 1997]

CHAPTER V TOWNSHIP ESTABLISHMENT

Establishment of townships

12. (1) A township may in the manner prescribed and with the approval of the Premier be established on any land by-
[substituted by Proc. R.63 of 1998]
(a) the owner of the land; or
(b) a township developer or authority to which that land is made available to under section 5, subject to the conditions of such making available.
- (2) The approval referred to in subsection (1) of the Premier shall be made known by notice in the Official Gazette. [substituted by Proc. R.63 of 1998]
- (3) No person shall establish a township otherwise than in accordance with the provisions prescribed.

Existing townships.

13. (1) Where rights to minerals in respect of land set apart or established as a township under a law repealed by section 39(1) before the commencement of this Act are held by any person other than the Government on the Ingonyama, such person shall be deemed to have consented to the establishment of the township concerned. [substituted by Proc. R.63 of 1998]
- (2) If land referred to in subsection (1) is proclaimed land or land held under mining title as contemplated in the Mining Rights Act, 1967 (Act No. 2 of 1967), such land shall be deemed to have been reserved for township purposes under section 184(1) of that Act.
- (3) The Premier may, in respect of a township referred to in subsection (1)-
[substituted by Proc. R.63 of 1998]
(a) apply for the opening of the township register;
(b) impose registrable conditions which shall attach to theerven in the township.
- (4) The registrar shall not open a register referred to in subsection (3) before the Premier has obtained a certificate of rights to minerals in favour of-
[substituted by Proc. R.63 of 1998]
(a) the Government, in respect of all rights to minerals held by the government or the Ingonyama under the same title as that by which it owns the land; [substituted by Proc. R.63 of 1998]
(b) a person who is the holder of or who is entitled to the rights to minerals referred to in section 71(2) bis(a) of the Deeds Registries Act, 1937, if such certificate has not yet been issued, and the Premier shall be deemed to be the agent of the holder or person entitled to the rights concerned for the purpose of obtaining that certificate. [substituted by Proc. R.63 of 1998]
- (5) To enable the provisions of subsection (3) to be carried out-
(a) the Premier may obtain the services of land surveyors, attorneys and other agents; [substituted by Proc. R.63 of 1998]
(b) the Premier may obtain from any person any subdivisional diagram, consolidated title diagram, certificate of title or any other document required for the purpose of opening the register referred to in subsection (3)(a); [substituted by Proc. R.63 of 1998]

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- (c) any person, including the owner of the land, shall upon the request of the Premier or any person referred to in paragraph (a), produce to the Premier or that person all the title deeds, diagrams and other documents that may in the opinion of the Premier or that person be necessary.
[substituted by Proc. R.63 of 1998]
- (6) Any act performed by the Premier under the provisions of subsection (3)(a), (4), or (5)(b), shall, notwithstanding anything to the contrary in the Land Survey Act, 1927, or the Deeds Registries act, 1937, be deemed to have been performed by the owner of the land or the holder of or person entitled to the rights concerned, as the case may be. [substituted by Proc. R.63 of 1998]

CHAPTER VI LAND USE

Control of land use (Only brought into operation wef 19 June 1998 National GN.814/98 GG18975)

14. (1) Subject to the provisions of this Act, no person shall without the consent of the Premier change the use of land, including a building, which is situated outside the area to which a scheme relates, for any purpose other than agricultural or residential purposes. [substituted by Proc. R.63 of 1998]
- (2) The provisions of subsection (1) shall not apply in respect of-
- (a) a right to prospect for a mine precious metals, base minerals, precious stones or natural oil, or the use of land for prospecting, mining or connected purposes;
- (b) the use of land under a right or permission granted in terms of the Precious Stones Act, 1964 (Act No. 73 of 1964), or the Mining Rights Act, 1967.
- (3) The Premier may, in granting the consent in terms of subsection (1)-
- (a) require the applicant to comply with any specific provision or with all the provisions of the KwaZulu Land Affairs (Township Establishment) Regulations; and
- (b) impose any condition of land use.
[subsection (3) inserted by Proc. R. 63 of 1998]

Town planning schemes

15. (1) A town planning scheme may be brought into operation in the prescribed manner in respect of any area within the jurisdiction of an authority.
- (2) the general purposes of a scheme shall be the co-ordinated and harmonious development of the area to which it relates, in such a manner as will most effectively tend to promote the economic development, health, safety, good order, amenity, convenience and general well-being of such area, as well as efficiency and economy in the process of development of such area.
- (3) No person may use land, including a building, to which a scheme in operation relates, in a manner contrary to the provisions of that scheme.

CHAPTER VII SUBDIVISION AND CONSOLIDATION

Restriction on subdivision or consolidation

16. (1) No person shall subdivide or consolidate an erf in an approved township, other than land referred to in subsection (5)(b), except with the consent of the authority concerned granted in the prescribed manner.
- (2) The authority may, subject to the regulations, grant its consent under subsection (1) subject to such conditions as it may impose.

- (3) An authority shall not approve a subdivision or consolidation under subsection (1) which will bring about a result that is in conflict with-
- (a) a condition of establishment of the township;
 - (b) a condition of title;
 - (c) a provision of a scheme applicable to the erf concerned.
- (4) The authority may enforce any condition referred to in subsection (2).
- (5) The provisions of this section shall not apply to-
- (a) an erf of which the Government or the Ingonyama is the owner;
[substituted by Proc. R.63 of 1998]
 - (b) agricultural land as defined in the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970).

Duties of surveyor-general and Registrar

17. (1) The surveyor-general shall not approve a general plan or diagram of a subdivision or consolidation of an erf referred to in section 16 unless the consent referred to in that section has been produced to him.
- (2) If the authority has granted consent under section 16 subject to a registrable condition, such condition shall be endorsed on the title deed of the land concerned.

CHAPTER VIII CONVERSION OF CERTAIN TENURE

Designation of informal townships for conversion of tenure

18. (1) The Premier may after consultation with the tribal authority concerned designate by notice in the Official Gazette, any area referred to in subsection (2) in respect of which rights to occupy land there may be replaced by deed of grant rights under section 19. [substituted by Proc. R.63 of 1998]
- (2) No area shall be designated under subsection (1) other than in a township-
- (a) which is outside an approved township; and
 - (b) in which the rights of persons to occupy or use their erven have been acquired-
 - (i) according to local custom or usage;
 - (ii) under the provisions of section 25(1)(a) or (5); or
 - (iii) in any other manner, whether or not use of the land as a township has been authorised under any law.
- (3) The provisions of sections 12(1) and (2) shall mutatis mutandis apply to a township designated under subsection (1). [substituted by Proc. R.63 of 1998]
- (4) A township specified under subsection (1) shall be deemed to be an approved township on publication of the notice referred to in that subsection.

Grant of deed of grant rights in designated townships

19. (1) The owner of land included in a township designated under section 18(1) shall-
- (a) cause the erven in such township to be-
 - (i) surveyed and shown on a general plan; or
 - (ii) identified mutatis mutandis as provided in section 10(2);
 - (b) identify the persons referred to in section 18(2) in the manner prescribed.
- (2) The owner of the land may grant deed of grant rights in respect of a holding occupied by a person identified under subsection (1)(b) in favour of that person against payment by him of- [substituted by Proc. R.63 of 1998]
- (a) the cost of survey or identification or of a pro rata amount thereof, as the case may be;
 - (b) any other amount that may be prescribed.

- (3) The provisions of-
- (a) sections 13(3) to (6) inclusive shall mutatis mutandis apply in respect of a township shown on a general plan as contemplated in subsection (1)(a)(i);
 - (b) section 10(3) to (5) shall mutatis mutandis apply in respect of a township the erven of which have been identified as contemplated in subsection (1)(a)(ii).
- (4) If a person contemplated in subsection (1)(b) holds rights referred to in section 25(1) or (5) which have been ceded as security for the performance of an obligation and the owner of the land is furnished before registration of deed of grant rights with the agreement of obligation and cession or with a mortgage bond hypothecating the deed of grant rights in favour of the cessionary as security for the performance of such obligation, such owner shall lodge such agreement or mortgage bond, as the case may be, with the registrar for registration with the deed of grant rights and the registrar shall simultaneously with registration of the deed of grant rights register against such rights such mortgage bond or, as the case may be, such agreement as if it were a mortgage bond hypothecating the deed of grant rights in favour of the cessionary.
[subsection (4) amended by Proc. 9 of 1997]

CHAPTER IX DISPOSAL OF FARMLAND

Disposal of farmland

20. (1) The Premier may, subject to the prescribed conditions, sell, exchange, donate or lease any Government land which vests in the provincial government in terms of section 239 of the previous Constitution of the Republic of South Africa, 1993 (Act 200 of 1993) and in respect of which a certificate has been issued in terms of section 239(2)(a) of the said previous Constitution or item 28(1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) including a lot in a settlement referred to in section 21, for farming purposes to a person who in the opinion of the Premier is or will be a suitable person to farm the land.
[substituted by Proc. R.63 of 1998]
- (2) The Minister may, subject to the prescribed conditions, sell, exchange, donate or lease any Government land which vests in the national government in terms of section 239 of the previous Constitution of the Republic of South Africa, 1993 (Act 200 of 1993) and in respect of which a certificate has been issued in terms of section 239(2)(a) of the said previous Constitution or item 28(1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) including a lot in a settlement referred to in section 21, for farming purposes to a person who in the opinion of the Premier is or will be a suitable person to farm the land.
[substituted by Proc. R.63 of 1998]

Establishment of settlements

21. (1) The Minister may, for the purposes of a disposal contemplated in section 20, cause any Government land contemplated in section 20(2) to be surveyed for the purpose of subdivision as a settlement. [substituted by Proc. R.63 of 1998]
- (2) The Premier may, for the purposes of a disposal contemplated in section 20, cause any Government land contemplated in section 20(1) to be surveyed for the purpose of subdivision as a settlement. [substituted by Proc. R.63 of 1998]

CHAPTER X LETTING OF TOWNSHIP ERVEN

Public landowner may lease erven

22. The Government or an authority may lease any erf in an approved township of which it is the owner.

Existing occupants deemed to be lessees

23. (1) The holder of a certificate of occupation in respect of a letting unit contemplated by a law repealed by section 39(1) shall be the lessee, and the owner of the land shall be

the lessor, of the erf concerned.

- (2) A lease referred to in subsection (1)-
 - (a) shall be subject to the payment of rental by the lessee to the lessor in an amount equal to the amount payable by the lessee immediately before the commencement of this Act in respect of the erf concerned, unless such amount is varied by agreement;
 - (b) may be terminated by the lessee, on three months' written notice to the lessor.
- (3) Subject to any agreement to the contrary between the parties to a lease referred to in subsection (1)-
 - (a) the lessor shall not be obliged to maintain any building on the erf;
 - (b) the lessee shall be liable for the payment of municipal charges and levies.

CHAPTER XI PERMISSION TO OCCUPY

Demarcation of allotments

24. The Minister may in the manner prescribed demarcate allotments on Government land or land owned by a tribal authority for the purpose of granting rights of occupation outside an approved township under section 25(1)(a).

Right to occupy allotments

25. (1) The Minister may, in the manner prescribed and after consultation with the tribal authority concerned, grant and record permission to any person to occupy-
- (a) an allotment; or
 - (b) an erf in an approved township which is situated in the area of jurisdiction of a tribal authority on Government land or land owned by such authority.
- (2) Permission granted under subsection (1) shall-
- (a) confer the rights to use and improve the allotments for the purpose specified by the Minister;
 - (b) subject to the provisions of subsection (3), endure for the life of the person to whom such right was granted;
 - (c) confer after the death of such person such rights on his widow as may be prescribed.
- (3) The Minister may, in the prescribed manner and after consultation with the tribal authority concerned, withdraw permission granted under subsection (1).
- (4) The rights held by virtue of permission granted under subsection (1) may, with the prior consent of the Minister given after consultation with the tribal authority, be ceded or otherwise disposed of to such extent and in such circumstances as may be prescribed.
- (5) Permission to occupy a demarcated allotment issued under a law repealed by section 39(1) shall be deemed to be permission granted under subsection (1).

Acquisition of deed of grant rights by occupant

26. (1) A person to whom permission to occupy land has been granted under section 25(1) may, with the prior consent of the Minister given after consultation with the tribal authority -
- (a) in the case of an allotment outside an approved township, cause such allotment to be surveyed and shown on a diagram;
 - (b) acquire deed of grant rights in respect of such land.
- (2) The owner of the land contemplated in subsection (1)-
- (a) may grant deed of grant rights in respect of such portion to the person concerned;

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- (b) shall, in the case of an allotment referred to in subsection (1)(a), thereafter obtain a certificate of registered title contemplated in section 43(1) of the Deeds Registries Act, 1937, in respect of such allotment.

CHAPTER XII REMOVAL OF RESTRICTIONS

Removal of restrictions affecting existing townships

27. (1) Notwithstanding anything to the contrary in any law contained, the Premier may at any time, by notice in the Official Gazette cancel, suspend for any period or modify in the manner and to the extent specified by the Premier, any restriction in operation under any law, or any condition or servitude which is in the opinion of the Premier inconsistent with or undesirable in relation to the establishment, existence, use, occupation or development of a township, referred to in section 13 or which prejudices the opening of a township register for that township, in relation to any piece of land registered or to be registered or to any portion of any piece, including any such piece or portion of Government land. [substituted by Proc. R.63 of 1998]
- (2) No notice shall be published under subsection (1) except after not less than one month's prior notice in writing to every person who in his opinion is likely to be affected thereby, and-
- (a) the provisions of section 7(3) and (5) of the Expropriation Act, 1975 (Act No. 63 of 1975), shall mutatis mutandis apply in connection with such notice;
- (b) notice given in terms of section 7(5) of that Act shall be deemed to have been given on the date on which it was published in the Official Gazette.
- (3) The provisions of section 6 of the Removal of Restrictions Act, 1967 (Act No. 84 of 1967), shall mutatis mutandis apply in respect of the entries and endorsements to be effected by the Registrar and surveyor-general to reflect the effect of a notice under subsection (1).
- (4) Subject to the provisions of this section, the Removal of Restrictions Act, 1967, and the Expropriation Act, 1975, shall not apply in respect of a cancellation, suspension or modification contemplated in subsection (1), but any person who has suffered any damages as a result of such cancellation, suspension or modification shall be entitled to compensation by the Government for those damages to an amount agreed upon by the Premier and that person, or failing agreement, to an amount determined by arbitration, and the provisions of the Arbitration Act 1965 (Act No. 42 of 1965) shall mutatis mutandis apply. [substituted by Proc. R.63 of 1998]

Lapsing of land use conditions of title

28. (1) Any restrictive condition or servitude registered against the title deed of an erf, or of deed of grant rights in respect of an erf, or against a permission to occupy an allotment, which relates to the purpose for which the erf or allotment may be used, shall lapse on the coming into operation under section 15(1) of a scheme in respect of an area in which that erf or allotment is situated.
- (2) The Registrar or registration officer, as the case may be, shall on application by or on behalf of an owner or holder referred to in subsection (1), and on production of the relevant title deed, endorse the fact of such lapsing on such title deed.

CHAPTER XIII LAND TITLES ADJUSTMENT

Investigator

29. (1) The Minister may at any time appoint a land investigator to investigate and determine the rights of persons claiming to-
- (a) own land;
- (b) hold deed of grant rights;
- (c) hold a servitude; or
- (d) hold any other registrable right to land.

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- (2) The investigator shall be the magistrate of the district in which the land in question is situated or some other official designation for that purpose.

Determination of ownership

30. (1) If land is found by the investigator to be in the occupation of a person who is not the registered owner or holder of the deed of grant rights, as the case may be, he shall enquire into and determine who is entitled to be registered as the owner of the land.
- (2) A certificate by the investigator in the form prescribed that a named person is entitled to be registered as the owner or holder of specified land or rights contemplated in section 29(1) shall, without it being necessary to pass transfer to any intermediate owner or holder, be sufficient authority for registration in the deeds registry of such person as the lawful owner or holder. [substituted by Proc. R.63 of 1998]
- (3) If the land referred to in subsection (2) is subject to a mortgage bond or any other registered right, the lawful owner or holder shall take transfer subject to the bond or other right. [subsection (3) substituted by Proc. 9 of 1997]
- (4) If the occupier is not the person entitled to be registered as the owner or holder and if the investigator is satisfied that such occupier has bona fide effected necessary or useful improvements on the land, the land investigator shall assess the value of the improvements, and may appoint a valuer or any other person to assist in such assessment, and no registration in favour of the person entitled to be registered as the owner or holder shall be made until the investigator has certified to the Registrar that the amount assessed has been paid or secured for the benefit of the occupier. [subsection (4) substituted by Proc.9 of 1997]
- (5) Any person aggrieved by a decision of the investigator under this section may in the manner and in the period prescribed appeal against that decision to a board of three persons who shall be appointed by the Minister from time to time as may be required, with all the powers of a land investigator under this Chapter and whose decision shall be final.

CHAPTER XIV

RESTRICTIONS ON ACQUISITION AND OCCUPATION

Acquisition or occupation of land in tribal authority area

31. (1) The owner of land situated in the area of jurisdiction of a tribal authority may in disposing of such land impose a condition that the land may not be acquired or occupied, or both, by a person who has not been approved by the tribal authority concerned.
- (2) The registrar shall not register a transfer under section 9 if the deed of grant rights concerned are subject to a condition contemplated in subsection (1) unless that condition is inserted in the deed of transfer referred to in section 9(1)(b)(1).

Rights of mortgagees

32. (1) The provisions of section 31 shall not apply to the acquisition of an interest in land by means of a registered mortgage bond.
- (2) A mortgagee may acquire the land concerned at a sale in execution if the outstanding mortgage loan debt cannot be recovered out of the proceeds of the sale.
- (3) [deleted by Proc. R.63 of 1998]
- (4) [deleted by Proc. R. 63 of 1998]

CHAPTER XV

POWERS OF MINISTERS, CONSTITUTION AND POWERS OF BOARD; REPEAL AND TITLE

Assignment of Powers

33. [Repealed by Proc. R.63 of 1998]

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Delegation of powers

34. (1) The Premier may, subject to such conditions as he or she may consider necessary, in general or in a particular case or in cases of a particular nature, in writing delegate any power conferred upon him or her under this Act or under a regulation promulgated under this Act to-
- (a) any member of the Executive Council of the province; or
 - (b) the Director-General of the province, to be exercised by that Director-General; or by an officer in the service of the provincial government or of a local government body contemplated in section 1 of the Local Government Transition Act, 193, indicated by that Director-General.
- (2) A member of the Executive Council of the province to whom any power has been delegated under subsection (1) may, subject to any conditions contemplated in subsection (1) and such further conditions as he or she may consider necessary, in writing delegate any such power to the Director-General to be exercised by that Director-General; or by an officer in the service of the provincial government or of a local government body contemplated in section 1 of the Local Government Transition Act, 193, indicated by that Director-General.
- (3) No delegation of power under subsections (1) or (2) shall prevent the exercise of the relevant power by the Premier or the member of the Executive Council, as the case may be, by himself or herself.

[Section 34 substituted by Proc. R. 63 of 1996]

Registration office regulations board

35. [repealed by Proc. 9 of 1997]

Board may make regulations

36. (1) The board may make regulations as to-
- (a) [deleted by Proc. 9 of 1997]
 - (b) [deleted by Proc. 9 of 1997]
 - (c) [deleted by Proc. 9 of 1997]
 - (d) the registration of deed of grant rights and mortgages and other real rights in respect of deed of grant rights;
 - (e) any matter whatsoever which is contemplated in the Deed Registries Act, 1937, in connection with registration in a registration office;
 - (f) [deleted by Proc. 9 of 1997]
 - (g) the noting of advances granted to holders of deed of grant rights by any person, the creation thereby of a charge attaching to such rights in favour of such person and any preference created by such charge;
 - (h) the acquisition of ownership by a holder of deed of grant rights as contemplated in section 9;
 - (i) any matter which in terms of this Act is required or permitted to be prescribed by the board;
 - (j) in general any other matter the regulation of which is necessary or desirable for the maintenance of an efficient system of registration calculated to afford security of title.
- (2) A regulation under subsection (1) shall not be invalid by reason only that any matter so prescribed is not in accordance with the provisions of the Deed Registries Act, 1937.
- (3) With the approval of the Minister of Land Affairs the board may make regulations without holding a meeting, if such regulations have been agreed to by all the members of the board.
[subsection (3) amended by Proc. 9 of 1997]
- (4) No regulation made by the board shall take effect unless it has been approved by the Minister of Land Affairs and has been published in the Government Gazette at least one month before the date specified in the notice so published as the date of commencement thereof.
[subsection (4) amended by Proc. 9 of 1997]

Regulations

37. (1)

The Minister:

may make regulations as to the matter referred to in paragraphs (a), (b), (c), (e)(i), (e)(ii), (e)(iv), (g), (k), (l), (n), (o), (p), (q) and (r); and

the Premier:

may make regulations as to the matters referred to -

(i) in the paragraphs (a) and (c) in so far as the said paragraphs relate to Government land which vests in the provincial government in terms of section 239 of the previous Constitution of the Republic of South Africa, 1993 (Act 200 of 1993) and in respect of which a certificate has been issued in terms of section 239(2)(a) of the said previous Constitution or item 28(1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996); and

(ii) paragraphs (d), (e), (f), (h), (i), (j), (m) and (p);

[inserted by Proc. R. 63 of 1998]

(a) the disposal of Government land, including the conditions of such disposal and the forms to be used for agreements;

[para (a) substituted by Proc. 9 of 1997]

(b) the procedure to be followed in granting deed of grant rights;

(c) the moneys payable in respect of the disposal of land owned by the Government or an authority;

(d) the conditions on which land is made available as contemplated in section 5;

(e) the manner in which a township may be established, including-

(i) the powers and duties of a registrar, surveyor-general or other person or body;

(ii) the vesting in any person or body of streets and other public places;

(iii) the restriction or prohibition of the disposal of land in townships in the course of establishment;

(iv) due regard for the rights of the holder of any real right;

(v) the imposing of conditions, opening of the township register and any other matter relating to the establishment of townships;

(f) subdivision and consolidation of erven, including the substitution of title deeds and the vesting in any person or body of streets and other public places;

(g) the procedure to be followed in investigating the rights of persons to occupy land in a township referred to in section 18(2)(b);

(h) town planning, including-

(i) the zoning or reservation of land into areas to be used exclusively or mainly for residential, business, industrial, agricultural, local authority, governmental or other purposes, with due regard for existing uses;

(ii) the planning or replanning of any area, whether developed as a township or not, including the prohibition of the use of land in such area in conflict with the terms of a scheme in operation or in course of preparation in respect of such area;

(iii) the regulation and limitation of building, including the demolition of or imposition of a special charge in respect of buildings or other structures erected or altered contrary to any provision made by virtue of powers conferred by this paragraph;

(iv) the prohibition of the transfer of land included in a scheme where any requirement by virtue of powers conferred under this paragraph has not been fulfilled;

(v) the preparation, approval, operation and amendment of schemes;

(vi) the payment by any person of-

(aa) compensation; or

(bb) a development contribution to an authority;

(vii) the consultation and taking into account of objections and representations of any person or body;

(viii) any provision relating to town planning in general;

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- (l) the procedure and circumstances under which a general plan of a township or any portion thereof may be cancelled or amended by the surveyor-general;
 - (j) the closing of public places;
 - (k) the demarcation of allotments, the recording of permission to occupy an allotment, the withdrawal of such permission and whether or not such withdrawal shall entitle the occupant to compensation;
 - (l) the procedure to be followed by an investigator, including the method to be followed to secure the presence of any person whether as a witness or otherwise as an investigation under section 30, the fixing and payment of witness fees, the production by any person and the temporary retention of any record book, document, or object and the administration of an oath or affirmation for the purposes of such investigation;
 - (m) the level and standard of engineering services to be provided in the course of establishment or development of a township, provisional survey area, allotment area or any other area;
 - (n) the establishment, constitution, powers, functions, duties and remuneration of one or more bodies of persons;
 - (o) the powers and duties of any person or body;
 - (p) the categories of persons, including the Government, who may be exempted from all or any of the provisions of this Act, the manner in which and the circumstances under which such persons may be so exempted, and in the case of persons other than the Government the procedures to be followed for the withdrawal of any such exemptions;
 - (q) any matter which in terms of this Act is required or permitted to be prescribed;
 - (r) in general any other matter the regulation of which is necessary or desirable for the effective carrying out of any provision of this Act.
- (2) No regulations may be made-
 - (a) [deleted by Proc. R. 63 of 1998]
 - (b) [deleted by Proc. R. 63 of 1998]
 - (c) as to the remuneration of any person except after consultation with the Minister of Finance.
 - (3) Different regulations may be made in respect of different areas and in respect of different categories of persons or land.
 - (4) The regulations may create offences and prescribe penalties for any contravention thereof.
 - (5) [deleted by Proc. R. 63 of 1998]

Agency agreements

38. [Repealed by Proc. R. 63 of 1998]

Repeal and amendment of laws, and savings

39. (1) The laws mentioned in Schedule I are hereby repealed to the extent indicated in the third column thereof.
[subsection (1) substituted by Proc. 9 of 1997]
- (2) Anything done or deemed to have been done under any provision of a law repealed by subsection (1) shall be deemed to have been done under the corresponding provision of this Act.

Short title and commencement

40. (1) This Act shall be called the KwaZulu Land Affairs Act, 1992, and shall come into operation on a date to be fixed by the Minister by notice in the Official Gazette.
- (2) Different dates may be fixed under subsection (1) in respect of the different provisions of this Act, and in respect of section 39(1) in so far as it relates to different laws or different provisions of any law mentioned in the Schedule.

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SCHEDULE I
LAWS REPEALED OR AMENDED

No. and Year of Law	Short Title	Extent of repeal or Amendment
Act No. 27 of 1913	Black Land Act 1913	The repeal of the whole except sections 9 and 11
Act No. 38 of 1927	Black Administration Act, 1927	1. The repeal of of sections 6, 7, 8 and 30(1) 2. The amendment of section 30(2) by the deletion of paragraphs (f) to (i) inclusive
Act No. 18 of 1936	Development Trust and Land Act, 1936	The repeal of sections 11, 11A, 12; 12(bis), 16, 21(2), 22, 39 and 41
Act No. 46 of 1937	Black Laws Amendment Act, 1937	The repeal of sections 34, 35 and 37
Act No. 42 of 1942	Black Administration Amendment Act, 1942	The repeal of sections 1 and 2
Act No. 21 of 1943	Black Administration Act 1943	The repeal of section 9
Act No. 36 of 1944	Black Laws Amendment Act, 1944	The repeal of section 22
Act No. 56 of 1949	Black Laws Amendment Act, 1949	The repeal of sections 20 and 32
Act No. 54 of 1952	Black Laws Amendment Act, 1952	The repeal of section 21
Act No. 18 of 1954	Development Trust and Land Amendment Act, 1954	The repeal of section 1
Act No. 73 of 1956	Development Trust and Land Amendment Act, 1956	The repeal of section 4
Act No. 41 of 1958	Development Trust and Land Amendment Act, 1958	The repeal of section 6
Proclamation R293 of 1962	Regulations for the Administration and Control of Townships in Black Areas	1. The repeal of the whole, except - (a) regulations 1, 6, 7, and 8 of Chapter 1; (b) regulations 1, 2, 5, 20, 24 to 46 inclusive, 48, 49 and 50 of Chapter 2; (c) regulations 6 to 12 inclusive, 14 to 19 inclusive and 26 of Chapter 3; (d) Chapters 4 to 8 inclusive; (e) regulation 10 of Chapter 9 (f) Chapter 10. 2. The amendment of regulation 10 of Chapter 9 by the deletion - (a) of the words "and no fee prescribed in the Registration of Deeds Act, 1937" (Act No. 47 of 1937)" (b) of the words following the words "payable under these regulations".
Proclamation R5 of 1963	Irrigation Schemes Control Regulations	1. The amendment of section 2 by the substitution for the definition of "permission-to-occupy" of the following definition: "permission to occupy means a permission contemplated in section 26(1)(a) of the KwaZulu Land Affairs Act, 1992". 2. The repeal of section 5
Act No. 42 of 1964	Black Laws Amendment Act, 1964	The repeal of section 33

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SCHEDULE I
LAWS REPEALED OR AMENDED Contd

No. and Year of Law	Short Title	Extent of repeal or Amendment
Act No. 84 of 1967	Removal of Restrictions Act, 1967	1. The substitution for section 1 of the following section: "Definitions 1. In this Act, unless the context otherwise indicates- (i) "local authority" means (a) a township council as defined in Proclamation R293 of 1962; (b) any person or body designated by the Minister as a local authority for the purposes of this Act; (ii) "Minister" means the Minister of the Interior; (iii) "townships board" means any person or body contemplated in regulations under the KwaZulu Land Affairs Act, 1992, with responsibilities in connection with the establishment of townships". 2. The amendment of section 2 by the repeal of sub-section (2). 3. The repeal of sections 5 and 9. 4. The substitution, wherever they occur- (a) for the words "Administrator", "Administrator of a province in which the land in question is situate", "provincial secretary", and "provincial secretary of the province wherein the land is situate" of the word "Minister"; (b) for the words "both official languages" by the words "the official language". (c) for the words "<u>Official Gazette</u>" of the province" of the words "KwaZulu <u>Official Gazette</u>". (d) for the word "State" of the word "Government".
Proclamation R192 of 1967	Regulations for the Control of the Residence on and Occupation of Privately or Tribally-Owned Land in Black Areas.	The repeal of the whole.
Proclamation R211 of 1968.	Amendment of the Regulations for the Administration and Control of Townships	The repeal of the whole except in so far as it relates to provisions not repealed by this Act.
Proclamation R188 of 1969.	Black Areas Land Regulations.	The repeal of the whole.
Proclamation R161 of 1970.	Amendment of the Regulations for Administration and Control of Townships in Black Areas.	The repeal of the whole.
Proclamation R280 of 1970	Amendment of the Control of the Residence on and Occupation of Privately or Tribally-owned Land in Black Areas.	The repeal of the whole.
Act No. 70 of 1970	Subdivision of Agricultural Land Act 1970	The amendment of section 1 by the deletion in the definition of "agricultural land" of paragraph (d).
Proclamation R84 of 1971	Amendment of the Black Land Areas Regulations.	The repeal of the whole.

SCHEDULE I
LAWS REPEALED OR AMENDED Contd

No. and Year of Law	Short Title	Extent of repeal or Amendment
Proclamation R95 of 1974.	Amendment of Black Areas Land Regulations.	The repeal of the whole.
Act No. 63 of 1975	Expropriation Act, 1975	The amendment of section 1- (a) by the deletion of the definition of "executive committee"; (b) by the substitution for the definition of "local authority" of the following definition: "local authority" means - (a) a township council as defined in Proclamation R293 of 1962; (b) any person or body designated by the Minister as a local authority for the purposes of this Act; (c) by the substitution for the definition of "Minister" of the following definition "Minister" means the Minister of the Interior.
Proclamation R16 of 1976	Amendment of the Black Areas Land Regulations.	The repeal of the whole.
Proclamation R174 of 1976	Amendment of the Regulations for Control of the Residence on and Occupation of Privately or Tribally-owned land in Black Areas.	The repeal of the whole.
Proclamation R34 of 1977	Amendment of the Regulations for the Administration and Control of Townships in Black Areas.	The repeal of the whole.
Proclamation R97 of 1977	Amendment of the Black Areas Land Regulations.	The repeal of the whole.
Proclamation R200 of 1978	Amendment of the Black Areas Land Regulations.	The repeal of the whole.
Act No. 48 of 1979	Amendment of the Black Areas Land Regulations.	The repeal of whole.
Act No. 16 of 1979	Laws on Plural Relations and Development Amendment Act, 1979.	The repeal of sections 1 and 3.
Proclamation R101 of 1979	Amendment of the Black Areas Land Regulations.	The repeal of the whole.
Act No. 16 of 1979	KwaZulu Tender Board Act, 1979	1. The amendment of section 4 (a) by the substitution in sub-section (1) for the words preceding paragraph (a) of the following words: "(1) <u>Subject to the provisions of subsection (2), the Board shall have power to procure supplies and services for the Government and for any tribal authority and to dispose of movable property of the Government and of any tribal authority and, subject to the provisions of the KwaZulu Land Affairs Act, 1992, to dispose of immovable property of the</u>

Government and of any tribal authority and may for that purpose-
 "(b) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) on behalf of the Government or any tribal authority, conclude an agreement with a person within or outside KwaZulu for the furnishing of supplies and services to the Government and to any tribal authority or the disposal of movable or immovable property of the Government and of any tribal authority".

2. The substitution for section 7 of the following section:
 "Government and tribal authority obliged to procure supplies and services and dispose of movable or immovable property through the board."

"7. Subject to the provisions of this Act and the regulations made under section 10 and of any other law, the Government and any tribal authority shall procure its supplies and services and dispose of all its stores and other movable property and of its immovable property through the board".

3. The substitution for the long title of the following long title
 "ACT"

To provide for the procurement of supplies and services for, and the disposal of movable and immovable property of the KwaZulu Government and tribal authorities in KwaZulu and for that purpose to establish a tender board and determine its functions; and to provide for matters incidental thereto."

Act No. 68 of 1981 Alienation of Land
 Act, 1981.

The amendment of
 section 1 by the deletion in the definition of "land" of paragraphs
 (c)(ii)(bb) and (dd).

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SCHEDULE II

Prepared by me

CONVEYANCER

(State surname and initials in block letters)

DEED OF TRANSFER

[By virtue of section nine of the KwaZulu Land Affairs Act 1992 (Act 11 of 1992)]

Be it hereby made known:

That whereas a township register has been opened in respect of the grant rights held under deed of grant No.....

I, the Registrar at

by virtue hereof, cede and transfer in full and free property to and on behalf of:

heirs, executors, administrators, or assigns, certain:

(describe the property, giving name, number, registration division, administrative district and observe the regulations relative to extending clause and conditions)

and by virtue hereof the said

heirs executors, administrators or assigns, now is and henceforth shall be entitled to conformably to local custom, the State, however, reserving its rights.

In witness hereof I, the said Registrar, have subscribed to these presents, and have caused the seal of office to be affixed hereto.

Thus done and executed at the Office of the

at

on this.....day of.....in the year of our Lord, One Thousand, Nine Hundred and

Registrar of Deeds

[Handwritten signature]

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REPUBLIC
OF
SOUTH AFRICA



REPUBLIEK
VAN
SUID-AFRIKA

Government Gazette Staatskoerant

Regulation Gazette

No. 6212

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Vol. 396

PRETORIA, 19 JUNE 1998
JUNIE 1998

No. 18978

PROCLAMATION

by the

President of the Republic of South Africa

No. R. 63 of 1998

ASSIGNMENT OF CERTAIN PROVISIONS OF THE KWAZULU LAND AFFAIRS ACT, 1992, AND CERTAIN REGULATIONS PROMULGATED IN TERMS THEREOF TO THE PROVINCE OF KWAZULU-NATAL

Under item 14 of Schedule 6 to and section 99 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), and section 2 (2) of the Land Administration Act, 1995 (Act No. 2 of 1995), I hereby—

(a) assign—

- (i) the KwaZulu Land Affairs Act, 1992 (Act No. 11 of 1992), excluding sections 11, 24, 25, 26, 29, 30 and 36 thereof;
 - (ii) the KwaZulu Land Affairs (Land Disposal) Regulations, 1994 (KwaZulu Government Notice No. 27 of 1994);
 - (iii) the KwaZulu Land Affairs (Provisional Survey Area) Regulations, 1994 (KwaZulu Government Notice No. 28 of 1994);
 - (iv) the KwaZulu Land Affairs (Township Establishment) Regulations, 1994 (KwaZulu Government Notice No. 29 of 1994);
 - (v) the KwaZulu Land Affairs (Town-planning) Regulations, 1994 (KwaZulu Government Notice No. 30 of 1994); and
 - (vi) the KwaZulu Land Affairs (Conversion of Certain Tenure) Regulations, 1994 (KwaZulu Government Notice No. 31 of 1994),
- to the Premier of the Province of KwaZulu-Natal;

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[Signature]

(b) determine—

- (i) that the above-mentioned legislation is assigned in so far as it is applicable in, or in any part of, the Province of KwaZulu-Natal;
- (ii) that the KwaZulu Land Affairs (Land Disposal) Regulations, 1994 are assigned in so far as they relate to land which vests in the provincial government in terms of section 239 of the previous Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), and in respect of which a certificate has been issued in terms of section 239 (2) (a) of the said previous Constitution or item 28 (1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); and

(c) amend the KwaZulu Land Affairs Act, 1992, as set out in the Schedule.

Given under my Hand and the Seal of the Republic of South Africa at Cape Town this Second day of June, One thousand Nine hundred and Ninety-eight.

N. R. MANDELA

President

By Order of the President-in-Cabinet:

D. A. HANEKOM

Minister of the Cabinet

SCHEDULE

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
 _____ Words underlined with a solid line indicate insertions in existing enactments.

KWAZULU LAND AFFAIRS ACT, 1992 (ACT NO. 11 OF 1992)

1. Section 1 of the KwaZulu Land Affairs Act, 1992 (Act No. 11 of 1992) (hereinafter referred to as the Act), is hereby amended—

- (a) by the deletion of the definition of "citizen";
- (b) by the substitution for the definition of "diagram" of the following definition:
 " 'diagram' means a diagram as defined in the Land Survey Act, [1927 (Act No. 9 of 1927)] 1997 (Act No. 8 of 1997);";
- (c) by the substitution for the definition of "general plan" of the following definition:
 " 'general plan' means a general plan as defined in the Land Survey Act, [1927 (Act No. 9 of 1927)] 1997 (Act No. 8 of 1997);";
- (d) by the substitution for the definition of "Government" of the following definition:
 " 'Government' means the government of the Province of KwaZulu-Natal";
- (e) by the substitution for the definition of "Government land" of the following definition:
 " 'Government land' means the land which was transferred to the Government of the former self-governing territory of KwaZulu in terms of Proclamation No. R. 232 of 1986 and includes any land acquired by the Government thereafter and, subject to the provisions of the KwaZulu Ingonyama Trust Act, 1994 (Act No. 1 of 1994), land transferred to and held in trust by the Ingonyama as trustee of the Ingonyama Trust Intestate of the said Act";
- (f) by the substitution for the definition of "land surveyor" of the following definition:
 " 'land surveyor' means a person registered as a professional land surveyor in terms of the Professional Land Surveyors' and Technical Surveyors' Act, 1984 (Act No. 40 of 1984), [of the Republic] and whose name is entered in the register referred to in section 7 (4) (a) of that Act";
- (g) by the substitution for the definition of "Minister" of the following definition:
 " 'Minister' means—
 [(a) the Minister of the Interior; or
 (b) a Minister to whom the Chief Minister has assigned the administration of a provision of the Act under section 33]
the Minister of Land Affairs in the national government";
- (h) by the substitution for the definition of "Official Gazette" of the following definition:
 " 'Official Gazette' means the Official Gazette of the Province of KwaZulu-Natal";
- (i) by the insertion of the following definition after the definition of "owner":
 " 'Premier' means the Premier of the Province of KwaZulu-Natal";

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- (j) by the substitution for the definition of "surveyor-general" of the following definition:
" 'surveyor-general' means the surveyor-general appointed under section 4 of the Land Survey Act, [1927] 1997 Act No. 8 of 1997;";
- (k) by the deletion of the definition of "tender board"; and
- (l) by the deletion of the definition of "Wetgewende Vergadering" in the Afrikaans text.

2. Section 2 of the Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

"(1) (a) The **[tender board]** Premier may, subject to the provisions of this Act and the KwaZulu Ingonyama Trust Act, 1994 and in the manner prescribed, sell, exchange, donate, lease or otherwise dispose of any Government land which vests in the provincial government in terms of section 239 of the previous Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), and in respect of which a certificate has been issued in terms of section 239 (2) (a) of the said previous Constitution or item 28 (1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), **[on behalf of the Government]** to any person, including an authority.

(b) The Minister may, subject to the provisions of this Act and the KwaZulu Ingonyama Trust Act, 1994 and in the manner prescribed, sell, exchange, donate, lease or otherwise dispose of any Government land which vests in the national government in terms of section 239 of the previous Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), and in respect of which a certificate has been issued in terms of section 239 (2) (a) of the said previous Constitution or item 28 (1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), to any person, including an authority."; and

- (b) by the deletion of subsection (2).

3. The following section is hereby substituted for section 3 of the Act:

- "3. (1) The **[Minister]** Premier may consent to the amendment or cancellation of any condition or servitude which was before or after the commencement of this Act embodied in or registered against a title deed in terms of any law or otherwise whereby any right, other than a right to minerals, was reserved to or acquired by the Government in respect of land.
- (2) If the **[Minister]** Premier has in terms of subsection (1) consented to the amendment or cancellation of a condition referred to in that subsection, he or she may authorise the Registrar in writing to endorse the amendment or cancellation, as the case may be, on the title deed of the land concerned, and the Registrar shall give effect to the said authorisation in such manner as may to him or her appear to be most practicable and convenient."

4. Section 5 of the Act is hereby amended—

- (a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

"(1) Government land may be made available by **[the tender board]**—

(i) the Premier in respect of land which vests in the provincial government in terms of section 239 of the previous Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), and in respect of which a certificate has been issued in terms of section 239 (2) (a) of the said previous Constitution or item 28 (1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); or

(ii) the Minister in respect of land which vests in the national government in terms of section 239 of the previous Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), and in respect of which a certificate has been issued in terms of section 239 (2) (a) of the said previous Constitution or item 28 (1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

subject to such conditions as **[it]** he or she may determine"; and

- (b) by the substitution for subsection (2) of the following subsection:

"(2) Land of which an authority is the owner may be made available to a township developer, subject to such conditions as may be determined by that authority and approved by the **[tender board]** Premier, to a township developer for the establishment of a township or the development of the land."

5. Section 6 is hereby amended—

- (a) by the substitution for paragraph (a) of the following paragraph:

"(a) shall not, subject to the provisions of this subsection and the regulations, in any way be alienated or further encumbered by the **[tender board or by the Government]** Premier or authority, as the case may be, while the land concerned remains so available;"

(b) by the substitution for paragraph (c) of the following paragraph:

"(c) may be alienated by the township developer or authority to which the land has been made available as the duly authorised agent of the [tender board, Government] Premier or authority, as the case may be, and on the conditions on which the land has been made available"; and

(c) by the substitution for paragraph (d) of the following paragraph:

"(d) may, in the event of a breach of the conditions on which the land was so made available by the person or body to whom the land was made available, be withdrawn by the [tender board] Premier subject to the payment of compensation determined in accordance with those conditions to the township developer or authority to whom the land was made available."

6. Section 7 of the Act is hereby amended by the deletion of subsection (3).

7. Section 10 of the Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The [Minister] Premier may, with the consent of the owner of the land and of the holder of any real right registered in the deeds registry, by notice in the *Official Gazette* declare any area specified in the notice, in respect of which no general plan has been approved by the surveyor-general, as a provisional survey area."

(b) by the substitution for subsection (2) of the following subsection:

"(2) Deed of grant rights may be granted in a provisional survey area in respect of an erf which has been identified, in the manner prescribed by the [Minister] Premier after consultation with the surveyor-general, by a land surveyor who has been appointed by or on behalf of the owner of the land to carry out the survey of such erf."

(c) by the substitution for the words preceding paragraph (a) of subsection (3) of the following words:

"(3) The owner who has granted deed of grant rights in respect of an erf referred to in subsection (2) shall within four years or such longer period as the [Minister] Premier may in any particular case approve, after registration of such grant—";

(d) by the substitution for subsection (4) of the following subsection:

"(4) If an owner, other than the government, referred to in subsection (3) fails to comply with the provisions of that section, the [Minister] Premier shall cause the provisions of that subsection to be complied with and may recover the cost from such owner."

(e) by the substitution for paragraph (a) of subsection (5) of the following paragraph:

"(a) the [Minister] Premier shall be deemed to be the owner of the land";

(f) by the substitution for paragraph (b) of subsection (5) of the following paragraph:

"(b) the owner referred to in that subsection shall furnish to the [Minister] Premier the deeds, diagrams, plans and documents concerned"; and

(g) by the substitution for paragraph (c) of subsection (5) of the following paragraph:

"(c) in the event of failure by the owner to produce the title deeds as required by paragraph (b), the [Minister] Premier shall produce to the registrar an affidavit that he or she has been unable to obtain possession of the deeds and the registrar shall thereupon make the necessary endorsements on the registry duplicate of such deeds, and if the original deeds are at any time lodged in his or her office for any purpose, he or she shall make a similar endorsement thereon."

8. Section 12 of the Act is hereby amended—

(a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

"(1) A township may in the manner prescribed and with the approval of the [Minister] Premier be established on any land by—"; and

(b) by the substitution for subsection (2) of the following subsection:

"(2) The approval referred to in subsection (1) of the [Minister] Premier shall be made known by notice in the *Official Gazette*."

9. Section 13 of the Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) Where rights to minerals in respect of land set apart or established as a township under a law repealed by section 39 (1) before the commencement of the Act are held by any person other than the Government or the Ingonyama, such person shall be deemed to have consented to the establishment of the township concerned."

(b) by the substitution for the words preceding paragraph (a) of subsection (3) of the following words:

"(3) The [Minister] Premier may, in respect of a township referred to in subsection (1)—"

(c) by the substitution for subsection (4) of the following subsection:

"(4) The Registrar shall not open a register referred to in subsection (3) before the **[Minister] Premier** has obtained a certificate of rights to minerals in favour of—

- (a) the Government, in respect of all rights to minerals held by the Government or the Ingonyama under the same title as that by which it owns the land;
- (b) a person who is the holder of or who is entitled to the rights to mineral referred to in section 71 (2) *bis* (a) of the Deeds Registries Act, 1937, if such certificate has not yet been issued, and the **[Minister] Premier** shall be deemed to be the agent of the holder or person entitled to the rights concerned for the purpose of obtaining that certificate."

(d) by the substitution for subsection (5) of the following subsection:

"(5) To enable the provisions of subsection (3) to be carried out—

- (a) the **[Minister] Premier** may obtain the services of land surveyors, attorneys and other agents;
- (b) the **[Minister] Premier** may obtain from any person any subdivisational diagram, consolidated title diagram, certificate of title or any other document required for the purpose of opening the register referred to in subsection (3) (a);
- (c) any person, including the owner of the land, shall upon the request of the **[Minister] Premier** or any person referred to in paragraph (a), produce to the **[Minister] Premier** or that person all the title deeds, diagrams and other documents that may in the opinion of the **[Minister] Premier** or that person be necessary;" and

(e) by the substitution for subsection (6) of the following subsection:

"(6) Any act performed by the **[Minister] Premier** under the provisions of subsection (3) (a), (4), or (5) (b), shall, notwithstanding anything to the contrary in the Land Survey Act, **[1927] 1997**, or the Deeds Registries Act, 1937, be deemed to have been performed by the owner of the land or the holder of a person entitled to the rights concerned, as the case may be."

10. Section 14 of the Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) Subject to the provisions of this Act, no person shall without the consent of the **[Minister] Premier** change the use of land, including a building, which is situated outside the area to which a scheme relates, for any purpose other than agriculture or residential purposes;" and

(b) by the insertion of the following subsection after subsection (2):

"(3) The Premier may, in granting the consent in terms of subsection (1)—

- (a) require the applicant to comply with any specific provision or with all the provisions of the KwaZulu Land Affairs (Township Establishment) Regulations, 1994;
- (b) impose any condition of land use."

11. Section 16 of the Act is hereby amended by the substitution for paragraph (a) of subsection (5) of the following paragraph:

"(a) an erf of which the Government or the Ingonyama is the owner;"

12. Section 18 of the Act is hereby amended—

(a) by the substitution for subsection (1) of the following section:

"(1) The **[Minister] Premier** may after consultation with the tribal authority concerned designate by notice in the *Official Gazette* any area referred to in subsection (2) in respect of which rights to occupy land there may be replaced by deed of grant rights under section 19;" and

(b) by the substitution for subsection (3) of the following subsection:

"(3) The provisions of sections **[13] 12(1)** and (2) shall *mutatis mutandis* apply to a township designated under subsection (1)."

13. Section 19 of the Act is hereby amended by the substitution for the words preceding paragraph (a) of subsection (2) of the following words:

"(2) The **[Minister] owner of the land** may grant deed of grant rights in respect of a holding occupied by a person identified under subsection (1) (b) in favour of that person against payment by him of—"

14. The following section is hereby substituted for section 20 of the Act:

"20. (1) The **[tender board] Premier** may, subject to the prescribed conditions, sell, exchange, donate or lease Government land which vests in the provincial government in terms of section 239 of the previous Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), and respect of which a certificate has been issued in terms of section 239 (2) (a) of the said previous Constitution or Item 28 (1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), including a lot in a settlement referred to in section 21, for farming purposes to a person who in the opinion of the **[tender board] Premier** is or will be a suitable person to farm the land.

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- (2) The Minister may, subject to the prescribed conditions, sell, exchange, donate or lease Government land which vests in the national government in terms of section 239 of the previous Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), and respect of which a certificate has been issued in terms of section 239 (2) (a) of the said previous Constitution or item 28 (1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), including a lot in a settlement referred to in section 21, for farming purposes to a person who in the opinion of the said Minister is or will be a suitable person to farm the land."

15. The following section is hereby substituted for section 21 of the Act:

- "21. (1) The Minister may, for the purposes of a disposal contemplated in section 20, cause any Government land contemplated in section 20 (2) to be surveyed for the purpose of subdivision as a settlement."
- (2) The Premier may, for the purposes of a disposal contemplated in section 20, cause any Government land contemplated in section 20 (1) to be surveyed for the purpose of subdivision as a settlement."

16. Section 27 of the Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

- "(1) Notwithstanding anything to the contrary in any law contained, the ~~[Minister]~~ Premier may at any time, by notice in the *Official Gazette* cancel, suspend for any period or modify in the manner and to the extent specified by the ~~[Minister]~~ Premier, any restriction in operation under any law, or any condition or servitude which is in the opinion of the ~~[Minister]~~ Premier inconsistent with or undesirable in relation to the establishment, existence, use, occupation or development of a township referred to in section 13 or which prejudices the opening of a township register for that township, in relation to any piece of land registered or to be registered or to any portion or any piece including any such piece or portion of Government land."; and

(b) by the substitution for subsection (4) of the following subsection:

- "(4) Subject to the provisions of this section, the Removal of Restriction Act, 1967 and the Expropriation Act, 1975, shall not apply in respect of a cancellation, suspension or modification contemplated in subsection (1), but any person who has suffered any damages as a result of such cancellation, suspension or modification contemplated in subsection (1), shall be entitled to compensation by the Government for those damages to an amount agreed upon between the ~~[Minister]~~ Premier and that person, or failing agreement, to an amount determined by arbitration, and the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965), shall *mutatis mutandis* apply."

17. Section 30 of the Act is hereby amended by the substitution for subsection (2) of the following subsection:

- "(2) A certificate by the investigator in the form prescribed ~~[by the board]~~ that a named person is entitled to be registered as the owner or holder of specified land or rights contemplated in section 29 (1) shall, without it being necessary to pass transfer to any intermediate owner or holder, be sufficient authority for registration in the deeds registry ~~[or registration office, as the case may be,]~~ of such person as the lawful owner or holder."

18. Section 32 of the Act is hereby amended by the deletion of subsections (3) and (4).

19. Section 33 of the Act is hereby repealed.

20. The following section is hereby substituted for section 34 of the Act:

"Delegation of powers

34. (1) The Premier may, subject to such conditions as he or she may consider necessary, in general or in a particular case or in cases of a particular nature, in writing delegate any power conferred upon him or her under this act or under a regulation promulgated under this Act to—

- (a) any member of the Executive Council of the province; or
- (b) the Director-General of the province, to be exercised by that Director-General; or by an officer in the service of the provincial government or of a local government body contemplated in section 1 of the Local Government Transition Act, 1993, indicated by that Director-General.

(2) A member of the Executive Council of the province to whom any power has been delegated under subsection (1) may, subject to any conditions contemplated in subsection (1) and such further conditions as he or she may consider necessary, in writing, delegate any such power to the Director-General to the province to be exercised by that Director-General or by any officer in the service of the provincial government or of a local government body contemplated in section 1 of the Local Government Transition Act, 1993, indicated by that Director-General."

(3) No delegation of power under subsections (1) or (2) shall prevent the exercise of the relevant power by the Premier or member of the Executive Council, as the case may be, him- or herself."

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21. Section 37 of the Act is hereby amended—

(a) by the substitution for the word preceding paragraph (a) of subsection (1) of the following words:

"(1) The Minister make regulations as to the matters referred to in paragraphs (a), (b), (c), (e) (i), (e) (ii), (e) (iv), (g), (k), (l), (n), (o), (p), (q) and (r); and the Premier may make regulations as to the matters referred to in—

(i) paragraphs (a) and (c), in so far as the said paragraphs relate to Government land which vests in the provincial government in terms of section 239 of the previous Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), and in respect of which a certificate has been issued in terms of section 239 (2) (a) of the said previous Constitution or item 28 (1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); and

(ii) paragraphs (d), (e), (f), (h), (i), (j), (m) and (p)—";

(c) by the deletion of paragraphs (a) and (b) of subsection (2); and

(d) by the deletion of subsection (5).

22. Section 38 of the Act is hereby repealed.

PROKLAMASIE

van die

President van die Republiek van Suid-Afrika

No. R. 63, 1998

OPDRAG VAN SEKERE BEPALINGS VAN DIE KWAZULU WET OP GRONDSAKE, 1992, EN SEKERE REGULASIES DAARKRAGTENS UITGEVAARDIG AAN DIE PROVINSIE KWAZULU-NATAL

Kragtens Item 14 van Bylae 6 tot en artikel 99 van die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996), en artikel 2 (2) van die Wet op Grondadministrasie 1995 (Wet No. 2 van 1995)—

(a) dra ek hierby—

- (i) die KwaZulu Wet op Grondsake, 1992 (KwaZulu Wet No. 11 van 1992), uitgesonderd artikels 11, 24, 25, 26, 29, 30 en 36 daarvan;
- (ii) die KwaZulu Regulasies oor Grondsake (Grondbeskikking), 1994 (KwaZulu Goewermmentskenningsgewing No. 27 van 1994);
- (iii) die KwaZulu Regulasies oor Grondsake (Voorlopige Opmetingsgebied), 1994 (KwaZulu Goewermmentskenningsgewing No. 28 van 1994);
- (iv) die KwaZulu Regulasies oor Grondsake (Dorpsstigting), 1994 (KwaZulu Goewermmentskenningsgewing No. 29 van 1994);
- (v) die KwaZulu Regulasies oor Grondsake (Dorpsbeplanning), 1994 (KwaZulu Goewermmentskenningsgewing No. 30 van 1994); en
- (vi) die KwaZulu Regulasies oor Grondsake (Omsetting van Sekere Grondbesit), 1994 (KwaZulu Goewermmentskenningsgewing No. 31 van 1994);

op aan die Premier van die provinsie KwaZulu-Natal;

(b) bepaal ek hierby—

- (i) dat die bogemelde wetgewing opgedra word vir sover dit in, of in 'n gedeelte van, die provinsie KwaZulu-Natal van toepassing is; en;
- (ii) dat die KwaZulu Regulasies oor Grondsake (Grondbeskikking), 1994 opgedra word vir sover dit betrekking het op grond wat in die provinsiale regering kragtens artikel 239 van die vorige Grondwet van die Republiek van Suid-Afrika, 1993 (Wet No. 200 van 1993), setel en ten opsigte waarvan 'n sertifikaat kragtens artikel 239 (2) (a) van die gemelde vorige Grondwet of item 28 (1) van Bylae 6 tot die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996); uitgereik is; en

(c) wysig ek hierby die KwaZulu Wet op Grondsake, 1992, soos in die Bylae uiteengesit.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Kaapstad, op hede die Tweede dag van Junie tweehonderd Negehoenderd Agt-en-negentig.

N. R. MANDELA

President

Minister van die President-in-Kabinet:

D. G. HANEKOM

Minister van die Kabinet

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married in community of property to each other*;
to have been granted deed of grant rights in respect of erf no.
measuring and shown on general plan/plan/aerial photograph no.
.....

#(b) determine that the use of the aforesaid erf is residential/business/industrial.

Date

FOR: Secretary of the Interior

* Delete if not applicable

Not to be inserted in the deed of grant if a town planning scheme is in the course of preparation or in operation

ANNEXURE C
[regulation 8(1)(a)]
CONDITION OF TITLE

1. The lot is subject to a servitude, 1 metre wide, in favour of the Government and tribal authority, for sewerage and other municipal purposes, along any two boundaries other than a street boundary and in the case of a panhandle lot, an additional servitude for municipal purposes 1 metre wide across the access portion of the lot, if and when required by the Government or tribal authority: Provided that the Government or tribal authority may waive compliance with the requirements of this servitude.
2. No building or other structure shall be erected within the aforesaid servitude area and no large-rooted trees shall be planted within the area of such servitude or within 1 metre thereof: provided that this servitude shall not apply to a building or structure erected or tree planted before registration of the servitude.
3. The Government and tribal authority shall be entitled to deposit temporarily on the land adjoining the aforesaid servitude such material as may be excavated by it during the course of the construction, maintenance or removal of such sewerage mains and other works as they, in their discretion, may deem necessary and shall further be entitled to reasonable access during process of the construction, maintenance or removal of such sewerage mains and other works being made good by the Government or tribal authority.

G.N. 32/94

KWAZULU LAND AFFAIRS (PERMISSION TO OCCUPY) REGULATIONS

I, Emmanuel Stephen Campbell Sithebe, Minister of the Interior, do hereby, by virtue of the powers vested in me by section 37(1) of the KwaZulu Land Affairs Act, 1992 (Act 11 of 1992), make the regulations set out in the Schedule.

E.S.C. SITHEBE

Minister of the Interior

SCHEDULE

Definitions

1. In these regulations, any word or expression to which a meaning has been assigned in the Act bears that meaning, and unless the context otherwise indicates -
"Act" means the KwaZulu Land Affairs Act, 1992;
"allotment" means an allotment -
(a) contemplated in regulation 3(1); or
(b) situated in -
(i) an irrigation scheme; or
(ii) a betterment area;
"betterment area" means an area referred to in section 3, or declared under section 4, of the Betterment Areas Proclamation R.196 of 1967;
"commonage" means any portion of government land which is not -
(a) an erf or allotment;
(b) specifically reserved for specific purposes other than the grazing of livestock;
(c) set aside as a public place; or

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[Signature]

- (d) a street, road or other public thoroughfare;
- "irrigation scheme" means an area declared under section 3(1) of the Irrigation Schemes Control Regulations made by Proclamation R. 5 of 1963;
- "Minister" includes the Secretary of the Interior or any other person in the service of the Government to whom the Minister has delegated his powers and functions under these regulations;
- "permission to occupy" means a permission to occupy an allotment issued under regulation 5(1).

Tribal authority decision

2. When a tribal authority has resolved to recommend the allocation to any person or Government department of a portion of land, whether or not such portion has been demarcated as an allotment, in its area of jurisdiction —
- (a) for any purpose other than residential purposes, the tribal authority shall give written notice of such recommendation to the Minister substantially in the form of Annexure A;
- (b) for residential purposes, such person or department may at any time approach the Minister for the issue of a permission to occupy after having received a notice referred to in paragraph (a) from the tribal authority, which shall issue such notice on request.

Demarcation of allotments

3. (1) The Minister may at any time after consultation with the Minister for Agriculture and the tribal authority —
- (a) cause to be demarcated into allotments any land —
- (i) which is situated outside an —
- (aa) approved township;
- (bb) an irrigation scheme;
- (cc) a betterment area; and
- (ii) in respect of which no deed of grant or permission to occupy has been issued to, or which is not owned by, a person other than the Government or a tribal authority; and
- (b) cause to be erected such pegs or other indicators of a substantial and durable nature that may be necessary to indicate the boundaries of the land demarcated.
- (2) The Minister may alter any demarcation under subregulation (1).
- (3) After a demarcation or redemarcation under subregulation (1) or (2), a plan shall be framed which —
- (a) shall —
- (i) indicate the location of every allotment so demarcated; and
- (ii) be approved by the Minister and a representative of the tribal authority and signed by them;
- (b) may in respect of any allotment record the information mentioned in regulation 4(c)(ii).

Identification of specific allotment

4. When the Minister has received a notice or approach contemplated in regulation 2, he may —
- (a) inspect the land allocated in the presence of —
- (i) a representative of the tribal authority; and
- (ii) the person concerned;
- (b) if the land allocated is not an allotment, demarcate it as provided in regulation 3;
- (c) complete, in respect of that allotment —
- (i) a site inspection certificate, substantially in the form of Annexure B, which shall be signed by the Minister and the representative of the tribal authority; and
- (ii) unless that allotment is shown on a plan contemplated in regulation 3(3) that records in respect of that allotment the information concerned, a

- sketch substantially in the form of Annexure C, which shall —
- (aa) contain a figure representing the allotment;
 - (bb) indicate each corner point of such figure by a letter of the alphabet;
 - (cc) describe the peg or other permanent physical feature marking each corner points of such figure;
 - (dd) state the length to the nearest metre of each side of such figure;
 - (ee) indicate the area of the allotment, which may be calculated from such lengths, expressed in square metres.

Issue and registration of permission to occupy

5. (1) The Minister shall, after completing a site inspection certificate and sketch contemplated in regulation 4(c) —
- (a) issue a permission to occupy the allotment concerned, substantially in the form of Annexure D, against payment of the fee prescribed by regulation 12;
 - (b) hand to the person concerned —
 - (i) the original permission to occupy against the signature of such person on the duplicate permission to occupy;
 - (ii) a copy of the sketch referred to in regulation 4(c)(ii) —
 - (aa) which shall be attached to the original permission to occupy;
 - (bb) against the signature of such person on the original sketch;
 - (c) retain the site inspection certificate, sketch and duplicate permission to occupy in his records.
- (2) Issue and retention of the documents referred to in subregulation (1) shall constitute registration of the permission to occupy concerned.
- (3) A permission to occupy shall not be issued —
- (a) to any person except on the recommendation of the tender board;
 - (b) in conflict with —
 - (i) the provisions of a town planning scheme;
 - (ii) any applicable rules made or directions given in respect of a betterment area;
 - (iii) any applicable provisions in relation to an irrigation scheme;
 - (c) in respect of an allotment which is larger than one hectare in extent and intended for use for a purpose other than for school or public purposes without the prior approval of the tender board, which may grant such approval —
 - (i) in general or in any particular case;
 - (ii) in respect of any area;
 - (iii) in respect of allotments to be used for a particular purpose.

Restriction on transfer of rights to occupy, and exemptions

6. (1) The rights of a holder of a permission to occupy may be transferred to any person or body referred to in section 31 of the Act with the prior approval of the Minister given after consultation with the tribal authority, subject to the provisions of subregulation (2).
- (2) No approval or consultation referred to in subregulation (1) shall be required for —
- (a) a cession to secure a debt; or
 - (b) a lease of rights to occupy an allotment for industrial purposes.
- (3) A cession contemplated in subregulation (2)(a) shall not confer on the cessionary any right to occupy the allotment.

Registration of transfer of rights to occupy

7. (1) The transfer of rights held by virtue of a permission to occupy, including a

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cession of those rights to secure a debt or a lease of those rights, shall, subject to the provisions of this regulation, be by means of an endorsement made by the Minister on such permission to occupy.

- (2) No endorsement under subregulation (1) shall be made —
- (a) before the written consent of the holder of the permission to occupy has first been obtained;
 - (b) without the Minister's consent first having been noted on the permission to occupy, unless such approval is not required in terms of regulation 6(2);
 - (c) in respect of rights held under a permission to occupy that have been ceded to secure a debt to a person other than the proposed transferee of those rights, until such cession has been cancelled or the rights have been released from the operation of the cession with the written consent of the holder: Provided that no such cancellation or release shall be necessary if the transfer is made —
 - (i) in execution of the judgment of any court, including a magistrate's court, by the deputy sheriff or messenger of the court concerned; or
 - (ii) by the —
 - (aa) trustee of an insolvent estate;
 - (bb) liquidator of a company which is unable to pay its debts and which is being wound up; or
 - (cc) executor administering and distributing an estate under section 34 of the Administration of Estates Act, 1965 (Act 66 of 1965);
 - (iii) in any other circumstances, as ordered by any competent court;
 - (d) without payment of the fee prescribed by regulation 12;
 - (e) in respect of a cession of rights to occupy to secure a debt, or a lease of such rights, if the Minister requires proof of the agreement of loan or lease, as the case may be, and such proof has not been produced: Provided that, if such proof is required, only those provisions of the agreement that relate to such endorsement shall be examined.
- (3) No endorsement under subregulation (1) shall be required for a lease of rights to occupy, which is —
- (a) entered into for a period of less than ten years; or
 - (b) renewable from time to time at the will of the lessee for periods which together with the first period of the lease amount in all to less than ten years.
- (4) If rights held by virtue of a permission to occupy are conveyed in respect of a portion of an allotment, a sketch, *mutatis mutandis* in accordance with the provisions of regulation 4(c)(ii), of such portion, unless the information mentioned in that regulation is recorded in respect of such portion on a plan contemplated in regulation 3(3), shall be attached to the permission to occupy,
- (5) After a permission to occupy and copy have been endorsed in terms of subregulation (1), the original permission to occupy shall be handed to the transferee of the rights concerned.

Cancellation of permission to occupy

8. The Minister may, after consultation with the tribal authority, withdraw and cancel the rights held under a permission to occupy —

- (a) by agreement with the holder of such rights and any cessionary for security of a debt or lessee;
- (b) after such rights have been expropriated under the Expropriation Act, 1975 (Act 63 of 1975); or
- (c) after the grant of deed of grant rights under section 21(2) of the Act in respect of the allotment concerned.

2.3


Conditions benefitting and burdening permissions to occupy

9. (1) The Government or tribal authority or any other public authority may for the public benefit --
- (a) lay roads, railways, tramlines, dams, aqueducts, drains, water furrows, telegraph or telephone lines, electrical pylons or cables or any pipelines over or under an allotment;
 - (b) have a right of way over any allotment to install, maintain, alter or remove any such works.
- (2) The holder of a permission to occupy may use the commonage in the area concerned, subject to --
- (a) the payment of any fees and charges imposed under any law;
 - (b) the right of the Government or tribal authority to apply any portion of the commonage for --
 - (i) a betterment area, irrigation scheme or township;
 - (ii) any public purpose;
 - (iii) any other purpose which is, in the opinion of the Minister after consultation with the tribal authority, in the public interest.

Copies

10. The Minister may on payment of the fee prescribed by regulation 12 issue --
- (a) a certified copy of a permission to occupy or other document referred to in these regulations to the holder, lessee or cessionary concerned, if the Minister is satisfied that such document --
 - (i) has been lost and cannot despite diligent search be found;
 - (ii) has been destroyed;
 - (iii) is in an unserviceable condition;
 - (b) a copy for information purposes of any permission to occupy or other such document to any person.

Rental

11. (1) The holder of a permission to occupy shall pay to the Minister the rental determined by the Minister from time to time.
- (2) No such rental shall be payable in respect of a permission to occupy an allotment used primarily for --
- (a) residential, church, creche, school or public purposes;
 - (b) any other purposes determined by the Minister and made known by notice in the *Official Gazette*.

Fees

12. (1) The fees payable in terms of these regulations shall be --
- (a) as specified in Annexure E;
 - (b) paid by or on behalf of the transferee concerned in respect of each act of registration contemplated in that Annexure.
- (2) No such fee shall be payable in respect of --
- (a) any act of registration or copy obtained on behalf of --
 - (i) the Government;
 - (ii) the Government of the Republic;
 - (iii) an authority;
 - (iv) the KwaZulu Finance and Investment Corporation, Limited;
 - (b) the cancellation of a permission to occupy.

Short title

13. These regulations shall be called the KwaZulu Land Affairs (Permission to Occupy) Regulations, 1994.

ANNEXURE A - [regulation 2]
KWAZULU LAND AFFAIRS (PERMISSION TO OCCUPY) REGULATIONS, 1994
RECOMMENDATION FOR ISSUE OF PERMISSION TO OCCUPY

TRIBAL AUTHORITY

To: (delegate of Minister)

It has been resolved to recommend the allocation

to
(allottee's name)
identity/registration* No.
of a portion of land/allotment* in (tribal
ward)

You are invited to arrange a site inspection with our representative and the allottee.

Date.....

Chairman of Tribal
Authority

Secretary of Tribal
Authority

* delete that which is not applicable

ANNEXURE B - [regulation 4(c)(i)]
KWAZULU LAND AFFAIRS (PERMISSION TO OCCUPY) REGULATIONS, 1994
SITE INSPECTION CERTIFICATE

Serial No.....

This is to certify that:

1. An inspection was carried out on 19....
of allotment
in ward
in extent
2. The allotment has been allocated to (allottee's full name)
identity/registration No.*
for purposes.

Date

For: Minister of the Interior

For: Tribal Authority

* delete that which is not applicable

delete if the allotment is in the area of a town planning scheme

ANNEXURE C [regulation 4(c)(ii)]
KWAZULU LAND AFFAIRS (PERMISSION TO OCCUPY) REGULATIONS, 1994

SKETCH

serial no.

Corner point description:

Sides in metres:

A: AB =

4.3
[Signature]

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B: BC =
C:
.....

(draw figure representing the allotment here)

The figure
represents allotment
in ward
area/district of
in extentsquare metres

Date..... For: Minister of the Interior
For: Tribal Authority

Copy received by me on(date)
.....
(signature of holder)

ANNEXURE D - [regulation 5(1)(a)]
KWAZULU LAND AFFAIRS (PERMISSION TO OCCUPY) REGULATIONS, 1994 PERMISSION TO OCCUPY

P e r m i s s i o n i s h e r e b y g r a n t e d
to (full name)
identity/registration* No.
to occupy allotment
in extent
in ward
area/district of
as will appear from the attached sketch/plan* No
for purposes.

Date) (for Minister of Interior)
Original received by me on(date):
..... (signature of holder)

* delete that which is not applicable
delete if the allotment is in the area of a town planning scheme

Consent and endorsement^a:

Consent :

I consent to
*the full and free transfer of my rights under this permission to occupy,
in respect of the portion shown on sketch/plan number
*the encumbrance on my rights under this permission to occupy to secure a debt of R.....
*the transfer of my rights under this permission to occupy for years in terms of a lease,
to (full name),
identity/registration* number
..... (date)..... (signature of holder)

Endorsement :

The rights under this permission to occupy have been -
*fully and freely transferred,
in respect of the portion shown on sketch/plan number
*encumbered to secure a debt of R.....
*transferred for years in terms of a lease,
to (full name)
identity/registration* number

Date.....
.....
(for Minister of the Interior)

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@ further consents and endorsements may be contained in additional pages annexed to the permission to occupy
 * delete that which is not applicable

ANNEXURE E - [regulation 12(1)]
 FEES OF OFFICE

- | | | |
|----|---|---------------------------------------|
| 1. | Issue of permission to occupy (regulation 5(1)(a)) for - | |
| | (a) agricultural purposes | R50,00 |
| | (b) residential, school or public purposes | R100,00 |
| | (c) other purposes | R250,00 |
| 2. | Transfer, including any cession or lease, of rights under permission to occupy (regulation 7(2)(d)) | Half the amount referred to in item 1 |
| 3. | Copy in substitution (regulation 10(a)) | R10,00 |
| 4. | Copy for information (regulation 10(b)) | R5,00 |

G.N. 33 /94 - KWAZULU LAND AFFAIRS (LAND TITLES ADJUSTMENT)
 REGULATIONS

I, Emmanuel Stephen Campbell Isithebe, Minister of the Interior, do hereby, by virtue of the powers vested in me by section 37(1) of the KwaZulu Land Affairs Act, 1992 (Act 11 of 1992), make the regulations set out in the Schedule.

E.S.C. SITHEBE

Minister of the Interior

SCHEDULE

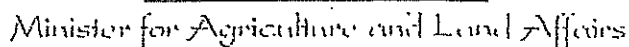
Definitions

1. In these regulations, a word or expression to which a meaning has been assigned in the Act bears that meaning, and unless the context otherwise indicates -
 - "Act" means the KwaZulu Land Affairs Act, 1992;
 - "award" means a determination made by a land investigator that the person named in the land investigator's certificate is entitled to be registered as the lawful owner of any land specified in such certificate;
 - "Board of Appeal" means a board of appeal referred to in regulation 8;
 - "claimant" means any person who lodges with the land investigator a claim to rights of occupation or ownership in land in respect of which a deed of grant or title has at any time been issued and which is situate within any area in respect of which such land investigator been appointed;
 - "deeds registry", in relation to rights registered in a registration office, means that office;
 - "land" means -
 - (a) land or rights referred to in section 29(1) of the Act; and
 - (b) includes a subdivided portion of land or an undivided share therein;
 - "land investigator" means the land investigator appointed by the Minister in terms of section 29(1) of the Act in respect of a particular area of land;
 - "land investigator's certificate" means the original of the certificate completed by the land investigator in terms of regulation 5;
 - "occupation" and "occupy" include "possession" and "possess", respectively;
 - "Registrar", in relation to rights registered in a registration office, means the registration officer concerned;
 - "Secretary" means the Secretary for the Interior.

Land investigator to compile list of properties and registered owners

2. (1) The Surveyor-General shall at the request of the land investigator furnish him free of charge with a copy of the compilation plan and of every diagram approved by him relating to land within the area in respect of which such land investigator is appointed.

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Reference: L3/1/1/1.1

UL 101.

1998-09-10

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Dear Inkosi Ngubane

DELEGATION OF SECTIONS 24 TO 26 OF THE KWAZULU LAND AFFAIRS ACT,
1992, AND THE KWAZULU LAND AFFAIRS (PERMISSION TO OCCUPY)
REGULATIONS, 1994

The letter from the Secretary of the Department of Traditional and Environmental Affairs, dated 26 of June 1998, regarding the request for the delegation of the function issuing Permissions to Occupy certificates to you, refers.

Under section 2(1) of the Land Administration Act, 1995 (Act No. 2 of 1995), I have pleasure in delegating sections 24 to 26 of the KwaZulu Land Affairs Act, 1992 (KwaZulu Act No. 11 of 1992) and the KwaZulu Land Affairs (Permission to Occupy) Regulations, 1994 (KwaZulu Government Notice No. 32 of 1994), as set out in accompanying schedule, to you.

I trust that the above will assist in the development of your province.

Kind regards

M. Andre

DEREK HANEKOM

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Table 1

DOCUMENT / PAGE	QUOTE / STATEMENT	AUTHOR	WHY IS IT IMPORTANT?	CROSS REFERENCE TO RELEVANT / CONTRADICTORY STATEMENTS
INGONYAMA TRUST BOARD WEBSITE http://ingonyamatrust.org.za/www431.job1.host-h.net				
http://ingonyamatrust.org.za/www431.job1.host-h.net/land-rights/ (own emphasis)	<i>In most cases the Board prefers to enter into leases for the use of Trust land. Ownership thus remains with the Trust for ultimate transfer in due course to its beneficiaries.</i>	Ingonyama Trust (Official Website)	- Shows that the Trust recognises that the people living on the land (the beneficiaries) are the ultimate owners of the land and that the land should be transferred to them. - Note: This statement may be a hangover from the language used when the Communal Land Rights Act 2004 (CLRA) was still in operation, but it nonetheless may be useful.	- Shows that the Trust recognises that the people living on the land have strong land rights (possibly real rights akin to ownership). - Undermines any statement by the Trust that the people living on the land do not have any legally recognised rights over the land.
http://ingonyamatrust.org.za/www431.job1.host-h.net/land-rights/ (own emphasis)	<i>Unless there are exceptional cases the Board charges a market related rent and lessees are responsible for all outgoings including assessment rates and other Municipal charges and for obtaining any necessary environmental or development planning consents.</i>	Ingonyama Trust (Official Website)	- This is the only guideline provided by the Trust for how it determines the amount of rental payable - there is no clear limitation or statutory or official guideline on the amount of rental the Trust can charge. - The Trust therefore could abuse this process by charging significant amounts of money for rental.	
http://ingonyamatrust.org.za/www431.job1.host-h.net/land-rights/ (own emphasis)	<i>The Board sees real estate management as its major core function and encourages development on its land which will be of benefit to the various communities not only from a rental income point of view but also through employment and other opportunities.</i>	Ingonyama Trust (Official Website)	- Shows that the Trust encourages outsiders obtaining leases. - Note: The Trust's website has recently been amended - all the previous information on the website has been removed. Before this was done, there was a useful statement on the website (probably in place of this statement, namely "It is through these leases that the Ingonyama Trust Board generates its revenue".)	
INGONYAMA TRUST BOARD "ANNUAL REPORT 01 APRIL 2014 - 31 MARCH 2015" (2015)				
Page 3 (own emphasis)	<i>The land is not "my land". It is the land of the Zulu Nation and Parliament has made the Monarch the Sole Trustee. Similarly, for the administration of the land, Parliament has put in place (w.e.f. 02 October 1998) the Ingonyama Trust Board, with myself or our nominee as the Chairperson and with eight members by yourself.</i>	King Goodwill Zwelinhlali (Cover Letter to the Minister in the Annual Report)	- Shows that the King is aware that he is not the owner of the land - and that the land is owned by the beneficiaries of the Trust or the people living on the land ("the Zulu Nation"). - Shows that he is only an administrative trustee (as opposed to a trustee as owner) ("it is not 'my land'").	- Undermines any statement by the Trust that the land is owned by the King or that the Trust is that land owner. - Undermines any statement by the Trust that the Trust acts as a trustee in its capacity as owner (as opposed to an administrative trust).
Page 3 (own emphasis)	<i>While it is true that the Board has moved from the apartheid-era permission to occupy ("PTOs") to leases as instruments of tenure, it is absolutely untrue that people are forced to residential leases as has been suggested. Institutional and commercial enterprises (including mining) are indeed required to enter into leases. The security and potential commercial value inherent in a (written) long-term lease is increasingly appreciated by citizens living on communal land. This has led to many more leases being granted both residential and commercial, which contributes to the slow journey from poverty for my people.</i>	King Goodwill Zwelinhlali (Cover Letter to the Minister in the Annual Report)	- Note: This statement can be used to undermine the legitimacy of the Trust if any of the lessees felt like they were coerced either directly or indirectly into signing a lease. - Shows that the Trust tried to justify the conversion to leases as a beneficial action that enhances tenure security as it is in willing. - Shows that the Trust clearly issues residential leases to people living on the land.	- Could be used to show that the Trust is untrustworthy if it can be shown that some of the lessees were compelled (directly or indirectly) to sign a lease agreement. - Undermines any statement by the Trust that it does not issue residential leases to people living on Trust land.
Page 11 (own emphasis)	<i>... (in relation to the recent threat of a court case over municipal rates) The idea is that if the ITB loses the case and it's unable to pay and settle the debt, the local authority will have a free hand to attach in execution any land it chooses registered in the name of the Trust.</i> <i>This attitude is regrettable because in trust the land administered by the Board belongs to the people... We are indeed looking at options to deal with this matter even if it means changing market related rentals on its leases in relation to state domestic properties to raise revenue...</i>	Chairperson of the Trust, Jerome Ngwenya (Chairperson's Statement)	- Shows how the Trust uses contrary understandings of ownership and trusteeship to manipulate other actors (in this case municipalities). - Shows that the Trust believes that it is not the owner of the land but that the land is actually owned by the people living on the land ("belongs to the people").	- Shows that the Trust recognises that the people living on the land have strong land rights (possibly real rights akin to ownership - "belongs to"). - Undermines any statement by the Trust that the people living on the land do not have any legally recognised rights over the land.
Page 41	Rental revenue of R70,785,638 (in 2014/2015), of which R9,696 was from Permissions to Occupy (Commercial) and R70,775,942 was for leases (includes straight lining income).	Ingonyama Trust (Financial Statements in Annual Report)	- Note: The amount of revenue the Trust received from rental from leases remains very high after the dramatic increase in 2014. - Shows that the Trust was receiving a significant income from leases (much more than PTOs). - Note that the rental revenue does not distinguish between commercial or business leases and rental leases but groups these amounts together.	
INGONYAMA TRUST BOARD 3rd QUARTER 2014/15 PERFORMANCE REPORT (2015) PRESENTATION BEFORE THE PARLIAMENTARY PORTFOLIO COMMITTEE ON RURAL DEVELOPMENT AND LAND REFORM (11 MARCH 2015) https://hmd.org.za/committee-meeting/20491/				
Summary of comments (Parliamentary Monitoring Group (PMG))	<i>Mr M Filene (UDM) said that slide 4 set out and explained the purpose and mission of the ITB. He wanted to deal with fundamental points, since other Committee Members had dealt with the specifics. The Committee had been consistently dissatisfied with the reports that were given. He referred to slide 16, where 92% of expenditure was reflected - 47% for support services, and 45% for Compensation of Employees - and said that 92% of funding had therefore been used for business that was not even the core business for which the ITB existed. This would be used as a point of reference to his presentation; 92% for support services. The fundamental question was what exactly was the ITB doing to change people's lives (besides the personal lives of the Board members) as well as traditional authorities?</i>	Parliamentary Monitoring Group (PMG) (Summary of meeting before the Parliamentary Portfolio Committee on RDLR)	Shows that very little (if any) of the proceeds and income that accrue to the Trust actually benefits the people living on Trust land (the beneficiaries of the Trust); instead most of the income benefits the employees of the Trust.	Undermines any statement by the Trust that the income it receives is passed on to benefit the communities living on Trust land (or the beneficiaries of the Trust).

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Summary of comments (Parliamentary Monitoring Group (PMG))	Ms Magadla asked if the tribal authorities were paid by the ITB or local government. She had noted that a high amount went to tribal authorities. Judge Ngwenya replied that this had to do with the ITB being a land management board and the revenue generated from land which was administered by particular tribal authorities. Where there was payment from the Board directed to any tribal authority, it had to do with revenue generated. The only concern was about revenue from land. This could be related to leases, telecommunication leases or mining materials.	Parliamentary Monitoring Group (PMG) (Summary of meeting before the Parliamentary Portfolio Committee on RDLR)	- Shows that the Trust does believe that the minimal amounts paid to traditional councils for workshops and capacity building constitutes the passing on of revenue. - Note: The Trust usually spends about R2,000,000 on traditional councils, which is no even close to the million it receives for income and therefore cannot be seen to be "passing on" income to beneficiaries through this process.	
Summary of comments (Parliamentary Monitoring Group (PMG))	Mr N Malesa (EFF) ... wanted to check the Board's compliance under the Act that established it, as it was the custodian of the Ministry and the Act in its conduct and the way in which it did business. He noted the reference by the Chairperson to King Zwelithini's intention to claim land in parts of KwaZulu Natal. He asked if the Board acted in the interests of the King and not in the interest of the Department of Rural Development and Land Reform. He thought that, legally speaking, this was problematic. The Chairperson of the Board's posture that the Board might facilitate such claims on land meant that the Board would be acting in the interests of the King. The implication of a blanket land claim had some consequences for the country and for posterity. It had financial implications too. The Committee would also want to get a sense of what the intention of the Board was about, in facilitating a claim with such dire consequences. He reiterated that this proposal could carry serious financial implications for the future if land was transferred through restitution processes from private individuals to tribal authorities or the ITB in the interest of the King or the people he represented. This would be regrettable because that land, as a matter of principle, would have had to be placed in the hands of the State on behalf of all South Africans. Judge Ngwenya spoke to the issue of land claims. It was not the mandate of this Board to entertain any land claims and as a board it was not its intention to do so. On 3 July 2014, when the King opened the Provincial House of Traditional Leaders in KwaZulu Natal, part of his speech had been directed to commending the President for reopening the opportunity for land claims for the people of KwaZulu Natal. In the same speech the King said he would take the opportunity to place the land in the care of traditional institutions in KwaZulu Natal, and requested the support of all traditional leaders in the province. In so doing he would ask his Board for assistance. Judge Ngwenya said that the King did not say it would be done by the ITB. The King had not done so up to now.	Parliamentary Monitoring Group (PMG) (Summary of meeting before the Parliamentary Portfolio Committee on RDLR)	- Shows that MPs think that there is a possibility that the Trust is not entirely impartial in relation to the King. - Shows that some MPs believe that the land is owned by the state on behalf of the beneficiaries of the Trust (i.e. that the land is held in a weak administrative trust on behalf of the real beneficiaries - the people living on the land).	May be useful to show that other government officials believe that the Trust is not a legal owner of the land but that the land is held in trust by the state on behalf of the beneficiaries living on the land.
INGONYAMA TRUST BOARD "ANNUAL REPORT: 2013 - 2014" (2014) PRESENTATION BEFORE THE PARLIAMENTARY PORTFOLIO COMMITTEE ON RURAL DEVELOPMENT AND LAND REFORM (15 OCTOBER 2014)				
Slide 16	The role of the Trust is to manage land that is occupied by the Tribes in the Province of KZN mainly for residential purposes and subsistence farming. In doing that it recognises old order tenure rights that are still in place. These old order rights are the Indigenous Rights and the Permission to Occupy. The Indigenous right is the primary right that is directly managed by the Traditional Councils and the Permission to Occupy is a personal right that was managed by the Department of Co-operative Governance and Traditional Affairs. However the granting of the latter right has since been disbanded due to its unsecured nature. Land occupants are therefore continuously encouraged through road shows and workshop campaigns to convert these rights to a new order right being the lease. The rolling out of the planning and development schemes by the Municipalities into rural areas has also highlighted the need to provide secure tenure instrument to the inhabitants. On the other hand, the rolling out of these planning and development schemes has facilitated development which has attracted commercial developments ventures and formalised housing. The effectiveness of secure tenure right is that it facilitates stability in the community and for an individual occupant as he/she knows the extent and permitted land use of his/her site. It also helps both the Traditional Council and the Local Municipality in planning the area for future settlement and commercial use, thus unlocking development on Trust land.	Ingonyama Trust (Content of Power Point presentation before Parliamentary Portfolio Committee)	- Shows that the Trust recognises that the people living on Trust land have substantial rights over the land even when they only have customary law rights to the land. - Shows that the Trust land is used "mainly for residential purposes and subsistence farming". - Shows that the Trust is actively seeking to encourage people living on Trust land to conclude leases and convert their PTOs (which remain legally valid).	Undermines any statement by the Trust that they do not recognise that the people living on Trust land have pre-existing land rights independent of the Trust.
Slide 17	Prior to 2007 the ITB received R 100,00 for general PTO income (residential income) per annum and R 48,00 for commercial PTO income per annum. PTOs are no more issued and the ITB has adopted the leasing system as a medium of providing tenure rights. The introduction of the leasing system has increased revenue for the community beneficiaries. ... By issuing leases the ITB's receivable income at an average rental of R 1000.00 per year is R 1 157 000.00. The increase is ten fold.	Ingonyama Trust (Content of Power Point presentation before Parliamentary Portfolio Committee)	- Shows that one of the primary motivations behind the conversion to leases is the increase in income to the Trust (despite the fact that this income is being received from the very beneficiaries who the Trust is supposed to serve). - Note that the Trust started pushing hard for leases in this year - the same year that it began losing royalties from mining on Trust land.	Relevant to showing why the Trust decided to push for leases.
Slides 41 and 42	See the pie chart on income from the Trust - placing rental income at 71% - and see the bar graph on the growth in rental income, which shows a sharp increase of rental in 2014.	Ingonyama Trust (Content of Power Point presentation before Parliamentary Portfolio Committee)	- Shows the Trust's reliance on rental income to fund the rolling 'expenses' of the Trust. - Note that the Trust, once again, fails to distinguish between income received from residential leases and income received from commercial leases.	
INGONYAMA TRUST BOARD "ANNUAL REPORT 01 APRIL 2013 - 31 MARCH 2014" (2014)				

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DOCUMENT / PAGE	QUOTE / STATEMENT	AUTHOR	WHY IS IT IMPORTANT?	CROSS REFERENCE TO RELEVANT / CONTRADICTIONARY STATEMENTS
Page 13 (own emphasis)	<i>The financial year 2013/14, was also marked by a further increase of lease applications received. In 2012/13 financial year there were 1611 applications received of which 858 applications were ultimately signed by both parties. In 2013/14 financial year, there were 2104 applications received of which 1167 applications were ultimately signed by both parties. The residential sector still leads in applications received and approved by the Board. This is an indication to a large extent that there is a growing need for security of tenure by the people residing in communal areas.</i>	Former CEO of the Trust, Ngqabutho Bhebeba (CEO's Statement)	- Highlights the number of leases signed in 2013/2014. - Shows that the Trust does provide a substantial number of residential leases, presumably more than the number of commercial leases ("residential sector still leads").	- Undermines statements that the Trust does not issue residential leases. - Note that this is usually how the Trust refers to the concluding of leases ("applications"). This is due to the fact that the form that needs to be completed is listed as an application form and makes it seem as if the people living on Trust land voluntarily approach the Trust for leases when often they are compelled (directly or indirectly) to conclude a lease by traditional leader or others in authority.
Page 18 (own emphasis)	<i>In terms of the Board policy part of the revenue it receives is allocated to various communities especially those which are the source of such revenue. Communities can source their allocations by providing an acceptable business plan to the Board. The Board encourages that communities develop sustainable projects especially those which are linked to land usage like community gardens and poultry production. About R 9 million was allocated to Agricultural Support and Infrastructure</i>	Ingonyama Trust (Content of Annual Report)	Shows that the Trust claims that it is Trust policy to allocate a portion of the revenue to the community whose land is the source of the revenue. The Trust therefore recognises that the communities should benefit from the income received for the use of their land.	This statement is in stark contrast to the lack of financial information flowing back to the communities (in many cases less than R2 million). See the Parliamentary Portfolio meetings.
Pages 21-22 (own emphasis)	<i>While the Board is designing an acceptable formula for surface leases based on international experience, it is of the view that this will be inadequate revenue as far as mining is concerned. This is more so when one takes into account the effects of mining to the surrounding community as against the overall benefits derived from mining activities. The Board is of the view that it is the rightful organ of state / recipient to receive the royalties from the mining houses that operate on Trust land.</i>	Ingonyama Trust (Content of Annual Report)	- Shows that the Trust recognises that the rental income it could receive from surface leases constitutes insufficient compensation given the "effects of mining on surrounding communities". Yet despite this acknowledgment (and the controversy around the Trust issuing surface leases, it has continued to do so). - The Trust here refers to itself as an organ of state (as it is convenient in order to make a play for the royalties). This implies that it holds the land in a largely governmental or administrative capacity.	- Undermines any statement that the Trust is the owner of the land and has exclusive jurisdiction to do with the land as it chooses. - Undermines any statement by the Trust that the mining is benefiting communities living on Trust land.
Page 22 (own emphasis)	<i>The Board is of the view that communities with access to as is the case with Ingonyama Trust should not starve or be financially disadvantaged. In order to render beneficiary communities on Ingonyama land self sustaining the Board will require that each community set aside a piece of land in which economic activities in large scale will take place and the revenue derived therefrom be made available for community development and benefit.</i>	Ingonyama Trust (Content of Annual Report)	Shows that the Trust intends to force each community to designate land for development / commercial purposes (presumably for the Trust to lease out).	
Page 35	<i>Royalties received by the entity from the mining operators were incorrectly recognised as revenue by the entity, which is contrary with the requirements of GRAP 9 Revenue from exchange transactions. Consequently, royalty revenue was overstated by R872 171 (2013: R710 884) and the payables to South African Revenue Services (SARS) were understated by the same amounts. Additionally, the accumulated surplus as at 31 March 2012 was overstated by R13,08 million and the payables to SARS were understated by the same amount.</i>	Auditor General (Report of the Auditor General to Parliament on the Ingonyama Trust republished in the Annual Report)	Suggests that the Trust unlawfully attempted to chiton off the royalties of mining taking place on Trust land by listed royalties as revenue that accrued to it after the MPRDA came into effect. This is particularly suspicious given the comment on pages 21 and 22 of this Annual report above.	- See the statement on pages 21 and 22 of this Annual Report noted above. - Similar statements are made in the 2014/2015 Annual Report with almost the exact same amounts.
Page 40	<i>Rental revenue of R73,907,495 (in 2013/2014), of which R9,696 was from Permissions to Occupy (Commercial) and R73,897,799 was for leases (includes straight lining income).</i>	Ingonyama Trust (Financial Statements in Annual Report)	- Note: The amount of revenue the Trust received from rental from leases suddenly increased dramatically from R43,602,235 in 2013 to R73, 907,495! - Shows that the Trust was receiving a significant income from leases (much more than PTOs) - Note that the rental revenue does not distinguish between commercial or business leases and rental leases but groups these amounts together.	
INGONYAMA TRUST BOARD "ANNUAL REPORT 2012/2013" (2013)				
Page 7 (own emphasis)	<i>While at the end of the day, the preferred tenure issued by the Board is leasehold, this is a simplification of a complex process which in essence contains a myriad of rights. People who live according to indigenous law and custom know that their rights are not adequately described by leasehold as there is more than this. Hence, a leasehold agreement is a convenient description of part of the content of their rights ... Their association with the land of which they are beneficiaries, is permanent and perpetual.</i> <i>As such to them Ingonyama Trust Board is not a landlord. It could not be rationally explained how an entity which came into existence just the other day can be the owner of land which most of the beneficiaries predate its existence. The fact that they have no documents to prove their rights is not good enough to deny their existence.</i>	Chairperson of the Trust, Jerome Ngyanya (Chairperson's Statement)	- Shows that the Trust recognises that the rights held by people living on Ingonyama Trust land are very strong. In particular the references to "permanent and perpetual" indicate that the Trust believes these are real rights. - Shows that the Trust recognises that leases are insufficient (and therefore too weak) to adequately describe the rights of people living on Ingonyama Trust land. - Shows that the Trust cannot truly act as a landlord to the people living on Trust land.	Undermines statements that the Trust does not issue residential leases.
Page 8 (own emphasis)	<i>In a way indigenous layers of rights in the absence of clear records are suppressed and hidden. The Board is like an outside world which is there to protect them in the language and manner that can be interpreted in the context of our common law.</i> <i>The Board must, moving forward, seek to document and clarify the entire content of these communal rights which each holder has on land. Hopefully once this is done a correct description of the nature of the instrument which encapsulates these rights will be properly described or given an appropriate term.</i>	Chairperson of the Trust, Jerome Ngyanya (Chairperson's Statement)	- Shows that the Trust recognises that leases are not the "correct" instrument to give expression to the rights of those living on Trust land. - Shows that the Trust claimed that it would document people's rights and clarify their rights	Undermines statements that the Trust does not issue residential leases.
Page 9 (own emphasis)	<i>The Financial year 2012/13 further witnessed an increase in residential applications for tenure rights. Again this being an encouragement that more and more people residing on land under the jurisdiction of Ingonyama Trust Board are seeking the value of secure tenure rights in the form of leasehold. A total of 1611 applications for land tenure rights were received during the 2012/2013 financial year and 859 was approved. This amounts to an increase of 652 applications from the 2011/2012 financial year.</i>	Former CEO of the Trust, Ngqabutho Bhebeba (CEO's Statement)	Shows that the Ingonyama Trust does issue residential leases to "people living on the land".	Undermines statements that the Trust does not issue residential leases.

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Page 13 (own emphasis)	During the 2012/2013 period under review, the Trust received ownership of 23 properties through formal title in extent of 17 445 hectares of land from the Department of Rural Development and Land Reform. The status of most of these properties that were transferred is fully occupied by traditional communities.	Ingonyama Trust (Content of Annual Report)	Shows that the Trust was transferred property that was owned by the national government in 2013.	
Page 14 (own emphasis)	Land audits continued at Jozini and Mangazi Local Municipalities. The primary purpose being to, identify the types of tenure rights that residents have within the project areas, to formalize the tenure rights through leases and to create a conducive environment for developments and to support the Traditional Councils and the Local Municipalities in the establishment of orderly planning.	Ingonyama Trust (Content of Annual Report)	Shows that the Trust was issuing leases to people on Trust land even though they recognised the types of rights people had could be different.	
Page 27	Rental revenue of R41,655,375 (in 2013), of which R9,696 was from Permissions to Occupy (Commercial) and R41,646,578 was for leases (includes straight lining income).	Ingonyama Trust (Financial Statements in Annual Report)	Shows that the Trust was receiving a significant income from leases (much more than PTOs) Note that the rental revenue does not distinguish between commercial or business leases and rental leases but groups these amounts together.	
Page 33	Permissions to Occupy In September 1998, the then Minister of Land Affairs gave a delegation to the MEC for Traditional and Local Government in KwaZulu-Natal to issue PTOs in respect of residential, agricultural and commercial sites on Ingonyama Trust Land where the extent of land was less than five hectares or the proposed development value was less than R 500 000.00. Permissions to Occupy were recognised when issued by the Department of Local Government and Traditional Affairs. This income is based on rentals set in terms of the KwaZulu Land Affairs Act 11 of 1992. The issuing of new PTOs ceased from 1 April 2007.	Ingonyama Trust (Notes on Financial Statements)	Indicates that the MEC for Local Government and Traditional Affairs retained the power to issue PTOs on Trust land after 1998, which means that PTOs could be issued to people living on Trust land. This shows that leases are not the only instrument open to the Trust to secure people's rights.	Note that the Trust was responsible for the prevention of any further issuing of PTOs (see the quotes from the Annual Report of 2007).
Page 46 (own emphasis)	The Ingonyama Trust Board leases its land on a short and long term basis for residential and commercial purposes.	Ingonyama Trust (Notes on Financial Statements)	Shows that the Ingonyama Trust does issue residential leases to people living on Trust land.	
INGONYAMA TRUST BOARD "ANNUAL REPORT 2011/2012" (2012)				
Page 2 (own emphasis)	As reported in previous years, my Board uses its capacity as legal landholder (de jure) to work with the beneficial occupiers, our traditional communities, in ensuring that any commercial developments on our land are to be clear benefit of those communities. At present the Board can only achieve this and via the grant of leases. This is always done with the written consent of the relevant Traditional Council. Our enabling Act, even as amended by Parliament in 1997, limits us to the role of legal landowner and does not specifically empower us with a developmental capacity	King Goodwill Zwelinhlili (Cover Letter to the Minister in the Annual Report)	Shows that the Trust considers itself a legal owner (in law) of the land under the administration of the Trust. Shows that the Trust recognises that some of people living on Trust land are beneficial occupiers (and therefore qualify for protection under PILRA). Shows that the Trust recognises that its mandate is limited by the Ingonyama Trust Act (i.e. that it cannot act as an owner with exclusive powers over the land).	
Page 2 (own emphasis)	In order to improve the security of tenure of the occupants of upgraded homes, but without detracting from customary practice, i.e. the role of traditional leadership, the families concerned will now receive written proof of allocation from their Inkosi reinforced by lease issued by my Board. We thus endeavour to harmonise of traditional practice with aspects of modern tenure practice. Although we do not claim to have reached perfection, we have come a long way.	King Goodwill Zwelinhlili (Cover Letter to the Minister in the Annual Report)	Shows that the Trust has been claiming to secure tenure when it has actually been undermining it. Shows that the Trust issues residential leases. Indicates that headmen are required to provide households with written proof of site allocations - which is, presumably, not taking place regularly and, consequently, threatening the tenure of those living under customary land rights.	
Page 8 (own emphasis)	These people (the people occupying the land held by the Trust) while in a legal sense are the beneficial occupiers, in reality are the true owners. They derive their rights of occupation from historical rights of various clans (tribes). Some pre date the colonial era...	Chairperson of the Trust, Jerome Ngwenya (Chairperson's Statement)	Shows that the Trust recognises that it is not the real legal owner of the land. By implication indicates that the trust hold the land under its administration not as an ownership trust but rather an administrative trust - as the beneficiaries are described as the true owners. Shows that the Trust recognises that the people living on Trust land have very strong rights to the land - either beneficial occupation rights or ownership rights.	Undermines any comment of the Trust that it is the land owner and has exclusive decision-making power over the land. Compares the rights of occupiers to ownership.
Page 9 (own emphasis)	The allocation of land on the ground by these Traditional Councils is in terms of the Zulu indigenous law, it is mainly oral and the rights acquired as such are not documented. They are preserved through passage of time from generation to generation. While the content of these rights is not documented, it is safe to state that these are more than land rights. They contain religious and social rights as well.	Chairperson of the Trust, Jerome Ngwenya (Chairperson's Statement)	Elaborates on the content of land rights in terms of customary law systems. The Trust recognises that people can have unrecorded land rights which as "more than land rights" i.e. potentially very strong.	Undermines any statement by the Trust that the people living on the land have no legally recognised land rights.
Page 9 (own emphasis)	What I have alluded to above should demonstrate to the reader that it is the people through their leadership structures that are in effective possession of this land and who exercise effective control over it. It is in this context that the rights of the landowner in law are significantly restricted if not outright curtailed. As lawyers would argue, possession is ninety percent of the law.	Chairperson of the Trust, Jerome Ngwenya (Chairperson's Statement)	Shows that the Trust recognises that it is not the real legal owner of the land. By implication indicates that the trust hold the land under its administration not as an ownership trust but rather an administrative trust - as the beneficiaries are described as the true owners. Shows that the Trust recognises that the people living on Trust land have very strong rights to the land - either beneficial occupation rights or ownership rights.	Undermines any comment of the Trust that it is the land owner and has exclusive decision-making power over the land.

DOCUMENT / PAGE	QUOTE / STATEMENT	AUTHOR	WHY IS IT IMPORTANT?	CROSS-REFERENCE TO RELEVANT / CONTRADICTORY STATEMENTS
Page 10 (own emphasis)	Simply put, although the Trust is the owner of big tracts of land, it has limited scope to generate revenue off the size of the land, but instead it could be generated by the occupation of the land. In curbing the weakness in the system of indigenous tenure allocation, the Trust concluded that the system remains vulnerable and has to be upgraded to a system which takes into the issues underpinning the traditional practices. The closest it could come to was the lease. Hence from April 2007, the Trust has insisted that all new tenure applications should be leases. Likewise a Permission to Occupy (PTO) had to be upgraded to leases as well. The reason behind this decision is that in the first instance, a PTO remains the aberration from the racially based land tenure. Secondly it is vulnerable. Thirdly it is economically unsustainable. For instance a holder of a PTO, is only liable to pay R40,00 per annum for ever, and nothing more. This is irrespective of the size or use of the land.	Chairperson of the Trust, Jerome Ngwenya (Chairperson's Statement)	- Shows that the Trust has been stating that it is "upgrading" the rights of people living on Trust land by issuing leases (even when people had already PTOs). - Shows that the Trust only offers only leases as a tenure option (despite their recognition that leases are inadequate or insufficient to recognise the nature of the rights). - Shows that the Trust converted PTOs to leases for financial gain (PTOs as "economically unsustainable").	Contradicted by statement that the Trust recognises that leases are not a proper expression of the rights of people living on Trust land (as shows that they refer to it as "upgrading" when they are aware that it diminishes the rights of people).
Page 12 (own emphasis)	The year 2011/12 again witnessed an increase in residential lease applications. This is an indication that the majority of the people living on the land under Ingonyama Trust Board are now having a better understanding of its role. The leases among others provide the following benefits to the occupiers; security of land tenure and an ability to apply for finance through financial The Secretariat received in excess of 950 lease applications during the year under review. Of which over 64,85% were processed and approved by the Board. This resulted in an overall increase of 11.45% of the rental revenue stream for the Board.	Former CEO of the Trust, Ngabulho Bhabha (CEO's Statement)	Shows that the Ingonyama Trust does issue residential leases to "people living on the land".	Undermines statements that the Trust does not issue residential leases.
Page 20	A total of 364 lease agreements were concluded during the 2011/2012 financial year. The total potential revenue generated for the concluded leases during this period was R 948 729,00. The breakdown of the leases concluded by the Board, according to districts is represented in the graph.	Ingonyama Trust (Content of Annual Report)	Shows numbers of leases concluded in 2012 and the potential revenue flowing from these leases.	
Page 34	After the land has been allocated to the applicant by the Traditional Council, the applicant has to complete the ITB1 lease application form and the Traditional Council grants him/her consent through the completion of ITB2 consent forms. In some instances a letter from the Municipality is required to confirm that the Municipality does not object to the building of such structure / facility and that it complies with the relevant regulations and the IDP. ITB then sends surveyors to survey the site and plot it on maps. The application is then submitted to Exco (Leases) for approval. If approved the applicant is given a 2 year short term lease to secure finance, etc. After two years the applicant applies for a forty (40) years lease with an option of further extension of another forty (40) years. Rates are market related or 3% of turnover and subject to 10% escalation per annum.	Ingonyama Trust (Content of Annual Report)	Shows the process through which people living on the land conclude leases.	
Page 45	Rental revenue of R23,081,318 (in 2012), of which R9,686 was from Permissions to Occupy (Commercial) and R23,081,622 was for leases (includes straight lining income).	Ingonyama Trust (Financial Statements in Annual Report)	- Shows that the Trust was receiving a significant income from leases (much more than PTOs). - Note that the rental revenue does not distinguish between commercial or business leases and rental leases but groups these amounts together.	
INGONYAMA TRUST BOARD "ANNUAL REPORT 2008/2009" (2009) - PRESENTATION BEFORE THE PARLIAMENTARY PORTFOLIO COMMITTEE ON AGRICULTURE AND LAND AFFAIRS (29 OCTOBER 2009)				
Slide 14	As at 31 March 2009 the Board has granted 376 leases generating R9,492,080 per annum by way of income. There is an increased demand for tenure rights on our land, and lease applications are currently being processed at the rate of 80 per month. By the end of the 2009/2010 financial year the income generated is estimated to rise to at least R9,708,987 per annum.	Ingonyama Trust (Content of Power Point presentation before Parliamentary Portfolio Committee)	- Shows numbers of leases concluded in 2012 and the potential revenue flowing from these leases. - Note that there is not distinction between leases for business / commercial purposes and leases for residential purposes.	
INGONYAMA TRUST BOARD "ANNUAL REPORT 2006/2007" (2007) - PRESENTATION BEFORE THE PARLIAMENTARY PORTFOLIO COMMITTEE ON AGRICULTURE AND LAND AFFAIRS (13 NOVEMBER 2007)				
Slide 7 (own emphasis)	Any income generated is passed on to the community	Ingonyama Trust (Content of Power Point presentation before Parliamentary Portfolio Committee)	Shows that the Trust claims money is filtered back to communities, when in actual fact, their financial records over multiple years show clearly that they do not.	
Slide 15 (page 11 of the Annual Report) (own emphasis)	In September 1998, the then Minister of Land Affairs gave a delegation to the MEC for Traditional and Local Government. In KwaZulu-Natal to issue Permissions to Occupy (PTOs) in respect of residential, agricultural and commercial sites on Ingonyama Trust land. It should be noted that this Ministerial delegation was given to the MEC and not the Trust. Thus an anomaly has arisen in that a tenure right is being issued by a third party on land vested in the Ingonyama Trust whilst all other rights such as leases and servitudes, are issued by the Board subject to obtaining the consent of the relevant Traditional Council. In anticipation of the coming into operation of the Communal Land Rights Act, 2004 it has been agreed that Permissions to Occupy will in future only be issued in exceptional circumstances and that in all other cases the Board will issue a lease. This avoids creating more old order rights. As a result a temporary back log of applications in respect of institutional and commercial uses has arisen. This backlog is being addressed by the Board.	Ingonyama Trust (Content of Power Point presentation before Parliamentary Portfolio Committee)	- Shows another motivation for why the Trust got rid of PTOs, namely that another party could issue land rights over Trust land other than the Trust. - Shows that the Trust came to an agreement with the MEC to stop issuing PTOs, so that it would have sole authority to issue land rights over Trust land (i.e. the Trust effectively ensured that there would be no other tenure rights awarded to the people living on Trust land other than leases by seeking out an agreement that PTOs would no longer be issued by the MEC).	Undermines claims by the Trust that there are no alternatives other than leases as a form of tenure security.

A transition from a perennially qualified audit report to an unqualified one in the financials of the Ingonyama Trust (ITB) was a dramatic one.

This is so because in the financials of 2015/2016 the Board ended with an adverse opinion from the Auditor General. The reason being that the Board (ITB) pointed out that there was a conflation of two yet interrelated legal entities in the financials. It pointed out that these need to be treated independently of each other. The oversight leading to this has been noted for some time but not immediately addressed. Neither was it formally pointed out to the auditors although the ITB personnel was fully aware of this. The Auditor General obtained a technical opinion which concurred with this view. As such it found itself having no alternative but to issue an adverse opinion on the basis of the information at its disposal. This now remains but history.

The year under review starts with a common understanding by all concerned that there are two legal entities that are the subject of discussion and audit here. The Ingonyama Trust Board (ITB) which is a unique and extra-ordinary board and Ingonyama Trust. The distinction between these two entities is important to emphasize. The emphasis lies in the history of communal land held in trust for the African people since colonial times. As history has sadly been told from the perspective of the victors, so has African law and their way of life. In my report in the 2010/11 annual report I made the following observations! "... the Constitution does not only protect the right to property, but also the indigenous legal system and the institution of Traditional Leadership... According to this system land is an unalienable Godly resource to humanity. On it humans could live and sustain themselves... Human beings can acquire rights over land which they can alienate and trade off."

The observation I made then is the manner in which "land ownership" is viewed from an indigenous perspective. In short it is collectively held while individual rights are as strong as those of Roman Dutch law which are by their nature individualistic. Again here today I do not seek to dwell in any great length with this subject matter. What is important to emphasize here is that the land which ITB co-administers, is held in trust (Ingonyama Trust) for the specified beneficiaries (the ultimate and true owner(s) in accordance with customary law. Therefore the land in question has both public and private character. It therefore enjoys all the legal protection accorded by law. Likewise its beneficiaries are entitled to all the benefits which the landowner as understood under the Roman Dutch law enjoys.



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The Ingonyama Trust Board (ITB) which is a unique and extra-ordinary board and Ingonyama Trust. The distinction between these two entities is important to emphasize.

Setting the record straight by separating the Trust from the Board from a financial reporting point of view was thus absolutely critical. Firstly to put beyond question that the Trust hold the title for the land which belongs to the people. The relevant section of the Act which vests the land in the Trust reads thus: "... any land or real right therein ... shall hereby vest in and be transferred to and shall be held in trust by the Ingonyama as trustee of the Ingonyama Trust ... for and on behalf of the members of the tribes and communities and the residents referred to..."

I have purposely said the Board co-administers the land referred to as opposed to "administers". This is so because in reality the Traditional Council structure is the first point of call in the administration of the land which is the subject matter here. The Ingonyama Trust was created in 1994 and had land transferred to its custodianship from the time of its creation. By its very nature the benefits which accrue to the land automatically accrue to its beneficiaries and not to the state as some would tend to argue.

The Ingonyama Trust Board (ITB) on the other hand stands on a different footing. Ordinarily the trustees of a trust would constitute a board of trustees. Members of the Ingonyama Trust Board are not the trustees. They are appointed by the Minister responsible for land in consultation with the trustee (the King). The Board is the listed entity in terms of the Public Finance Management Act (PFMA) and the Trust is not. Therefore the state only makes financial contribution in the form of transfer towards the administrative cost of the Board. All the projects of the Trust and its assets are self-funded. These include legal costs and all other land related charges and levies.

Coming back now to the separation and recognition of two separate entities. Firstly we have been able for the first time to separate and account for government funding without diluting this with Trust self-generated income. It has also been possible to explain land as an asset better than before. The qualifications are now better located and could be addressed even better. The road ahead can now be better navigated.

In the year under review there are two qualifications. One relates to Trust land and one to Trust royalties. Personally I understand these qualifications to mean that not

adequate information has been placed before the auditors to determine the veracity of the land value and extent. Furthermore that by the same token the auditors were not placed in a situation whereby they could determine the legal rationale for the calculation and retention of the Trust royalties. From this reasoning I would urge the Board to engage with anyone from this perspective.

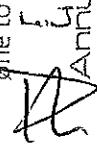
In my respectful view the Trust should be able to address questions pertaining to "its land" with less equivocation. Likewise those of royalties. I have said earlier the transition to the present was dramatic. Indeed it was but has ushered a new era and perspective. It should now be glaring to all that the Board was created to provide professional resources to the Trust and the communities through the Traditional Councils. Without a substantial contribution by the Trust which far exceeds that of the State, the mandate of the Board would be hugely undermined by inadequate financial resources.

On the other hand with an improved efficiency on the part of the Secretariat and the Traditional Councils, the time may and will come whereby the funding by the State will be a thing of the past. With the distance travelled to date I am hopeful that there are meaningful lessons learnt from the business model of the ITB. I am confident that next year will be even better.



**Chairperson of the Ingonyama Trust Board
Hon. Mr Justice S J Ngwenya**

Date: 2017/08/31



voices & CAREERS



Irresistible
comparison
to
Idi Amin

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LAND BARON Although steps have been taken to place on hold the Ingonyama Trust's land grab, King Goodwill Zwelithini has made blood-curdling threats against those who challenge the trust's claims to ownership of the land

PHOTO: TEDDSON LITSEBE

THE CHIEF PROBLEM WITH LAND RIGHTS

Since 1994, millions of black South Africans have faced being stripped of their land rights without compensation, or have already lost these rights. Yet this threat has received scant coverage in the media.

The main beneficiaries of this massive act of dispossession are traditional leaders and councils. The policy is justified by the argument that traditional leaders controlled the land in pre-colonial practice and customary law. This is qualified by the idea that they held the land on behalf of their subjects.

However, in the absence of a clear prescription for how subjects can control chiefs, this qualification is vague. It also assumes that black residents of the former Bantustans must hold land as communities rather than as individuals or households.

But this is a profound misrepresentation of history. Traditional leaders were made chiefs by the people. Their power was based on the size of their followings, not on control of the land.

Chieftains rarely formed on virgin land - they were usually established over pre-existing populations who retained their land. New settlers who moved into the area with, or after, new ruling groups, approached chiefs to ask for a place to settle. The land they were allocated was distributed to households whose residents could not be dispossessed of their fields for any reason short of treason.

This land was then passed down to new generations within households and local settlements. The chiefs did not own the land. Instead, the strongest rights to land, which many argued amounted to a form of ownership, were located at the level of the household or household.

The idea that chiefs were the owners of the land was a colonial invention. Colonial administrators saw themselves as taking over the role and powers of chiefs. It suited them to argue that the new colonial system had inherited control of the land from the pre-existing political leaders.

In the apartheid era, the system of traditional leadership was comprehensively reconstructed by the imposition of the Bantu Authorities Act, which drew chiefs into a tight colonial embrace. Traditional leaders were recognised, and tribal boundaries were drawn with the intention to reward those who lost support to the system and to penalise those groups who resisted.

Traditional leaders in varying degrees became chiefs selected by government and not the people. This new order expanded their power over the land and lives of their subjects. The genesis of the notion that chiefs owned the land is thus a product of colonial and apartheid ideology and intervention.

Peter
Delius



the inflated power of traditional leaders would be curbed, especially in relation to land.

The Constitution stated that, where racist policies under apartheid had diminished or made people's rights to land insecure, these must be strengthened in a democratic South Africa. A central challenge was to upgrade the weak rights to land of people living under traditional leaders in the old Bantustan areas.

But, 24 years later, government is still struggling to improve the rights of ordinary people in rural areas. Since 1994, government's various attempts to do so have been heavily tilted in favour of traditional rulers. They have been abandoned in the face of popular resistance and struck down by the Constitutional Court.

There have also been developments that have impeded the rights of rural residents. In 1994, on the eve of the first democratic elections, the KwaZulu legislative assembly enacted the KwaZulu Ingonyama Trust Act. All the land in the former KwaZulu homeland was placed under the control of the Zulu King.

Concerned with securing the participation of the Inkatha Freedom Party (IFP) in the elections and restoring peace, the ANC did not challenge this land grab. Initially, the trust continued with the tenure systems that land existed in the homeland. But, in 2007, the trust introduced a new leasing system.

This initially applied to business sites, but has more recently been increasingly extended to residential land. Families who have lived on land for generations and regard it as their property are now treated as tenants. Rent has been imposed and "tenants" face eviction if it is not paid. Equally destructive of pre-existing rights is that, on the death of the tenant, the lands revert to the trust. This stipulation threatens to destroy the system of inheritance within families rooted in customary law.

The trust has also ignored the rights and failed to consult existing residents when allocating land for developments.

Evidence has recently come to light about some lease agreements with foreign investors. Among these are a Russian armaments factory making drones, an Indian company building a port near the border of Mozambique and another Indian company planning to

people who were removed to make way for Richards Bay.

The residents also see no part of the rent that their land generates. While, in 2015, the trust received R70 million in rent from families and businesses on "their land".

The Ingonyama Trust is by no means an isolated example. As in-depth research and recent court cases have shown, traditional leaders have been negotiating lucrative deals with mining houses in relation to the resettlement of the platinum belt without the consent of those living on the land. For example, the Bakgatla Ba Kgafela in North West have been robbed of millions of rands in mining revenue through secret deals made by Kgosi Nyakala Pileane and his traditional council.

Meanwhile, the Mapela chief in Limpopo secretly signed a R175 million settlement with a mining company without consulting the community. These agreements also ensure that the bulk of the revenue flows to traditional leaders and their allies rather than to their subjects.

Testimony given to the high-level panel on the Assessment of Key Legislation and Acceleration of Fundamental Change eloquently expresses the frustration and anger of many rural residents: "We are dispossessed of our land by development and by the mines, and we get no compensation or benefits out of the so-called development of our ancestral land. We are not consulted. We have been turned into nonentities with nothing, and yet we are the rightful owners of the land."

Fortunately, mounting protests, numerous court cases and the high-level panel report have finally ensured that government pays attention, and steps have been taken to place on hold the Ingonyama Trust's land grab. However, King Goodwill Zwelithini has made blood-curdling threats against those who challenge the trust's claims to ownership of the land.

There are also ominous rumblings on this issue emanating from the IFP, and from the groups inside and outside the ANC in KwaZulu-Natal that are mobilising in support of former president Jacob Zuma.

There are other looming threats to these already economically and politically marginalised societies. What will be the effect on them if expropriation without compensation comes to pass? Will their land be regarded as the property of the state, as is implied by the Economic Freedom Fighters' nationalisation policy? If so, they will suffer double dispossession - firstly by expropriation and then by populism. Or will collusion between some corporations, traditional leaders and new rural elites prevail and the historic rights of rural residents to the land finally be extinguished?

It is high time to act on the constitutional clause that obliges the state to restore degraded land rights. Some of the statements issued after the recent ANC conference on land suggest a belated recognition that the primary rights to land should be located at the household level, however, draft legislation on land rights and the recently approved Traditional and Khoisan Leadership Bill suggest that, in reality, traditional councils will exercise control. Traditional leaders and their allies, meanwhile, are also mobilising to secure their grip on the land. It appears that sections of the ANC are once again trying to fudge the stark choice that former president Kgama Mntshane drew between serving the chiefs or the people. It remains an open question whether the organisation will finally find the political will to act in favour of the people.

Delius, an emeritus professor at Wits University, has published numerous books and articles on land and rural transformation. His most recent book, co-authored with William Delmar and Michelle Hay, is *Rights to Land: A Guide to Tenure Upgrading and Resilience in SA*.

TALK TO US

Have you or your family been dispossessed of your land by traditional leaders?

Email your story to land@voices.co.za or comment on the story by SMSing 35597 using the keyword LAND. Please include your name and province. SMSes cost R1.50



”

We are dispossessed
of our land by
development and by
the mines, and we
get no compensation
or benefits out of
the so-called
development of our
ancestral land

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**INGONYAMA
TRUST BOARD**

Menu

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Trust Land Rights

The Board sees real estate management as its major core function and encourages development on its land which will be of benefit to the various communities not only from a rental income point of view but also through employment and other opportunities.

Sales of Trust land

The Board does not usually agree to the sale of land as this could have the effect of diminishing the area of land in Black ownership. Occasionally however, where the circumstances indicate that a sale is the logical approach and with the consent of the relevant Traditional Council (if any) land is sold.

In the very few instances where land is sold, the Board is committed to getting the best possible price so as to maximize the benefits to the beneficiaries of the Trust.

Leases of Trust land

In most cases the Board prefers to enter into leases for the use of Trust land. Ownership thus remains with the Trust for ultimate transfer in due course to its beneficiaries.

It is standard policy, in the case of undeveloped sites, to issue a short term lease for up to two years to enable would-be developers to obtain planning and environmental consents and to secure finance for the development.

Thereafter a lease for a term of up to forty years with an option to renew for a further forty years is normally granted once the requirements of the short term lease have been met.

L.J

Short term leases are however granted for agricultural uses and for short to medium term developments. Unless there are exceptional cases the Board charges a market related rent and lessees are responsible for all outgoings including assessment rates and other Municipal charges and for obtaining any necessary environmental or development planning consents.

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Permission to Occupy

In addition to applications for commercial and agricultural purposes the Board processes many applications for residential sites. Many of these sites are the subject of Permissions to Occupy which were granted up until 1st April 2007.

Permissions to Occupy are no longer issued, except in exceptional circumstances as they afford limited security for funding and are not registrable interests.

Servitudes

The Board has a considerable amount of public infrastructure on its land such as roads, transmission lines, pipelines, bulk water and, railway lines. It is standard policy for such infrastructure to be evidenced by a registered deed of servitude.

Applications for Tenure Rights

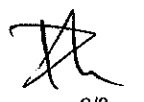
Applicants for tenure rights on Trust land are required to complete and return a Tenure Option Application Form. Form **ITB1** can be viewed or downloaded from this website. The Board attempts to process these applications as timeously as possible but delays may occur if the information requested has not been fully supplied or where a site survey is required.

Traditional Council Consent

It is a requirement of the Ingonyama Trust legislation that the formal consent of the relevant Traditional Council be obtained before a tenure rights application can be processed.

This should be in the form of the draft pro-form **ITB2** which can be viewed or downloaded from this website.

It is important to note that this formal consent is only required where the subject site falls within a proclaimed Traditional Council area. Applicants should confirm with the Board's Secretariat before approach is made to a Traditional Council.

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Specific Enquiries

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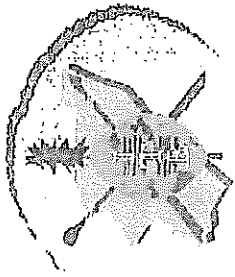
For general information, tenure application queries and land ownership queries please contact the relevant desk officer in the Secretariat as shown under the heading "Where to find us" on this website.

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INGONYAMA TRUST BOARD

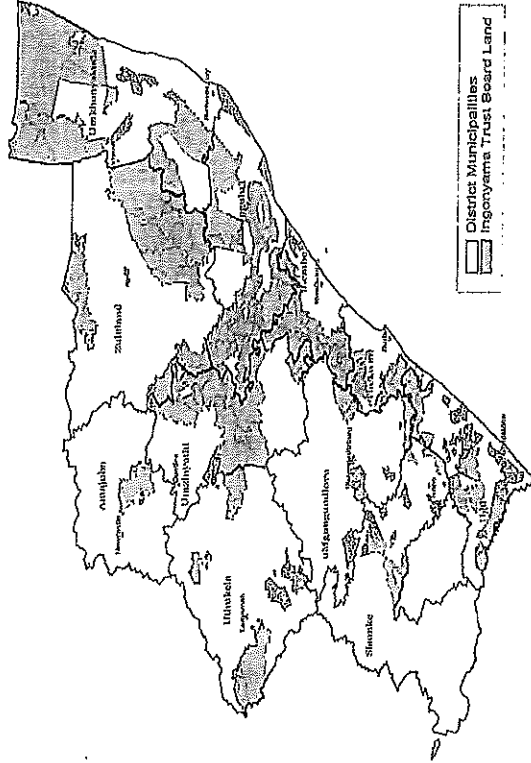
INGONYAMA TRUST BOARD ANNUAL REPORT 06/07

**Presentation to the Portfolio Committee on
Agriculture and Land Affairs**

13 November 2007

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Ingonyama Trust Board: Land



Land Ownership

The Trust is the largest landowner in the Province with a total extent of 2, 703, 533 hectares held under some 1600 individual titles. Land is owned in all of the 11 District and Metro Municipal areas and we are probably the largest individual landowner.

Population

Based on information supplied by the Bureau of Statistics the number of persons residing on Trust land as at the year 2001 census was estimated at 4.558.698.



Background

The Ingonyama Trust was established in 1994 at the time of the April election by an Act of Parliament – Act 3 of 1994 with His Majesty the King as the sole Trustee. An amendment Act in 1997 established a Board to actually administer the affairs of the Trust.

CORE BUSINESS

The core business of the Trust is to manage the land for the "material benefit and social well being of the individual members of the tribes". However, no alienation or burdening of the land may occur without the written permission of the relevant traditional or community authority.

Vision

To improve the quality of life of the people living on Ingonyama Trust land by ensuring that land usage is to their benefit and in accordance with the laws of the land.

Objectives

- To formulate and implement policy;
- To provide an effective land administration system;
- To create a climate which encourages development; and
- To extend security of tenure in accordance with both customary and statutory law always subject to the Constitution, 1996.



INGONYAMA TRUST BOARD

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Corporate Governance and Structure

(page 4 of the Annual Report)

Management Structure

The Board has the following management structure:

- The Executive Authority in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999) (PFMA) is the Minister for Agriculture and Land Affairs.
- The sole Trustee of the Ingonyama Trust is His Majesty King Goodwill Zwelithini ka-Bhekuzulu.
- An Audit Committee constituted in terms of the PFMA.
- The Accounting Authority in terms of section 49 of the PFMA are the members of the Board.
- The internal administrative costs of the Board are met from a grant-in-aid from the National Department of Land Affairs, (*i.e. voted by Parliament*). The operational costs are met from 10% of funds accruing through the Trust.



Secretariat

(page 5 of the Annual Report)

The Board is assisted in its day to day work by a full time Secretariat.

The Secretariat's work consists of the following categories:

- Real estate management;
- general administration;
- financial administration;
- managing the Board's agents and service providers;
- engaging with numerous organs of state; and
- engaging with the private (commercial) sector.

Our portfolio is quite diverse and includes:

- Residential;
- agricultural;
- game parks;
- conservation areas;
- forests;
- woodlots;
- state domestic;
- mining; and



INGONYAMA TRUST BOARD

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Secretariat (continues)

(page 5 of the Annual Report)

- commercial developments such as:
 - shopping centres;
 - hotels;
 - filling stations;
 - housing projects;
 - aquaculture; and
 - farms.



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Use and development of Trust Land

The Board is happy to encourage development but has a policy not to alienate or sell land except in exceptional circumstances.

- Instead, we make land available on a leasehold basis.
- We encourage community participation by way of Joint Ventures and also worthwhile job opportunities at both construction and operation stages.
- Any income generated is passed on to the community.
- There are several forms of tenure rights on Trust land:
 - These are leases, indigenous titles, Permissions to Occupy (PTO's) and Servitudes.
 - The Board's preferred tenure right is a lease. These are registrable interests and usually yield a market related rent.
 - It is Board policy not to interfere with the granting of indigenous titles. These are allocations by the Inkosi or Induna of residential and agricultural land in accordance with the provisions of indigenous laws and custom. They are not registered in any formal deeds registry.
 - Secondly we have PTO's issued by DLGTA under a delegation. They are not registrable.
 - Another form of tenure on Trust land is servitudes. These are registrable and range from Eskom power lines, Transnet railways, Petronet pipelines, roads, borrow pits and local authority bulk services.



Strategic Plan

(page 6 of the Annual Report)

- In accordance with the requirements of the Public Finance Management Act 1999 the Board had a Strategic plan for the year 2006-2007. This plan was approved by the Hon Minister as Executive Authority and was scrutinised by the Portfolio Committee.
- The plan was prepared in order to assist the Board to achieve its mission and vision and focused on the issues that need to be resolved over the next five years.
- It has regard to Government priorities such as poverty alleviation, provision of housing and infrastructure and black empowerment.
- The objectives of the strategic issues raised in the Plan are to optimise land usage for the material benefit and social well being of the communities living on Ingonyama Trust land and to assist in extending security of tenure in accordance with both customary and statutory law.

The following slides focus on the strategic key issues noted in the Annual Report :-



INGONYAMA TRUST BOARD

•Development of an assets register and a Land Tenure Information System

(page 7 of the Annual Report)

The Board is the successor-in-law to some 1600 titles to land throughout the Province and has numerous subsidiary interests on its land. In order to optimise land usage it is important to identify and record all real estate assets including titles, leases, Permissions to Occupy and servitudes.

This exercise cannot however be completed until some 300 properties have been transferred from the Department of Land Affairs, townships transferred to Local Municipalities and State Domestic Properties transferred to the relevant organs of State.

The commissioning of the Land Tenure Information System and the real estate register have highlighted some 168 discrepancies between the area extents recorded by the Deeds Register and the data held by the Board. All of these discrepancies are being investigated in conjunction with the Surveyor-General and the Registrar of Deeds. Most of the discrepancies appear to have arisen through erroneous recording and calculations outside of the control of the Board.

To date, the Land Tenure Information contains some 4000 tenure right records and this is being continuously updated.



INGONYAMA TRUST BOARD

•Transfer of former KwaZulu towns to Local Authorities

(page 7 of the Annual Report)

In terms of the Ingonyama Trust Act, 1994 (as amended), the task of the Board was, and is, to transfer former R293 KwaZulu towns to the various Municipalities.

During the year, the Board continued to engage with the Municipalities to persuade them to take over the land which has vested in them. By the end of this financial year only 9 townships out of 26 remain to be transferred.



INGONYAMA TRUST BOARD

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•Transfer of land used for state domestic purposes to relevant organs of State

(page 8 of the Annual Report)

In terms of our legislation, property used for state domestic purposes prior to April 1994 vest in various organs of State.

Identification of such properties has continued to be a difficult exercise because in some cases there are no records of allocation prior to the coming into existence of the Trust and in other cases the question as to whether or not a particular property qualifies for transfer is not always straight forward despite the availability of survey data. The various organs of state did not take transfer of a single state domestic property during the year.

The Board intends to rectify this situation during the coming year despite capacity constraints in the various organs of state and have already held meetings with both the National and Provincial Departments of Works who are the bodies responsible for finalizing the process on behalf of the various organs of state.



•Monitoring of Land Claims on Trust Land

(page 9 of the Annual Report)

The Board continues to be aware of land claims on Trust land and endeavours to co-operate with the Regional Land Claims Commission to resolve such claims in order that the Trust can perform its functions as land owner-in-law.

Full information on all claims on Trust Land is awaited from the Land Claims Commission.



•Land identification on the outskirts of townships

(page 10 of the Annual Report)

The Board has identified properties which it owns in townships areas. One such property is adjacent to the Mangosuthu Technikon in Umlazi. This property is currently being administered by the Department of Social Welfare and is not being used optimally.

In conjunction with the Technikon, the student community, the Municipality and private developers, the land has been earmarked for development as a student village and negotiations are in progress.

KwaMakhutha township has also been identified by the Board together with the Municipality and private developers as a model to integrate a former black townships with former white suburbs.



•Granting of Leases

(page 10 of the Annual Report)

The Board sees real estate management as its major core function and during the year continued to encourage development on its land which will be of benefit to the various communities, not only from a rental income point of view but also through employment and other opportunities. This can include shareholdings and seats on company Boards.

As previously noted the Board prefers to enter into leases for the use of Trust land. In so doing it endeavours to obtain the best deal for the relevant (affected) community. Ownership thus remains with the Trust for ultimate transfer to the beneficiaries to be identified in due course in terms of the provisions of the Communal Land Rights, 2004 (Act No. 11 of 2004).

To date the Board has granted some 119 commercial leases generating R1, 274, 195.00 per annum by way of income. There is an increased demand for tenure rights on our land and lease applications are currently being processed at the rate of 50 per month. By the end of the 2007/2008 financial year the income generated is estimated to rise to at least R2,000,000.00 per annum.



•Agreeing to the granting of Permissions to Occupy (PTO's)

(page 11 of the Annual Report)

In September 1998, the then Minister of Land Affairs gave a delegation to the MEC for Traditional and Local Government in KwaZulu-Natal to issue Permissions to Occupy (PTO's) in respect of residential, agricultural and commercial sites on Ingonyama Trust land.

It should be noted that this Ministerial delegation was given to the MEC and not the Trust. Thus an anomaly has arisen in that a tenure right is being issued by a third party on land vested in the Ingonyama Trust whilst all other rights such as leases and servitudes, are issued by the Board subject to obtaining the consent of the relevant Traditional Council.

In anticipation of the coming into operation of the Communal Land Rights Act, 2004 it has been agreed that Permissions to Occupy will in future only be issued in exceptional circumstances and that in all other cases the Board will issue a lease. This avoids creating more old order rights. As a result a temporary back log of applications in respect of institutional and commercial uses has arisen. This backlog is being addressed by the Board.



•Registration of Land vesting in the Trust and consolidation of titles

(page 8 of the Annual Report)

The Department of Land Affairs still has to complete the transfer of some 300 parcels of land to the Trust. Most of these parcels were to have been transferred to the Trust's predecessors-in-title following various proclamations and Commissions but for one reason or another have never been transferred.

Despite high level meetings and the submissions of supporting evidence not one of the parcels of Land had been transferred to the Trust.

The continued delays in transfer are impacting on other strategic objectives, notably the onward transfers of townships, state domestic properties and the issuing of leases.



INGONYAMA TRUST BOARD

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•Implementation of the Communal Land Rights Act, 2004 (Act No. 11 of 2004) (CLARA)

(page 8 of the Annual Report)

This Act, once a commencement date has been announced, will reconstitute the Board as the Ingonyama Land Rights Board for KwaZulu Natal. This Board will continue to own the land presently registered in its name and will have certain of the powers and responsibilities of the Minister under CLARA in respect of the land. At the same time it will have to perform the functions of a normal Land Rights Board in respect of any other land subject to the Act within the Province.

The Board awaits publication of the draft Regulations and announcement of the commencement date of the Act. In anticipation of the implementation of the Communal Land Rights Act, 2004 (Act No.11 of 2004) (CLARA), the Board is investigating various projects to identify tenure rights which in terms of the CLARA will be recognised as Old Order Rights.



INGONYAMA TRUST BOARD

•Mineral Rights and Royalties

(page 11 of the Annual Report)

Subject to the provisions of the Mineral and Petroleum Resources Development Act, 2002 the Board continued to monitor the development of the mining potential on Trust land for the benefit of the communities. This is done by way of mining rights leases on Trust land (*not to be confused with mining permits issued by the, Department of Minerals and Energy*).

During the year R9,236,350.00 was received by way of royalty income.



INCONYAMA TRUST BOARD

Disbursement of Funds to Traditional Beneficiaries

(page 11 of the Annual Report)

It is Trust policy for income accruing from mining or commercial activity within an identifiable traditional community area, to be earmarked for the benefit of that particular community less the 10% retained in terms of Trust Financial Regulation 10(2). During the year the number of Traditional Councils qualifying for funding totaled 29.

The Board is concerned about the slow take up of funds by the Traditional Councils and is investigating alternative methods for the release of funds.

The Traditional Councils need to create structures such as Community Development Trusts to act as conduits for monies receivable from the Board in respect of mining royalties, leases and other income.

This is so because the present Traditional Council Accounts can only receive money allocated by the Government.

Such Trusts could also act as catalysts for development. If requested, the Board is willing to assist in the process.



INGONYAMA TRUST BOARD

Constraints

(page 14 of the Annual Report)

One of the downsides of owning land which is substantially occupied by the beneficiaries in terms of the Ingonyama Trust legislation is the absence of accurate and adequate records of tenure particularly by Municipalities and the Deeds Office.

This results in the various Municipalities sending rates accounts to the Board whereas they should have been sent to the various occupiers.

As a result, the Board's indebtedness in terms of the newly introduced Municipal Property Rates Act, Act 6 of 2004 could be inflated.

It will be noted that since the inception of the Board the issue of rates has been a thorny one. The Board intends to commission land audits in order to help alleviate this problem.

In the meantime the Board is in dispute with eThekweni Municipality over the payment of rates and the matter is the subject of a dispute in terms of the Inter Governmental Relations Framework Act, Act 13 of 2005.



INGONYAMA TRUST BOARD

Auditor-General basis for qualified opinion

- land holdings - *(page 17 of the Annual Report)*
- permissions to occupy – *(page 17 of the Annual Report)*
- royalty income – *(page 18 of the Annual Report)*



Emphasized and other matters

- Contingent liability: property rates - *(page 18 of the Annual Report)*
- Internal control: - *(page 18 of the Annual Report)*
monitoring
revenue
- Organogram - *(page 18 of the Annual Report)*
- Risk management strategy - *(page 18 of the Annual Report)*
- Strategic plan: policies and procedures - *(page 19 of the Annual Report)*



Financial Performance

(page 23 of the Annual Report)

During the year 2006/2007:

- ❖ the rental income increased by 8%;
- ❖ the income from mining royalties increased by 31 %;
- ❖ the total income increased by 29 %;
- ❖ the expenses increased by 27%;
- ❖ the net income increased by 60%.

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THE END!

L. J.

