

Tenure Reform: Ingonyama Trust

A review of the findings of the High Level Panel Report on the Assessment of Key Legislation and the Acceleration of Fundamental Change – December 2017

In terms of s 25(6) of the Constitution, parliament must enact legislation that would provide security to “a person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices”. The HLP report acknowledged submissions made that in spite of the Constitution and tenure rights legislation, tenure continues to be insecure in communal areas, farms and urban informal settlements; and that tenure insecurity contributes to social, spatial and economic inequality and perpetuates divisions across race, class, gender and habitation.

Key issues at a glance

Core problems	Principal HLP recommendations
<ul style="list-style-type: none"> • The Ingonyama Trust Act is fundamentally flawed • The Trust seeks to convert PTOs into lease agreements eroding the tenure security of rights holders • Lease revenues do not benefit people on the land managed by the Trust • The Trust has entered into agreements with outsiders with rights holders being denied the protections afforded by IPILRA 	<ul style="list-style-type: none"> • Repeal or substantially amend the Ingonyama Trust Act • If opting for repeal the Repeal Act should provide for the repeal of the Ingonyama Trust Act of 1994 and for the disestablishment and dissolution of the Ingonyama Trust. It should include provisions for the transfer of the Trust land, assets, liabilities, rights and obligations to the Minister responsible for land affairs as custodian on behalf of the members of the communities and residents concerned. • If opting for amendments these must secure the land rights of the people affected, and ensure that the land vests in a person or body with proper democratic accountability. • A Repeal Act or Amendment Act should provide mechanisms by which an aggrieved person, community or resident may lodge a dispute or institute proceedings. • Ensure that revenue or compensation from mining and other development activities shall be paid to land rights holders

Problem statement

The Act is full of deficiencies and ambiguities and its amendments and the ramifications thereof have had a far-reaching effect on the communities and residents on the land concerned. The Trust is currently trying to convert PTO's into lease agreements. This conversion of existing land rights into leases undermines the tenure security of the people. There is little evidence that the revenue generated by leases is used for the benefit of communities or their material well-being. Some of the people have complained that they are being victimised by the developmental projects that have concluded lease agreements with the Trust. The actions of the Trust undermine section 25(6) of the Constitution and the Interim Protection of Informal Land Rights Act 31 of 1996 (IPILRA).

Voices from public hearings

One speaker at the KZN hearing lamented the victimisation of citizens by developmental projects. He argued that when developmental initiatives are introduced, poor citizen's lives are disrupted without their consent. A businessman described how his business was shut down because of outstanding rental fees to the Ingonyama Trust. This was in spite of his having a Permission to Occupy Certificate and having made payments to the traditional leader. A speaker from Jozini submitted that in 2012, Jozini community members were invited to the Jozini Thusong Centre and asked to bring their identity documents. Without explanation, they were told to 'join' the Ingonyama Trust. He now receives monthly rental statements reflecting mounting debt to the Ingonyama Trust. Other speakers complained of the Ingonyama Trust having authorised quarries and other forms of development on their land without their consent. They complained that the benefits from these developments go to the Ingonyama Trust, as opposed to themselves.

Government proposals/responses

Government has not made any proposal regarding the strengthening of the rights of the people who are occupying the land that is currently owned by the Ingonyama Trust.

HLP Recommendations

Amendments, repeals, implementation

The Panel motivates for the repeal of the Ingonyama Trust Act to bring KwaZulu-Natal in line with national land policy, and to secure land tenure for the communities and residents concerned. If repeal is not immediately possible, substantial amendments must be made. They must secure the land rights of the people affected, and ensure that the land vests in a person or body with proper democratic accountability. There is also a pressing need to create mechanisms to investigate and resolve complaints by people whose rights have been infringed by the Trust, or whose rights may be infringed in the future.

Ownership of this land vests in the Ingonyama as trustee. If the Act is either amended or repealed, this will not result in automatic transfer of ownership to the people on the land, which is a complex process. The ownership will vest either in the national government or in some other body designated for this purpose. Currently, the ITB and some traditional councils claim the right to the benefits from the land (for example rental or compensation for use of the land by others.)

This is not correct: the people who are entitled to those benefits from the land are the people who use the land, and who lose that use. Many (but not all) of them have a claim to customary law ownership of

the land. If the Act is either amended or repealed, the repealing or amending Act should state explicitly that the holders of rights to the land (users and occupiers of the land) are deemed to be the owners of the land for the purposes of any revenue from the land or any compensation for use of the land, which would otherwise flow to the registered owner. Any such revenue or compensation shall be paid to them and not to the Ingonyama, the Trust (if it continues to exist) or the state. For example, where a mining company uses land in terms of a mining right granted in terms of the MPRDA, it is obliged to pay compensation for surface rights to the owner. Such compensation should be paid to the people who are deprived of the use of the land, and not to the state or the Ingonyama (the registered owner).

Repeal: The Repeal Act should provide for the repeal of the Ingonyama Trust Act of 1994 and for the disestablishment and dissolution of the Ingonyama Trust. It should include provisions for the transfer of the Trust land, assets, liabilities, rights and obligations to the Minister responsible for land affairs as custodian on behalf of the members of the communities and residents concerned.

Amend: An Amendment Act should provide for the amendment of the Act to ensure that trust land (including all land registered in the name of the Ingonyama as trustee for the Ingonyama Trust) is administered for and on behalf of and for the benefit of the members of the communities and residents concerned. It should also include provisions amending the composition of the Ingonyama Trust Board, which should fall under the auspices of the Minister responsible for land affairs, to provide that trust land shall be subject to national land programmes, to reiterate that the Act shall not apply to land in all townships, to provide for a trust fund, and to preserve the records of the Trust and establish a 'land register'.

Trust Land Register: A Repeal Act or Amendment Act should provide for the preservation of the records of the Ingonyama Trust and the ITB. A 'Register of Trust Land' should be established, which should contain the prescribed information. This should be available for inspection by any person during ordinary office hours and it should also be accessible to the public by electronic means (see Chapter 2 for Land Records Act proposals).

Dispute resolution: A Repeal Act or Amendment Act should provide mechanisms by which an aggrieved person, community or resident whose existing rights or obligations were affected by the administration of the Trust or ITB may lodge a dispute or institute proceedings. It should provide that the aggrieved person, community or resident may within five years lodge a dispute with an 'Ingonyama Trust Administrator', or institute proceedings in the magistrate's court or the Land Claims Court. If all the parties consent thereto, proceedings may be instituted in the High Court.

Conclusion

It is recommended that Ingonyama Trust Act be scrapped or amended enormously in order to strengthen the rights of all of the people who are occupying the land that belongs to Ingonyama Trust.