

INGONYAMA TRUST BOARD

• 65 Trelawney Road, Southgate, Pietermaritzburg, 3201 • P.O. Box 601, Pietermaritzburg, 3200
• Tel: 033 846 9900 • Fax: 033 386 2528 • www.ingonyamatrust.org.za

24 October 2017

The Chairperson of the Portfolio Committee on Rural Development and Land Reform

The Honourable Ms P.C. Ngwenya – Mabila, MP

Dear Honourable Chairperson,

Re: Invitation to a meeting to deliberate on the constitutional mandate and reporting procedures of the Ingonyama Trust Board

I refer to your email of the 19th October 2017 in which you invite Ingonyama Trust Board (ITB) and other institutions to a meeting to deliberate on the constitutional mandate and reporting procedure of the Ingonyama Trust Board.

First I wish to record my apology for not being able to meet the deadline of submitting the briefing documents by the 23rd October 2017. Secondly I record my apology for being unable to make myself available to the scheduled meeting on the 25th October 2017. I had already committed myself to a meeting in Johannesburg on the same day for which huge costs had already been incurred.

I enclose to this letter a brief response to the enquiry. The attachment deals in brief with the background to the establishment of the Ingonyama Trust and later Ingonyama Trust Board (ITB).

In this letter I deal briefly with the two entities and their constitutional mandate. The attachment to this letter adequately sets out the historical background and the mandate of the two entities.

In 2001 the Minister of Finance listed both the Trust and the Board as public entities under Government Notice 402 of the 16th February 2001, with effect from 01 April 2001. By Government Notice 1261 of the 17th April 2003, Ingonyama Trust was delisted. Until this date Ingonyama Trust had never received any monies from the government.

The simultaneous listing of the two entities caused the confusion and led to the Accounting Authority to conflate the rather two distinct entities. It should also be noted that neither during

the listing nor delisting did the Minister consult the ITB. Therefore it took time to note the delisting.

The mere delisting on its own is a recognition of Ingonyama Trust as a separate entity from the ITB. While it is a registered owner of the land in trust, the Board is not. The hierarchy of the Trust is the King at its apex, Amakhosi below him and the communities below them. The hierarchy of the Board is dual. It accounts to the Executive Authority and the King at the same time.

The Executive Authority is by law responsible for the administrative cost of the Board. In turn the Board as the accounting authority is liable to, with in terms of the dictates of the Public Finance Management Act (PFMA) and the KwaZulu – Natal Ingonyama Trust amendment Act 1997, and the Administrative and Financial Regulations promulgated thereunder.

The nature of the Ingonyama Trust is quasi-public. This is so because it is a creature of statute yet it owns land in trust for the benefit not of the general public but for specific communities. The affairs of the Trust are determined by the King as the sole trustee at his discretion. Further the Board has a wide discretion in terms of how it administers Trust land. We submit that in so doing it has to act with a fiduciary duty in mind and be guided by the spirit and purport of the Act and the Constitution.

We bring to the attention of your committee that the Board is bound to act in consultation with and with the prior written consent of the relevant Traditional Council of the listed communities. Income generated from land related activities belongs to the Trust for the benefit of the beneficiary communities. As such these communities through their Traditional Councils are entitled in law to seek accountability of the Trust and the Board.

The ITB takes a different view to that of the Auditor General in so far as the issue of Mineral Royalties are concerned. This stems from the fact that royalties on Ingonyama Trust land were never expropriated. As such Ingonyama Trust was never compensated for the loss of the minerals. The reason for this was that the minerals of the Ingonyama Trust were at all material times administered by the KwaZulu Finance Corporation (KFC), which is now called Ithala.

An agreement was then reached with KFC that Ingonyama Trust Board would seek a new agent from the 1st July 1999. An advertisement was placed on the Sunday Times on the 11th April 1999. In this regard a copy of same is attached to this letter.

Responding to the advertisement, the then Minister of Mineral Resources, Dr P. N. Maduna requested the then President of the Republic of South Africa, Dr N. R. Mandela to take over this agency free of charge instead. To this extent he also approached the then Minister of Land Affairs, Mr Derek Hanekom and the then Chairperson of the ITB, Mr Owen Greene.

The relevant correspondence in this regard is also attached to this letter. Arising out of these correspondence and subsequent discussions an agreement was reached that the Department of Mineral Resources will take over the agency of administering the minerals of the Ingonyama Trust free of charge. As evident from both Dr Maduna's letter and Mr Hanekom's the issue of



expropriation of these was not on the cards. Had this been otherwise, a consultative process with the King, Amakhosi and the communities would have been followed.

As Dr Maduna pointed out a competitive compensation would have been agreed to. Needless to say that the necessary amendment to the KwaZulu – Natal Ingonyama Trust Amendment Act, would have been affected. Likewise the agency agreement would have been cancelled. In this regard the provisions of section 12 of Schedule II to the Mineral and Petroleum Resources Development Act for the record it reads:

"Payment of compensation

12. (1) Any person who can prove that his or her property has been expropriated in terms of any provisions of this Act may claim compensation from the State.

(2) When claiming compensation, a person must –

- (a) prove the extent and nature of actual loss and damage suffered by him or her;
- (b) indicate the current use of the property;
- (c) submit proof of ownership of such property;
- (d) give the history of acquisition of the property in question and price paid for it;
- (e) detail the nature of such property;
- (f) prove the market value of the property and the manner in which such value was determined; and
- (g) indicate the extent of any State assistance and benefits received in respect of such property.

(3) In determining just and equitable compensation all relevant factors must be taken into account, including, in addition to sections 25(2) and 25(3) of the Constitution –

- (a) the State's obligation to redress the results of past racial discrimination in the allocation of and access to mineral and petroleum resources;
- (b) the State's obligation to bring about reforms to promote equitable access to all South Africa's natural resources;
- (c) the provisions of section 25 (8) of the Constitution; and
- (d) whether the person concerned will continue to benefit from the use of the property in question or not.

(4) Any claim for compensation must be lodged with the Director – General in the prescribed manner."



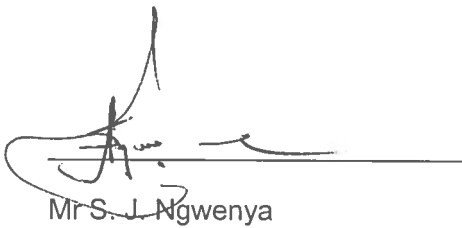
Should there be an intention of expropriating Ingonyama Trust minerals we submit that a due process will have to be undertaken so that the ITB would in turn seek the necessary legal recourse.

The foresighted rationale of the two Ministers is quite understandable. The beneficiaries of Ingonyama Trust land are entitled to the royalties of the country regardless of whether their specific ones are expropriated or not. Therefore to expropriate theirs and burden the State with compensation which will run into billions would appear not to be a prudent option. However if the argument of the Auditor General in this topic were to be the last word, no doubt in its fiduciary duty the ITB and the King will have to press for compensation.

We conclude by advising that there are discussions underway between the ITB and the Department of Mineral Resources at the highest level. It is hoped that shortly the National Treasury will be part of these discussions.

I hope this responds adequately to the enquiry at hand.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'S. J. Ngwenya', is written over a horizontal line. The signature is stylized with a large initial 'S' and a long horizontal stroke.

Mr S. J. Ngwenya

Chairperson – ITB

CC His Majesty, the King, Zwelithini kaBhekuZulu

ANNEXURE A

BACKGROUND TO INGONYAMA TRUST AND INGONYAMA TRUST BOARD

BACKGROUND TO INGONYAMA TRUST AND INGONYAMA TRUST BOARD.

INTRODUCTION

Ingonyama Trust was established in 1994 to create a Trust to take over the ownership of land hitherto owned in trust by either the state or specially created trusts by the state for the Zulu people in the present day KwaZulu-Natal. In other provinces similar trusts were created for the respective African South Africans. The land which is the subject of ownership by the Trust is owned communally and in most instances administered by Amakhosi (in some areas the word chief or Traditional leader is used).

Ingonyama Trust has the King as the sole trustee. The beneficiary clans or communities are listed in the Act and each such community has Inkosi (singular for Amakhosi) as the head of that clan or community. There are instances where the land is administered directly by the King through the Board. From the inception of the trust on the 25th April 1994, the King as the sole trustee had no administrative capacity nor infrastructure to administer the land. While this may appear strange and at the same time not so obvious, it was absolutely critical that this oversight should have been noticed earlier and addressed soon.

ABSENCE OF A BOARD (TRANSITION)

Communal land is ordinarily administered in terms of shared rules or custom. In respect of Ingonyama Trust land it is administered in terms of Zulu customary law and statutory law. Hence, despite the fact that in terms of title holding, ownership changed from the KwaZulu government to Ingonyama Trust, on day to day basis land allocation continued in the hands of Amakhosi. The big challenge arose in instances where there was a need of formal encumbrance and enforcement of certain obligations. These could not be effectively and efficiently done in the absence of the personnel. Hence the King ended up appoint agencies in his place and Powers of Attorney to few institutions, officials and the Premier of the Province. This is especially so in the context of commercial projects.

Apart from ineffective administration and poor co-ordination of those holding agencies and Powers of Attorney there was also huge political pressure on the wisdom of the existence of Ingonyama Trust. A discussion in detail on this falls outside the scope of this report. Suffice it to state that for any trust to be without a Board and effective administrative capacity is undesirable. Needless to state that there is no rational basis for the state to hold land in trust for the people. This on its own places the state in a conflictuous position. Again any elaborate discussion on this falls outside the scope of this report.

The argument in support of the King being the trustee is that he is the leader and head of the Zulu nation. He is the peace bearer and the force that unites the people. This, viewed in historical and present context advances a powerful argument. Indeed he is the ultimate source of customary law and culture which binds the people and regulate their affairs. For this reason communal land under his

custodianship in terms of title has been administered peacefully without formal records for decades.

Current technical and social developments makes it imperative to have formal records, procedures and efficient administration remains critical and cannot be substituted. Further, as was reported above, the political pressure had to find expression through legislation. This saw the light of the day through the KwaZulu-Natal Ingonyama Trust Amendment Act, 1997 which gave birth to the establishment of Ingonyama Trust Board.

It is worth recording that the creation of Ingonyama Trust and ultimately the Ingonyama Trust Board took place under tense, volatile and slippery political climate. Thus when the Board came into existence it had to navigate this terrain with extreme sensitivity and caution.

We emphasise under this heading (Trust land ownership) that land management by the trust is not one of the deliverables in terms of the government stated goals. As would become clear in this report the state does not incur any expenditure for activities of the Trust. All the activities of the Trust are funded by income generated by the Trust. The mandate of the Trust is broadly set out in the Act as follows:

"2. Establishment of the Ingonyama Trust. – (1) A corporate body, to be called Ingonyama Trust...is hereby established with perpetual succession and power to sue and be sued and, subject to the provisions of this Act, to do all such acts and things as bodies corporate may lawfully do."

INGONYAMA TRUST BOARD (ITB)

Ingonyama Trust Board is a very unique Board. It is a Board which is appointed by the Minister responsible for land after consulting the King, the Chairperson of the provincial House of Traditional Leaders in KwaZulu-Natal and the Premier of the province. The Board members are appointed for four year term and eligible for further terms. The King or his nominee is the chairperson of the Board. The Board members are not trustees but administer the Trust with the King. The Board discharges its functions through the staff which is employed as a secretariat. The mandate of the Board is broadly set out in the Act as follows: "The Board shall administer the affairs of the Trust and the Trust land."

ADAPTING TO CHANGING CIRCUMSTANCES

Customary law like all other systems of law adapt to changing circumstances. Therefore the rights to land by people subscribing to customary law is no different to that of those whose rights are only understood within the context of individual ownership. Just like mineral rights which in most part of the South African law were inherent in land rights, so are individual rights of various individuals integrated to other rights to land under customary law. That being the case, the King announced in 2016, that rights to housing in his view could be carved out and be treated in a different footing to other sets of rights, yet within the context of communal setting. When he used the term "title deed", it was in this context. Those who understood him from their perspective of a title deed lost the opportunity to engage on the

subject matter in great detail when Ingonyama Trust Board hosted a discussion with Amakhosi in June 2016.

The land in question is primarily accessed in terms of indigenous customary law through Traditional Councils under the leadership of Amakhosi. While this system is constitutionally guaranteed, it calls for urgent documentation. As such, the existence of the ITB, provides a seamless transition to the modern social and technical system. This enables a process of radical land rights transformation to take place in a systematic way. While customary procedures do not provide land right formal records, the ITB is putting in place formal systems which place rural people on parity with urban communities. The details of these systems and models are provided in various brochures of the ITB.

The land owned by Ingonyama Trust on behalf of the people who are specifically identified by statute constitutes a very large part of (almost ninety per cent) of the rural land in KwaZulu-Natal. It is occupied by at least four million people. These are the beneficiaries. The shortcoming of the customary law in this regard is that rights to land are not registered nor documented. As a result from a common law perspective, are treated as personal rights. In contrast, title deeds convey a real right in law.

The role of the ITB becomes even more important in this regard. In the discharge of its duties as the administrator of the Trust land, with the consent of His Majesty the King it has for many years championed the conversion of these "personal" rights into real rights in the form of leases. In the year 2016, the King announced that in line with the Constitution, these "personal" rights in so far as they relate to housing should be strengthened and secured by providing the rights holder with title deeds. His Majesty's view is informed by the fact that as the sole trustee, only he can make this process credible. He is however mindful that he needs a buy in from all the role players. In particular, the Traditional Councils, Amakhosi and the beneficiaries themselves. Therefore a consultation process was initiated by the ITB, in June 2016. This process so far was aimed at Amakhosi. It became evident from the few interactions that a fair amount of time is required on capacity building, information sharing and general understanding of the current legal constitutional regime. This process is ongoing.

SCHEDULE OF COMMUNITIES ON INGONYAMA TRUST LAND

DISTRICT	NAME OF TRADITIONAL COUNCIL / COMMUNITY
EMNAMBITHI	CUNU / MCHUNU
	INGWE
	KUNENE
	MABASO
	MBHENSE

DISTRICT	NAME OF TRADITIONAL COUNCIL / COMMUNITY
	MTHEMBU
	NXUMALO
	SITHOLE
EMZUMBE	BHEKANI
	CELE M
	CELE P
	DLAMINI / VUSATHINAMAZULU
	DUNGE / AMADUNGE
	EMBO / SIZWE HLANGANANI
	MBHELE
	MJOLI / SIZWE
	NDELU
	NHLANGWINI
	NYAVINI
	QOLOQOLO
	HLONGWA
	HLUBI
	KHOLWA / SIZWE HLANGANANI
	MADZIKANE / SIZWE HLANGANANI
	LUSHABA
	MADLALA
	QWABE P
	QWABE Z
	THULINI
	ZIZI – SIZWE / HLANGANANI
ENSELENI	BIYELA / KWAYANGUYE
	BIYELA / OBUKA
	CEBEKHULU / OBIZO

DISTRICT	NAME OF TRADITIONAL COUNCIL / COMMUNITY
	KHOZA
	MBONAMBI (MAXWELL)
	MTHEMBU / SOMOPHO
	NDHLAZI / MAMBUKA
	ZULU / NTEMBENI
	ZUNGU / MADLEBE
	MTHETHWA / MHLANA
EZINGOLWENI	CELE
	DLAMINI / KWAFODO
	DUMA / THOKOZANI MADUMISA
	JALI / NHLANGANO
	MACI / ISIBONDA
	MAVUNDLA / MVUNDLA
	MBOTHO / MAMBOTHO
	MTHIMUDE
	NSIMBINI
	NZIMAKWE
	SHWAWU / JABULANI BESHWAYO
	XOLO
	SHWAWU / BESHWAYO
	NYUSWA / QINISELANI MANYUSWA
HLABISA	ABAKWA HLABISA
	MDLETSHÉ
	MPEMBENI
	MPUKUNYONI / MKHWANAZI
HLANGANANI	BATLOKOA / BASOTHO
	BOMVU / ZASHUKE
	DLAMINI / BIDLA

DISTRICT	NAME OF TRADITIONAL COUNCIL / COMMUNITY
	DLAMINI / ESIPHAHLENI
	DUMISA / MAGUSWANA
	KHOLWA / ISIBONELO ESIHLE
	KHOLWA / VUMINDABA
	KUZENI / AMAKUZE
	MADZIKANE / BHACA
	MEMELA / SIZANANI
	MKHULISI / VEZOKUHLE
	MOLIFE / ISIMINZI
	NDLOVU / VUKANI
	NGWANE / AMANGWANE
	NXAMALALA
	PEPETA / UMACALA GWALA
INGWAVUMA	MATHENJWA
	MNGOMEZULU
	NYAWO
	TEMBE
INKANYEZI	BANGINDODA ZULU
	BHEKESHOWE ZULU
	BIYELA / MOBENI
	BIYELA / MVUZANE
	BIYELA / NDLANGUBO
	KHOLWENI
	KHOZA
	KWAMONDI
	MATHONSI
	MPUNGOSE
	NTULI

DISTRICT	NAME OF TRADITIONAL COUNCIL / COMMUNITY
	SHANGE
	SIKHONYANE
MADADENI	GULE / NYANYADU
	HLUBI / BUHLE – BOMZINYATHI COMMUNITY AUTHORITY
	MANGWENI / BUHLE – BOMZINYATHI COMMUNITY AUTHORITY
	KUBHEKA / BUHLE – BOMZINYATHI COMMUNITY AUTHORITY
	NKOSI / BUHLE – BOMZINYATHI COMMUNITY
MAHLABATHINI	BUTHELEZI
	BUTHELEZI - EMPITHIMPITHINI
	MBATHA
	MPUNGOSE
	NDEBELE
	NOBAMBA COMMUNITY AUTHORITY
	XIMBA
	ZUNGU
MAPHUMULO	ABAKWA CELE
	ABAKWA ZUBANE
	AMAMBEDU / MBEDU
	BOMVU A
	BOMVU W
	EMBO
	GCWENSA
	HLONGWA
	KHABELA
	LUTHULI
	MABOMVINI
	MLAMULA / NYUSWA
	MTHEMBU / SITHOLE

DISTRICT	NAME OF TRADITIONAL COUNCIL / COMMUNITY
	NTULI / MTULINI
	NDLOVU / MASIHAMBISANE
	NGCOLOSI
	NTANZI
	NTULI / HOHOZA / MKONTO
	QADI
	QWABE
	SITHOLE / MTHEMBU
	ZULU / NODUNGA
MPUMALANGA	DASSENHOEK COMMUNITY AUTHORITY
	EMBO
	FREDVILLE COMMUNITY AUTHORITY
	ILANGA COMMUNITY AUTHORITY
	GCUMISA
	MAPHUMULO
	MDLULI / MANYAVU
	SHANGASE
	XIMBA
MSINGA	BASO
	BOMVU
	CHUNU
	MTHEMBU
	NGOME
	QAMU
NDWEDWE	CHILI
	CIBANE
	EMALANGENI / LANGA
	EMBO / KWAKHABAZELA

DISTRICT	NAME OF TRADITIONAL COUNCIL / COMMUNITY
	INKUMBA / NYUSWA
	HLOPHE
	KHUMALO
	MANGANGA
	MTHEMBU
	NGCOLOSI
	NGONGOMA / MAVELA
	NODWENGU
	PHEPHETHA
	QADI
	QINISELANI MANYUSWA
	QWABE
	SHANGASE
	WOSIYANE
NKANDLA	AMAKHABELA
	BIYELA / AMAHLAYIZENI
	BIYELA / MANGIDINI
	CUBE
	CUNU
	IZIGQOZA
	KHABELA
	KHANYILE / EKUKHANYENI
	KHANYILE / IZINDLOZI
	MAGWAZA
	MBHELE / AMAPUTO
	MPUNGOSE
	NTULI / GODIDE
	NTULI / INGONO

DISTRICT	NAME OF TRADITIONAL COUNCIL / COMMUNITY
	NXAMALALA
	SIBISI / CWEZI
	XULU
	ZONDI
NONGOMA	ZULU / KHAMBI
	ZULU / MANDLAKAZI
	ZULU / MATHENI
	ZULU / USUTHU
NQUTHU	HLATSHWAYO
	JAMA
	MDLALOSE / HLAHLINDLELA
	MNCUBE / MBOKODWEBOMVU
	MOLEFE
	NGOBESE / KHIPHINKUNZI
	NGWE / MANGWE – BUTHANANI
	NTOMBELA
	SITHOLE / VULINDLELA
	ZONDI
	ZONDO
	ZULU / EMANDLENI
OKHAHLAMBA	AMAZIZI
	DLAMINI
	HLUBI
	EMBO
	MABASO
	MHLUNGWINI
	NGWANE / AMANGWANE
	NGWE / AMANGWE

DISTRICT	NAME OF TRADITIONAL COUNCIL / COMMUNITY
ONGOYE	DUBE
	MKHWANAZI
	MZIMELA
	CAMBINI
	NZUZA
	ZULU
SIMDLANGENTSHA	DLAMINI
	DLAMINI M
	MAVUSO – MASIDLA COMMUNITY AUTHORITY
	MTUNGWA – MASIDLA COMMUNITY AUTHORITY
	MSIBI
	MTHETHWA
	NTSHANGASE
	SIBIYA – MASIDLA COMMUNITY AUTHORITY
	SIMELANE
UBOMBO	MABASO
	MANUKUZA / JOBE
	MASHABANE
	MNQOBOKAZI
	MYENI / NGWENYA
	MYENZI / NSINDE
	NIBELA
	SIQAKATHA
	QWABE / MAKASA
	ZIKHALI / MBILA
UMBUMBULU	CELE / VUMANGAZI
	EMBO / NKASA ISIMAHLA
	EMBO / TIMUNI

DISTRICT	NAME OF TRADITIONAL COUNCIL / COMMUNITY
	EMBO / VUMAKWENZA
	LUTHULI / UMNINI TRUST
	MAKHANYA / SOBONAKHONA
	MANGANGENI / VUMAZONKE
	MAPHUMULO
	TOYANA
VULAMEHLO	BELE / QIKO
	CELE
	DUMISA M
	DUMISA N
	EMBO / KHWEZI LOKUSA
	EMBO / UKUTHULA
	MBHELE / KWALEMBE
	NHLANGWINI / SHIYABANYE
	NYUSWA
	ZEMBENI / ZEMBE
VULINDLELA	FUZE
	NXAMALALA
	XIMBA
	ZONDI / INADI
	ZONDI / MPUMUZA

ANNEXURE B

INDEX OF THE CORRESPONDANCE

TITLE OF DOCUMENT	DATE
Sunday Times Newspaper advertisement	11 April 1999
Background document for prospective agencies	
Letter from Minister Maduna to President Nelson Mandela	21 April 1999
Letter from Minister Maduna to Mr Owen Greene	22 April 1999
Letter from Minister Hanekom to Minister Maduna	11 May 1999
Letter from Minister Hanekom to Mr Owen Greene	18 May 1999
Letter from Dr Marius Spies (Ithala) to Mr Owen Greene	31 May 1999
Letter from Department of Minerals and Energy to Mr Owen Greene	14 July 1999

Ingonyama Trust: Mineral Rights Administration Agency

The Ingonyama Trust wishes to retain the services of an agency which will administer mining and mineral rights on Ingonyama land in the interests of, and for the material benefit of the people living on Ingonyama land.

The Ingonyama Trust will retain the services of an agency which will optimise the collection of revenue from mining and from the granting of mineral rights. The successful agency will be required to take over and improve an existing administration system.

The agency will recommend the allocation of, and administer leases to prospective miners in terms of mineral rights and environmental legislation. The agency will liaise with tribal authorities and act on their behalf in securing deals with operators. It will monitor all mining and quarrying activities on Ingonyama land and oversee the rehabilitation of land when mining activities are terminated.

The successful candidate will have experience in the administration of mineral rights. It will have experience in leasing and sub-leasing of land for the purpose of mining and related activities. It will be familiar with mining, mineral rights and environmental legislation. It will have experience in the area of land administration and rural development. In addition, the agency will have the capacity and skills to develop relationships with mining operators and tribal authorities.

Payment will be based upon the performance of the agency. Therefore remuneration will be directly linked to revenue generated. This may be supported by the payment of a basic retainer.

Further information and a briefing document can be obtained from Ms Zandile Nene, The Ingonyama Trust, PO Box 601, Pietermaritzburg 3200. Tel: (0331) 94-6390.

Interested candidates should submit a prospectus by no later than 12:00 on 30 April 1999.

Ingonyama Trust

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Further information and a briefing document can be obtained from:

Ms Zandile Nene
The Ingonyama Trust
P O Box 601
Pietermaritzburg
3200

Tel: (0331) 946 390

Interested candidates should submit a prospectus no later than 12 noon, 30 April 1999.

Ingonyama Trust: Mineral Rights Agency

Background document for prospective agencies

Contact: Ms Zandile Nene
The Ingonyama Trust Secretariat
Justice Park Building
291 Pietermaritz St
Pietermaritzburg

P O Box 601 Pietermaritzburg, 3200

Tel: (0331) 946 390
Fax: (0331) 943 753

Closing date for applications: 12 noon 30 April 1999

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Background

The KwaZulu Ingonyama Trust Act (no.3 of 1994) was passed by the KwaZulu legislature shortly before South Africa's first democratic elections in April 1994. In one stroke the act delegated control of all KwaZulu state, tribal and urban land in KwaZulu to the King (Ingonyama).

After the elections, President Mandela recalled all legislation in the country until such time as the new provinces and their respective areas of competence had been determined. The KwaZulu Ingonyama Trust Act was assigned to the Minister of Land Affairs. This move was contested by the KwaZulu-Natal legislature, which wished to establish control of land as a provincial competence. The dispute was finally resolved between the national Minister of Land Affairs (Mr D Hanekom) and the then KwaZulu-Natal Premier (Dr Ben Ngubane).

As a result the national Minister of Land Affairs tabled the KwaZulu-Natal Ingonyama Trust Amendment Act (No. 9 of 1997). This act required the Department of Land Affairs to establish and finance a board together with necessary support to administer land matters previously under the control of the Ingonyama.

The Minister of Land Affairs nominated eight members to serve on the Board. The Ingonyama (His Majesty the King) nominated the Chairman. Board members noted the wishes of the Minister of Land Affairs that the Board should not create an additional layer of bureaucracy within government. Members were clear that the Board should delegate certain of its functions to government departments and institutions since the Board itself had no capacity to perform work. Board members were equally clear that the board should play a role in development. Three principles were expressed. They are:

1. The board would have to define its role in development
2. The board should make policy
3. The board should delegate authority

In addition, the vision and mission of the Trust has been clearly defined by the Board:

Vision

Board members defined the vision of the board as follows:

"To improve the quality of life of the people living on Ingonyama land"

Mission

Following the vision, the mission of the board was stated.

"The Ingonyama Trust Board will:

- Provide an effective land administration service
- Formulate policy
- Create a climate which encourages development
- Extend security of tenure"

As may be expected of any large landholder, the Trust has a variety of sources of revenue. A significant income accrues to the Trust through the granting of mining

rights and the collection of royalties. In the past the KwaZulu-Finance and Investment Corporation has administered mining rights on behalf of the Trust. Revenue was estimated conservatively at R 6 million per annum. It is known that revenues can be optimised.

Principles which the mineral rights agency must acknowledge

The vision of the trust clearly indicates that the role of the Trust centers around the welfare and material wellbeing of people living on Ingonyama land. Therefore the exploitation of minerals on Ingonyama land must result in direct and tangible benefits for the people who live on that land. The agency will acknowledge the development role of the Trust in defining its own operations.

Part of the development role of the agency will be in pursuing and assuring that tribal authorities and individuals under those authorities derive clearly negotiated, documented and quantifiable material benefits from any mining activities.

Primary functions of the agency

The primary function of the agency will be to administer leases and to ensure the collection of royalties from mining and quarrying operations on Ingonyama land. The agency will also play an important role in monitoring and documenting mining and quarrying operations. The agency will play a strong role in acting on the behalf of tribal authorities in negotiating and securing favourable deals with operators.

Amongst other activities, the agency will be required to:

1. Take over and improve the present administration system
1. Recommend the allocation of, and administer leases to prospective miners in terms of mineral rights and environmental legislation.
2. Assess mineral capacity and potential output of all sites
3. Categorise, record and map all mining activities
4. Ensure the collection of revenue from mining
5. Liaise with tribal authorities and act on their behalf in securing deals with operators.
6. Monitor all mining and quarrying activities on Ingonyama land and oversee the rehabilitation of land when mining activities are terminated
7. Maintain accurate records of leases, contracts, and revenue
8. Report to the Secretariat of the Trust.

Remuneration

It is anticipated that the agency will be granted a retainer who should be used to support the basic infrastructure and running costs.

Remuneration will be based on the performance of the agency in increasing collecting and optimising revenue.



Minister of Minerals and Energy

21 April, 1999

Mandisa

INGONYAMA TRUST: MINERAL RIGHTS ADMINISTRATION AGENCY

The advertisement which appeared in the Sunday Times of 11 April 1999 regarding the above-mentioned matter, a copy of which is attached for the President's information, refers. The attached background document for prospective agencies also bears reference.

When the Constitution for the Republic of South Africa, 1993 (Act No 200 of 1993), came into operation on 27 April 1994, the ownership of land (including the mineral rights attached thereto) held by the governments of the former TBVC States and self-governing territories, reverted to the National Government. However, there were two exceptions. In the former KwaZulu the relevant land, and attached to it the mineral rights, were not transferred to the National Government, since it had shortly before that event been transferred to a body corporate, namely the Ingonyama Trust, in terms of the KwaZulu-Natal Ingonyama Trust Act, 1994 (Act No 3 of 1994). In the former Lebowa the mineral rights had been separated from the land and transferred to the Lebowa Minerals Trust.

The King of the Zulu people is the trustee of the Ingonyama trust and the Provincial Government of KwaZulu-Natal, through the KwaZulu Finance Corporation, currently administers the mineral rights held by the trust.

From the White Paper on a new Minerals and Mining Policy for South Africa, which was formally released during October 1998, it is clear that Government's long-term objective is for all mineral rights to vest in the State. In the meantime, it is the Government's intention to promote minerals development by applying the "use it and keep it" principle as far as mineral rights are concerned.

As a transitional arrangement in pursuance of the objective to vest all mineral rights in the State, a new system for granting access to mineral rights is proposed in the White Paper. In terms of the proposal, the right to prospect and to mine for all minerals will vest in the State, and legal provision will be made for, *inter alia*, payment of compensation by the grantee to the current holder of the mineral rights, which compensation will be payable in the form of royalties which will be internationally competitive and which will not inhibit the initiation of new projects.

Furthermore, Government intends to phase out intermediate regulatory institutions, such as statutory mineral trusts. The Department of Minerals and Energy is currently drafting the necessary legislation to give effect to Government policy as contained in the above-mentioned White Paper. It can also be mentioned that as far as the Lebowa Minerals Trust is concerned, Cabinet already approved on

4 November 1998 that the said Trust be dissolved. The Department of Minerals and Energy is currently drafting the necessary legislation in this regard.

The following aspects of the Ingonyama Trust were considered by me:

- Its statutory mandate is geographically limited to parts (and not the whole) of the Province of KwaZulu-Natal and was created solely for the benefit of those persons who live within the parts of the national territory that are as envisaged in the Act;
- It is incompatible with the intention of the Constitution that all mineral related matters are to be dealt with on a national basis;
- It is not supportive of a coherent, nation-wide approach to ensure that the country's mineral wealth is developed to the benefit of the entire population;
- From an investor perspective, it contributes to inconsistency in the State's approach and the governance of the minerals industry;
- It opposes the objective to have all mineral rights vested in the State; and
- The political sensitivity of the Ingonyama Trust land issue.

The President will note from the advertisement referred to above, that the Ingonyama Trust wishes to retain the services of an agency which will administer mining and mineral rights on Ingonyama land. I am of the opinion that the Department of Minerals and Energy is the institution best suited to perform the required functions of the proposed agency and in this regard I wish to inform the President that I have instructed the Department to approach the Ingonyama Trust offering the services of the Department to perform the required functions free of charge.

The background document referred to above states that when the members of the Trust Board were appointed, it was clear that the Board should delegate certain of its functions to government departments and institutions. In this regard the KwaZulu-Natal Ingonyama Trust Act, 1994 (Act No 3 of 1994), as amended, makes provision for the Board to delegate any of its powers to, inter alia, an official in the public service.

Copies of this letter have been forwarded for information to the Deputy President and the Minister of Agriculture and Land Affairs. Separate letters have also been addressed to His Majesty the King and the Chairman of the Ingonyama Trust Board.

Kind regards



DR PM MADUNA
MINISTER

President NR Mandela
Office of the President
Private Bag X1000
PRETORIA
0001



Ministry of Minerals and Energy

1999 -04- 22

1/38/1

Dear Mr Green

INGONYAMA TRUST: MINERAL RIGHTS ADMINISTRATION AGENCY

The advertisement which appeared in the Sunday Times of 11 April 1999 regarding the above-mentioned matter, refers.

It is with interest that I have taken note of the intention of the Ingonyama Trust to retain the services of an agency which will administer mining and mineral rights on Ingonyama land. As I am of the opinion that my Department has the necessary experience, expertise and skills at its disposal to perform the functions of the proposed agency, I have instructed them to approach the Trust offering the services of the Department to perform such functions at no cost to the Trust. In this regard it is noted that the KwaZulu-Natal Ingonyama Trust Act, 1994 (Act No 3 of 1994), as amended, makes provision for the Ingonyama Trust Board to delegate any of its powers to, inter alia, an official in the public service.

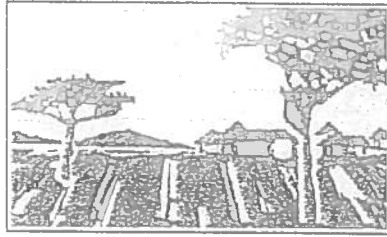
The President, Deputy President and the Minister of Agriculture and Land Affairs were also informed accordingly. A letter was also addressed to His Majesty the King regarding the matter.

Kind regards

DR PM MADUNA, MP
MINISTER OF MINERALS AND ENERGY

Mr Owen Green
Chairman of the Ingonyama Trust Board
P O Box 601
PIETERMARITZBURG
3200

BUL cp(apr1 yama)



Minister for Agriculture and Land Affairs

Dr P M Maduna
Minister
Department of Minerals & Energy
Private Bag X646
PRETORIA
0001

L3/1/1/11

Dear Dr Maduna

INGONYAMA TRUST: MINERAL RIGHTS ADMINISTRATION AGENCY

Thank you for the copy of your letter dated 21 April 1999 addressed to the President.

I have noted your concerns, and I am simultaneously writing to the Chairperson of the Ingonyama Trust. I enclose for your information a copy of that letter.

It seems to me that your letter raises two separate issues, namely ownership of the mineral rights in respect of the land concerned, and administration of those rights.

As far as the question of ownership is concerned, this is of course a matter of great political sensitivity. The question of the Trust has been the subject of delicate and extended negotiations since 1994, and the 1997 Amendment Act was one of the products of those negotiations. The question of a change of ownership of the mineral rights was not raised either during those negotiations, or at Cabinet which considered the matter of the Trust on more than one occasion. If you would like to discuss the way forward on this matter, I would be very happy to meet for this purpose.

The advertisement to which you refer deals only with the question of the administration of the mineral and mining rights. The Trust is naturally concerned to ensure that the rights are administered effectively and for the best advantage of the beneficiaries of those rights, namely the people living in the area concerned. There would obviously be advantage to the people concerned if the administration was done at no cost to them, as proposed in your letter. As you will see in the attached letter, I have requested the Chairperson of the Ingonyama Board to ensure that whatever steps are taken are consistent with national policy, and that the most serious consideration should be given to the proposal that the Department of Minerals and Energy should perform the functions of the proposed agency without charge.

Kind regards

DEREK HANEKOM
1999-05-11



Minister for Agriculture and Land Affairs

Ref: L3/1/1/11

Mr O Greene
Chairperson: Ingonyama Trust
c/o Mr Mdu Shabane
Department of Land Affairs
Private Bag X 9000
PIETERMARITZBURG
3200

Dear Mr Green

I enclose a copy of a letter which the Minister of Minerals & Energy has sent to the President, a copy of which has been sent to me for my information.

It is my wish that the Trust should operate in a manner which is consistent with national policy as set out in the White Paper on "A Minerals & Mining Policy for South Africa".

It seems to me that if the Department of Minerals & Energy is able to perform the functions of the proposed Minerals Rights Administration Agency without making any charge for its services, that would be to the advantage of the intended beneficiaries of the rights concerned. I trust that the Board will give this proposal its most serious consideration.

I enclose for your information a copy of a letter I have sent to the Minister of Minerals & Energy.

Kind regards

DEREK HANEKOM



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P.O. Box 2801 Durban 4000 South Africa

Corporate: Tel. (031) 907 891

Corporate: Tel. (031) 907 891

Fax (031) 907 535

Direct: Tel: (031) 9078600

Fax (031) 9074808

mspies@ithala.co.za

Mr O M Greene
Chairman
Ingonyama Trust Board
P O Box 601
Pietermaritzburg
3200

ADMINISTRATION OF MINERAL RIGHTS

In the interest of good order I wish to place on record that your Board has decided to take over the administration of mineral rights and mining in the former KwaZulu territory from Ithala with effect from 1 July 1999.

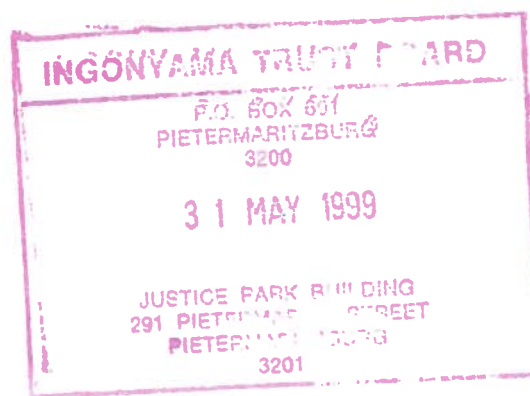
In order to ensure that the take over is implemented as smoothly as possible, our staff and representatives of your Board have commenced with the preparations for the handover. Attached is a provisional programme that we have drafted in respect of the handover. I will appreciate your confirmation and acceptance of the programme and timetable.

I await your earliest response in order to finalise this matter timeously.

Yours sincerely

Charles Jones

Encl





DEPARTMENT OF MINERALS AND ENERGY

Minerals and Energy for Development and Prosperity

Enquiries: F.C. BESTER

Tel No. 0341-22111 Ext. 206

Date: 05-07-1999

Ref No 4/3/2/99

PRIVATE BAG 2014
DUNDEE 3000

**THE CHAIRMAN
INGONYAMA TRUST BOARD
P.O. BOX 601
PIETERMARITZBURG
3200**

FOR ATTENTION : MR. OWEN GREEN

Dear Sir,

ACKNOWLEDGEMENT OF RECEIPT : RECEIPT AND DEPOSIT BOOK

I hereby acknowledge receipt of the receipt books and deposit book, which will be used specifically for the depositing of all royalties due to the Ingonyama Trust Board.

I must also confirm that we have successfully taken over the files from the Kwazulu Finance and Investment Corporation, and have compiled a list of these files, a copy of which is attached hereto for your records.

We assure you that the highest standards will be maintained, as we execute our duties as agent for the Ingonyama Trust Board.

Yours faithfully,


**DIRECTOR: MINERAL DEVELOPMENT
KWAZULU-NATAL REGION
AS/**

