



# LAMOSA

LAND ACCESS MOVEMENT OF SOUTH AFRICA

## SUBMISSION

### TO PORTFOLIO COMMITTEE ON AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT –

Upgrading of Land Tenure Rights Amendment Bill [B6-2020] August 2020





## Application or area of operation of ULTRA:

**cl 4: s25A references to s19 and s20 must be scrapped, or repeal s19 or 20**

S19 and s20 deal with transfers of communal land by the minister to “tribes”

1991 - ULTRA applied to White South Africa outside of the 10 Bantustans.

1993 - ULTRA extended to 3 Bantustans Lebowa, QwaQwa and KaNgwane.

1994 – ULTRA not extended to the remaining 6 Bantustans.

- iro White South Africa and 3 bantustans:

- s2 and sch 1 to be dealt with by Provinces
- S3 and sch 2 remains with the national department

1996- ULTRA amended: made slightly more democratic, area of application remains

1998 - ULTRA (except for s3, s19 and s30) extended to the whole of RSA,  
ie: s3, s19 and s20 not applied to TBVC ‘independent’ states, Gazankulu, KwaZulu, KwaNdebele

2004 - CLARA repeals s19 and 20, but CLARA declared invalid

2020 - B6 proposes to extend s19 and s20 to TBVC and GKN Bantustans, without justification by the Department and without the Constitutional Court requiring it.



1986	68	Abolition of Influx Control Act 68 of 1986
1986	75	Abolition of Development Bodies Act 75 of 1986 [Blacks Administration Boards reconfigured into provinces]
1988	81	Conversion of Certain Rights to Leasehold and Ownership Act 81 of 1988
1991	108	Abolition of Racially Based Land Measures Act, 1991 (Act 108 of 1991) - repeal the Group Areas Act and the Land Acts of 1913 and 1936
1991	102	Upgrading of Land Tenure Rights Act, 1991 (Act 112 of 1991)
1991	113	Less Formal Townships Establishment Act, 1991 (Act 113 of 1991) repealed 2015
1991	B95	<b>Rural Development Bill [B95-1991]</b> [never proceeded with and it was supposed to back s20 of ULTRA to develop tribal land]
1991	B	Residential Environment Bill [not proceeded with but partly incorporated into the 3 <sup>rd</sup> Abolition Act Chapter VII to maintain standards in post Group Areas Act white suburbs]



Bantustan	capital	Tribe/ Nation	territ auth	leg ass	Self- Gov	‘indep’	ULTRA
<u>Transkei</u>	Umtata	<u>Xhosa</u>	1956	1963	1963	1976	
<u>Bophuthatswana</u>	Mmabatho 1977- Mafeking	<u>Tswana</u>	1961	1971	1972	1977	
<u>Venda</u>	Thohoyandou 1979- Sibasa	<u>Venda</u>	1962	1971	1973	1979	
<u>Ciskei</u>	Bisho 1981- Zwelitsha	<u>Xhosa</u>	1961	1971	1972	1981	
<u>Lebowa</u>	Lebowakgomo 1974- Seshego	<u>Northern Sotho (Pedi)</u>	1962	1971	1972		1993
<u>Gazankulu</u>	<u>Giyani</u>	<u>Tsonga (Shangaan)</u>	1962	1971	1973		
<u>QwaQwa</u>	<u>Phuthaditjhaba</u> (Witsieshoek)	<u>Southern Sotho</u>	1969	1971	1974		1993
<u>KwaZulu</u>	<u>Ulundi</u> 1980- <u>Nongoma</u>	<u>Zulu</u>	1970	1972	1977		
<u>KwaNdebele</u>	<u>KwaMhlanga</u> 1986- <u>Siyabuswa</u>	<u>Ndebele</u>	1977	1979	1981		
<u>KaNgwane</u>	<u>Louieville</u> 1985- <u>Schoemansdal</u>	<u>Swazi</u>	1976	1977	1984		1993

## **Proposal 2: Make IPILRA permanent new proposal**

- The committee can request the National Assembly to deal with other provisions of ULTRA. The committee can now enact IPILRA as PILRA and require regulations to PILRA to ensure its continued operation to respect and protect the property rights of all property rights holders on communal land in the RSA.
- This is necessary because Parliament must now signal that it is serious about making good on the constitutional imperative to enact a Communal Land Tenure Act that will promote and fulfil the property rights as required in terms of s25(6) and (9) of the bill of rights. Parliament must enact the legislation referred to in subsection (6).

# Proposal 3: reconsider s3 and sch 2

Cl 4 of B6 extends sched 2 and s 3 of ULTRA to all the former Bantustans, TBVC plus 3. Currently sched 3 only covers R188 PTOs, irrigation scheme PTOs and customary law rights.

1. The department and the President must first say how they intend to amend sched 2, before the committee can further proceed with the bill.
2. Sched 2 item 2 **R.188 of 1969**, the relevant provision in the schedule, was either not applicable, replaced or amended in former Bantustans. Sched 2 is empty for all intents and purposes.
3. In any event R188 and its PTOs encapsulate the outcomes of eight preceding betterment proclamations which created 544 betterment or villagisation projects in the country. These were principal instruments of Native Commissioners under Apartheid to subjugate independent African communities inside and outside what would still become the former Bantustans.
4. s 3 must first be amended to require PTOs to first be evaluated against overlapping customary rights and constitutional equality principles, before they can be converted.
5. The tenure rights registers for each villages and settlement must be established and updated first, into the existing s24D, before s3 rights can be converted. **LAMOSAs proposes wording for the amendment of s3 and sched 2 below.**

# s3 and sched 2 amendments wording

In order to make s3 work and be effective, it requires extensive amendment:

- 1 It must be consistent and compatible with s2;
- 2 It must not overwhelm the availability of state resources;
- 3 It must not duplicate effort;

Sched 2 must be amended to include enactments of the Bantustans since 1969, or when R188 was repealed by Bantustan governments.

Any amendments to s3 require extensive consequential amendments to the balance of the Act including s42D dealing with compilation and updating of registers of land rights, definitions and other safeguards for the concerned household, family, community and its members.

In addition, the judgment in *Ramuhovhi and Others v President of the Republic of South Africa and Others* (CCT194/16) (30 November 2017) and its implications for matrimonial property law and the law of succession must be accommodated.



# Other pertinent consequential amendments

- The definitions to require that notices be published and posted locally in a manner that will information will reach affected persons
- s1A on security of tenure to introduce principles of equality of rights of women and men to guide any interpretation of provisions of the Act and ensure compliance with the Ramuhovhi judgment
- s2 to include the constitutional option of comparable redress to household and family members who cannot be accommodated under conversion
- The regulations to:
  - guide the contents of a deed of other property right such as household and family life title, as distinguished from freehold title;
  - Guide the contents of the annual report of the Minister to Parliament to ensure that a proper management and control system is implemented to operationalise the Act and conversions of insecure tenure in townships to freehold title or life title
  - Monitor progress and developments in order that Parliament can address further shortcomings in the Regulations and the Act, and timeously address such with appropriate amendments and other measures.

2020 08 19 LAMOSA proposed amendments including consequential amendments:  
 Square brackets or yellow highlight notes and underlining are own notes:  
 B6 amendments incorporated

# CONVERSION UPGRADING OF CERTAIN [Township] LAND TENURE RIGHTS ACT NO. 112 OF 1991

[ASSENTED TO 27 JUNE, 1991]

[DATE OF COMMENCEMENT: 1 SEPTEMBER, 1991]

(Afrikaans text signed by the State President)

as amended by

General Law Amendment Act, No. 139 of 1992 [with effect from 7 August, 1992]  
 General Law Second Amendment Act, No. 108 of 1993 [with effect from 1 August, 1993]  
 Land Affairs General Amendment Act, No. 11 of 1995  
 Development Facilitation Act, No. 67 of 1995  
 Upgrading of Land Tenure Rights Amendment Act, No. 34 of 1996  
 Land Affairs General Amendment Act, No. 61 of 1998  
 Transformation of Certain Rural Areas Act, No. 94 of 1998 [with effect from 2 November, 1998]  
 Public Service Amendment Act, No. 30 of 2007 [with effect from 1 April, 2008]  
 Rural Development and Land Reform General Amendment Act, No. 4 of 2011

## ACT

To provide for the ~~upgrading and~~ conversion into ownership of certain rights granted in respect of land; ~~for the transfer of tribal land in full ownership to tribes;~~

To provide for the immovable property right of life title to express the life title to property and a home envisaged in section 25(6) and section 26 of the Constitution:

To provide for certain members of certain communities to choose whether they wish to hold title to their immovable property on which their homes in which they reside are situated in terms of „life title or freehold title;

and for matters connected therewith.

1. Definitions.—(1) In this Act, unless the context otherwise indicates—

“Administrator” . . . . .

“community” means any group or portion of a group of persons whose rights to land are derived from ~~shared rules determining access to land held in common by such group; or~~

a group of persons of which its members have or wish to have their rights to or in a particular piece of land determined by shared rules;

“community resolution” means any decision taken by a majority of the members of the community over the age of 18 years present or represented at a meeting convened for the purpose of considering the disposal of a right in land lawfully occupied ~~or being used by or allocated for the use of~~ such community, of which they have been given sufficient notice, and in which they had a reasonable opportunity to participate:—

Provided that such community resolution shall comply with the provisions of the Protection of Informal Land Rights Act, No. 31 of 1996 whenever the provisions of that Act are applicable;



**"Deeds Act"** means the Deeds Registries Act, 1937 (Act No. 47 of 1937);

**"deeds registry"** means a deeds registry as defined in section 102 of the Deeds Act;

**"erf"**, in relation to a township, means any surveyed or any informally demarcated unit in the township or, if a general plan has been prepared for the township, any unit indicated on such general plan as an erf, plot or stand;

**"formalized township"** means a township for which a general plan or general plans have been approved under a provision of any law and which—

- (a) has been established or is deemed to have been established as a township under section 35 of the Black Communities Development Act, 1984 (Act No. 4 of 1984);
- (b) has been established as a town under section 25 or 30 of the Black Administration Act, 1927 (Act No. 38 of 1927); or

(c) \_\_\_\_\_

- (ed) is for the purposes of Chapter 1 declared to be a formalised township under section 15(1);

**"general plan"** means a plan representing the relative positions and dimensions of two or more pieces of land;

**"land tenure right"** means any leasehold, deed of grant, quitrent or any other right to the occupation of land created by or under any law and, in relation to ~~tribal~~communal land, includes any right to the occupation of such land under the indigenous law or customs of the ~~tribe~~community in question;

**"Minister"** means the Minister of Rural Development and Land Reform;

[Definition of "Minister" substituted by s. 30 (b) of Act No. 108 of 1993, by s. 8 (b) of Act No. 11 of 1995 and by s. 9 of Act No. 4 of 2011.]

~~**"Official Gazette"** means the Official or Provincial Gazette of the province concerned;~~

**"putative holder"** means the person who occupies an erf as if he or she is the holder of the land tenure right in respect of that erf but who is not formally recorded in the register of land rights as the holder of the right in question;

~~**"putative owner"** means the community which occupies a township, or settlement as if it is the owner or the holder of the land tenure right in respect of township or settlement but which is not formally recorded in a deeds registry or register of land rights as the owner or the holder of the right in question;~~

**"register of land rights"—**

- (a) in relation to a township in which a land tenure right mentioned in Schedule 1 or 2 has been granted in respect of any erf or other piece of land in the township in terms of a provision of any law, means the register compiled and written up in terms of a provision of any law as a record of the granting of such land tenure right in erven or other pieces of land in the township or, if such register has been compiled or updated for the township

under section ~~18 (1)~~ **24D**, the register so compiled or updated;

- (b) in relation to a township on ~~tribal~~ **communal** land in which a land tenure right has been granted ~~or established~~ in respect of any erf or other piece of land in the township under the indigenous law or customs of the ~~tribe~~ **community** in question, means the register compiled under section ~~24D 18 (2)~~ as a record of ~~such property right~~ **the granting of such land tenure right** in erven or other pieces of land in the township;

- (c) in relation to a piece of land in respect of which a land tenure right mentioned in Schedule 1 or 2 has been granted under a provision of any law and which does not form part of a township, means the register compiled in terms of a provision of any law as a record of the granting of such land tenure right in such piece of land;

**"title of land right"**, in relation to any erf or any other piece of land, means a deed executed under a provision of any law as proof of the registration of a land tenure right in respect of such erf or such piece of land in the name of a person, ~~and life title has a corresponding meaning~~:-

**"township"** means—

- (a) any piece of land which is subdivided into smaller units in such a manner that the units are accessible by means of streets or thoroughfares, whether the units have been surveyed or are informally demarcated; or
- (b) any settlement, whether surveyed as such or established in any informal manner;

**"township owner"** means the person who, by virtue of his ownership of the land on which a township is situated, is the owner of the erven and other pieces of land in the township or, if any of such erven or pieces of land have been transferred, is the owner of the remaining erven or pieces of land;

**"township register"** means a register referred to in section 46 (1) of the Deeds Act;

~~**"tribal land"** means land—~~

- ~~(a) — in respect of which a tribe is the owner;~~
- ~~(b) — which is held in trust on behalf of a tribe; or~~
- ~~(c) — which has been allocated for the use of a tribe to the tribe by the State or the South African Development Trust mentioned in section 4 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936);~~

~~**"tribal resolution"**, in relation to a tribe, means a resolution passed by the tribe democratically and in accordance with the indigenous law or customs of the tribe: Provided that for the purposes of this Act any decision to dispose of a right in tribal land may only be taken by a majority of the members of the tribe over the age of 18 years present or represented at a meeting convened for the purpose of considering such disposal, of which they have been given sufficient notice, and in which they had a reasonable opportunity to participate;~~

~~**"tribe"** includes—~~

- ~~(a) — any community living and existing like a tribe; or~~

(b) ~~any part of a tribe living and existing as a separate entity.~~

**"communal land"** means land contemplated in section 25A which is, or is to be, occupied by members of a community subject to the rules or custom of that community;

**"comparable redress"** means an award which may comprise—

- ~~(a) land other than the land to which the application for conversion or update of a register relates or a right in such other land;~~
- ~~(b) compensation in money or in any other form; or~~
- ~~(c) a combination of land or a right in land contemplated in paragraph (a) and compensation contemplated in paragraph (b).~~

**"property right"**, means an entitlement and obligation which respect, protect, promote and fulfil the lives and livelihoods of the persons and their environment who choose to hold such right and organise themselves and record their mutual relationships in a manner chosen by them and according to the process envisaged under this Act.

**"holder"** means any person, woman or man, irrespective of marital status and including a putative holder.

**"local publication"** means to publish in a manner accessible to persons affected as prescribed and including,

- ~~a) on notice boards frequented by persons affected including public notice boards of clinics, schools, municipal offices, courts, police stations, bus stops and taxi ranks on or near the subject land;~~
  - ~~b) on social media frequented by persons affected, including facebook pages;~~
  - ~~c) in local newspapers read by affected persons;~~
  - ~~d) on municipal websites~~
- ~~and 'publish locally' has a corresponding meaning.~~

**"for local inspection"** means making registers and other documents available and accessible to persons affected as prescribed and including,

- ~~a) at public desks of municipal offices, public libraries, clinics and school libraries;~~
- ~~b) on social media including open access facebook groups;~~
- ~~c) on official websites and in particular the websites of the relevant local and district municipality.~~

**"this Act"** includes any regulations made under this Act.

(2) For the purposes of this Act, any piece of land within the borders of a township which is not registrable in the township register of such township or, if a township register has not yet been opened, will not be so registrable, shall not be deemed to form part of the township.

**1A Security of tenure.** —(1) A person is entitled to the extent and in the manner provided for in this Act and within the available resources of the State, either to tenure which is legally secure or to comparable redress if the tenure of land of such person is legally insecure as a result of past racially discriminatory laws or practices.

(2) A right held by a married person is, despite any law, practice, usage or registration to the contrary, deemed to be held by all spouses in a marriage in which such person is a spouse, jointly in undivided shares irrespective of the matrimonial property regime applicable to such marriage and must, on conversion in terms of this Act be registered in the names of all such spouses.

(3) A woman is entitled to the same legally secure tenure, rights in or to land and benefits from land as is a man, and no law, community or other rule, practice or usage may discriminate against any person on the ground of the gender of such person.

(4) Wives and husbands will have joint and equal ownership and other rights to, and joint and equal rights of management and control over marital property, and any registered or unregistered rights held or putatively held, and any converted property rights in respect of such rights and property shall be exercised by the wife and husband in the best interests of the household and family unit constituted by the household and family. [Ramuhovhi and Others v President of the Republic of South Africa and Others (CCT194/16) (30 November 2017)]

#### CHAPTER I

##### APPLICATION FOR CONVERSION OF LAND TENURE RIGHTS INTO OWNERSHIP OR OTHER PROPERTY RIGHT

2. ~~6~~ Application for conversion of land tenure rights mentioned in Schedule 1: —(1) Any land tenure right mentioned in Schedule 1 and which was granted in respect of—

(1) Any person who is the registered holder of a land tenure right according to the register of land rights in which that land tenure right was registered in terms of the provisions of any law, or could have been a holder of that land tenure right had it not been for laws or practices that unfairly discriminated against such person, may apply to the Minister, in the manner prescribed, for the conversion of such land tenure right into ownership or other property right in respect of—

- (a) any erf or any other piece of land in a formalized township for which a township register was already opened at the commencement of this Act, ~~shall at such commencement be converted into ownership;~~
- (b) any erf or any other piece of land in a formalized township for which a township register is opened after the commencement of this Act, ~~shall at the opening of the township register be converted into ownership;~~
- (c) any piece of land which is surveyed under a provision of any law and does not form part of a township, ~~shall at the commencement of this Act be converted into ownership,~~

~~and as from such conversion the ownership of such erf or piece of land shall vest exclusively in the person who, according to the register of land rights in which that land tenure right was registered in terms of a provision of any law, was the holder of that land tenure right immediately before the conversion.~~

“(1A) The Minister shall on receipt of such application cause to be published in the Gazette ~~and locally~~ a notice, as prescribed, which informs all interested persons of the application for conversion.

(1B) The notice as contemplated in subsection (1A) must provide all interested persons—

- (a) with an opportunity to object to the conversion; and
- (b) time frames within which to object to the conversion, which must not be less than one calendar month.

(1C) An objection to a conversion may be lodged in the prescribed manner with the Minister.

(1D) The Minister must, upon receipt of an application or objection contemplated in subsections (1A) and (1B) institute an inquiry, in the prescribed manner, in order to assist the Minister in determining the

facts and to make a decision relating to

- a) the conversion of land tenure rights,
- b) the objection thereto,
- c) the award of comparable redress, and
- d) the vesting of ownership or other property right."

(1E) The Minister may, before institution and inquiry on good grounds and taking into account the number of individual applications received in respect of certain land and available resources of the State, authorise the compilation or updating of a register of land rights as contemplated in section 24D.

(2) (a) In order to give effect to subsection (1), the registrar of deeds concerned shall make the necessary entries and endorsements in respect of his registers and other documents, as well as in respect of any relevant documents produced to him.

(b) No transfer duty, value-added tax, stamp duty, deeds registration fees of office or other fees shall be payable in respect of any such entries and endorsements.

(3) For the purposes of subsection (2), the registrar of deeds may supplement the township register of the township concerned in accordance with the entries in any relevant register of land rights: Provided that if he or she is satisfied that any relevant register of land rights is suitable for use as part of the township register of the township concerned and he or she has endorsed the register of land rights on the obverse with words to that effect and so dated it, such register of land rights shall be deemed to form part of the township register of the township.

(4) For the purposes of subsection (1) (c) and section 6, any piece of land in respect of which a land tenure right referred to in item 2 of Schedule 1 has been granted, shall be deemed not to form part of a township irrespective of its position. leg certain R188 quitrents or parts of such quitrents]

3. Conversion of land tenure rights mentioned in Schedule 2.—(1) Subject to subsection (1B), any land tenure right mentioned in Schedule 2 and which was granted in respect of any erf or any other piece of land shall, upon the submission by the owner of such erf or piece of land at the deeds registry of a deed of transfer on the form prescribed for that purpose under the Deeds Act [form DDD] and made out in the name of the person who is the holder of the relevant land tenure right or could have been a holder of that land tenure right had it not been for laws or practices that unfairly discriminated against such person, be converted into ownership or other property right by the registrar of deeds by the registration of such erf or piece of land in the name of such person: Provided that—

- (a) where the State [or a municipality] is the formal owner of an erf or piece of land situated outside a formalised township, the relevant land tenure right need not be converted into ownership or other property right, and a deed of transfer shall not be submitted unless—
  - (i) the Minister is satisfied, on the basis of a report by a person assigned or appointed by him or her, that the rights or interests of putative holders and holders are are being protected; and
  - (ii) where such land is lawfully occupied [ie ito IPILRA] or is being used has been allocated for the use of a tribe or a community a tribal or community resolution has been obtained: Provided that all the relevant information concerning the rights of all holders to the erf or piece of land as required in subsection (a)(i) shall be placed before the meeting;

- (b) where a ~~tribe~~community is the **putative** owner of the land **[eq ito IPILRA]**, the decision to convert the relevant land tenure right into ownership ~~or other property right~~ shall be taken by way of a **community** ~~tribe~~ resolution; ~~Provided that all the relevant information concerning the rights of all holders to the erf or piece of land as required in subsection (a)(i) shall be placed before the meeting.~~


(1A) For the purposes of an investigation referred to in subsection (1) (a), the **Minister and the** designated or appointed person shall have all the rights and duties referred to in section 24D ~~(5) to (13), and the provisions of section 24D (5) to (13) apply~~ *mutatis mutandis* to any investigation referred to in subsection (1)(a)-(7).

(1B) If an owner of an erf or piece of land is requested to submit a deed of transfer of land in terms of subsection (1), the Minister may on request of such owner, or if the State is the **formal** owner of such land, of his or her own accord—

- (i) impose conditions in respect of the use of such land, but if the State is the owner of such land and it is lawfully occupied **[eq ito IPILRA]** ~~by or has been allocated for the use of~~ ~~being used by~~ a ~~tribe or~~ community, ~~in consultation with such tribe or~~ community;
  - (ii) from moneys appropriated by Parliament or at the cost of an affected person and on such conditions as he or she may determine, cause such land to be surveyed;
  - (iii) order that an amount to be determined by him or her be paid by an affected person to the owner of the erf or other piece of land, or if the erf or other piece of land falls within an area lawfully occupied or ~~being used by allocated for use by a tribe or~~ a community, to the ~~tribe of~~ community concerned;
  - (iv) provide for a method for determining the amount to be paid in terms of paragraph (iii).
- (2) A deed of transfer referred to in subsection (1) **[ie form DDD]** shall be prepared by—




- (a) a conveyancer; or

- (b) if the owner of the erf or piece of land is the State or any ~~local government~~ **bodymunicipality**, any officer in the public service or person in the employ of such ~~local government bodymunicipality~~, as the case may be, who has been designated for the purpose by the Minister, a Premier or a ~~local government bodymunicipality~~, as the case may be.

(3) A deed of transfer referred to in subsection (1) shall be in the form prescribed under the Deeds Act and shall be signed by the **formal** owner of the erf or piece of land or his or her duly authorised agent in the presence of a conveyancer referred to in subsection (2) (a) or an officer or person referred to in subsection (2) (b) in the manner prescribed under that Act.

- (4) An officer or person referred to in subsection (2) (b)—

- (a) shall disclose the fact that the deed of transfer referred to in subsection (1), or any power of attorney, application or consent, which may be required by the



registrar for the purposes of the registration of the transfer was prepared by him or her, by signing an endorsement to that effect on the deed of transfer, power of attorney, application or consent, as the case may be, and by virtue of such signing accepts, *mutatis mutandis*, in terms of section 15A (1) and (2) of the Deeds Act, responsibility for the correctness of the facts stated in any such document; and

- (b) may, despite anything to the contrary contained in any other law, perform all of the functions of a conveyancer in relation to the registration of a deed of transfer as contemplated in this section.

(5) A conveyancer, officer or person referred to in subsection (2) shall lodge the deed of transfer together with the necessary supporting documents at a deeds registry in the manner prescribed under the Deeds Act.

(6) The registrar shall deal with a deed of transfer and the other documents referred to in subsection (5) as if such deed of transfer were executed in the presence of the registrar in terms of section 20 of the Deeds Act.

(7) Ownership or other property right of the erf or piece of land shall be deemed to have been transferred on the date of registration by the registrar of a deed of transfer referred to in subsection (1).

(8) Section 17 (1) and (2) of the Deeds Act shall not apply to and no transfer duty or stamp duty shall be payable in respect of the transfer of ownership or other property right of any erf or piece of land in terms of this section.

4. Contents of land tenure rights mentioned in Schedule 1 and Schedule 2 pending conversion. — (1)\*

Notwithstanding anything to the contrary contained in any law but subject to subsections (2) and (3), a land tenure right mentioned in Schedule 1 and Schedule 2 which has been granted in respect of any erf or any other piece of land in a formalized township for which a township register has not yet been opened shall bestow, pending the conversion thereof into ownership or other property right in terms of section 2 (1) (b) as soon as a township register is opened, on the person who is, according to a register of land rights of the township, the holder or putative holder thereof, or could have been the holder thereof but for laws or practices that unfairly discriminated against such person, all rights and powers as if he or she is the owner of the erf or the land in respect of such which the land tenure right has been granted. **[B6 consistent]**

(2) The provisions of subsection (1) shall not affect—

- (a) any condition, servitude, mortgage bond or other right registered against the title of the land on which the township concerned is situated;
- (b) any condition, servitude, mortgage bond or other right registered against the title of land right of the relevant erf or other piece of land; and
- (c) any condition in force in respect of the township concerned.

(3) No provision, irrespective of whether it is contained in any law or registered against the title or title of land right referred to in subsection (2), shall be of force in respect of any land tenure

right referred to in subsection (1), in so far as such provision—

- (a) has placed any restriction on the period for which the land tenure right concerned was granted;
- (b) has placed any restriction, other than by virtue of an agreement to which the holder of such land tenure right was a party, on the capacity of the holder to alienate, bequeath, let, hypothecate or otherwise deal with such land tenure right as if he or she is the owner;
- (c) has placed any restriction on the transfer of such land tenure right to, or on the possession, use or occupation of the relevant erf or other piece of land by, any person of a particular population or ethnic group or who is not of a particular population or ethnic group; or
- (d) has imposed any obligation on the holder of such land tenure right to pay any royalty or similar periodic levy to any person ~~the township owner~~ for the continued existence of such land tenure right.

5. Continuation of title conditions, servitudes, mortgage bonds, etc.— (1) Ownership or other property right vested in any erf or any piece of land by virtue of any conversion in terms of section 2 or 3 shall, subject to subsections (2) and (3), be subject to—

- (a) any condition, servitude, mortgage bond or other right registered immediately before such conversion —
  - (i) in the case of any erf or any other piece of land in a township, against the title of the land on which the township is situated;
  - (ii) in the case of any piece of land which does not form part of a township, against the title of that land; and
- (b) any condition, servitude, mortgage bond or other right registered immediately before such conversion against the title of land right of such erf or piece of land.

(2) Ownership or other property right vested in any erf or any piece of land by virtue of any conversion in terms of section 2 or 3, shall not be subject to a provision of any condition, servitude, mortgage bond or other right referred to in subsection (1), in so far as such provision—

- (a) placed any restriction on the period for which the land tenure right concerned was granted;
- (b) placed any restriction, other than by virtue of an agreement to which the holder of such land tenure right was a party, on the capacity of the holder to alienate, bequeath, let, hypothecate or otherwise deal with such land tenure right;
- (c) placed any restriction on the transfer of such land tenure right to, or on the possession, use or occupation of such erf or piece of land by, any person of a particular population or ethnic group or who is not of a particular population or ethnic group; or
- (d) imposed any obligation on the holder of such land tenure right to pay any royalty or similar periodic levy to the person who was the owner of such erf or piece of land for

the continued existence of such land tenure right.

(3) (a) If a mortgage bond has been registered over the land on which a formalized township referred to in section 2 (1) (a) or (b) or 3 (1) (a) is situated, the mortgage bond shall lapse in respect of those erven and other pieces of land in the township in respect of which ownership or other property right is vested by virtue of any conversion in terms of section 2 or 3.

(b) Paragraph (a) shall not affect the continuation of such mortgage bond in respect of erven and other pieces of land in the township concerned which are not affected by any conversion in terms of section 2 or 3.

~~6. Effect of Act.~~ (1) The provisions of any law governing the registration and transfer of any land tenure right mentioned in ~~this Act~~ Schedule 1 shall—

- (a) ~~... as from the commencement of this Act, no longer apply in respect of any township referred to in section 2 (1) (a) or in respect of any erf or any other piece of land in such township;~~
- (b) as from the opening of a township register for a township ~~referred to in section 2 (1) (b)~~, no longer apply in respect of the township for which the township register is opened or in respect of any erf or any other piece of land in such township; or
- (c) as from the commencement of this Act, no longer apply in respect of any land which does not form part of a township.

(2) As from the discontinuation of the provisions of any law in terms of subsection (1) relating to any township or piece of land referred to in that subsection, any authorization in any such law for the granting of any land tenure right mentioned in Schedules 1 or 2 in respect of any erf or other piece of land in such township or in respect of such piece of land, shall be construed as authorization for the granting of ownership or other property right in respect of any such erf or piece of land.

(3) Property transactions in any township referred to in section 2 (1) (a) or (b) shall—

- (a) in the case of the transfer of any erf or any other piece of land of which the township owner is immediately after the commencement of this Act or the opening of the township register, as the case may be, still the owner, be disposed of in accordance with section 3 (1) (a), if any land tenure right mentioned in Schedule 2 has been granted in respect thereof, or in accordance with section 13, if any such land tenure right has not been granted in respect thereof; [form DDD] and
- (b) in the case of any other transfer of erven and other pieces of land in any such township, be disposed of in accordance with the Deeds Act.

(4) Property transactions with reference to any land which does not form part of a township shall—

- (a) in the case of the transfer of such piece of land in respect of which any land tenure right referred to in Schedule 2 has been granted, be disposed of in accordance with section 3 (1) (b); or
- (b) in the case of any other transfer, be disposed of in accordance with the Deeds Act.

(5) . . . . .

~~7. Cancellation of certain servitudes and restrictive conditions relating to formalized townships.—(1)~~

The Minister may by notice ~~published~~ in the *Official Gazette* ~~and locally~~ cancel—

- (a) any servitude registered against the title of the land on which a formalized township is situated and which in his opinion is not being utilized beneficially or, as a result of the township situated on such land, cannot be utilized; or
- (b) any restrictive condition so registered or otherwise operative in respect of such land,

if he ~~or she~~ is of the opinion that any such servitude or condition is inconsistent with, or undesirable with reference to, the use or occupation or the further development or subdivision of such land as a township.

(2) A cancellation under subsection (1) shall take effect—

- (a) in the case of any township for which a township register has been opened, 60 days after the date of publication of the notice; or
- (b) in the case of any township for which a township register has not yet been opened, 60 days after the date of publication of the notice or, if the township register is not yet opened after the expiry of the said period, at the opening of the township register.

(3) The Minister may at any time before any cancellation is effected in terms of subsection\* (2) withdraw by notice ~~published~~ in the *Official Gazette* ~~and locally~~ a notice under subsection (1), or the cancellation of any particular servitude or condition specified therein.

(4) A notice under subsection (1) shall specify the fact that a cancellation specified in the notice shall take effect 60 days after the date of publication of the notice or at the opening of the township register, as the case may be, as well as that such cancellation may be withdrawn prior to the expiry of the said period or prior to the opening of the register, as the case may be.

(5) Subsection (1) shall not be construed as authorizing the cancellation of any registered right to minerals over the land concerned.

(6) The cancellation of a servitude or condition registered against the title of the land on which\* a township is situated under this section shall, in the case of a township for which a township register has been opened, also be effectual in respect of any title of an erf or other piece of land in the township against which such servitude or condition is registered.

(7) (a) In order to give effect to subsections (1) and (6), the registrar of deeds concerned\* shall make the necessary entries and endorsements in respect of his ~~or her~~ registers and other documents, as well as in respect of any relevant documents produced to him ~~or her~~.

(b) No stamp duty or other fees shall be payable in respect of any such entries and endorsements.

~~8. Compensation in respect of cancelled servitudes and conditions.—(1) Any person who has\* suffered any damage as a result of the cancellation of a servitude or restrictive condition under section (7) (1) or (6) may, within a period of three years after such cancellation has taken effect, claim compensation for his damage from the Minister.~~

(2) The Minister shall compensate the claimant for his damage, if any, in the amount agreed upon by the Minister and the claimant, or failing such agreement, in the amount determined by arbitration, in which case the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965), shall apply *mutatis mutandis*.

(3) If any person other than the State was the township owner at the time of the relevant cancellation and the Minister exercises his powers under subsection (2) after consultation with such person, the Minister may recover from such person any amount paid by him as compensation to any claimant in terms of that subsection.

~~9. Opening of township registers in respect of certain formalized townships.—~~(1) (a) The Minister may in respect of any formalized township for which a township register has not been opened at the commencement of this Act or any township which is declared to be a formalized township under section 15 (1) apply to the registrar of deeds for the opening of a township register for any such township.

(b) If the land on which the township is situated is not State-owned land, the person who is the owner of the land on which the township is situated may make an application referred to in paragraph (a) to the registrar of deeds.

(2) The registrar of deeds shall open a township register in respect of a township referred to in subsection (1) if he is satisfied that all relevant legal and other requirements for the opening of the register have been complied with.

(3) At the opening of a township register of a township referred to in section 15 (1), the ownership of portions indicated on the general plan as public places shall vest—

(a) in a case where the township is situated within the area of jurisdiction of a local municipality authority, in the local municipality authority; and

~~(b) in other cases, in the Premier in trust for a local authority until a local authority is established for the township or the township is incorporated in the area of jurisdiction of a local authority, whereupon it shall vest in such local authority;~~

and the registrar of deeds shall make an entry of such vesting in the documents under his or her control or which are produced to him or her, in such manner as he or she may deem necessary.

~~10. Arrangements by Minister to facilitate opening of township registers.—~~(1) The Minister shall take all steps necessary to enable the registrar of deeds to open a township register in respect of any formalized township for which a township register has not been opened.

(2) The steps referred to in subsection (1) shall include steps—

(a) to comply on behalf of a township owner or person referred to in section 11 (1) (a) or (b), and with or without the consent or authorization of such township owner or person, with the provisions of that section;

(b) to apply on behalf of the relevant township owner, and with or without the consent or authorization of that township owner, for the opening of a township register in terms of section 9 (1), or to comply with any relevant legal or other requirement for the opening of the township register; and

- (c) to require the relevant township owner or other person to deliver to the Minister any relevant title deed, diagram or other document in the possession or under the control of that township owner or person.

~~(3) The Minister may recover any costs incurred by him in connection with anything done by him on behalf of a township owner or person under subsection (2), from that township owner or person.~~

~~11. Directions as to opening of township registers.—(1) ... The registrar of deeds shall not open any township register in respect of a township referred to in section 9 (1), unless a certificate of rights to minerals has been taken out in favour of—~~

~~(a) the township owner, in respect of all rights to minerals held by him under the same title as the title by which he is the registered owner of the land on which the township is situated;~~

~~(b) any 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 Act, if such certificate has not yet been issued.~~

(2) For the purposes of section 9 (2)—

- (a) any general plan approved by or under any law other than the Land Survey Act, 1927 (Act No. 9 of 1927), shall be deemed to be a general plan approved under the Land Survey Act, 1927; ~~and~~

~~(b) the township owner or the person in whom the rights to minerals in respect of the land vests, if that township owner or person is not the Premier, shall be deemed to have consented to the opening of the township register.~~

~~12. Conditions of land use.—(1) If a township is declared to be a formalized township under section 15 (1), the Minister may by notice in the Official Gazette and published locally impose conditions in respect of such township for the regulation of the use of the erven and other pieces of land in the township.~~

(2) Conditions imposed under subsection (1)—

- (a) shall not be registered against the title of the land on which the township is situated or against the title of any erf or other piece of land in the township;
- (b) may be amended or withdrawn by the Minister by like notice prior to or after the opening of a township register for the township.

(3) The Minister shall exercise the powers conferred upon him by this section ~~in~~after consultation with the relevant community in such manner as he may deem the most suitable.

(4) Any condition referred to in this section shall lapse as from the date on which a town planning scheme or a zoning scheme becomes applicable in respect of the township concerned.

~~13. Shortened registration procedures relating to certain erven and land transferred by township owner.—(1) If a township owner, with reference to any formalized township, intends to transfer ownership or other property right in respect of any erf or any other piece of land in respect of which no land tenure right has been granted, he may do so by lodging a deed of transfer on the~~



form prescribed for that purpose under the Deeds Act and made out in the name of the transferee, at the deeds registry for the registration of such erf or piece of land in the name of the transferee.

(2) Ownership or other property right in respect of any erf or any piece of land registered in terms of subsection (1) shall be subject to any condition, servitude or other right registered upon such registration against the title of the land on which the township concerned is situated.

(3) A deed of transfer referred to in subsection (1) shall be prepared by—

- (a) a conveyancer; or
- (b) if the owner of the erf or piece of land is the State or any ~~local government~~ bodymunicipality, any officer in the public service or person in the employ of such ~~local government~~ bodymunicipality, as the case may be, who has been designated for the purpose by the Minister, a Premier or a ~~local government~~ bodymunicipality, as the case may be.

(4) A deed of transfer referred to in subsection (1) shall be in the form prescribed under the Deeds Act, and shall be signed by the owner of the erf or piece of land or his or her duly authorised agent in the presence of a conveyancer referred to in subsection (3) (a) or an officer or person referred to in subsection (3) (b) in the manner prescribed under that Act.

(5) An officer or person referred to in subsection (3) (b)—

- (a) shall disclose the fact that the deed of transfer referred to in subsection (1), or any power of attorney, application or consent, which may be required by the registrar for the purposes of the registration of the transfer was prepared by him or her, by signing an endorsement to that effect on the deed of transfer, power of attorney, application or consent, as the case may be, and by virtue of such signing accepts, *mutatis mutandis*, in terms of section 15A (1) and (2) of the Deeds Act, responsibility for the correctness of the facts stated in any such document; and
- (b) may, despite anything to the contrary contained in any other law, perform all of the functions of a conveyancer in relation to the registration of a deed of transfer as contemplated in this section.

(6) A conveyancer, officer or person referred to in subsection (3) shall lodge the deed of transfer together with the necessary supporting documents at a deeds registry in the manner prescribed under the Deeds Act.

(7) The registrar shall deal with a deed of transfer and the other documents referred to in subsection (6) as if such deed of transfer were executed in the presence of the registrar in terms of section 20 of the Deeds Act.

(8) Ownership or other property right of the erf or piece of land shall be deemed to have been transferred on the date of registration by the registrar of a deed of transfer referred to in subsection (1).

(9) Section 17 (1) and (2) of the Deeds Act shall not apply to and no transfer duty or stamp duty shall be payable in respect of the transfer of ownership or other property right of any erf or piece of land in terms of this section.

~~14. Correction of township registers by registrar of deeds. —(1) If any entry in a township register\*~~

of any formalized township is manifestly incorrect, the registrar of deeds having custody and control of that township register may correct the error upon application by any interested person.

(2) The provisions of section 2 (2) shall *mutatis mutandis* apply in respect of any such correction.\*

14A. "Court applications (1) Notwithstanding the provisions of this Act or any other law, any person aggrieved by a conversion of a land tenure right which took effect from 27 April 1994 may approach the court for an order—

(a) setting aside such conversion and registration of land tenure right; or

(b) that is just and equitable; or

(c) that affords comparable redress.

(2) Transfers of ownership of any erf or any other piece of land from 27 April 1994 in which a land tenure right had been converted in respect of—

(a) any erf or any other piece of land purchased by third parties acting in good faith;

(b) any erf or any other piece of land which has been inherited by a third party acting in good faith and the estate has been finalized in terms of the law of succession and the Reform of Customary Law of Succession and Regulation of Related Matters Act, 2009 (Act No. 11 of 2009) [as amended and interpreted], has been applied; or

(c) any erf or any other piece of land which has been converted to ownership in favour of a woman in terms of this Act acting in good faith, remain valid."

## CHAPTER 2

### FORMALIZING OF TOWNSHIPS

15. Declaration of townships to be formalized townships.—(1) The Minister may by notice published in the Official Gazette and locally declare a township specified in the notice to be a formalized township for the purposes of Chapter 1.

(2) The Minister shall not declare any township to be a formalized township under subsection (1) unless—

(a) a general plan in respect of any such township has been approved under the relevant provision of any law;

(b) a land tenure right mentioned in Schedule 1 or 2 has been granted in respect of any erf or any other piece of land in any such township, or a register of tenure rights has been compiled or updated as envisaged in terms of section 24D;

and

(c) if any such township is situated on communal tribal land, the tribe community in question has requested the Minister by means of a tribe community resolution to take steps to declare any such township to be a formalized township with a view to converting the land tenure rights granted to individuals in respect of erven and other pieces of land in any such township into ownership or other property right: Provided that such request shall not unreasonably be refused, and provided further that the Minister shall provide reasons if such request is refused.

16. Assistance by Minister to formalize townships.—(1) Subject to the provisions of subsection (2)\* and within the resources of the state the availability of moneys and personnel, the Minister may

in respect of a township in which land tenure rights mentioned in Schedule 1 or 2 ~~have been granted~~ in erven or other pieces of land, ~~take in conjunction with the community residing in such township~~ such steps as may be necessary to declare such township to be a formalized township.

~~(2) Subsection (1) shall not be applicable in respect of any township situated on tribal communal land unless the tribe community in question has requested the Minister by means of a tribal community resolution to take steps to declare any such township to be a formalized township with a view to converting the land tenure rights granted to individuals in respect of erven and other pieces of land in any such township into ownership or other property right: Provided that such request shall not unreasonably be refused, and provided further that the Minister shall provide reasons if such request is refused.~~

17. Surveying.—(1) If a township in which land tenure rights mentioned in Schedule 1 or 2 have been granted in erven or other pieces of land has not been surveyed, the Minister may—

- (a) in conjunction with the community residing in such township, cause the layout of such township to be rearranged and cause such adjustments to be effected to the layout thereof as he may deem necessary;
- (b) cause the land on which such township is situated, including such township itself, to be surveyed and cause a diagram or general plan to be prepared; and
- (c) cause such diagram and general plan to be submitted to the surveyor-general for his approval.

(2) If the land on which the township is situated is not State-owned land, the Minister may take the steps contemplated in subsection (1) with or without the consent or authorization of the owner of the land.

~~(2) Subsection (1)(a) shall not be applicable in respect of any township situated on communal land unless the community in question has requested the Minister by means of a community resolution to take steps to cause the layout of such township to be rearranged and cause such adjustments to be effected to the layout thereof as he may deem necessary: Provided that such request shall not unreasonably be refused, and provided further that the Minister shall provide reasons if such request is refused.~~

18. ....

## CHAPTER 2A

18A. ....

18B. ....

18C. ....

18D. ....

18E. ....

18F. ....

18G. ....

18H. ....

18I. ....

### CHAPTER 3 MISCELLANEOUS

~~19. Legal capacity of tribe to obtain property.—(1) Any tribe shall be capable of obtaining land in ownership and, subject to subsection (2), of selling, exchanging, donating, letting, hypothecating or otherwise disposing of it.~~

~~(2) Land obtained by any tribe by virtue of section 20 shall not during a period of ten years as from the commencement of this Act be sold, exchanged, donated, let or otherwise allocated by that tribe to any person who is not a member of that tribe, except on the authority of consent granted by a competent court.~~

~~(3) Consent in terms of subsection (2) shall not be granted unless the court is satisfied—~~

~~(a) —that the relevant disposal is authorized by a tribal resolution;~~

~~(b) —that the relevant disposal is not in conflict with the interests of the members of the tribe; and~~

~~(c) —that satisfactorily alternative residence is available for persons residing on the land concerned, if the relevant disposal results in those persons waiving their right to the occupation of such land.~~

~~20. Transfer of tribal land to a tribe.—(1) A tribe may request the Minister to transfer tribal land the control of which vests in the tribe to the tribe in ownership.~~

~~(2) If the land has been surveyed the Minister may take steps to transfer the land concerned to the tribe in question.~~

~~(3) If the land has not been surveyed the Minister may designate any person to investigate the feasibility of the request and to submit a report and recommendation to him or her in regard thereto.~~

~~(4) Any person designated under subsection (3) may for the purposes of his or her investigation—~~

- ~~(a) — gather such information as he or she may deem necessary;~~
- ~~(b) — hear or receive representations from any person;~~
- ~~(c) — question any person who in his or her opinion may have relevant information available;~~
- ~~(d) — by agreement between interested parties, settle any difference as to the land which forms the subject of the investigation, or the boundaries of such land;~~
- ~~(e) — if requested by the interested parties determine the boundaries of such land or, if they cannot be determined, establish them in consultation with interested parties;~~
- ~~(f) — on the authority of a warrant issued by a magistrate or a judge having jurisdiction at any reasonable time enter upon such land or any contiguous land.~~

~~(5) Any person designated under subsection (3) may in the performance of his or her functions be accompanied by such persons as he or she under the circumstances of any particular case may deem necessary.~~

~~(6) The Minister shall issue to a person designated under subsection (3) proof in writing of his or her designation, and such person shall in the performance of his or her functions under this section produce, at the request of any person affected by such functions, such proof to the latter person.~~

~~(7) After receipt of a report and recommendation referred to in subsection (3), the Minister may cause the land to be surveyed, if such land or any portion thereof has not been surveyed, and take steps to transfer such land or such portion to the tribe in question.~~

~~(8) If the Minister does not proceed in terms of subsections (2) or (7) he or she shall cause the tribe in question to be notified in writing of the reasons for his or her decision not to accede to such request.~~

~~(9) No transfer duty, stamp duty or other fees shall be payable in respect of any transfer in terms of subsection (2) or (7).~~

~~(10) For the purposes of this section "surveyed" means surveyed under a provision of any law—[S. 20 substituted by s. 7 of Act No. 34 of 1996.]~~

## 21. Legal presumptions:.... ~~(1) Whenever in any judicial proceedings the question arises—~~

- ~~(a) — .....~~
- ~~(b) — whether a person with a particular name is the holder of a land tenure right mentioned in Schedule 1 or 2 in respect of a particular erf or piece of land, a certificate signed or purporting to have been signed by any person who alleges therein that he is lawfully in control of the register of land rights in which such land tenure right is registered and that a person with a name specified in the certificate is entered in such register as the holder of such land tenure right in respect of that particular erf or piece of land shall, on production of such certificate at any such proceedings by any person, be accepted as *prima facie* proof of the facts alleged therein.~~
- ~~(c) — whether a person is a putative holder.~~

~~(d) whether a person—~~

**22. Transfer of certain offices to the Department of Rural Development and Land Reform.—**

~~(1) Any office for the registration of land tenure rights—~~

~~(a) mentioned in Schedule 1; or~~

~~(b) similar to the rights mentioned in Schedule 1, as contained in laws which by virtue of section 229 of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), continue to be in force in any area of the Republic;~~

~~and which has been established in the Department of Development Aid or in any department under the control of the government of a territory, which after the commencement of that Constitution, forms part of the national territory, is hereby transferred to the Department of Rural Development and Land Reform.~~

~~(2) As from the date of the commencement of the Upgrading of Land Tenure Rights Amendment Act, 1996—~~

~~(a) the control of such an office and all registers, books, plans, diagrams, records and other documents relating to the affairs of such office, shall vest in the Director-General of Rural Development and Land Reform; and~~

~~(b) the officers and employees attached to such office shall, subject to subsection (3), perform their functions as if they were seconded to the Department of Rural Development and Land Reform.~~

~~(3) Any officer or employee referred to in subsection (2) and who is an officer or employee in the public service may be dealt with in accordance with the Public Service Act, 1994.~~

**23. Offences and penalties.—(1) Any person who—**

(a) wilfully hinders or obstructs any person designated or appointed under section 3 ~~or 24D(1) or (2) or 20(3)~~ in the performance of his or her functions under this Act;

(b) fails to comply with an order in terms of section 24D(7)18(6A), except an order for costs,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

**24. Amendment of Schedules 1 and 2.—(1) Subject to the provisions of section 25, the President may by proclamation in the Gazette and locally—**

(a) amend Schedule 1 by the addition of any leasehold, deed of grant or quitrent created by any law of a self-governing territory and specified in the proclamation;



(b) amend Schedule 2 by the addition of any land tenure right specified in the proclamation.

(2) If the President adds to Schedule 1 any leasehold, deed of grant or quitrent under subsection (1) (a), a reference in this Act to its commencement, with reference to any such leasehold or deed of grant or quitrent, shall, except where it is clearly inappropriate, be construed as a reference to the commencement of the relevant proclamation under that subsection.

(3) Any proclamations made under this section must be tabled in Parliament.

24A. Delegation of powers and assignment of functions.—(1) The Minister may, either in general or in a particular case or in cases of a particular nature, in writing delegate to—

- (a) a Premier or a member of the Executive Council of a province; or
- (b) any officer in the service of the national government or a ~~local government body~~ ~~municipality contemplated in section 1 of the Local Government Transition Act, 1993 (Act No. 209 of 1993),~~

any power conferred upon him or her by or under this Act.

(2) Any person to whom any power has been delegated under subsection (1) shall exercise that power subject to the directions of the Minister.

(3) The Minister may at any time revoke such delegation in writing and the delegation of any power shall not prevent the Minister from exercising that power himself or herself.

(4) The Premier or a member of the Executive Council of a province to whom any power has been delegated under subsection (1) (a) may, subject to any directions contemplated in subsection (2) and such further conditions and periods of time as he or she may determine, delegate any such power in writing to—

- (a) the Director-General of that province; or
- (b) any officer in the service of the provincial government concerned.

(5) The President may, by proclamation in the *Gazette*—

- (a) assign the administration of this Act or any provision of this Act to a Premier of a province; or
- (b) reassign the administration of this Act or any provision as assigned in terms of paragraph (a) to a Minister referred to in section 88 of the Constitution,

either generally or to the extent specified in the proclamation, and subject to such conditions, amendments, adaptations, modifications, and periods of time as the President may determine.

(6) When the President assigns the administration of this Act under subsection (5), or at any time thereafter, and to the extent that he or she considers it necessary for the efficient carrying out of the assignment, he or she may regulate any matter which is necessary or expedient as a result of the assignment, including matters relating to the transfer or secondment of persons (subject to the provisions of sections 236 and 237 of the Constitution) and relating to the transfer of assets, liabilities, rights and obligations, including funds, to or from the national or a provincial

government or any department of state, administration, force or other institution.

(7) The transfer of any asset, liability, right or obligation contemplated in subsection (6) shall be done subject to the provisions of the relevant applicable Exchequer Act.

(8) The transfer or secondment of persons as contemplated in subsection (6) shall be done after consultation with the Minister for the Public Service and Administration, if applicable.

(9) The Premier of a province may, subject to such conditions and periods of time as he or she may determine, in writing authorise—

- (a) any member of the Executive Council of that province;
- (b) any member of such Executive Council and the Director-General of the province jointly;
- (c) the said Director-General;
- (d) any officer in the service of the provincial government concerned;
- (e) any ~~local government body~~ municipality contemplated in section 1 of the Local Government Transition Act, 1993,

to exercise or perform in general or in a particular case or in cases of a particular nature, any power, duty or function which the Premier is in terms of a proclamation under subsection (5) authorised to exercise or perform, except the power to make regulations.

(10) The provisions of section 10 (5) and (5A) of the Interpretation Act, 1957 (Act No. 33 of 1957), shall apply *mutatis mutandis* to the administration of this Act or any provision of this Act assigned under subsection (5) (a) or reassigned to a Minister under subsection (5) (b).

(11) Any delegation or assignment made under this section shall be published in both the Government Gazette and the relevant Provincial Gazette.

~~24B. Payment of costs of upgrading.—The holder of a land tenure right shall be responsible for the payment of all costs connected with the upgrading of such right including the costs of surveying: Provided that the Minister may assist such person with the payment of such costs.~~

(2)

24C. Regulations.—(1) The Minister may make regulations regarding—

- (a) any ~~matter required or~~ permitted to be prescribed by regulation in terms of this Act; ~~and~~
- (b) generally, all matters which are necessary or expedient to be prescribed in order to achieve the objects of this Act.

(2) The Minister must make regulations regarding-

(a) Any matter required to be prescribed by regulation in terms of this Act: including

(b) A management policy which must provide for an effective internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the management processes are being followed and whether the desired objectives are being achieved;

(c) The contents of the annual report to Parliament as contemplated in section 25B on progress in implementing the provisions of this Act including:

- (i) the number of applications and objections received;
- (ii) the number of applications for freehold title and life title granted in full;
- (iii) the number of applications refused in full and refused partially;
- (iv) the number of internal appeals lodged;
- (v) the number of applications with reference to the provisions of this Act brought to a court;
- (vi) such other matters as may be prescribed.

(d) The features of any deed of other property right or deed of life title which shall include the protect and promote the following:

- (i) the exercise of joint and equitable rights to the property held and occupied by the household members and the family members;
- (ii) the rights of habitation and occupation of all family members and household members occupying the residential home or homes on such property, jointly, equitably and individually;
- (iii) customary law if customary law is applied by the concerned household, family, neighbourhood or community;
- (iv) just and equitable conditions to any disposal or encumbrance of the right concerned to
  - i. any person who is not a member of the household or family concerned who actually or ordinarily resides on the erf or piece of land or in the township;
  - ii. any other person who does not actually or ordinarily resides on the erf or piece of land; and
  - iii. any other person who does actually or ordinarily resides in the township concerned;

in order to ensure that any relevant disposal is not in conflict with the interests of the members of the household, family and community; and that satisfactorily alternative residence is available for persons residing on the land concerned, if the relevant disposal results in those persons waiving their right to the occupation of such land. [s19]

- (v) just and equitable restrictions on disinheriting any member of a household and family member actually residing or ordinarily resident on the erf or piece of land.
- (vi)

(3) Any regulations made under this section must be tabled in Parliament.

24D. Updating and compilation of registers of land rights.—(1) If the Minister is of the opinion that a register of land rights in respect of which land tenure rights mentioned in Schedule 1 or 2 have been granted in erven or other pieces of land has not been written up or properly written up, there is an incorrect entry therein or that it reflects the names of persons who are not the putative holders of the relevant land tenure right, he or she may designate any suitably qualified person or persons to investigate and compile a register of land rights for the area or to update the existing register and to rectify errors or supplement omissions.

(2) If the Minister receives a request from a ~~tribe or~~ community in respect of any ~~township held, putatively held or area on land~~ lawfully occupied by ~~or has been allocated for use by such tribe or~~ community, in which the individual erven or other pieces of land are occupied ~~or held or utilized~~ by individuals and their ~~households or~~ families under the ~~customary law,~~ rules or customs of that ~~tribe or~~ community,

he or she may designate any suitably qualified person or persons to compile a register of land rights in respect of such area:—

Provided that such request shall not unreasonably be refused if such request was made and supported by a community resolution, and provided further that the Minister shall provide reasons if such request is refused.

(3) If an area referred to in subsection (1) or (2) has not been surveyed, the Minister may determine that the functions contemplated in that subsection shall ~~not~~ be performed at the same time as before the survey of such area ~~has commenced, and the designated person in consultation with the surveyor may:~~

(a) hear or receive representations from any person:

(b) question any person who in his or her opinion may have relevant information available:

(c) by agreement between interested parties, settle any difference as to the land which forms the subject of the investigation, or the boundaries of such land;

(d) if requested by the interested parties determine the boundaries of such land or, if they cannot be determined, establish them in consultation with interested parties;

(4) Any register of land rights compiled or updated under subsection (1) or (2) shall, as to its shape, form and contents, be compiled or updated in accordance with the legal and administrative requirements applicable to a township ~~or other relevant register~~ or as prescribed.

(5) Any person designated under subsection (1) or (2) shall in the compilation or updating of a register of land rights—

(a) satisfy himself or herself that if a general plan for an area exists the property descriptions in the register or which he or she makes in the register correspond with those descriptions on the general plan of the area concerned;

(b) ascertain the identity of the person who at the relevant time is the *de jure* holder of the land tenure right in each relevant erf or other piece of land in the area as well as the identity of any putative holder of the relevant land tenure right in each such erf or piece of land;

(c) consider any representations made to him or her either orally or in writing by any person who lays claim to be registered in the register as the holder of a land tenure right;

(d) take reasonable steps to ensure that persons affected or likely to be affected by the investigation and compilation receive effective notice of the investigation, are given an opportunity of making representations with regard thereto and are informed of the result thereof;

(e) if it is just and equitable, make a recommendation to the Minister regarding such arrangements as are appropriate and necessary to:

(i) protect other rights and interests, if any, in that erf or piece of land, including the rights and interests of putative holders.

(ii) protect rights of persons who could have been the holders thereof but for laws or practices that unfairly discriminated against such person:

(iii) promote the exercise of joint and equitable rights to the property held and occupied by the household members and the family members;

(iv) protect the rights of habitation of all family members and household members occupying the home or homes on such property, jointly, equitably and individually;

(v) take account of, respect and develop the customary law of the community concerned if customary law is applied by the concerned household, family, neighbourhood or community; and

(vi) comparable redress.

(f) \_\_\_\_\_

(6) In order to gather information which is necessary or expedient in compiling or updating a register of land rights for the area concerned, any person designated under subsection (1) or (2) may—

- (a) subject to any law governing privilege, question any person who in his or her opinion may have relevant information available;
- (b) subject to any law governing privilege, require any person to deliver to him or her forthwith, or to submit to him or her at such time and place as may be determined by him or her, any register, permit, certificate, title of land right or other document in the possession or under the control of any such person and which in his or her opinion contains relevant information;
- (c) examine any such register, permit, certificate, title of land right or document or make an extract therefrom or a copy thereof;
- (d) if it is necessary for the purposes of paragraph (a), (b) or (c), at any reasonable time, on the authority of a warrant issued by a magistrate or judge having jurisdiction, enter upon any erf or other land in the area concerned;

(e) consider any register compiled and updated by a community concerned;

(f) cause to publish a notice locally setting out the procedure and timelines of his or her investigations, information required from holders and putative holders, the requirements of section 1 of this Act and the features of life title and freehold title promoted by the provisions of this Act: Provided that any such notice shall contain a copy of proof in writing of his or her designation;

(g) consider proposals for comparable redress.

(7) If any person refuses to answer a question put to him or her under subsection (6) (a) or to deliver or submit anything required under subsection (6) (b), the person acting under subsection (6) (a) or (b) may apply to the magistrate's court for the district in which the erf or piece of land in question is situated for an order compelling the former person to answer the question or deliver or submit the thing and the court may make such order as it deems fair and just under the circumstances, including an order for costs, having regard to the public interest and the right to privacy of the respondent.

(8) Any person designated under subsection (1) or (2) may in the performance of his or

her functions be accompanied by such persons as he or she under the circumstances of any particular case may deem necessary.

(9) The Minister shall issue to a person designated under subsection (1) or (2) proof in writing of his or her designation, and such person shall in the performance of his or her functions under this section produce, at the request of any person affected by such functions, such proof to the latter person.

(10) (a) Any person aggrieved by an entry made by a person designated under subsection (1) or (2) in a register of land rights, may within 30 days after he or she became aware of the entry, but not more than a year after the entry was made, appeal in writing against such entry to the Minister.

(b) The Minister may, after he or she has considered the grounds of the appeal and the reasons of the person designated under subsection (1) or (2) for such entry—

(i) either in whole or in part, allow the appeal, and—

(aa) direct such person to alter such entry or to substitute for it any other entry which such person in the Minister's opinion ought to have made; or

(bb) order that such arrangements be made as are appropriate and necessary to protect the rights and interests of the appellant as well as other rights and interests, if any, in that erf or piece of land; or

(ii) dismiss the appeal.

(c) The Minister shall cause a person who lodged an appeal with him or her and all other affected persons to be notified in writing of his or her decision on the appeal.

(11) The Minister may from monies appropriated by Parliament for that purpose, after receiving a recommendation in terms of subsection (5) (e) or an order made in terms of subsection (10) (b) (i) (bb), provide assistance to persons having rights and interests in such erf or piece of land, including assistance to obtain rights in such erf or piece of land or alternative land, or an award of alternative redress.

(12) The designation of a person in terms of subsections (1) and (2) and section 3 (1) (a) and assistance in terms of subsection (11) shall be subject to the available resources of the State~~availability of personnel and funds~~.

(13) Any decision of the Minister to compile or update a register of land rights, or any designation under this section shall be published in the Government Gazette and locally with the necessary details including appropriate descriptions of the land and persons affected, and the contact details of the designated person.

(14) Any decision of the Minister to compile or update a register of land rights, or any designation under this section shall be published in the Government Gazette and locally with the necessary details including appropriate descriptions of the land and persons affected, and the contact details of the designated person.

(15) Any register of land rights compiled or updated in terms of this section shall be  
(a) made available for local inspection;  
(b) a public document and shall be made available for inspection by members of the public on the websites of department and the relevant municipality. This section shall apply throughout



the Republic.

25. . . . .

**25A. Application of Act.**—~~As from the coming into operation of the Land Affairs General Amendment Act, 1998, the provisions of t~~ This Act, ~~excluding sections 3, 19 and 20,~~ shall apply throughout the Republic, ~~including:~~

(a) ~~State land which is beneficially occupied and State land which—~~

(i) ~~at any time vested in a government contemplated in the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), before its repeal or of the former Republics of Transkei, Bophuthatswana, Venda or Ciskei, or in the South African Development Trust established by section 4 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936);~~

(ii) ~~was listed in the schedules to the Black Land Act, 1913 (Act No. 27 of 1913), before its repeal or the schedule of released areas in terms of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), before its repeal;~~

(b) ~~land to which the KwaZulu-Natal Ingonyama Trust Act, 1994 (Act No. 3 KZ of 1994), applies, to the extent provided for in this Act;~~

(c) ~~land acquired by or for a community whether registered in its name or not; and~~

(d) ~~any other land, including land which provides equitable access to land to a community as contemplated in section 25 (5) of the Constitution.~~

(2) ~~The Minister may, by notice in the Gazette, determine land contemplated in subsection~~

(1) (d) ~~and may in such notice specify which provisions of this Act apply to such land.~~

**25B: Reports to Parliament and the Human Rights Commission.**—~~The information officer of the national department and each province must annually submit to Parliament and the Human Rights Commission a report stating in relation to the national department and provincial government the report as prescribed.~~

**25C: Amendment and repeal of laws.**—(1) ~~The laws mentioned in Schedule 3 are amended or repealed to the extent set out in the third column of the Schedule.~~

(2) ~~Any law which regulates a right and which—~~

(a) ~~is not mentioned in Schedule 3; and~~

(b) ~~is not in conflict with this Act.~~

~~remains in force until repealed by a competent authority.~~

**25D. Inconsistency in laws.**—~~In the event of any inconsistency between this Act and the KwaZulu-Natal Ingonyama Trust Act, 1994 (Act No. 3 KZ of 1994), this Act prevails.~~

**26. Short title and commencement.**—This Act shall be called the ~~Conversion~~**Upgrading** of ~~Certain~~ Land Tenure Rights Act, 1991, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

## Schedule 1

## LEASEHOLDS, DEEDS OF GRANT AND QUITRENTS

1. Any deed of grant or any right of leasehold as defined in regulation 1 of Chapter 1 of the Regulations for the Administration and Control of Townships in Black Areas, 1962 (Proclamation No. R.293 of 1962).
2. Any quitrent title as defined in regulation 1 of the Black Areas Land Regulations, 1969 (Proclamation No. R.188 of 1969).
3. Any right of leasehold as defined in section 1 (1) of the Black Communities Development Act, 1984 (Act No. 4 of 1984).
4. Any right of leasehold within the meaning of the Conversion of Certain Rights to Leasehold or Ownership Act, 1988 (Act No. 81 of 1988).
5. Deed of grant rights or rights of leasehold as defined in regulation 1 (1) of the Regulations concerning Land Tenure in Towns, 1988 (Proclamation No. R.29 of 1988).
6. Deed of grant rights or rights of leasehold within the meaning of the Regulations for the Disposal of Trust Land in Towns, 1988 (Government Notice No. R.402 of 1988).

7 Any quitrent title referred to in Proclamation 196 of 1920.

8 Any quitrent title referred to in Proclamation 170 of 1922.

## Schedule 2

## RIGHTS TO THE OCCUPATION OF LAND

1. Any permission granted in terms of regulation 5 (1) of the Irrigation Schemes Control Regulations, 1963 (Proclamation No. R.5 of 1963), to occupy any ~~irrigation and~~ residential allotment.
2. Any permission to occupy for residential purposes or part of such permission to occupy any allotment within the meaning of the Black Areas Land Regulations, 1969 (Proclamation No. R.188 of 1969).
3. . . . .
4. Any right to the occupation for residential purposes of communal tribal land granted under the indigenous law or customs of the ~~tribe~~ community in question, or part of such right to occupation.
- 5 Any right of occupation for residential purposes within the meaning of KwaZulu-Natal Ingonyama Trust Act, 1994 Act No. 3 KZ of 1994
- 6 Any right of occupation for residential purposes within the meaning of Bophuthatswana Land Control Act, 1979 Act No. 39 of 1979.
- 7 Any right of occupation for residential purposes within the meaning of Venda Land Control Act, 1986 Act No. 16 of 1986.

8 Any right of occupation for residential purposes within the meaning of Venda Land Affairs Proclamation, 1990 Proclamation 45 of 1990.

9 Any right of occupation for residential purposes within the meaning of Ciskei Land Regulation Act, 1982 Act No. 14 of 1982

10 Any right of occupation for residential purposes within the meaning of Owaqwa Land Act, 1989 Act No. 15 of 1989

11 Any right of occupation for residential purposes within the meaning of KwaNdebele Land Tenure Act, 1992 Act No. 15 of 1989

12 Any right of occupation for residential purposes within the meaning of Administrative Area Regulations – Unsurveyed Districts Transkeian Territories Proclamation 26 of 1936

13 Any right of occupation for residential purposes within the meaning of

14 Any right of occupation for residential purposes within the meaning of

### **Schedule 3**

#### **AMENDMENT OR REPEAL OF LAWS**

**(Section 25B)**

<u>No. and year of law</u>	<u>Short title</u>	<u>Extent of amendment or repeal</u>
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<u>Act No. 31 of 1996</u>	<u>Interim Protection of Informal Land Rights Act, 1996</u>	<u>Amendment of section 1 by deletion of the definition of tribe and the insertion of the definitions:</u>
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"Informal right to land" means—

(a) the use of, occupation of, or access to land in terms of—

(i) any ~~tribal~~ customary or indigenous law or practice of a ~~tribe~~ community;

(b) ....

"this Act" includes any regulations made under this Act.

Amendment of section 4 by inserting

(2) Any regulations made under this section must be tabled in Parliament.

		<u>Amendment of section 5 by the deletion of subsection (2).</u>	◀
		<u>Amendment of name by deleting 'interim'.</u>	
Act No. 38 of 1927	Black Administration Act, 1927	Repeal of sections 6 and 7.	? ▶
			?? ▶
Act No. 47 of 1937	Deeds Registries Act, 1937	1. Amendment of section 3 by the insertion in subsection (1) after paragraph (d)bis of the following paragraphs:	◀
-	-	<u>(d)ter register the establishment and conversion to life ownership as contemplated in the Conversion of Certain Land Tenure Rights Act, 1991.</u>	◀
-	-	<u>(d)ter (1A) register the conversion to freehold ownership as contemplated in the Conversion of Certain Land Tenure Rights Act, 1991.</u>	◀
-	-	<u>(d)ter (1B) register the cancellation of registered and unregistered rights referred to in schedules 1 and 2 as contemplated in the Conversion of Certain Land Tenure Rights Act, 1991.</u>	◀
-	-	2. Insertion after section 16B of the following section:	◀
-	-	<b><u>"Registration of property rights</u></b>	◀
-	-	<b><u>16C.</u></b> Property rights shall be transferred by means of a Deed of Property Right as contemplated in the Conversion of Certain Land Tenure Rights Act, 1991;."	◀
-	-	3. Amendment of section 102—	◀
-	-	<u>(a) by the insertion of the following definition:</u>	◀
-	-	<b><u>" 'Deed of Property Right' means a deed of property right as defined in section 1 of the Conversion of Certain Land Tenure Rights, 1991"</u></b>	◀
-	-	<u>(b) by the substitution for the definition of "general plan" of the following definition:</u>	◀
-	-	<b><u>" 'general plan' means a plan which represents the relative positions and dimensions of two or more pieces of land and has been signed by a person recognized by law as a land surveyor, and which has been approved, provisionally approved or certified as a general plan by a surveyor-general or other officer empowered under</u></b>	◀

any law so to approve, provisionally approve or certify a general plan, and includes a general plan or copy thereof prepared in a surveyor-general's office and approved, provisionally approved or certified as aforesaid, or a general plan which has at any time, prior to the commencement of this Act, been accepted for registration in a deeds registry or surveyor-general's office, and includes a general plan as contemplated in the Right as contemplated in the Conversion of Certain Land Tenure Rights Act, 1991":

(c) by the addition to the definition of "immovable property" of the following paragraph:

"(e) property rights as contemplated in the Conversion of Certain Land Tenure Rights Act, 1991"; and

(d)

by the substitution for the definition of "person" of the following definition:

" 'person', for the purpose of any registration in terms of this Act, includes a trust and, for the purpose of the Conversion of Certain Land Tenure Rights Act, 1991, includes a community: "

Act No. 8 of 1997

Land Survey Act, 1997

Amendment of section 1 by the substitution for the definition of "general plan" of the following definition:

" 'general plan' means a plan which, representing the relative positions and dimensions of two or more pieces of land, has been signed by a person recognised under any law then in force as a land surveyor, or which has been approved or certified as a general plan by a Surveyor-General and includes a general plan or a copy thereof prepared in a Surveyor-General's office and approved or certified as such or a general plan which has, prior to the commencement of this Act, been lodged for registration in a deeds registry or Surveyor-General's office in the Republic or any area which became part of the Republic at the commencement of the Constitution, 1993 and, for the purposes of the Conversion of Certain Land Tenure Rights Act, 1991, includes a communal general plan contemplated in that Act: "



LAND ACCESS MOVEMENT OF SOUTH AFRICA

## **SUBMISSION TO PORTFOLIO COMMITTEE ON AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT**

Summary Submission on the Upgrading of Land Tenure Rights Amendment Bill [B6-2020]

### Summary:

- 1 LAMOSA opposes the whole of the amendment bill B6. The bill is ill conceived, ignores reality and at least one of its provisions violates the constitution.
- 2 First, the bill unconstitutionally extends procedural and ownership powers to the minister to transfer land to “tribes” in former Bantustans without any cognisance or reference to the constitutional safeguards and constitutional imperatives of s26(5) for citizens, households and peoples.<sup>1</sup>
- 3 Second, the bill purports to provide relief to women whose gendered property rights were violated under ULTRA, but ignores similar violations under R188 predecessors and its Bantustan derivatives after 1969. LFTEA platforms for deeds to the extent that it did not confirm underlying rights of women, act 81 of 1988 read with act 4 of 1984 with reference to s4 and 6 of ULTRA, and other apartheid tenure awarding instruments and associated practices. These instruments are not listed in the schedules and or excluded by other provisions of ULTRA, eg s4 and 6.<sup>2</sup>
- 4 Third, the bill is internally contradictory and inconsistent with regard to:
  - a. Compensation to affected persons; b. Payment for costs of upgrading and surveying; c. Investigations and inquiries; d. Application of the act, and the jurisdictions of the Minister and MECs;
 and the procedure being followed by Parliament since August last year is fatally flawed.<sup>3</sup>
- 5 ULTRA has in any event failed. Since 1991 it promised conversion of apartheid land tenure to ownership. The limited extent to which there has been ‘tenure upgrade’ is largely undocumented and has been costly. The department has not addressed or budgeted for, and the bill does not address, budget for, or intend to update registers of land rights in terms of s24D of the Act.
- 6 The cynical attempt in clause four to use this piece of Apartheid legislation to dubiously transfer land in former Bantustans to “tribes” is a huge backward step. The application of s20 in the former Bantustans would fundamentally alter power relations: dominium over land equates with imperium over people. It will be challenged by progressive democratic communities.
- 7 There is no budget, there are no tenure extension officers, and there are no dispute resolution mechanisms in the bill or in the expenditure frameworks of the department.

<sup>1</sup> See discussion below on clause 4 of the bill and extending s 20 to the former homelands paragraphs x – y and below 8-12; outstanding concerns paras ; main submission paras

<sup>2</sup> Discussed below in main submission at paragraphs xx – yy and further.

<sup>3</sup> Paragraphs xxx – yyy in the main submission.

## Sections 19 and 20, and the Bantustans

8 ULTRA was conceived in the dying days of Apartheid. It was enacted by the Apartheid Tricameral Parliament at a time that the Cape Town Parliament could not make new laws for the Bantustans, ie the TBVC 'independent' States and the Self-Governing Territories. It could only make laws for the White, Coloured and Indian parts of South Africa.

- a. At the same time and in the same year that ULTRA was passed, the 3<sup>rd</sup> Abolition Act did away with secondary remnants of the pass laws and the formal Bantustan consolidation laws. Some of the statutory edifices of the migrant labour system were formally removed. The Apartheid government needed a new law to continue rural segregation [sections 19 and 20 of ULTRA] and to continue urban separation whilst accommodating certain black urban [schedule 1 of ULTRA and LFTEA]. In the 'homelands' much land is owned nominally by the South African Development Trust, which is abolished with the repeal of the 1936 Land Act in 1991. As to who shall own the land, the State President had the sole power to decide.

1986	68	Abolition of Influx Control Act 68 of 1986
1986	75	Abolition of Development Bodies Act 75 of 1986 [Blacks Administration Boards reconfigured into provinces]
1988	81	Conversion of Certain Rights to Leasehold and Ownership Act 81 of 1988
1991	108	Abolition of Racially Based Land Measures Act, 1991 (Act 108 of 1991) - repeal the Group Areas Act and the Land Acts of 1913 and 1936
1991	102	Upgrading of Land Tenure Rights Act, 1991 (Act 112 of 1991)
1991	113	Less Formal Townships Establishment Act, 1991 (Act 113 of 1991) repealed 2015
1991	B95	Rural Development Bill [B95-1991] [never proceeded with and it was supposed to back s20 of ULTRA to develop tribal land]
1991	B	Residential Environment Bill [not proceeded with but partly incorporated into the 3 <sup>rd</sup> Abolition Act Chapter VII to maintain standards in post Group Areas Act white suburbs]

- b. Act 112 in its original form and wording<sup>4</sup> was meticulously crafted to apply to African black rural land and urban land outside of the Bantustans. The Afrikaans text was signed by the State President on 27 June and the act came into operation on 1 September 1991 by proclamation 85 of 1991. The original sections 19 to 21 and also 22 and 25, under the heading 'Miscellaneous,' provided for the transfer of tribal land to tribes for the ensuing ten years.
- c. During the ten year period from 1991, a year after the unbanning of organisations and during peace talks and settlement negotiations, the three acts allowed a backdoor for the NP to effect necessary changes to an increasingly intolerable reality and legal framework. For Bantustan appeasement purposes, ULTRA had three elements:
- in terms of s25 of ULTRA and s29 of the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), ULTRA's application could be extended to a compliant Bantustan... [and this happened in 1993 when ULTRA (and LFTEA in the case of Kangwane) was extended to Lebowa, QwaQwa and Kangwane];<sup>5</sup>
  - in terms of s20 of ULTRA, state land and state acquired land in white South Africa can be transferred to a compliant tribe and thus 'incorporated' into a Bantustan; and
  - in terms of s22 offices and staff from the erstwhile registration offices of Bantu Affairs/Development Aid can be transferred to the Land Department of White South Africa.

<sup>4</sup> <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:abfc351c-1214-4ae6-8c7a-d0e02c24451d>

<sup>5</sup> Compilation of ULTRA proclamations p15

<https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:42d27cb1-a2ce-41db-876c-9ee5026ee169>  
<https://discover.sabinet.co.za/document/RGG26925>

- d. The Rural Areas Development Bill B95 of 1991, the sister of ULTRA, was not proceeded with because of opposition by UDF affiliated organisations, CALS and others, exactly because it furthered the Apartheid segregation trusteeship agenda.

9 The Constitutional Court and the Constitution do not require that s19 and s20 of ULTRA be applied to the former Bantustans. Traditional and other communities in the former Bantustans deserve much better to undo the problem created by Apartheid.

- a. In the Tongoane judgment in 2010 justice Ngqobo said that '[124] This is a constitutional imperative which must be achieved. I accept the magnitude of the problem created by apartheid laws and practices, as well as the amount of time and effort necessary to undo these consequences. Section 237 of the Constitution provides that "All constitutional obligations must be performed diligently and without delay." It is now some 13 years since the final Constitution came into effect. By any standard, a 13-year delay is unfortunate. This judgment will, however, provide Parliament with the opportunity to take a second look at the substantive objections raised by the applicants in respect of CLARA. The legislation contemplated by section 25(9) read with section 25(6) must be enacted with a sense of urgency and diligence.' [Tongoane 124-127]
- b. The judgment order in Herbert v Senqu 22 August 2019 said this:
  - '1. The declaration of invalidity made by the High Court of South Africa, Eastern Cape Division, Grahamstown is confirmed.
  - 2. Section 1 of the Land Affairs General Amendment Act 61 of 1998 and section 25A of the Upgrading of Land Tenure Rights Act 112 of 1991 are declared to be inconsistent with the Constitution and invalid to the extent that they do not extend the applicability of section 3 of the Upgrading of Land Tenure Rights Act to the entire Republic of South Africa.
  - 3. As from the date of this order section 25A of the Upgrading of Land Tenure Rights Act shall **be read as if it makes no reference to section 3.**'
- c. The Herbert judgment did not declare the reference to s19 and s20 in section 25A invalid, the Court did not require the minister to amend s25A and the minister and her department did not tell the court that they are planning do so.
- d. The amendment bill B6 clause 4 does not 'bring ULTRA in line with the Rahube and Herbert judgments.' It goes much further. Clause 4 impacts on ownership by communities in all former Bantustans.

10 On 11 February 2020 Minister Didiza told the committee that 'legislation dealing with land tenure reforms in the rural areas had to be concluded during 2020 to address issues raised by those who had taken the Minister to court in the Tongoane matter on 11 May 2010.' On 26 June 2020 Adv Ramasala Head: Legal Unit, DALRRD, told the portfolio committee that 'the Department was involved in the process of finalising the Communal Land Tenure Bill in order to have a full reflection of land tenure rights' and 'the Department had committed to introducing the Bill in Parliament by next year.' We have still not seen the draft bill and we are nearing the end of 2020.

11 The problem is what happens in the meantime. Clause 4 will allow 'tribes' to be awarded ownership. The application of s20 in the former Bantustans would fundamentally alter power relations: domination over land equates with imperial power over people.

12 Clause 4 of the amendment bill B6 is an abomination. The committee can immediately state its intention to scrap it, entirely or at least its application to s19 and s20. Then the public and directly affected citizens can proceed to discuss the other contentious provisions of the amendment bill B6.





**LAMOSA**  
LAND ACCESS MOVEMENT OF SOUTH AFRICA

LAND ACCESS MOVEMENT OF SOUTH AFRICA

## SUBMISSION TO PORTFOLIO COMMITTEE ON AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT

### **Main Submission on the Upgrading of Land Tenure Rights Amendment Bill [B6-2020]**

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## *Outstanding issues of concern:*

### **The impact and reach of ULTRA in practice**

- 1 What is missing from the conversations, the four hearings of the committee and the two briefings of Department is an overview of how ULTRA works and what its impact has been over 29 years. Only then can the portfolio committee, civil society and the affected persons understand the problem and consider the amendment bill presented by the Minister.
  - a. In 2009 the department commissioned research into the efficacy and effectiveness of ULTRA. The diagnostic report Umhlaba of 227 pages,<sup>6</sup> excluding annexures of figures and maps have not been mentioned in the conversation. We do not know why. The department may be sweeping the report under the carpet, forgot about it, or did not read it.
  - b. LAMOSA, in the table at the end of this main comment lists the document with links to the annexed maps, tables and excel sheets of figures, interviews with relevant officials in all the provinces who implemented upgrading of title all over the country, using various instruments including
    - i. ULTRA
    - ii. Conversion of Certain Rights into Leasehold or Ownership Act 81 of 1988, which augmented act 4 of 84 and provided for 99 year leaseholds and individual title [the CCRLOA is still on the statute book] read with Act 4 of 1984 Black Communities Development Act, 1984 25 (Act No.4 of 1984) [part of the BCDA is still on the statute book]
    - iii. LFTEA [repealed by SPLUMA in 2015] and DFA [repealed by SPLUMA]

### **“bringing ULTRA in line with the two Constitutional Court judgments”<sup>7</sup>**

- 2 At the meeting of the portfolio committee on 26 June 2020 the two advocates, representing the department and the parliamentary legal office, and briefing the committee on B6 claimed that B6 is a technical processing bill ‘bringing ULTRA in line with the two Constitutional Court judgments.’ LAMOSA submits that they were wrong.
  - a. In Herbert/Senqu the Court did not impugn s25A in relation to sections 19 and 20. B6 clause 4 drags sections 19 and 20 into the fray whilst the court did not deal with those sections. LAMOSA dealt with this in its summary.
  - b. In Rahube the Court urged the department **and Parliament** ‘to conduct the necessary factual enquiry to establish the full extent of redress demanded,’ motivating that effects could be far reaching beyond those explicitly excluded, ie those not in the same position as Ms Rahube and implicated in the court order.
    - i. Contrariwise the department failed in conducting any meaningful research on potential impact... the DG claiming that this is ‘very difficult’ and an official stating that the department had been informed, apparently by the deeds office, that ‘there was no way of determining the number of conversions.’<sup>8</sup>
    - ii. The preliminary SEIA<sup>9</sup> is wholly inadequate claiming that the only other statutes implicated are IPILRA and the Restitution Act, and a final SEIAS report still remains outstanding despite the undertaking that a final SEIAS and a M & E Plan would have been

<sup>6</sup> <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:631a4526-d6d2-4584-92a2-376abe35cdd>

<sup>7</sup> <https://pmg.org.za/committee-meeting/30548/> Video recording at 1:25; page 8 at lines 10-18  
<https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:7d7e9ad3-db2f-4b82-9168-009cbaa40a1d>

<sup>8</sup> 7:34 <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:7d7e9ad3-db2f-4b82-9168-009cbaa40a1d>

<sup>9</sup> <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:96e3aa44-7360-48a4-9aa8-bf2036636d83>

filed prior to the cabinet submission and introduction to Parliament. The preliminary SEIA states:

***‘there is no information on***

- ***the total number of land tenure rights that were issued,***
- ***number of those converted [fn ‘This number is determinable, but it would require too much effort in performing the necessary deeds data analysis’],***
- ***number of those number of those yet to be converted and***
- ***number of possibly disputed land tenure rights.***

***Whilst this information would have helped in costing, researching it at this stage seems quite late.’***

- c. This is not a technical issue. The application of s20 in the former would fundamentally alter power relations: dominium over land equates with imperium over people. Absolute ownership of land leads to political control over the people dependent on that land by those owners. This was the basis of feudalism in an earlier historical epoch and has no place in a democracy or in the 21st century.

#### **LAMOSAs shortlist<sup>10</sup> on the way forward:**

- 3 The committee can immediately state its intention to scrap clause 4 of the Bill, entirely or at least its application to s19 and s20. Then the public and directly affected citizens can proceed to discuss the other contentious provisions of the amendment bill B6.

Motivation: The minister inadvertently or otherwise believes that s19 and s20 require to be applied in the former Bantustans at this stage. This would amount to an unconstitutional amendment because it would violate s25(6) of the bill of rights, inter alia because s20 does not protect the existing property rights of property rights holder in the former Bantustans. Also, CLRA repealed or would have repealed s20. Any decent communal land tenure act will do so.

- 4 The committee can request the National Assembly to deal with other provisions of ULTRA. The committee can now enact IPILRA as PILRA and require regulations to PILRA to ensure its continued operation to respect and protect the property rights of all property rights holders on communal land in the RSA.

This is necessary because Parliament must now signal that it is serious about making good on the constitutional imperative to enact a Communal Tenure Act that will promote and fulfil the property rights as required in terms of s25(6) and (9) of the bill of rights. Parliament must enact the legislation referred to in subsection (6). Parliament can no longer rely on the say so of the department that it will make good on its promises. The CLRA made IPILRA permanent.

- 5 Clause 4 extends schedule 2 and section 3 of ULTRA to the former Bantustans. The department and the President must first say how they intend to amend schedule 2, before the committee can further proceed with the bill.

Sch 3 item 2 R.188 of 1969, the relevant provision in the schedule, was either not applicable, replaced or amended in former Bantustans. Schedule 2 is empty for all intents and purposes.<sup>11</sup> If not, expect more constitutional challenges on Hector/Senqu type arguments.  
But much worse. R188 exemplifies betterment planning and villagisation, a primary instrument of domination and power over independent communities during Apartheid. Does the portfolio committee want to solidify betterment outcomes without a thorough understanding and real meaningful

- 6 taking into account all the complexities and the lack of preparedness, it is not meaning full to enact another un do able statute. Parliament and the department must do the homework and announce that it is expediting work on a comprehensive communal land tenure bill

<sup>10</sup> Elaborated upon at the end of the main submission below.

<sup>11</sup> To make s3 work for former Bantustans, the following Bantustan statute law should be considered as candidates for inclusion: Venda Land Control Act, 1986; Ciskei Land Regulation Act, 1982; Qwaqwa Land Act, 1989; KwaNdebele Land Tenure Act, 1992; Administrative Area Regulations – Unsurveyed Districts Transkeian Territories Proclamation 26 of 1936, and see below in elaborated LAMOSA proposals.

## Legislative Drafting for Democratic Social Change

- 1 Elected representatives in developing countries and economies in transition strive to exercise their constitutionally-assigned role to ensure for their people a better present and a brighter future.
- 2 What is required is a problem solving approach and a decision-making model that employs reason informed by experience. At its operational core, there are questions: What social problems do the bill address? What provisions in the bill will cost effectively change the causes of the problems? How to monitor and evaluate the new law's implementation?<sup>12</sup>
- 3 You as a legislator must do more than follow the directives of the executive. You must enact **effective** legislation.

This task requires you to perform three law-making jobs: enacting legislation, overseeing its implementation, and communicating with constituents. Whether you contribute to all three tasks depends on your capacity to assess a bill in the public interest.

- 4 To assess how a bill will likely 'work' in our country's unique circumstances, you should demand evidence that the bill will ameliorate the identified social problem, at not too great socio-economic costs?
- 5 Unless you can estimate a law's potential real-world outcomes, you cannot use law to induce deliberate social, political and economic change. Without more or less reliable prediction of outcomes, purpose becomes impossible. To estimate a new law's probable outcomes, you must investigate the law's potential impact on society.

You should also ask:

- Do the bill's detailed provisions seem do-able? At what cost? With what possible unintended social consequences?
  - What constitute the bill's likely social costs and benefits?
  - In light of available drafting resources, how difficult and how long a drafting task does the bill seem likely to present?
  - What other proposed legislation competes for priority?
- 6 Law and the legal order can and do change inherited institutions to give farmers access to these essentials. That may produce mixed results. The devil lies in the laws' details. They determine which of which particular group of people may be affected, and how they will behave in the face of the new legislation.
  - 7 At the end of the day, only democratic participation can ensure that law and the state help solve poverty and powerlessness, not cause them.
  - 8 Our sermon above to the legislature applies equally to civil society and in particularly advocacy entities like LAMOSA. It is a joint responsibility of respecting all knowledges.

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<sup>12</sup> Ann Seidman, Robert Seidman, and Nalin Abeysekere ASSESSING LEGISLATION - A MANUAL FOR LEGISLATORS 2003 <http://www.bu.edu/law/lawdrafting>

## Framing this submission

- 9 Given the responsibilities of the legislature and civil society enact meaning full, problem solving and effective legislation, LAMOSA proposes to motivate its above summary and outstanding concerns with reference to
  - a. A general statement on governance and tenure that should inform the debate and
  - b. Borrows from comprehensive evaluations of past performance over twenty years such as the HLP report, in order to
  - c. Identify the gaps in law to address the social problem.
- 10 The second leg of the exercise is to understand the statutory context, the other statutes relating to land and property rights and their efficacy and shortcomings in order not to replicate mistakes and duplicate effort. It is not surprising that the lack of comprehensive tenure law, linked with recordal and administrative institutional capacity, is crucial. No amount of tinkering with the myopic ULTRA can begin to address the bigger problem.
- 11 The submission ends with proposals elaborating those already foregrounded above in LAMOSA's summary and 'outstanding concerns.'

## Governance and tenure

- 12 Land governance and administration are critical for achieving social welfare, economic growth and development in any country.
- 13 In South Africa, poverty, unemployment and the inequitable distribution of wealth; land reform: restitution, redistribution and security of tenure; and social cohesion and nation-building – go to the heart of the post-apartheid project of building an inclusive society.
- 14 The record on the progressive realisation of the right of equitable access to land is concerning. The pace of land reform has been slow. The development of policy and law has drifted away from its initial pro-poor stance and lacks a vision for inclusive agrarian reform. The gap on tenure security is glaring, where legislation has not been passed, putting the lives and livelihoods of many rural dwellers in peril.
- 15 Many agricultural experts, ie local community experts, government field workers, intellectuals (organic and academic) and holders of other knowledges, agree that, to increase agricultural productivity, legislation should facilitate farmers' efforts to gain access to six essentials:
  - (1) Sufficient arable and well-watered land;
  - (2) security of tenure appropriate to the land use;
  - (3) farm inputs (appropriate machinery, seeds, water supplies, sometimes fertilizer, etc), and credit to purchase those inputs;
  - (4) adequate technology;
  - (5) the necessary skills to maximize their use of these inputs; and
  - (6) markets, including the transport, storage, and marketing facilities they need to sell their increased outputs.

Tenure security is central to agrarian reform.

- 16 There is a duality in the normative life of many developing countries that represents both an opportunity and a complication for those who deal in common property solutions. The duality is

between customary law and national legislation. These often exist in parallel and sometimes in conflict. The opportunity lies in the rich common property elements in customary legal systems, while the complication lies in the poor articulation between these systems in national law and the uncertainties that this creates.<sup>13</sup> Currently, about 17 million South Africans live in the former Bantustans, despite the meagre prospects of livelihood opportunities available. the former Bantustans remain the poorest areas of South Africa. The poorest ten district municipalities or metropolitan municipalities were all district municipalities and all ten were situated in the Eastern Cape, KZN and Limpopo and mostly in former Bantustan areas. The ten poorest wards in the entire country are to be found in the Eastern Cape and KZN and all in former Bantustan areas. In the Eastern Cape they are all found in the former Transkei Bantustan.

- 17 Tenure is secured when rights can be realised through (a) their legitimacy in the eyes of society, and (b) access to the range of supportive legal and administrative mechanisms that allow rights to be actualised in practice. In other words, the important criterion for tenure security is the ability of rights holders to enforce a socially legitimate tenure system that is backed up by strong governance and juristic institutions.<sup>14</sup>
- 18 Land Tenure Reform in terms of the 1997 White Paper was meant to establish a unitary, legally validated system of landholding. The White Paper laid down guiding principles that would inform the policy development process and the programme of action that would ensue:
  - tenure reform must move towards rights and away from permits;
  - tenure reform must allow people to choose the tenure system which is appropriate to their circumstances; [Bakgatla Bakgafela judgment]
  - all tenure systems must be consistent with the Constitution's commitment to basic human rights and equality, including the land rights of women; [Rahube judgment]
  - a rights-based approach and adjudicatory principles to be adopted which recognised and accommodated de facto vested rights (i.e. those which existed on the ground); [Rahube a quo; IPILRA etc]
- 19 Legal loopholes place communities at risk of their land and land-related assets not being as secure the South African Constitution promises. They are at risk of losing some of their most valuable assets and land during the current processes of law reform, tenure law reform and traditional council law reform. The Motlanthe report puts it thus: "Of particular concern are recent laws that have been used to dispossess vulnerable South Africans of customary land rights in former homeland areas. As the people who bore the brunt of the Land Acts and forced removals, those living in the former homelands deserve particular protection and redress".

#### REPORT OF THE HIGH LEVEL PANEL

- 20 The HLP report provides a comprehensive overview of legislative shortcomings, both in context and in the implementation of post 1994 statutes.
- 21 The HLP report prioritises the drafting of the Land Records Act<sup>15</sup> will require alignment with existing land rights legislation, inter alia:
  - a. the Interim Protection of Informal Land Rights Act (31 of 1996) IPILRA, which is **recommended to be amended and made permanent as PILRA;**

<sup>13</sup> PROPERTY RIGHTS ISSUES IN COMMON PROPERTY REGIMES FOR FORESTRY JOHN BRUCE

<sup>14</sup> <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:642ce05a-a75f-4ac5-9d85-21c60b46de06>

<sup>15</sup> 275 REPORT OF THE HIGH LEVEL PANEL ON THE ASSESSMENT OF KEY LEGISLATION AND THE ACCELERATION OF FUNDAMENTAL CHANGE

- b. the Communal Property Associations Act (CPA);
  - c. the Prevention of Illegal Eviction from and Unlawful Occupation Act 19 of 1998 (PIE);
  - d. the Land Titles Adjustment Act 111 of 1993 (LTAA);
  - e. the Upgrading of Land Tenure Rights Act 112 of 1991 (ULTRA);
  - f. the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA);
  - g. the Extension of Security of Tenure Act 62 of 1997 (ESTA);
  - h. the Land Reform (Labour Tenants) Act 3 of 1996 (LTA).
- 22 It is proposed that, in the process, ULTRA and LTAA will be substantially amended and merged, as much of their content will be superseded by the Land Records Act. “This law will make different categories of rights visible, and elevate such rights to constitute property. The Act is conceived as enabling legislation that will trigger a range of appropriate and interrelated measures and mechanisms to build up a comprehensive institutional framework. It aims to put in place a model of land administration with capacity to underpin the rights-based approach to the land tenure laws passed after 1994 and to create capacity to resolve disputes where land rights are contested.”<sup>16</sup>
- 23 The HLP report provides helpful recommendations to address the enduring spatial inequality between the former Bantustans and the rest of South Africa. It makes specific recommendations in respect of the standing of women and security of tenure in such communities.
- a. Laws meant to govern traditional communities should be tailored to the reality posed by the social and political economy of rural areas wherein women are not only (or even primarily) wives.
  - b. Government must ensure that women (who make up 59% of people living under traditional leadership) are always robustly consulted in the making of laws for customary communities.
- 24 Attached to the report is an annexure entitled illustrative NATIONAL LAND REFORM FRAMEWORK BILL OF 2017.<sup>17</sup> It contains a chapter on Tenure reform principles:
- “(1) Tenure reform must build a unitary non-racial system of land rights for all South Africans, and move away from weak forms of rights such as permits.
  - (2) People must be able to choose a tenure system appropriate to their circumstances, and select the governance arrangements and institutions needed to administer and support their land rights that they prefer.
  - (3) All land reform initiatives must enable people to attain long-term and secure use and benefit rights, and to participate in deciding on the precise manner in which they will hold their land and on governance and institutional mechanisms for land administration.
  - (4) Forms of land tenure such as those derived from customary law, which were actively discriminated against in the past, deserve extraordinary affirmative action support. This must be reflected in terms of the resources made available in order to uphold, recognize and develop these forms of tenure.
  - (5) The Minister must take appropriate measures to ensure that such tenure forms are secured and that people holding such tenure are prioritised in the provision of state support. This also applies to access to water rights held under customary law.
  - (6) Equal levels of support must be provided to family and other group based forms of communal tenure.
  - (7) Any form of individual and communal tenure must be held without bias or discrimination against them by any organs of state.

<sup>16</sup> 59 REPORT OF THE HIGH LEVEL PANEL ON THE ASSESSMENT OF KEY LEGISLATION AND THE ACCELERATION OF FUNDAMENTAL CHANGE

<sup>17</sup> <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:9a24f5f6-af55-4602-b1bf-198faa6e9fb6>



(8) Farm dwellers and labour tenants must be given the opportunity for apply for land (as indicated in Section 4 of the Extension of Security of Tenure Act, 62 of 1997 and section 16 of the Land Reform (Labour Tenants) Act 2 of 1996.

(9) People who reside in informal settlements are entitled to recognition and to secure forms of land tenure.

### *The Ingonyama Trust*

- 25 In terms of the Upgrading of Land Tenure Rights Act 111 of 1991 (ULTRA) PTOs could be upgraded to ownership after surveying the land. This is an indication of the strength of such underlying rights. However the Act was never effectively implemented because of the costs and complexity entailed in surveying land and transferring title. In KwaZulu-Natal PTOs were kept alive after 1994 first by the KwaZulu Land Affairs Act 11 of 1992 and then by Government Notice 32 of 1994.
- 26 Annual reports of the Ingonyama Trust indicate that the Ingonyama Trust decided that PTOs should no longer be issued, and has over the years pursued a programme of converting PTOs and existing customary rights in land into lease agreements for both business and residential purposes. The standard ITB lease agreement provides for a 40-year term, and a 10% annual increase on rental. It compels the 'lessee' to fence the property within six months. The lessee must obtain written permission to build and record all improvements, and submit this to the ITB. The ITB is entitled to cancel the lease agreement for failure to pay rent. All buildings and structures that have been built on the land will belong to the Ingonyama Trust when the lessee vacates the premises.
- 27 Significant income is generated for the Ingonyama Trust by such lease agreements. In the 2015/2016 period rental income was R96 130 563. There is little evidence that the revenue generated by leases is used for the benefit of communities or their material well-being. The Trust has built up very substantial reserves.<sup>18</sup>

### Ownership of land in townships

- 28 The Ingonyama Act originally applied to rural and urban land within the former KwaZulu and included townships known as 'R293' or 'Trust' townships, established in terms of Proclamation R293 of 1962. This meant that the underlying ownership of township land including public places and streets, vested in the Ingonyama Trust. In an attempt to rectify this, the Amendment Act of 1997 provided that the Act shall not apply to townships, and that the land is to vest in the relevant municipality. There is however evidence that the Trust has retained land in townships, and is dealing with this land as if it were the outright owner – continuing to exercise exclusive power to allocate the land, authorise its use, and collect revenue from the land. R293 township sites qualify for upgrading of tenure rights in terms of ULTRA. There has however been widespread failure to implement ULTRA.<sup>19</sup>
- 29 The Ingonyama Trust Act and the establishment of the ITB exemplifies discordant tenure and institutional arrangements... the gap of recordal and administration.

### *The glaring gap: recordal and administration*

- 30 The Motlanthe report correctly identified the glaring omission in the post-1996 legislative reform programme: The absence of functional, affordable and appropriate recordal and land rights

<sup>18</sup> 275 REPORT OF THE HIGH LEVEL PANEL ON THE ASSESSMENT OF KEY LEGISLATION AND THE ACCELERATION OF FUNDAMENTAL CHANGE

<sup>19</sup> 275 REPORT OF THE HIGH LEVEL PANEL ON THE ASSESSMENT OF KEY LEGISLATION AND THE ACCELERATION OF FUNDAMENTAL CHANGE



management systems for off-register rights. The proposal for a land records act goes hand in hand with the overhaul of tenure rights and institutional capacity for the administration of rights, and their protection under the law and dispute resolution mechanisms.

- 31 The FAO guidelines<sup>20</sup> emphasises the principles of recordal, administration and dispute resolution for tenure rights. It is crucial to make these rights visible for people who have lived all their lives with no official recognition of their land rights. Otherwise the poor will remain invisible to the formal economy and be excluded from it.
- a. States should, with appropriate consultation and participation, provide transparent rules on the scale, scope and nature of allowable transactions in tenure rights and should define what constitutes large-scale transactions in tenure rights in their national context. States should provide safeguards to protect legitimate tenure rights, human rights, livelihoods, food security and the environment from risks that could arise from large-scale transactions in tenure rights. Such safeguards could include introducing ceilings on permissible land transactions and regulating how transfers exceeding a particular scale should be approved, such as by parliamentary approval. (FAO: 2012, 12.5-12.6]
  - b. When investments involving large-scale transactions of tenure rights, including acquisitions and partnership agreements, are being considered, States should strive to make provisions for different parties to conduct prior independent assessments on the potential positive and negative impacts that those investments could have on tenure rights, food security and the progressive realisation of the right to adequate food, livelihoods and the environment. (12.10]
  - c. The FAO guidelines emphasises the principles of recordal, administration and dispute resolution for tenure rights. It is crucial to make these rights visible for people who have lived all their lives with no official recognition of their land rights. Otherwise the poor will remain invisible to the formal economy and be excluded from it.<sup>21</sup>
  - d. 'The multiple and overlapping nature of customary rights to a parcel of land are affected when that parcel of land is subject to exclusive ownership through formalisation processes. In addition to producing winners and losers through excision of overlapping claims to land, land titling may encourage land grabbing by the elite and other well-resourced members of the community who are more familiar with the processes of land registration, have more information and resources to comply with the processes of formalisation of land rights. Instead of enhancing security of tenure and yielding such advantages as increased investment in land, higher levels of productivity, increased access to credit as land can be used as collateral security; there have been increased instances of land-related conflicts.'<sup>22</sup>
- 32 The Motlanthe report recommended that a robust land administration system be developed. This system needs to be linked to a recordal system in local government and through the Department's CPA (Community Property Association) registrar to the Deeds Office to ensure external oversight of the security. Government needs to invest in an affordable land recordal system that can be rolled out at scale, together with strong land administration and enforcement institutions that are accessible to all, in both urban and rural areas. The Land Records Act would be a crucial component of a land

<sup>20</sup> Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (FAO: 2012)

<sup>21</sup> Compare the current situation in South Africa: Nandipha NO v Irfani Traders CC t/a Jabulani Hardware and Another (4654/2017) [2018] ZA ECMHC 50 (21 August 2018) It is concerning, if not disturbing, that the majority of rural communities are still not the owners of their land. Like the applicant they rely on the mercy of the Minister for Rural Development and Land Reform by signing the Interim Protection Act for them to remain in occupation of their land legally...

<sup>22</sup> <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:0db830a3-6c0d-49fb-9fe3-12be2da6e858>

administration system that provides robust forms of recourse to ordinary people seeking to assert and protect their land rights.

- 33 Related to the challenge of tenure administration is the general lack of statutory, policy and customary law instruments to hold the structures involved in communal land administration accountable.
- 34 The legacy report<sup>23</sup> of the former Portfolio Committee on Rural Development and Land Reform of the 5th Parliament indicated that the key focus areas over the five years from 2014 to 2019. The report is not yet public as it had not been formally adopted. The PowerPoint presentation by the content advisor reported that the HLP report was considered on issues only, and not comprehensively. The report states that there were delays in the finalisation of e-cadastre. The legacy report recommended the finalisation of an electronic deeds system and exploration of mechanisms for registration of customary land rights in the Deeds Office (not titling but records where rights of rural dwellers are protected). [slide 9]

### The statutory context

- 35 ULTRA was conceived in the dying days of Apartheid. It must be read in its context. First, the principal act must be read in the statutory context of other relevant sister legislation. Second, the amendment bill must be read in context with preceding amendments.

PRE			
1984 4	Black Communities Development Act, 1984 (Act No. 4 of 1984) – partly still on statute book		
1986 15	Town Planning and Townships Ordinance 15 of 1986 [Transvaal]		
1988 81	Conversion of Certain Rights to Leasehold and Ownership Act, 1988 (Act 81 of 1988) – still on statute book		
1991 108	Abolition of Racially Based Land Measures Act, 1991 (Act 108 of 1991)		
1991 102	<b>Upgrading of Land Tenure Rights Act, 1991 (Act 112 of 1991)</b> The Upgrading Act commenced on 1 September 1991.		
1991 113	Less Formal Townships Establishment Act, 1991 (Act 113 of 1991)	1	
1993 119	Distribution and Transfer of Certain State Land Act, 1993 (Act 119 of 1993)		
1993 126	Provision of Land and Assistance Act, 1993 (Act 126 of 1993)		
1994 4	KwaZulu-Natal Ingonyama Trust Act No. 3KZ of 1994 1994 04 24 COMMENCED amended in 1997 to create the Ingonyama Trust Board (ITB)		
POST			
1994 139	Proclamation 139 of 1994		
1995 67	Development Facilitation Act, 1995 (Act 67 of 1995)	1	
1996 3	Land Reform (Labour Tenants) Act		
1996 28	Communal Property Associations Act [2018 amendment not in operation]		
1996 31	Interim Protection of Informal Land Rights Act 31, 1996 (Act 31 of 1996)		

<sup>23</sup> <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:04230015-4049-47df-bfd2-8ea65d632b05>

1996 34	Act 34 of 1996 Upgrading of Land Tenure Rights Amendment Act Date of Commencement: 07/03/1996, Assented to Date: 27/06/1996		
1997 04 00	1997 White Paper WHITE PAPER ON SOUTH AFRICAN LAND POLICY <sup>24</sup>		
1998 5	KwaZulu Natal Planning and Development Act 5 of 1998		
1998	Transformation of Certain Rural Areas Act, 1998 (TRANCRAA)		
2000	Home Loan and Mortgage Disclosure Act		
2003	Traditional Leadership and Governance Framework Act of 2003		
2004 11	Communal Land Rights Act, 2004 (Act 11 of 2004) = declared invalid	2	
2007 19	Government Immovable Asset Management Act No. 19 of 2007		
2013	Spatial Planning and Land Use Management Act 16 of 2013		
2019	Traditional and Khoi-San Leadership Act [not in operation]		
1	LFTEA and DFA were repealed by SPLUMA [ASSENTED TO 2 AUGUST, 2013] [DATE OF COMMENCEMENT: 1 JULY, 2015]		
2	CLARA never came into operation as it was declared constitutionally invalid		

- 36 The R293 towns (from Regulations for the Administration and Control of Townships, Proclamation R293 of 1962) were established to redirect Black urbanisation to homeland areas. Although these towns were managed by the Apartheid state, the intention was to incorporate them into the ethnic homelands. By the 1980s this programme became unrealistic and intolerable.
- 37 The White Paper on Land Reform (WP 8--91) and the four accompanying bills incorporated several important shifts of principles for the National Party. These were published within weeks of the 'discussion document' issued by the Land Commission of the ANC.
- the White Paper acknowledged access to land as a basic human right, and proposed that access be achieved through operation of a market economy in which free enterprise and private land ownership would prevail.
  - In addressing quality and integrity of title in land, the White Paper expressed the government's commitment to a policy of upgrading lower order, racially based land tenure rights, and registration, to full ownership or better rights of leasehold.
  - Government policy espoused the efficient use of land for the benefit of the entire population.
  - Specifically, the government sought to protect the current production capacity of commercial agricultural land in rural areas, further developing this system of production within a market economy and in accord with market forces, through increasing access to private ownership.

## THE APPLICABILITY OF ULTRA

- 38 The Upgrading of Land Tenure Rights Act No. 112 of 1991 (ULTRA) provides for, inter alia, the conversion of permissions to occupy (PTOs) from old order rights which may be "upgraded" to freehold. The upgrading of rights may occur mostly where land has been cadastrally surveyed. The lack of surveying of land which was previously regarded by the apartheid government as Bantustans, limits and constrains the extent to which communal land rights may be upgraded. On land that has been surveyed, there are title deeds of quitrent rights and deed of grants that are out of date. In cases of quitrent settlements, there are overlapping rights by owners, tenants and occupiers.<sup>25</sup>

<sup>24</sup> <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:67fe64c4-9586-4ae5-a4f1-603ee63d2d7f>

<sup>25</sup> Advisory Panel on Land Reform and Agriculture May 2019

- 39 Immediately after promulgation in 1991 three of the nine former Bantustans opted in to the upgrading act. Lebowa, Qwa Qwa and Kangwane self governing territories were apparently consulted by the NP government and were awarded the application of ULTRA.<sup>26</sup>
- 40 In terms of Proclamation 139 of 1994, Schedule 6 Functions in terms of the Interim Constitution were assigned to the provinces in respect of the functions pertaining to Provincial Governments, i.e. urban development (Schedule 1 functions).<sup>27</sup>
- 41 S3 of ULTRA Schedule 2 functions were never assigned to the provinces.
- a. The power to issue PTO'S and to deal with tribal land therefore remains vested in the national government.
  - b. The implication therefore is that the relevant Provincial Government may implement and / or approve certain components of the Act as indicated in the delegations, that is the most pertinent aspects of the Act relating to township establishment.
- 42 ULTRA has gone through a number of amendments, more substantively in 1992, 1993, 1995, 1996 and 1998.<sup>28</sup> The whole of chapter 2A was repealed by Act 34 of 1996.<sup>29</sup>
- 43 Originally, section 25 of the Act excluded its application in the former self-governing territories, except by special agreement with any government of a self governing territory and a proclamation by the State President to that effect. This section of the Act was repealed by Act 11 of 1995.

<sup>26</sup> No. R. 99 and 134, 1993 <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:42d27cb1-a2ce-41db-876c-9ee5026ee169>

<sup>27</sup> Proc. R293 of 1962 assigned (whole) to North West and Eastern Cape, under Section 235 (8) of the Interim Constitution Gazette No. 15813, Proc. R110 and 111 of 1994 dated 17 June 1994. Proc. R293 of 1962 was also assigned (excluding those provisions (if any) which fall outside the functional areas specified in Schedule 6 to the Constitution or which relate to matters referred to in paragraphs (a) and (e) of section 126 (3) of the Constitution) to Eastern Transvaal (Mpumalanga), KwaZulu/Natal and Northern Transvaal (Limpopo) under section 235 (8) of the Interim Constitution, Gazette No. 1604 , Proc. R162 of 1994 dated 31 October 1994.

<sup>28</sup> <https://www.gov.za/documents/upgrading-land-tenure-rights-act>

- Amended by Rural Development and Land Reform General Amendment Act 4 of 2011 from 16 May 2011: S 1, 22

- Amended by Public Service Amendment Act 30 of 2007 from 1 Apr 2008: S 24

- Amended by Communal Land Rights Act 11 of 2004 from 20 Jul 2004: S 20, 25

- Amended by Housing Consumers Protection Measures Act 95 of 1998 from 1 Dec 1999: S 6, Sch 2

- Amended by Land Affairs General Amendment Act 61 of 1998 from 28 Sep 1998: S 25

- Amended by Upgrading of Land Tenure Rights Amendment Act 34 of 1996: S 1, 3, 16-18, 20-24

<https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:2a79c025-d718-4d3d-b7c1-fb93bd26799b>

- Amended by Land Affairs General Amendment Act 11 of 1995: S 1, 24-25

- Amended by General Law Second Amendment Act 108 of 1993: S 1, 15, 18, 23-24

- Amended by General Law Amendment Act 139 of 1992: S 2

<sup>29</sup> General Law Amendment Act, No. 139 of 1992 [with effect from 7 August, 1992]

General Law Second Amendment Act, No. 108 of 1993 [with effect from 1 August, 1993]

Land Affairs General Amendment Act, No. 11 of 1995

Development Facilitation Act, No. 67 of 1995

Upgrading of Land Tenure Rights Amendment Act, No. 34 of 1996

<https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:2a79c025-d718-4d3d-b7c1-fb93bd26799b>

Land Affairs General Amendment Act, No. 61 of 1998

Transformation of Certain Rural Areas Act, No. 94 of 1998 [with effect from 2 November, 1998]

Public Service Amendment Act, No. 30 of 2007 [with effect from 1 April, 2008]

Rural Development and Land Reform General Amendment Act, No. 4 of 2011

<https://www.mylexisnexis.co.za/Index.aspx>

- 44 Act 61 of 1998 was introduced extending the applicability of the Act to the entire Republic of South Africa, with the exception of sections 3, 19 and 20.<sup>30</sup>
- 45 Significantly, section 20 of ULTRA, which provides for transfer of state land to 'tribes', was to be repealed when the Communal Land Rights Act 2004 (Act 11 of 2004) became operational, but declared unconstitutional in its entirety.<sup>31</sup>

## Schedule 1 upgrades in practice

### R1063 and R293

- 46 The vast majority of urban areas for blacks in white South Africa was established in terms of section 2(1)(a)-(c) of the Blacks (Urban Areas) Consolidation Act 25 of 1945 (or its predecessors). Under this act as well as under the Black Communities Development Act 4 of 1984 these townships may only be occupied by Blacks. In terms of the Abolition of Influx Control Act 68 of 1986 influx control was removed from the statute book. The Black Communities Development Act 4 of 1984 was also amended in 1986 to provide for a new form of freely alienable leasehold as well as for the acquisition of ownership. GN R1036 of 1968-06-14 the regulations governing the control and supervision of an urban Black residential area and relevant matters were issued in terms of section 38(8)(a) of the Blacks (Urban Areas) Consolidation Act 25 of 1945. GN R1036 was until the establishment of the system of Administration Boards (by virtue of the Black Affairs Administration Act 45 of 1971) applied by the relevant urban local authority with jurisdiction over the particular urban Black area. In 1971 the Blacks Affairs Administration Act 45 of 1971 was introduced and provided for a centralised system of Administration Boards.
- The residential permits, lodgers' permits, hostel permits and certificates of occupation were in the nature of personal contractual rights with the local authority and were held by the male head of household.
- 47 The Conversion of Certain Rights into Leasehold or Ownership Act, 1988 repealed Government Notice No. R.1036 of 14 June 1968 [Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters].
- 48 On SADT land (that is scheduled land and land outside the Bantustans) Proclamation R293 of 1962-11-16 (as amended) applied and the control over all land matters rested with the Department of Development Aid. Apparently, on 9 March 1988 R293 was repealed in the areas where the SA Parliament still had jurisdiction and replaced by proclamations and regulations dealing with land tenure, registration of land rights and local government.<sup>32</sup>
- 49 Scheduled areas ito the 1913 Land Act and Released areas, or SADT land ito the 1936 Land Act also applied R293 at least until 1986, whereafter Bantustan governments could amend or substitute R293.
- a. In terms of R293 the Survey Act 9 of 1927 was in principle not applicable to towns in the Black areas; consequently general plans and title deeds are the exception.

<sup>30</sup> 25A. Application of Act.—As from the coming into operation of the Land Affairs General Amendment Act, 1998, the provisions of this Act, excluding sections 3, 19 and 20, shall apply throughout the Republic.[S. 25A inserted by s. 1 of Act No. 61 of 1998.]

<sup>31</sup> Tongoane

<sup>32</sup> Proclamation R29 of 1998, Government Notice R404 of 1988, Government Notice R405 of 1988, and Government Notice R1888 of 10 August 1988 which amended R404/1988

- b. Proc R293 was amended by GN R1538 of 1986-07-23 (GG' 10364 of 1986-07-23) to provide for the acquisition and registration (in the Deeds Office) of ownership and leasehold.

*Regulations Townships in Bantu Areas, Proclamation No.R.293, 1962*

- 50 As the title 'Regulations for the Administration and Control of Townships in Bantu Areas' indicates R293 applied to proclaimed townships. It was also issued in the name of the then Department of Bantu Administration and Development, successor in name to the Department of Native Affairs, and issued in terms of sections 6(1) and 25(1) of the Native Administration Act No.38 of 1927 and section 21 of the Native Trust and Land Act No.18 of 1936.
- a. R293/1962 provided for the issues of Deeds of Grant which were processed through applications to relevant homeland departmental officials. Although these Deeds of Grant fell short of freehold, they did involve the registration of deeds with the Deeds Office.
  - b. The Repeal of the Black Administration Act and Amendment of Certain Laws Act No. 28 of 2005 at section 1(6) repeals any proclamation made in terms of section 25(1) of 38/1927 and which was not already repealed by 108/1991 with effect from "(i) 31 July 2006; or (ii) such date as it is repealed by a competent authority, whichever occurs first."  
 The repeal of R188 and R293 and other regulations by Act 28/2005 does not have any effect on similar or even identical legislation which was enacted or amended by the TVBC states unless this legislation has been explicitly repealed.
  - c. While there may have been assignments and delegations of sections of R188 and R293 between 1994 and 2006, and land rights may have been determined in terms of these provisions, those sections no longer enabled any new rights to be created or determined from 31 July 2006 at the very latest.  
 However the repeal of the legislation has no effect on the determination and accrual of any rights under that legislation while it was in force and on the continued existence of those rights after the repeal.

*The operation of section 2(1) of ULTRA*

- 51 Section 2(1) provides that the land rights listed in schedule 1 in respect of erven in a formalised township and surveyed land outside of a township "shall ... be converted into ownership."
- a. When s2 was extended to apply across the RSA in 1998 by the Land Affairs General Amendment Act, Schedule 1 rights acquired prior to the "independence" of former Bantustans fall within the provisions of the amended Act and therefore are converted to "ownership" by operation of law.
  - b. What is not entirely clear is the status of rights acquired after "independence" and/or under amended versions of the legislation not listed in Schedule 1. Technically they may not qualify although in terms of the spirit and intention of the law it could be argued that they should apply, more particularly so since the Rahube judgment.
  - c. In any event in practice the deeds offices, with a few exceptions, never endorsed the registered deeds of leasehold listed in schedule 1 as required by s2. S4 also prevented such conversion pending the opening of a township register. LAMOSA's understanding is that only the King Williams Town registry religiously endorsed and converted certain quitrents qualifying under ULTRA. Anecdotal evidence suggests that the Bisho registry stored its quitrent certificates on private property where, at a fee, questionable copies with a range of endorsements could be obtained.



- d. Be that as it may, automatic conversions may be something of the past, given the wording of clause 1 of B6. The memorandum to B8 When the technical experts briefed the committee on 26 June 2020, they testified that s2(1) read with schedule 1 as it is proposed to be amended will now operate thus:

*Clause 1 of the Bill, which amends section 2 of the ~~Principle~~ Principal Act, was to provide that **instead of conversions occurring automatically, people interested in objecting to conversions of deeds of grants would be able to apply to the Minister for conversions, and once the application was received, the Minister would publish notice of application in the Gazette to inform interested persons who may wish to object the conversion.** Once an objection of the conversion was made, the Minister would institute an enquiry to establish facts around the application and the objection, with the purpose of making a determination on whom the legitimate holder of the deed of grant was<sup>i 33</sup>*

The PMG minute leave much to be desired but with reference to the google translation we get the gist. Whereas under the principal act conversions happened automatically on promulgation of ULTRA ito s2 or , ito s4 on the opening of the relevant township register, this will no longer be the case. As indicated in the heading to s2, rights holders or unfairly discriminated disadvantaged would be holders will in future have to apply for conversion.

- e. What is curious, and not in accordance with ULTRA s2(1)(a) is paragraph 1.3 of the memorandum to B6 which insists that the past and current practice is that 'individuals have been converting some of the rights...'

#### *'Automatic Conversion'*

- 52 Standard conveyancing texts and manuals deal with leaseholds iro act 4 of 1984 and ULTRA.<sup>34</sup> From 1 September 1991 all schedule 1 land tenure rights (leaseholds / deeds of grant / quitrents) which was granted in respect of any erf in a formalized township for which a township register was already opened, were automatically converted into ownership - (Section 2(1)(a)). No registration procedure shall be required for such conversion. The holder of the right of ownership/leasehold (or his agent) shall produce the relevant title deed to the registrar who shall endorse such title deed to the effect that the land tenure right is converted to ownership - (Section 2(2)(a)). It shall not be required that the conveyancer shall make application for the leasehold to be converted to ownership. The owner himself or his agent can produce the deed of transfer to the registrar in order to have it endorsed. No transfer duties, stamp duties or other costs are payable in respect of such endorsement.

- a. If, however, transfer is to be passed of land tenure rights (leasehold) in respect of which no endorsements for the conversion thereof have been made, the registrar shall, upon registration of the deed of transfer, endorse the deed to the effect that the leasehold is converted to ownership.
- b. From 1 September 1991 all schedule 1 land tenure rights (leasehold / deeds of grant / quitrents) which was granted in respect of any erf in a formalized township for which a township register is opened after the commencement of this Act, shall at the opening of the township register be automatically converted into ownership - (Section 2(1)(b)).
- c. A registered leasehold converted into ownership is transferred by means of a conventional deed of transfer. Such deed of transfer shall be prepared in accordance with Form E of the Deeds Registries Act.

- 53 Ms Matshabelle Mary Rahube's family and household was issued with a 'Certificate of Occupation of a Letting Unit for Residential Purposes' under Proclamation 293 of 1962, in the name of her brother Mr Hendsrina Rahube despite her uncle being regarded as the head of household, in 1970 after the family had been forcibly removed from Lady Selbourne to Mabopane Township. The certificate was

<sup>33</sup> <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:0f4597fb-f033-4ac3-b454-50298732ff3c>

<sup>34</sup> <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:5b80a927-abaa-4bf3-8e10-b7149191cb6c>

converted to a deed of grant and subsequently, in 1998, to full ownership, apparently at the instance of Mr Hendsrina Rahube.<sup>35</sup>

- a. Please note that the certificate issued in 1970 required the names of all adult occupants of the leased premises.
- b. It is a mystery how the certificate was converted to a deed of grant.

54 The conversion process ito s2(1) is in fact 'semi automatic.' The top down process still requires of the holder or purported holder to arrive at the deeds office with a document proving a schedule 1 right.

#### The proposed changes by B6

- 55 To the extent that the Rahube judgment now requires supervision of the conversion process to secure the rights of women, clause 1 of B6 requires the following of the process for future conversions:
  - a. The only reference to schedule 1 is in the heading. For purposes of interpretation it must be assumed that the operative provision ie s2(1) only relates to rights in the schedule?
  - b. A natural person must initiate the process.
  - c. A holder or would be holder must apply.
  - d. The application must relate to a registered right, ie the right must appear on a register held by an official registry.
- 56 The Rahube judgment ordered retrospective application from 1994 of the conversion process, meaning that discriminating conversions since 1994 could be re opened. It is not immediately apparent from B6 how the 26 year discriminating conversions will be made accessible to ordinary discriminated persons, fast tracked or publicised.
  - a. The Bill inserts section 14A into the Act. Clause 3 makes provision for any person aggrieved by the conversion of a land tenure right from 27 April 1994 to approach a court for an order that sets aside the offending land tenure right, or for an order that is just and equitable.
  - b. The proposed section 14A(2) states that any of the following transfers of ownership of property from the abovementioned date in which a land tenure right had been converted shall remain valid:
    - i. Property purchased by third parties in good faith;
    - ii. Property inherited by a third party in good faith and the estate has been finalized;
    - iii. Property which has been converted to ownership in favour of a woman in good faith in terms of the Act.
- 57 The following can be noted for purposes of evaluation:
  - a. The process is more bottom up but depends entirely on the minister's capacity to process 'applications.' Conversion is no longer semi automatic, it is application driven.
  - b. Only rights that already appear on an official register are to be considered in any application.
  - c. It is doubtful that Ms MM Rahube would have been able to have access to an entry in a register to support her application. It is doubtful that an inquiry initiated by the minister would easily or at all access the entry in a register relating to Ms Rahube's application. It could delay or stall her application indefinitely.
  - d. The efficacy of the process proposed in B6, with or without exponentially increased capacity, does not appear ex facie the bill, the memorandum or the briefing on 26 June 2020.

<sup>35</sup> Para 27 of founding affidavit in CC <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:f2a276b2-e3be-4e80-956d-7981f7e5e4e4>



- 58 In search for clarity about the amended conversion process to promote women's rights and promoted by B6, the report of the department to the portfolio committee on 20 August 2019<sup>36</sup> is revealing:
- a. Ms M Tlhape (ANC) said that it was vital that the Committee gain an understanding of how big the problem was;
  - b. Mr Mdontswa Deputy Chief Land Claims Commissioner: Department of Rural Development and Land Reform (DRDLR) explained that the socio-economic impact study that was currently being conducted was a study that would give the Department an indication of how many people were affected;
  - c. The study would look at how many conversions had been done before between 1991 and 1994 which were safe, and how many were done after 1994... where the conversions had been done and perfected in the deeds office after 1994;
  - d. The homework had to a very large extent been done to determine what the most cost effective way of dealing with the upgrading of tenure rights that were given to people was.
  - e. Adv Vela Mngwengwe, Chief Director: Property Management and Advisory Services, DRDLR said the difficulty with the rights envisaged in section 2(1) was that it empowered the holder of a right to approach the deeds office and get it upgraded. It did not require any kind of public process.
  - f. The Chairperson concluded that the Committee must be updated on the enormity of this issue by looking into the details of each case, and establishing how many cases there were.
- 59 The dilemma facing the committee and civil society is that B6 on the face of it and the two briefings, raise more questions than produce answers. It remains a real possibility that ULTRA s2 will become a dead letter for purposes of new conversions, and that discriminating conversions over the last 26 years will depend on court applications for those able to afford it or getting legal aid.
- 60 The dilemma becomes even more real if it is thought that ULTRA under s2 and schedule 1 will provide relief to urban dwellers in the former Bantustans.
- a. On 20 August 2019 Mr Mngwengwe informed the committee: the register of these rights during the pre-1994 governments were not reliable. There was not a single record throughout the country where one could go and find all the leaseholds that had been issued.
  - b. If we cannot enumerate the schedule 2 rights in the Bantustans, then how can we upgrade them through the application process and what will the social and other costs be of individualised inquiries?
  - c. On the face of it and until the department produces evidence to the contrary, individualised inquiries under ULTRA will be socially and economically expensive and un do able particularly in the former Bantustans. We have not been apprised of the future possible alternative in the form of a communal tenure bill.
- 61 The mainstream evaluation by corporate law firms is that the amendment bill is a step in the right direction. One example is cited:
- "The Bill inserts section 14A into the Act which will appear after section 14. The section makes provision for any person aggrieved by the conversion of a land tenure right from 27 April 1994 to approach a court for an order that sets aside the offending land tenure right, or for an order that is just and equitable. Section 14A(2) states that any of the following transfers of ownership of property from the abovementioned date in which a land tenure right had been converted shall remain valid:*
- a. *Property purchased by third parties in good faith;*

<sup>36</sup> <https://pmg.org.za/committee-meeting/28712/>

- b. *Property inherited by a third party in good faith and the estate has been finalized;*
- c. *Property which has been converted to ownership in favour of a woman in good faith in terms of the Act.*<sup>37</sup>

It continues: *In Rahube v Rahube and Others the court stated that "Laws and policies must seek to do more than merely regulate formalistically. The Legislature is enjoined to ensure that laws and policies promote the participation of women in social, economic and political spheres while also advancing the spirit, purport and objects of the Constitution." The Bill is a step in the right direction to secure land tenure rights to women previously marginalised by discriminatory policies."*

- 62 More is expected of the law maker to evaluate B6. What is the problem that must be addressed? Is the tool the right one, and does it have the reach to address the problem? Will the tool be effective? What are the costs including the social costs? Who will be left out?
- a. LAMOSA has already indicated above that ULTRA in its current or possible amended format will not cut the grade.
  - b. Further explanation follows.

### Black Communities Development Act afterlife

- 63 From 1984 up until 1 September 1991 residence of black people in urban areas in white South Africa was largely controlled by the Black Communities Development Act. Upon commencement of the Abolition of Racially Based Land Measures Act, No. 108 of 1991, most of this act was repealed. Chapters VI and VIA, however, remain in force, as well as the regulations promulgated in terms of this Act. There are two sets of regulations, i.e. the so-called Leasehold Regulations and the so-called Township Development Regulations.<sup>38</sup>
- a. Land tenure rights (rights of leasehold) can still be granted and registered in terms of Chapters VI and VIA. However, such granting and registration is limited to towns for which no township register has yet been established.<sup>39</sup>
  - b. A person to whom leasehold is granted (in respect of an erf in a town for which no township register was opened) may register such leasehold at the deeds registry. In order to effect registration thereof in the deeds registry a "Certificate of Provisional Granting of Leasehold" together with a "Certificate of Registered Grant of Leasehold" shall be lodged with the deeds registry. The "Certificate of Registered Grant of Leasehold" shall be registered by the registrar of deeds. A conveyancer's execution with the registrar, as in conventional transfers, shall not be necessary. No stamp or transfer duties shall be payable in respect of the registration of leasehold. Subsequent transfers occur by way of conventional deeds of transfer.<sup>40</sup>
  - c. By operation of ULTRA s4, a right of leasehold in respect of leasehold premises is [supposed to be] automatically converted into a right of ownership when a township register is opened with

<sup>37</sup> Writing the Wrongs of the Past of The Upgrading of Land Tenure Act By: Sifiso Msomi, Partner , Durban Practice Area(s): Property & Conveyancing - Shepstone & Wylie Attorneys <https://www.wylie.co.za/articles/writing-the-wrongs-of-the-past-of-the-upgrading-of-land-tenure-act/#:~:text=The%20Upgrading%20of%20Land%20Tenures,of%20tenure%20rights%20to%20ownership>.

<sup>38</sup> 72(2) Chapters VI and VIA of the Black Communities Development Act, 1984 (Act No. 4 of 1984), and any regulation made under the said Act, and in force immediately prior to the commencement of this section in an area, shall, notwithstanding the provisions of subsection (1) of this section but subject to any amendment thereof under section 87 of this Act, remain in force until repealed under the said section 87. (Date of commencement of s. 72: 1 September, 1991.) Minister of Land Affairs and Another v Slamdien and Others | [1999] 1 All SA 608 (LCC); [1999] JOL 4491 (LCC); 1999 (4) BCLR 413 (LCC)

<sup>39</sup> Section 6(1)(b) of the Upgrading of Land Tenure Rights Act, No. 112 of 1991.

<sup>40</sup> 52(14) The provisions of the Alienation of Land Act, 1981 (Act No. 68 of 1981), shall apply mutatis mutandis with respect to any alienation of a leasehold, and any reference to "land", "erf" or "unit" in the said Act shall be construed as a reference to the relevant leasehold.

regard to the town in which the premises is situated. Until a township register is opened ULTRA does not become applicable.<sup>41</sup>

- 64 What is clear is that not only ULTRA but also act 4 of 1984, the Conversion of Certain Rights to Leasehold and Ownership Act, 1988, and LFTEA all ‘produced’ forms of title, ownership or leaseholds that were and are prone to challenges similar to a Rahube type challenge. These will not be addressed by B6, particularly so if ULTRA was not used to upgrade them to ownership. We now know from the Umhlaba report that act 4 of 84, the Conversion Act 81 of 1988 and LFTEA were applied separately from and alongside ULTRA to produce and confer ‘dubious’ potentially discriminatory titles to men.
- 65 LAMOSA’s own desktop research shows widespread application of all four instruments producing leasehold and ownership titles in townships since 1994. By all accounts and as evidenced in the 2009 Umhlaba report, ULTRA played and continues to a minority role in producing and registering tenure rights or their upgrading. Tinkering with ULTRA will not necessarily promote women’s tenure rights at scale or significantly. Much much more must be done.

	ULTRA	BLACK COMMUNITIES DEVELOPMENT ACT*	LFTEA – LESS FORMAL TOWNSHIP ESTABLISHMENT ACT ^	CONVERSION OF CERTAIN RIGHTS TO LEASEHOLD ACT, 1988
EASTERN CAPE	45		355	
FREE STATE			90	
KZN	8		117	
GAUTENG	22	273	47	
LIMPOPO	17	6	9	
MPUMALANGA	98	32	10	
NORTHWEST	4	2	9	
NORTHERN CAPE	3			
WESTERN CAPE	2		10	
	199	313	942	301

## Schedule 2 upgrades in practice

### R188 and betterment

- 66 This system of indirect rule had the twin advantages for the colonising power that it was both cheap and effective. As the system of government of the Cape developed and was elaborated towards the later part of the nineteenth century, it was logical that the officials administering the Transkei provided both the leadership and ideology for the new Native Affairs Department. In the absence of any coherent “native policy” or any effective administration in the northern provinces in 1910, the Cape Native Affairs section came to lead the new Union Department of Native Affairs. One consequence of this was that the experiences in the Transkei around land tenure and land administration were reproduced across the entire Union, including the preference for locally recorded and administered land rights.<sup>42</sup>
- 67 Proclamation R188/1969 was new legislation but it was based firmly on a series of proclamations and practices going back to the late nineteenth century. In particular it drew heavily on Proclamation 117

<sup>41</sup> 52(16) Notwithstanding anything to the contrary contained in any law, any leasehold granted by an Administrator or by a local authority, whether before or after the commencement of the Constitutional Laws Amendment Act, 1988, in respect of any land owned by the one or the other of them and in respect of which the register in terms of section 46 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), had not been opened at the time of such grant, shall be deemed to be validly granted for all purposes under this Act, notwithstanding that that leasehold was so granted by the Administrator or local authority while the other one of them was the owner of the land concerned.

<sup>42</sup> <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:24a18728-4a64-4e5e-97c5-e3dfb334f3de>

of 1931, Regulations for certain surveyed districts of the Cape Province. Annexure 1 of R188/1969 listed prior proclamations repealed by R188/1969. This list ran to over two pages and included legislation promulgated in the late nineteenth century, in particular the Glen Grey Act No.25 of 1894.

- a. The reach and extent of the formal provisions of Proclamation R188/1969 reflects the extent to which betterment planning including villagisation was implemented. Betterment planning was formally launched across SA by Proclamation 31 of 1939, and refined and made increasingly authoritarian by successive proclamations including those of 1944, 116/1949 and 196/1967.
- b. As of 1976 the total count of betterment projects was distributed across the country inside and outside Bantustans as follows<sup>43</sup>

Province	total	
cape	257	Mostly Eastern Cape districts
natal	70	
Free state	3	
Transvaal	214	A large number in Northwest districts
	544	

- c. There were 26 betterment areas declared in the Glen Grey district, 77 in King Williams Town and so on.

Province	District (Total)	Type of betterment areas
Cape	Cathcart (1)	Mission Station
	East London (4)	Locations
	Fort Beaufort (1)	Location
	Glen Grey (26)	3 Farms, 23 Locations
	Herbert (5)	Locations
	Herschel (23)	Locations
	Kieskammahoek (15)	Locations
	King Williams' Town (77)	Locations
	Kuruman (9)	Locations
	Mafeking (1)	Tribal Area
	Middledrift (33)	Locations
	Peddie (13)	1 Farm, 12 Locations
	Queenstown (20)	Locations
	Stutterheim (2)	Reserves
	Taung (9)	2 Tribal Areas, 7 Locations
	Victoria (11)	1 Grazing Land, 10 Locations
	Vryburg (7)	Reserves
	Totals Cape: (257)	
Natal	Bergville (1)	Location
	Empangeni (1)	Reserve
	Entonjaneni – Melmoth (1)	Reserve
	Eshowe (2)	Tribal Areas
	Estcourt (2)	Locations
	Harding (9)	Locations
	Ixopo (1)	Location

	Kranskop (9)	Farms
	Mahlabatini (2)	Tribal Areas
	Mapumulo (1)	Mission Reserve
	Msinga (1)	Tribal Area
Natal	Ndwedwe (1)	Tribal Area
	New Hanover (2)	Tribal Areas
	Nongoma (3)	Tribal Areas
	Nqutu (3)	1 Reserve, 2 Tribal Areas
	Pietermaritzburg & New Hanover (15)	Farms
	Pietermaritzburg (5)	Tribal Areas
	Polela (2)	Locations
	Port Shepstone (6)	Locations
	Richmond (2)	1 Farm, 1 Mission Reserve
	Umzinto (1)	Reserve
	Totals Natal: (70)	
OFS	Harrismith (1)	Reserve
	Thaba Nchu (2)	Reserves
	Total OFS: (3)	
Transvaal	Cullinan (2)	Farms
	Delareyville (1)	Farm
	Groblersdal (9)	2 Locations, 1 Tribal Area, 6 Tribal Farms
	Letaba (14)	8 Farms, 6 Locations
	Marico (12)	9 Farms, 3 Locations
	Pietersburg (49)	37 Farms, 12 Locations
	Potgeitersrus (39)	36 Farms, 3 Locations

<sup>43</sup>[http://lrc.org.za/art\\_external/pdf/A1\\_2013\\_Stubbs\\_Betterment\\_Planning\\_and\\_Restitution\\_-\\_Considering\\_the\\_Implications\\_of\\_the\\_Draft\\_Restitution\\_Bill\\_of\\_2013.pdf](http://lrc.org.za/art_external/pdf/A1_2013_Stubbs_Betterment_Planning_and_Restitution_-_Considering_the_Implications_of_the_Draft_Restitution_Bill_of_2013.pdf)

	Pretoria (3)	Farms
	Rustenburg (33)	Farms
	Sisba (13)	3 Farms, 2 Locations, 5 Tribal Areas, 3 Tribal Authorities)
	Soutpansberg (14)	7 Farms, 7 Locations

	Swartruggens (14)	Farms
	Warm Baths (8)	Farms
	Waterberg (3)	Farms
	Totals Transvaal: (214)	

- d. R188 incorporated the betterment regulations and they were all finally abolished by the 3<sup>rd</sup> abolition act. But R188 and the PTOs and quitrents issued thereunder in no way necessarily reflected the reality on the ground, resolved the disputes created by its betterment predecessor proclamations enacted with eight betterment proclamations between 1937 and 1967:

G No.		Other Titles	Provisions	
2610	31	Control and mprovement of Livestock in Native Areas	Gave the Minister of Native Affairs the Power to declare betterment areas, control grazing rights in those areas, and declare an optimum number of stock and cull any animals over that number.	1939
3336	92	Amendment to Proclamation 31	Amended section 2: Made all areas in section 6.1(b) from Native Trust and Land Act into betterment areas, and all farms purchased under section 10.	1944
3793	76	Amendment to Proclamation 31	Limited punishments only to betterment areas that had already been assessed.	1947
3958	66	Amendment to Proclamation 31	Notice of time and place of Section 6.1 shall be posted 14 days in advance; Any one owning stock that is trespassing on a betterment area is guilty of an offence	1948
4162	116	Limitation, Control and Improvement of Livestock and Pastoral and Agricultural Resources in Native Areas; Betterment Areas Proclamation	Repealed Proclamation 31. Greatly expanded the powers of the Native Commissioner, Allowed the Native Commissioner to demarcate residential, arable, and grazing areas. Allowed the Native Commissioner to issue regulations regarding cultivation, grazing, fencing, and stock management. Native Commissioner could constrict laborers to assist with betterment projects. Increased fines and broadened punishment for non-compliance with regulations.	1949
5259	56	Amendment to Proclamation 116	Added that lack of knowledge is not a sufficient defense for criminal proceedings	1954
5948	303	Amendment to Proclamation 116	Added all released areas of which a Native is an owner or any Native Tribe, or any land held in Trust by a Native as betterment areas; Changed consultation to explanation and added the Bantu Authorities Act of 1951, increased the scope of an offense for hindering the implementation of the proclamation	1957
57	37	Amendment to Proclamation 116	Notice placed in the Gazette is sufficient notice of an area being declared a betterment area	1961
62	46	Amendment to Proc 116	Minor administrative changes	1961
1841	R196	Limitation, Control and Improvement of Livestock and Pastoral and Agricultural Resources in Bantu Areas	Continuation of policies from 116 with some minor revisions	1967
13341	R116	Abolition of Racially Based Land Measures	Repealed betterment under section 87 (1) of the Abolition of Racially Based Land Measures Act No. 108 of 1991.	1991

- e. Addressing betterment requires a thorough and deep study of each of the 544 projects declared since 1937 and each individual household in such projects, and thereafter considering whether any allocation made ito R188 would stand constitutional scrutiny on presentation of such a permit.
- f. Allocations of PTOs in betterment areas and outside betterment areas after the R188 of 1969 must then be investigated and those overlapping and new permits considered.

68 But this is not the end of locating R188 in the statutory context. R188 had not only 8 predecessors but also subsequent iterations in the statute books of each of the Bantustan statute books

- g. The candidates for consideration of inclusion in amendments to schedule 2, ie statute law enacted since 1969 by the former Bantustans which replaced R.188 of 1969, include at least the following:

	Proclamation 26 of 1936	Administrative Area Regulations – Unsurveyed Districts Transkeian Territories
	No.14 of 1989 and No.10 of 1966	Transkei Agricultural Development Acts
	Act No. 11 of 1992	KwaNdebele Land Tenure Act, 1992
	Act No. 15 of 1989	Qwaqwa Land Act, 1989
	Act No. 14 of 1982	Ciskei Land Regulation Act, 1982
	Proclamation 45 of 1990	Venda Land Affairs Proclamation, 1990
	Act No. 39 of 1979	Bophuthatswana Land Control Act, 1979
	Act No. 3 KZ of 1994	KwaZulu-Natal Ingonyama Trust Act, 1994

- h. The provisions of each of the above eight statutory instruments must be analysed to check which sections or regulations awarded or required registered, even if not surveyed, rights. These will have to be identified and enumerated.
- i. Proc 26 of 1936 never applied to the whole of the former Transkei. The history of statute law for the western half of the former Transkei starts with the Glen Grey Act of 1884, and each district has its own unique idiosyncratic tenure laws and practices. It illustrates a history of the failure of titling programmes, and bogus titling programmes, in South Africa going back to the nineteenth century. Of the 28 magisterial districts which comprised the “independent” Transkei Bantustan, only in 8 districts was land surveyed after annexation to the Cape Colony and the British Crown.
- j. The PTOs of the Transkei are a pandora’s box of questions.<sup>44</sup> The actual PTO of Teba Trust in Senqu Sterkstroom and its authorising statute are not evident from the judgments in Hector v Senqu. Neither did the minister bring any evidence about the tenure regime of Sterkstroom to the table.

69 There must be many many thousands of PTOs and similar certificates, including deemed PTOs. Prior to 1994 married men were the holders of land rights in trust areas, almost without exception. This was authorised in terms of sections 20(4)(c)(i), 37, 49(1)(b), 56(5)(b)(i), 53(2) of Proclamation No.R.188 of 1969 Land Regulations. The first acknowledgement in legislation that this was changing was the inclusion at various stages into the drafts of what became the Communal Land Rights Act No.11 of 2004 (CLaRA) of sections 4(2), 4(3), 5(1) and 18(4)(b) to provide for the security of tenure for women and joint ownership of land rights.

70 A 1998 report commissioned by DLA stated: ‘A defining characteristic of this tenure system [the PTO system] is its conflation of ownership and land administration issues. A situation was created where government (in its role as trustee for black persons) became the owner, developer and administrator of land. To provide the necessary empowering frameworks to exercise these competences, specific laws for specific tenure regimes were created which integrated the necessary empowering development and administrative provisions into encompassing laws. This contrasts with the situation outside the former homelands where a clear distinction can be drawn between the issue of ownership and governance and which clearly reflects in the administration and legal systems operative in these areas. If the issue of governance and ownership remains bundled in the rural areas of the former homelands under the new dispensation, little progress would be possible in extending democratic local government to these areas.’

<sup>44</sup> Madikizela-Mandela v Executors Estate Late Mandela and others [2020] JOL 47478 (SCA)

This is only part of the problem of the precipitous path of extending s19 and s20 of ULTRA to the former Bantustan rural areas.

- a. Firstly the “owner” of the land should be correctly identified as the holder{s} of the recorded or informal rights to the land. The owner was mistakenly identified as the state as trustee.
- b. Secondly the assumption of an unbreakable connection between “democratic local government” and the separation of governance and ownership has little if any theoretical or empirical basis.
- c. If one accepts that this was a functional and inexpensive administrative system and that “upgrading” is neither essential nor necessarily desirable, then the situation that is being described presents an opportunity.<sup>45</sup>

- 71 Clearly PTOs and deemed PTOs cannot be ignored and warrant attention in any communal land tenure arrangement for the future. The question is whether ULTRA s2 and schedule 2 are the appropriate provisions to do so. LAMOSA submits not, particularly not in the former Bantustans as envisaged by clause 4 of B6.

### The operation of section 3 of ULTRA

- 72 Conveyancing manuals describe the operation of section 3 thus:
- a. Any land tenure right mentioned in Schedule 2 (rights to the occupation of land) for which a township register was opened, shall as from 1 September 1991 be converted into ownership by the registrar of deeds registering a special deed of transfer in the name of the holder of the land tenure right - (Section 3(1)). These are land tenure rights to the occupation of land granted to individuals, but for which no "certificate of leasehold" was issued. It must be distinguished from leasehold.
  - b. In order for a schedule 2 land tenure right to be converted into ownership, the owner of the erf (or piece of land) shall lodge with the registrar for registration a "deed of transfer" (prepared in accordance with Form DDD of the Deeds Regulations) issued in the name of the holder of the land tenure right - (Section 3(1)).
  - c. The deed of transfer shall be prepared by-
    - (a) a conveyancer; or
    - (b) if the owner of the erf or piece of land is the State or any local government body, any officer in the public service or person in the employ of such local government body, as the case may be, who has been designated for the purpose by the Minister, a Premier or a local government body.
  - d. The deed of transfer is then lodged at a deeds registry, and ownership will pass on the date of registration by the registrar.
  - e. No transfer duties, stamp duties or other fees shall be payable but the required clearance certificate shall be lodged. Furthermore, proof that no VAT is payable shall have to be delivered - (Section 3 (8))
  - f. The deed of transfer shall be made subject to all existing conditions, if any, in the title deed concerning the property.
- 73 A special form was created in terms of the Deeds Registries Act to accommodate the transfer of PTO rights. Form DDD<sup>46</sup> was inserted by GN R330 of 1996 and amended by GN R395 of 2000. It was developed to cater for
- a. section 5 of the Conversion of Certain Rights into Leasehold or Ownership Act, 1988 (Act 81 of 1988),

<sup>45</sup> MIKE KENYON in report to DLA Afesis Corplan 2015

<sup>46</sup> <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:a264598a-a076-4dc4-9a8d-ed1fd7b32429>



- b. section 3 (1), 13 (1) of the Upgrading of Land Tenure Rights Act, 1991 (Act 112 of 1991), [s13 'Shortened registration procedures relating to certain erven and land transferred by township owner' was rewritten to accommodate the DFA]
  - c. section 9 (1) or 26 (1) of the Less Formal Township Establishment Act, 1991 (Act 113 of 1991),
  - d. section 9 (1) of the Provision of Certain Land for Settlement Act, 1993 (Act 126 of 1993),
  - e. section 64 (1) of the Development Facilitation Act, 1995 (Act 67 of 1995),
  - f. section 86A of Housing Act (House of Representatives), 1987 (Act 2 of 1987), or section 40A of the Development Act (House of Representatives), 1987 (Act 3 of 1987)
  - g. any other applicable act.
- 74 Note that the larger part of s3 and the whole of s13 were amended by the Development Facilitation Act to accommodate the sea change introduced by the DFA including the introduction of 'provisional ownerships.'
- a. Clause 3 of B6 providing for court applications and the emancipation of women as owners of tenure rights applies to both s2 and schedule 1, and s3 and schedule 2.
- 75 There is no apparent evidence, even in the 2009 Umhlaba report, of s3 schedule 2 conversions under ULTRA where it is currently applicable ie the former white South Africa and the three former self governing territories where ULTRA is currently applicable ie Qwa Qwa, Kangwane and Lebowa.

*The TEBA-Hector v Senqu Municipality judgment*

- 76 Mr Hector NO and others represent the TEBA Trust, the successor of Wenela (Witwatersrand Native Labour Organisation) and NRC (Native Recruiting Corporation) set up by the Chamber of Mines in 1902.<sup>47</sup> TEBA used its PTO land in Sterkspruit town since the 1940s for recruitment of migrant labour for the mines. The Trust had a compound and recruiting offices on the premises. The court papers are not clear on what the intended future land use was. In the 1990s the land was transferred by operation of law apparently by POA to the municipality. Since then TEBA negotiated the transfer of the land from the municipality to TEBA. The Senqu municipality wants to use the extensive TEBA land to accommodate informal traders that are currently selling their wares from the sidewalks. Eventually TEBA instituted declarator proceedings claiming that the exclusion of ULTRA s3 to the former Transkei Bantustan is unconstitutional.
- a. S3 and schedule 3 R188 does not apply to the Transkei Bantustan.
    - i. In the Eastern Cape R188 applied outside of the former Transkei reserve areas and to the magisterial districts of Herschel/Sterkspruit and Glen Grey/Lady Frere which were transferred to the Transkei in 1976. Senqu Municipality is situated in the former Sterkspruit district.
    - ii. R293 did not apply in the Transkei with the exception of Ezibeleni and Ilinge near Queenstown, now under the Lukhanji Local Municipality, and Butterworth Extension 5.
  - b. It is not clear from the court papers under what statute TEBA acquired its PTO.
  - c. The department DRDLR did not participate in the proceedings or provide context to the relief sought by TEBA. Instead right at the end before the CC hearing the DRDLR minister filed heads of argument dealing with procedural issues and the delay in the review proceedings.

<sup>47</sup> <https://www.uj.ac.za/library/informationresources/special-collections/Documents/TEBA%20History.pdf> Teba is now a privately owned company, whose executive chairman, James Motlatsi, was the founding president of the National Union of Mineworkers.



- 77 The court made a 'read in' order: 'As from the date of this order section 25A of the Upgrading of Land Tenure Rights Act shall be read as if it makes no reference to section 3.'
- a. LAMOSA is not certain whether this judgment requires an urgent amendment to ULTRA and more particularly whether it requires making s3 applicable to the former Bantustans.
  - b. The question is whether we can live with the 'read in' order of the CC whilst we await the enactment of the comprehensive land tenure act.
- 78 An overhasty extension of s3 and schedule 2 to the former Bantustans can have a number of problematic consequences, foreshadowed by those dealt with by the applicants in the Tongoane matter. Also, much has happened in the intervening more than a decade:
- a. Consistent with the 1997 White Paper, the 2019 HLP report and the CC judgment in Daniels v Scribante distanced themselves from narrowly conceptualised hierarchies of rights which place freehold ownership at the apex and which overtly or tacitly characterises other rights as 'second class'.
    - i. These were not dealt with in the Rahube and Senqu judgments and neither were they expected to be. The dispute did not require examination of the nature and content of tenure rights.
  - b. Increasing poverty, neglectful and ineffectual municipalities, disillusioned democratic and pro active traditional and other local leaders, and dissipated voluntary local energy for participatory local law making, further exacerbated by Covid;
  - c. Land grabbing by powerful mining and agricultural industry players, local power and knowledge elites is changing the land scape;
  - d. Ever dissipating land reform capacity and energy exemplified by the land reform programme and the resolution of historic outstanding land claims coming to a stand still, and even going into reverse.

### The registration dilemma

- 79 The major, if not the greatest, root cause of the non-issuing of title deeds since 1994 was the failure to finalise the establishment and proclamation of new areas being developed. These delays in township proclamation were largely because the project developers had not followed through on the approval of a General Plan for the new area. This then delayed the opening of a township register. The primary stumbling blocks were that underlying disputes over land rights needed to be resolved first, and provincial and municipal departments and the Deeds Registry Offices often did not (and still do not) have the necessary expertise or capacity to do that.
- 80 While municipalities might have performed in terms of physical service delivery as expected by short-circuiting the process of township proclamation to get houses on the ground, the abandoned paperwork only gets disorganized and makes it even more complex to rectify in future. In the local municipality of Polokwane, Limpopo Province, there are several unregistered townships and transfer of individual stands has never taken place while the projects are closed. These are the so called blocked projects, the danger in prioritizing housing delivery over town planning paperwork is that politicians and project implementers never go back to finish off the invisible processes which were abandoned. Recognising the importance of these processes will enable government officials, political leaders and communities to emphasize completion of township establishment processes before houses are built. In actual fact, a house handover should be a simultaneous process with a title deed

handover. If anything must come first, it must be a title deed because a house should be built on a registered Erf within a proclaimed township.<sup>48</sup>

- 81 On 15 July 2014, the Minister of Human Settlements L N Sisulu promised in her budget vote speech to “prioritise the issuing of title deeds”. The second highest priority commitment by the Minister for the 100 days after the speech was as follows:

*Number two is the issue of title deeds. Firstly we will prioritise the issuing of title deeds for pre--1994 stock. This is important because these are otherwise dead assets. Without the title deeds the owners are unable to revitalise the old townships, which are in a very sad state of decay. The Estate Agency Affairs Board has been tasked to prioritise this and submit a report by 30 September 2014. Secondly, for the post--1994 stock, again we have dead assets lying in the Deeds Office. The Department will collaborate with the Department of Land Reform and the Office of the Land Commission and create a dedicated unit dealing with fast--tracking the issuing of title deeds of this post--1994 stock. Our people have a right to their title deeds and the fact that they do not have them is a sad indictment, because this is supposed to be an entry into the economy for the poor.*<sup>49</sup>

- 82 Under the Discount Benefit Scheme tenants of pre--1994 state--funded housing stock, who were denied property ownership under the previous regime, were given the opportunity to own their houses. However, approximately 68,400 of these transfers were still outstanding. From 1994 onwards, houses produced under the current democratic government's housing programme were mostly transferred into the name of new home owners, but especially since 2004 we have fallen behind, and a growing backlog has emerged. Analysis of the national Deeds Registry in 2011 showed that over a million subsidy housing beneficiaries had probably not been issued with a title deed.<sup>50</sup>
- 83 "It was shown that the majority of constraints pertained to a multitude of beneficiary and subsidy administrative issues (43%) and conveyancing (30%) constraints. The other constraint types collectively accounted for only 28%, as follows: land ownership (8%), town planning (6%) [and] land surveying (14%). Generally the findings within the individual municipalities were found to be relatively consistent with the provincial wide situation." (Arcus Gibb report)<sup>51</sup>
- 84 It is estimated that approximately 20 million land parcels in communal land areas and informal settlements are yet to be surveyed in South Africa. We have no news about progress or potential of electronic deeds and survey systems.

## LAMOSAs proposals

- 85 Even with the shortcomings in the process, evidence and motivation for B6, LAMOSAs makes proposals and will continue to focus such in the ongoing public participation exercises by the national assembly and the national council of provinces.

<sup>48</sup> <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:6430ca86-65de-4334-9584-77d809d7072b> 38

<sup>49</sup> Speech by L N Sisulu, Minister of Human Settlements on the Occasion of the Budget Vote of the Ministry of Human Settlements, 15 July 2014, National Assembly Chamber, Parliament.

<sup>50</sup> FinMark Trust (2011). Housing Subsidy Assets: Exploring the Performance of Government Subsidised Housing in South Africa – Overall Analysis. April 2011. Report by Shisaka Development Management Services. Page 73.

<sup>51</sup> Arcus Gibb (2012). Study on the Extent and Constraints Related to the Transfers of Ownership and the Issuing of Title Deeds to Subsidy Housing Beneficiaries in the Western Cape: Report 5. Report prepared for Provincial Government of Western Cape, Department of Human Settlements. 17 August 2012.

- 86 The committee can immediately state its intention to scrap clause 4 of the Bill, entirely or at least its application to s19 and s20. Then the public and directly affected citizens can proceed to discuss the other contentious provisions of the amendment bill B6.

Motivation: The minister inadvertently or otherwise believed that s19 and s20 requires to be applied in the former Bantustans at this stage. This would amount to an unconstitutional amendment because it would violate s25(6) of the bill of rights, inter alia because s20 does not protect the existing property rights of property rights holder in the former Bantustans.

Significantly, section 20 of ULTRA, which provides for transfer of state land to 'tribes', was to be repealed when the Communal Land Rights Act 2004 (Act 11 of 2004) became operational, but declared unconstitutional in its entirety.

Any future communal tenure act delete section 20 of ULTRA.

Section 20 of ULTRA is not an appropriate holding mechanism. We could rather do without.

- 87 The committee can request the National Assembly to deal with other provisions of ULTRA. The committee can now enact IPILRA as PILRA and require regulations to PILRA to ensure its continued operation to respect and protect the property rights of all property rights holders on communal land in the RSA.

This is necessary because Parliament must now signal that it is serious about making good on the constitutional imperative to enact a Communal Tenure Act that will promote and fulfil the property rights as required in terms of s25(6) and (9) of the bill of rights. Parliament must enact the legislation referred to in subsection (6). Parliament can no longer rely on the say so of the department that it will make good on its promises. The CLRA made IPILRA permanent.

- 88 Clause 4 extends schedule 2 and section 3 of ULTRA to the former Bantustans. The department and the President must first say how they intend to amend schedule 2, before the committee can further proceed with the bill.

- Sch 2 item 2 R.188 of 1969, the relevant provision in the schedule, was either not applicable, replaced or amended in former Bantustans. Schedule 2 is empty for all intents and purposes
- In any event R188 encapsulate the outcomes of eight preceding betterment proclamations which created 544 betterment or villagisation projects in the country which were principal instruments of Native Commissioners under Apartheid to subjugate independent African communities inside and outside what would still become the former Bantustans.

- 89 For ULTRA to be effective and efficient it requires accurate registers. The department must prepare and scope an exercise to update registers in a transparent process taking into account the

requirements now demanded of the Rahube judgment. The scoping report and indicative budgets for such must be presented to the portfolio committee

24D. Updating and compilation of registers of land rights.—(1) If the Minister is of the opinion that a register of land rights in respect of which land tenure rights mentioned in Schedule 1 or 2 have been granted in erven or other pieces of land has not been written up or properly written up, there is an incorrect entry therein or that it reflects the names of persons who are not the putative holders of the relevant land tenure right, he or she may designate any person to investigate and compile a register of land rights for the area or to update the existing register and to rectify errors or supplement omissions.

On 20 August 2019 the department lamented the poor state of registers. Something must be done about it. We do not have to wait for a Communal Land Tenure Bill to start the process in townships, in particular wrt schedule 1 rights.

90 In addition:

- a. The committee is urged to hold workshops with the officials responsible for B6, the overseers of the implementation of ULTRA as it currently stands and other stakeholders in the potential impacts of B6, including the community experts that will have to explain this law making exercise to their constituencies.
- b. The committee can urge municipalities which bear the brunt of implementation to assist in finding viable solutions to the perennial problem of out of date tenure registers in the absence of national and provincial leadership and policy, and not just for rental and rates recovery but crucially for planning and tenure security purposes.<sup>52</sup>
- c. There is no reason why the committee should not be apprised to the following by the department
  - i. The homework that to a very large extent had been done to determine what the most cost effective way of dealing with the upgrading of tenure rights that were given to people was. [statement of Mr Mdontswa on 20 August 2019]
  - ii. The draft land tenure bill referred to on 26 June 2020
    1. Adv Ramasala said the process of reviewing communal land legislation was a comprehensive one, and required that all laws in the country relating to communal land tenure had to be looked at.
    2. the Department had committed to introducing the Bill in Parliament by next year. The bill is ready from our point of view and we are just consulting with stakeholders.
- d. The proposals of the HLP Panel for a Tenure Recordal Act be pursued with the attention that they deserve, in conjunction with the preparation for electronic deeds registries and other local electronic registries employing mobile phone and other electronic cloud based applications.

<sup>52</sup> Polokwane Polokwane Municipality Proclamation R293 Land Administration Policy 2016  
<https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:27e43d1f-3aff-49d1-9d5d-b02822b10ddf>

## PUBLIC PARTICIPATION

- 91 The draft bill was published for purposes of rule 241 compliance in the government gazette 43045 on 25 February 2020.<sup>53</sup> The general notice did not invite the public to comment, nor did it contain a memorandum. On 26 June the advisors were adamant that the draft bill was not published. It is ironic that B6 relies on government gazette publication in seeking comments on interested and affected parties, if neither the briefing advisors nor our committee members were aware of the publication on 25 February 2020, or at least not on 26 June 2020.
- 92 MEDIA STATEMENT: COMMITTEE URGES DEPARTMENT TO WORK WITH SPEED TO BRING UPGRADING OF LAND TENURE RIGHTS ACT BEFORE PARLIAMENT Parliament, Tuesday, 20 August 2019 – The Portfolio Committee on Agriculture, Land Reform and Rural Development today requested the Department of Rural Development and Land Reform to work with haste...<sup>54</sup>
- 93 LAMOSA reminded the committee of the programme tabled by the department exactly a year ago, in terms of which the draft bill would have been published, comments invited, and the bill introduced and already debated by the committee six months ago.<sup>55 56</sup>
- 94 The lamentable delays of two years after the Rahube judgment do not justify a rush to enact another piece of ineffective law, that on at least one count, ie the extension of the backward s19 and s20 to the former Bantustans.
- 95 LAMOSA studied the committee's very helpful proposal for public participation<sup>57</sup> and opts for virtual meetings and in person physical workshops to accommodate interested citizens. In addition LAMOSA reminds that the reasonable effort to enhance public participation as envisaged in the court cases and judgements in which LAMOSA had participated, should include at the very least a real effort to reach and meaningfully engage those directly affected by B6.

LAMOSA is a community based organisation that fought against forced removals without compensation during Apartheid. We still uphold and fight for the rights of poor people in in our rural villages, the streets of our cities, parliament and the courts. We made submissions on section 25 to: a. The Motlanthe Panel b. The Parliamentary Constitutional Review Committee and c. The President's Advisory Panel. We take the mandates of our member rural community organisations very seriously.

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for oral presentation on 19 August 2020

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2008 11 00	Local Land Registration Practices in South Africa: Urban LandMark	42	<a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:b915e3c9-0b8d-49ee-bd15-4a701cfc1827">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:b915e3c9-0b8d-49ee-bd15-4a701cfc1827</a>
2009 03 09	SITUATIONAL ANALYSIS OF THE UPGRADING OF LAND TENURE RIGHTS ACT (ULTRA): Umhlaba for DLA	227	<a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:02c2216a-8fd9-4d2c-bd2c-f3cc7a2678df">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:02c2216a-8fd9-4d2c-bd2c-f3cc7a2678df</a>
2010 12 00	"Incrementally Securing Tenure: An Approach for Informal Settlement Upgrading in South Africa" DEVELOPMENT OF AN APPROACH FOR THE RECOGNITION OF INFORMAL SETTLEMENTS AND TENURE SECURITY IN SOUTH AFRICA WITH THE POTENTIAL FOR REGIONAL APPLICABILITY - Urban LandMark	86	<a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:4f6063f9-7a9c-4cc5-8dc6-6d0c48d18537">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:4f6063f9-7a9c-4cc5-8dc6-6d0c48d18537</a> <a href="http://www.urbanlandmark.org.za/downloads/booklet_inc_sec_tenure.pdf">http://www.urbanlandmark.org.za/downloads/booklet_inc_sec_tenure.pdf</a> <a href="http://www.urbanlandmark.org.za/downloads/inc_securing_tenure_p01.pdf">http://www.urbanlandmark.org.za/downloads/inc_securing_tenure_p01.pdf</a>
2011 11 00	HOUSING SUBSIDY ASSETS Exploring the Performance of Government Subsidised Housing in South Africa - Shisaka	89	<a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:1afc8cd5-fbee-4798-95dd-0d2c60edf63f">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:1afc8cd5-fbee-4798-95dd-0d2c60edf63f</a>
2012 00 00	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security		
2012 00 00	IMPROVING LAND SECTOR GOVERNANCE IN SOUTH AFRICA IMPLEMENTATION OF THE LAND GOVERNANCE ASSESSMENT FRAMEWORK – Urban LandMark	83	<a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:a75f3e9f-4ddf-4046-8595-a8c4d4242566">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:a75f3e9f-4ddf-4046-8595-a8c4d4242566</a>
2013 08 15	Betterment Planning and Restitution: Considering the Implications of the Draft Restitution Bill of 2013		<a href="http://lrc.org.za/art_external/pdf/A1_2013_Stubbs_Betterment_Planning_and_Restitution_-_Considering_the_Implications_of_the_Draft_Restitution_Bill_of_2013.pdf">http://lrc.org.za/art_external/pdf/A1_2013_Stubbs_Betterment_Planning_and_Restitution_-_Considering_the_Implications_of_the_Draft_Restitution_Bill_of_2013.pdf</a>
2013	Aninka Claassens, 2013, "Recent Changes in Women's Land Rights and Contested Customary Law in South Africa", Journal of Agrarian Change, Vol. 13 No.1		
2014 00 00	The Map is not the Territory: Law and Custom in 'African Freehold': A South African Case Study, University of the Western Cape. Dr Kingwill		
2014 09 26	Title Deeds Restoration Project Inception Report	44	<a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:dd5155af-bccb-4902-8fe9-0d7a8bb4a54b">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:dd5155af-bccb-4902-8fe9-0d7a8bb4a54b</a>
2015 11 00	Communal Land Research Project ANNEXURE 2: LEGACIES, CURRENT LEGISLATION AND POLICIES Housing Development Agency Afesis-Corplan	79	<a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:6b9fc09d-0d06-4d4c-9bee-77e4265d0500">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:6b9fc09d-0d06-4d4c-9bee-77e4265d0500</a>
2016 00 00	Towards a Policy Foundation for the Development of Human Settlement Legislation. Department of Human Settlements		
2016 00 00	Polokwane Municipality Proclamation R293 Land Administration Policy 2016 Read in line with the Polokwane Municipal Immovable Property Acquisition, Holding and Disposal Policy Framework, 2013 Polokwane/Perkesbult Town Planning Scheme 2007 Polokwane Spatial Development Framework, 2011 Spatial Planning and land Use Management Act 16 of 2013	30	<a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:d3c064b9-bcf6-457f-a450-2c4683f1d121">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:d3c064b9-bcf6-457f-a450-2c4683f1d121</a>
2016 04 13	Leasehold in respect of the Upgrading of Land Tenure Rights Act, No.112 of 1991	12	<a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:d871f833-3168-4e10-a628-5255f24856f0">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:d871f833-3168-4e10-a628-5255f24856f0</a>
2017 00 00	EXPLORING THE DELAYS IN LAND REGISTRATION WITHIN TOWNSHIP ESTABLISHMENT PROCESS FOR LOW INCOME HOUSING DEVELOPMENTS IN SOUTH AFRICA, A CASE STUDY IN SESHEGO/ POLOKWANE: LIMPOPO: Mashego WITS	105	<a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:6430ca86-65de-4334-9584-77d809d7072b">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:6430ca86-65de-4334-9584-77d809d7072b</a>
2017 07 00	The role of land tenure and governance in reproducing and transforming spatial inequality Commissioned report for High Level Panel on the assessment of key legislation and the acceleration of fundamental change, an initiative of the Parliament of South Africa Phuhlisani NPC FINAL July 2017	67	<a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:84dcf88a-f505-405f-9938-4d09c4909d69">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:84dcf88a-f505-405f-9938-4d09c4909d69</a>
2017 11 00	REPORT OF THE HIGH LEVEL PANEL ON THE ASSESSMENT OF KEY LEGISLATION AND THE ACCELERATION OF FUNDAMENTAL CHANGE	601	<a href="https://www.parliament.gov.za/high-level-panel">https://www.parliament.gov.za/high-level-panel</a>
2017 11 00	Illustrative National Land Reform Framework Bill of 2017 with Land Rights Protector BILL To provide a coherent framework of overall objectives and principles to guide the formulation and implementation of specific policies and programmes of land reform and the provision of support services to beneficiaries; to guide the		<a href="https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/Commissioned_reports_for_triple_challenges_of_poverty_unemployment_and_inequality/Illustrative_National">https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/Commissioned_reports_for_triple_challenges_of_poverty_unemployment_and_inequality/Illustrative_National</a>

	establishment of institutional arrangements for land reform and service based on co-operative governance; and to guide the design of mechanisms for transparency and accountability in the implementation of land reform.		<a href="#">Land Reform Framework Bill of 2017 with Land Rights Protector.pdf</a>
2017 12 20	REPORT OF THE 54TH NATIONAL CONFERENCE	88	<a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:addd6263-d94a-440e-979f-61aff84d01ed">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:addd6263-d94a-440e-979f-61aff84d01ed</a>
2019 03 00	A TALE OF TWO MARKETS: UNEQUAL ACCESS TO PRIVATE PROPERTY IN A SOUTH AFRICAN CITY	19	<a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:ac07f6f4-77b9-4b12-9fb6-9ef81599aab1">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:ac07f6f4-77b9-4b12-9fb6-9ef81599aab1</a>
2019 05 04	FINAL REPORT OF THE PRESIDENTIAL ADVISORY PANEL ON LAND REFORM AND AGRICULTURE	144	<a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:487a7b48-b5ba-4446-8151-458c9a40e2d6">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:487a7b48-b5ba-4446-8151-458c9a40e2d6</a>

## Key judgments

		principle
1906	Hermansberg Mission Society v Commissioner of Native Affairs and Darius Mogale 1906 TS 135; MODISAKING PETLELE AND OTHERS vs THE MINISTER OF NATIVE AFFAIRS OF TRANSVAAL AND AUGUST MOKHATLE IN HIS PRIVATE CAPACITY AS CHIEF OF THE BAFOKING TRIBE. CASE NO: T1/1908 SUPREME COURT OF TRANSVAAL;	
	Setlogelo v Setlogelo 1914 AD 221	“Now the right of the applicant is perfectly clear. He is a possessor; he is in actual occupation of the land and holds it for himself. And he is entitled to be protected against any person who against his will forcibly ousts him from such possession. True, the law does not allow him to buy land, or to lease it, or to take transfer of it. But it does not forbid him from occupying it, more especially as it would seem to have devolved upon him by way of inheritance. It would indeed be a remarkable state of things if a native could be deprived of his right of occupation of land which he had honestly come by at the instance of any person who took a fancy to it, merely because he was not and could not become the registered owner. And yet that would be the result of the order appealed from if it were allowed to stand.”
2000	DVB Western Cape Provincial Government: In re DVB Behuising (Pty) Ltd v North West Provincial Government (2000) ZACC 2; 2001 (1) SA 500 (CC); 2000 (4) BCLR 347 (CC) (DVB Behuising)	
2003	Alexkor v Alexkor Ltd and the Republic of South Africa v The Richtersveld Community & Others (CCT19/03) (2003) ZACC 18; 2004 5 SA 460 (CC); 2003 12 BCLR 1301 (CC) (14 October 2003)37	(t)he real character of the title that the Richtersveld community possessed in the subject land was a right of communal ownership under indigenous law.
2004	Bhe and Others v Khayelitsha Magistrate and Others (CCT 49/03) [2004] ZACC 17; 2005 (1) SA 580 (CC); 2005 (1) BCLR 1 (CC) (15 October 2004)	male primogeniture in the customary law of succession, and in particular with references to the inheritance of property, discriminated unfairly against women and illegitimate children and accordingly was unconstitutional wrt section 23 of the 1927 Native Administration Act which entrenched male primogeniture
2009	Shilubana & Others v Nwamitwa 2009 2 SA 66 (CC)	
2009	Residents, Joe Slovo Community, Western Cape v Thubelisha Homes and Others CCT 22/08(2009) ZACC 16	condition that it would supervise the implementation of the relocation plan and it should be done in a reasonable manner that protects the rights of the prejudiced community.
2009	Centre for Minority Rights Development (Kenya) and Minority Rights Group International obo Endorois Welfare Council v Kenya 2009 AHRLR 75 (ACHPR 2009) (Endorois)	
2010	Tongoane and Others v National Minister for Agriculture and Land Affairs and Others 2010 (6) SA 214 (CC)	‘to use the Black Authorities Act of 1951 as a platform for reform after 1994 is simply incredible’ [127] ... This judgment will, however, provide Parliament with the opportunity to take a second look at the substantive objections raised by the applicants in respect of CLARA when it considers the proper way to give effect to section 25(6) of the Constitution. .
2012	City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another (2012 (2) BCLR 150 (CC)	the city had wrongly budgeted on the basis that it was not obliged to provide them with emergency housing.
2015	Bakgatla-Ba-Kgafela Communal Property Association v Bakgatla-Ba-Kgafela Tribal Authority and Others (CCT231/14) [2015] ZACC	Choice of tenure system and institutional arrangements



	25; 2015 (6) SA 32 (CC); 2015 (10) BCLR 1139 (CC) (20 August 2015)	
2016	Mandela v Executors Estate Late Mandela and others [2016] 2 All SA 833 (ECM)	
2017	Daniels v Scribante and Another 2017 (8) BCLR 949 (CC); (2017) ZACC 13 (CC); 2017 (4) SA 341 (CC)	the hierarchy of property rights, and the absolutisation of ownership that during apartheid served a very political goal
2018	Baleni and Others v Minister of Mineral Resources and Others Case no 73768/2016 of 22 November 2018 (GP)	
2018	Nandipha NO v Irfani Traders CC t/a Jabulani Hardware and Another (4654/2017) [2018] ZA ECMHC 50 (21 August 2018)	It is concerning, if not disturbing, that the majority of rural communities are still not the owners of their land. Like the applicant they rely on the mercy of the Minister for Rural Development and Land Reform by signing the Interim Protection Act for them to remain in occupation of their land legally. No doubt such Communities are not aware that they are not permanent owners of the land they occupy. Interestingly, the provisions of section 25, (5), (6) and (9) of the Constitution are there for the Parliament to correct the anomalies created by apartheid laws."
2018	Maledu v Itereleng Bakgatla Mineral Resources (Pty) Ltd case no CCT 265/17 of 25 October 2018 (ZACC)	Compensation payable for any deprivation
2018	Herbert NO v Senqu Municipality Case no 2457/2016 of 11 October 2018 (ECG)	
2018	Gongqose & others v Minister of Agriculture, Forestry & Fisheries and others; Gongqose & others v State & others (Case no 340/16 & 287/17) 1 June 2018 (SCA)	customary right of access to and use of the marine resources in the area.
2019	Herbert N.O. and Others v Senqu Municipality and Others (CCT 308/18) [2019] ZACC 31; 2019 (11) BCLR 1343 (CC); 2019 (6) SA 231 (CC) (22 August 2019)	declared section 25A 'should be read as not making any reference to section 3'
2019	COMMISSION INTO TRADITIONAL SUCCESSION DISPUTES AND CLAIMS: BAKGATLA BA KGAFELA TRADITIONAL COMMUNITY FINAL REPORT 20 August	Customary law and IPILRA trumps the MPRDA
2019	Dambuza and Others v Mvandaba and Others (5899/2018) [2019] ZAECMHC 58 (15 October 2019)	I have no doubt that persons in insecure tenure like the applicants do have a constitutional right to protect their land rights from being usurped
2020	Unemployed Peoples Movement v Premier, Province of the Eastern Cape and Others (553/2019) (2020) ZAECGHC 1; 2020 (5) BCLR 573 (ECG); 2020 (3) SA 562 (ECG) (14 January 2020)	paved the way for residents in dysfunctional municipalities to hold those they elect accountable
2018	Madikizela-Mandela v Executors Estate Late Mandela and others [2020] JOL 47478 (SCA)	

#### LAMOSA's documents immediately relevant to the bill:

2019 06 26	PRESENTATION PORTFOLIO COMMITTEE ON AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT	<a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:7e9de1e0-ae41-4031-a015-c24c6621e3ac">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:7e9de1e0-ae41-4031-a015-c24c6621e3ac</a>
2019 08 20	PC: 20 August 2019 when the committee was briefed on the implications of the Rahube judgment dated 30 October 2018 giving an 18 month deadline for amendment, and informed the committee that	<a href="https://pmg.org.za/committee-meeting/28712/">https://pmg.org.za/committee-meeting/28712/</a>
2019 09 00	SOCIO-ECONOMIC IMPACT ASSESSMENT SYSTEM (SEIAS) REVISED (2018) UPGRADING OF LAND TENURE RIGHTS AMENDMENT BILL	<a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:18b54e8d-f45e-4fd5-8bf2-c7ec5774d4e7">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:18b54e8d-f45e-4fd5-8bf2-c7ec5774d4e7</a>
2020 02 11	PC: 11 February 2020 when the legislative agenda for 2020 was presented by the Minister and senior management of the combined departments under the ministry. On that occasion the Minister announced that the Constitutional Court would be approached for an extension of the deadline in the Rahabe matter which was 30 April 2020	<a href="https://pmg.org.za/committee-meeting/29766/">https://pmg.org.za/committee-meeting/29766/</a>
2020 06 23	NEDLAC REPORT ON THE UPGRADING OF LAND TENURE RIGHTS AMENDMENT (ULTRA) BILL [various amendments proposed]	<a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:e0a09494-cd9b-4375-a781-b36598886752">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:e0a09494-cd9b-4375-a781-b36598886752</a>
2020 06 26	Portfolio Committee on Agriculture, Land Reform and Rural Development DALLRD briefing Upgrading of the Land Tenure Rights Amendment (ULTRA) Bill	<a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:4a937fd2-b1d2-499b-866a-9108dbf3175c">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:4a937fd2-b1d2-499b-866a-9108dbf3175c</a>
2020 08 07	Deadline for submission of inputs on land bill extended	<a href="https://www.bizcommunity.com/Article/196/832/206823.html">https://www.bizcommunity.com/Article/196/832/206823.html</a>



2020 08 11	Processing the Upgrading of Land Rights Amendment Bill, 2020 incorporates suggestions developed by the PEO, PDO and PCS	<a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:adc54272-fbb8-4788-9225-2df885665106">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:adc54272-fbb8-4788-9225-2df885665106</a>
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## 2009 UMHLABA REPORT

9th March 2009

SITUATIONAL ANALYSIS OF THE UPGRADING OF LAND TENURE RIGHTS ACT (ULTRA) VOLUME I: NARRATIVE REPORT FINAL REPORT	<a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:631a4526-d6d2-4584-92a2-376abe35cdd5">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:631a4526-d6d2-4584-92a2-376abe35cdd5</a>
National PROCLAIMED R293 TOWNSHIPS	<a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:fd637a99-7199-4598-aca8-6f3fd90e041b">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:fd637a99-7199-4598-aca8-6f3fd90e041b</a>
ANNEXURE AD_1 DATA GATHERING GUIDES	<a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:e172915c-cfe9-4274-aa5e-e499d095073">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:e172915c-cfe9-4274-aa5e-e499d095073</a>
ANNEXURE AD_2 ULTRA SITUATIONAL ANALYSIS - INVENTORY OF INFORMATION GATHERED (TEMPLATE)	<a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:0de2dc1e-eb5b-44aa-ae24-091cf17584a1">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:0de2dc1e-eb5b-44aa-ae24-091cf17584a1</a>
<b>Eastern Cape</b> ANNEXURE EC_1: INTERVIEWS ANNEXURE EC_2 LIST OF PROCLAIMED R293 TOWNSHIPS IN THE EASTERN CAPE PROVINCE ANNEXURE EC_3 Eastern Cape: Act 4/1984 townships with Act 112/1991 upgrades or conversion to Act 113/1991 ANNEXURE EC_4 Quitrent areas falling under the King William's Town Deeds Registry ANNEXURE EC_5 ANNEXURE EC_6 LEFTEA applications in King William's Town Registry of Deeds Annexure EC_7 EASTERN CAPE DEVELOPMENT TRIBUNAL LAND DEVELOPMENT APPLICATIONS RECEIVED	<a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:fa7a7cea-d358-4df8-b628-267b21d8e58c">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:fa7a7cea-d358-4df8-b628-267b21d8e58c</a>
<b>Free State</b> You can view "Annexure FS_1 - STAKEHOLDER INTERVIEWS[1].doc" at: <a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:4ae160cf-3023-4600-9d46-12c8b4e061cd">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:4ae160cf-3023-4600-9d46-12c8b4e061cd</a> You can view "Annexure FS_2 - R293 TOWNSHIPS.xls" at: <a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:fdde8450-4ae1-4b8d-aa5e-21378b32a52a">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:fdde8450-4ae1-4b8d-aa5e-21378b32a52a</a> You can view "Annexure FS_3 - R188 TOWNSHIPS.xls" at: <a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:dcea5e13-0eb6-4fe5-ae05-8cd96b31f527">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:dcea5e13-0eb6-4fe5-ae05-8cd96b31f527</a> You can view "Annexure FS_4a - BULTFONTEIN 2 THABA NCHU.xls" at: <a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:cea860e7-c287-43ee-8b99-b62c0279ade5">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:cea860e7-c287-43ee-8b99-b62c0279ade5</a> You can view "Annexure FS_4b - BULTFONTEIN 3 THABA NCHU.xls" at: <a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:af4c6a6c-b5c2-4da3-a04d-5c2130720d21">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:af4c6a6c-b5c2-4da3-a04d-5c2130720d21</a> You can view "Annexure FS_4c - BULTFONTEIN 4 THABA NCHU.xls" at: <a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:15c3116a-e115-4d46-a734-91a9a3e43683">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:15c3116a-e115-4d46-a734-91a9a3e43683</a> You can view "Annexure FS_4d - BULTFONTEIN 5 THABA NCHU.xls" at: <a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:2333df36-fd31-4d20-91be-121850bde1c3">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:2333df36-fd31-4d20-91be-121850bde1c3</a> You can view "Annexure FS_4e - RATAU THABA NCHU.xls" at: <a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:39a24bf4-bff5-49c1-b60f-a8a7700812d6">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:39a24bf4-bff5-49c1-b60f-a8a7700812d6</a> You can view "Annexure FS_4f - RATLOU THABA NCHU.xls" at: <a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:964449d9-63be-4ae5-90d1-feae4f6bc6fa">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:964449d9-63be-4ae5-90d1-feae4f6bc6fa</a> You can view "Annexure FS_4g - ROOIFONTEIN THABA NCHU.xls" at: <a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:38f869df-0d42-4225-8a64-29ee3d1261bf">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:38f869df-0d42-4225-8a64-29ee3d1261bf</a> You can view "Annexure FS_4h - ROSSOUWS 250 transfers THABA NCHU.xls" at: <a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:53391291-6295-43fd-b8bd-962a66dce70f">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:53391291-6295-43fd-b8bd-962a66dce70f</a> You can view "Annexure FS_4i - correction transfers Jul 02 THABA NCHU.xls" at: <a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:51b2254b-06bc-4721-8e08-1af08342101b">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:51b2254b-06bc-4721-8e08-1af08342101b</a> You can view "Annexure FS_4j - SEROALO THABA NCHU.xls" at: <a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:c7ca51e3-fba5-412a-8ef9-558affda3954">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:c7ca51e3-fba5-412a-8ef9-558affda3954</a>	
<b>Free State 4</b> You can view "Annexure FS_1 - STAKEHOLDER INTERVIEWS[1].doc" at: <a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:4ae160cf-3023-4600-9d46-12c8b4e061cd">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:4ae160cf-3023-4600-9d46-12c8b4e061cd</a> You can view "Annexure FS_2 - R293 TOWNSHIPS.xls" at: <a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:fdde8450-4ae1-4b8d-aa5e-21378b32a52a">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:fdde8450-4ae1-4b8d-aa5e-21378b32a52a</a> You can view "Annexure FS_3 - R188 TOWNSHIPS.xls" at: <a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:dcea5e13-0eb6-4fe5-ae05-8cd96b31f527">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:dcea5e13-0eb6-4fe5-ae05-8cd96b31f527</a> You can view "Annexure FS_4a - BULTFONTEIN 2 THABA NCHU.xls" at: <a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:cea860e7-c287-43ee-8b99-b62c0279ade5">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:cea860e7-c287-43ee-8b99-b62c0279ade5</a> You can view "Annexure FS_4b - BULTFONTEIN 3 THABA NCHU.xls" at: <a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:af4c6a6c-b5c2-4da3-a04d-5c2130720d21">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:af4c6a6c-b5c2-4da3-a04d-5c2130720d21</a> You can view "Annexure FS_4c - BULTFONTEIN 4 THABA NCHU.xls" at: <a href="https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:15c3116a-e115-4d46-a734-91a9a3e43683">https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:15c3116a-e115-4d46-a734-91a9a3e43683</a>	

You can view "Annexure FS\_4d - BULTFONTEIN 5 THABA NCHU.xls" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:2333df36-fd31-4d20-91be-121850bde1c3>

You can view "Annexure FS\_4e - RATAU THABA NCHU.xls" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:39a24bf4-bff5-49c1-b60f-a8a7700812d6>

You can view "Annexure FS\_4f - RATLOU THABA NCHU.xls" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:964449d9-63be-4ae5-90d1-feae4f6bc6fa>

You can view "Annexure FS\_4g - ROOIFONTEIN THABA NCHU.xls" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:38f869df-0d42-4225-8a64-29ee3d1261bf>

You can view "Annexure FS\_4h - ROSSOUWS 250 transfers THABA NCHU.xls" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:53391291-6295-43fd-b8bd-962a66dce70f>

You can view "Annexure FS\_4i - correction transfers Jul 02 THABA NCHU.xls" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:51b2254b-06bc-4721-8e08-1af08342101b>

You can view "Annexure FS\_4j - SEROALO THABA NCHU.xls" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:c7ca51e3-fba5-412a-8ef9-558affda3954>

#### **Mpumalanga 5**

You can view "Annexure MP\_1 - Interviews Mpumalanga Province Stakeholders.doc" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:274e7469-7668-4d06-bcd8-e5cd40798208>

You can view "Annexure MP\_2 - Mpumalanga Prov R188, R293 and Act 4 of 84 settlements.xls" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:8ec9caa0-6318-4298-9ee8-1e58286bf3a3>

You can view "Annexure MP\_3 - example of Deeds information on Act 4 of 84 settlement.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:5ad1aa8a-b0eb-4f6b-a610-cdc2b360a474>

You can view "Annexure MP\_4 - DALA Planning Processes.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:4609c018-6c38-4893-93a7-7c26ba0c048a>

#### **Northwest 6**

You can view "Annexure NW\_5 - information on Lehurutshe.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:2af5ac65-91dc-46e9-8c90-1d926df07472>

You can view "Annexure NW & NC\_A - R188 villages - Bophuthatswana.xls" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:4949a637-b68b-48e9-b609-893a9ec2acf5>

You can view "Annexure NW & NC\_B - Reviewed Government Notices R188.doc" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:5de696c9-e76a-4058-a06b-89cc54d38394>

You can view "Annexure NW & NC\_C - contacts and interviews.doc" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:aa9133d5-5f9d-4f16-a376-9c972cbbba72>

You can view "Annexure NW\_1 - LIST OF KGOSI NW PROVINCE.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:8c4e1b2f-1a14-4095-aa88-393829cbf3cf>

You can view "Annexure NW\_2 - ACT 4 OF 84 and R293 Townships.xls.xls" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:d7f412b1-1f12-48ae-b2cd-266af6a8173b>

You can view "Annexure NW\_3 - CourtCase Relevant to Bophuthatswana R293s.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:5904328a-96cc-464c-9812-df79e7ea762b>

You can view "Annexure NW\_4 (a) - List of townships that initiated formalisation.doc" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:7a710031-612f-465f-9a7a-7f129ac606aa>

You can view "Annexure NW\_4 (b) - R188 GIS Info.xls" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:c4299e8c-e168-4a27-a941-25863bca668b>

#### **Limpopo 7**

You can view "Annexure LP\_5.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:1096a385-16b1-4e97-8db6-fb5789495cc3>

You can view "Annexure LP\_1 - List of settlements in need of upgrading.xls" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:7a805650-8695-40ac-88e6-8ef89a0d5f7a>

You can view "Annexure LP\_2 - Sources and Interviews.doc" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:2acaabb1-3c24-4926-a5ef-b7001d624813>

You can view "Annexure LP\_3 - Limpopo Settlements vested in Limpopo Province.xls" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:56db5965-8975-4068-96da-65039b55c1e4>

You can view "Annexure LP\_4.xls" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:bf151078-0d71-4d79-944f-48cb06860e65>

#### **Gauteng 8**

You can view "Annexure GP\_3 - R293 and R188 Towns and Settlements.xls" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:fd2c794e-f16b-4aec-9170-19c016c81f28>

You can view "Annexure GP\_1 - Officials and Implementers Interviewed.doc" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:5d55b049-9fd7-42aa-b37d-a67c141ac7d7>

You can view "Annexure GP\_2 - 4 of 84 and 113 of 1991Townships.xls" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:b62ff49c-c8e5-4a48-8feb-b65f32add613>

#### **Western Cape 9**

You can view "Annexure WC\_3 - Handleiding.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:c044cbe3-4c99-4116-bb44-d2ff219b57d6>

You can view "Annexure WC\_1 - List of people consulted.doc" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:7fd9d3db-5ef6-494f-bd6a-38369b26e5b4>

You can view "Annexure WC\_2 - s13(1) transfer.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:c060cd02-0f86-455c-ba32-011e6914b5ae>

#### **Northern Cape 10**

You can view "Annexure NC\_1 (b).xls" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:ab2283b0-6dbb-40a5-a732-bfffc0baf010>

You can view "Annexure NC\_2 (a) - R188 GIS Info.xls" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:8fe87591-0243-4644-b4af-5cdfb239efc3>

You can view "Annexure NC\_2 (b) - MAP MoshawengandGasegonyanaVillages.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:25a6de26-3738-4f91-9f6a-34d2fe410feb>

You can view "Annexure NC\_3 - Act 4 of 84 townships.xls" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:c1b6efc1-63d8-4a99-8ea9-449e35b596df>

You can view "Annexure NC\_4 - ULTRA Pampierstad Upgrading Narrative.doc" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:34d5702a-ee9f-49b0-b955-6d62d947a838>

You can view "Annexure NC\_5 (a) - Pampierstad Diagrams.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:0cc4f16e-6a28-4e13-a1f7-3ffcd959f2ea>

You can view "Annexure NW & NC\_A - R188 villages - Bophuthatswana.xls" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:856ce521-d011-4591-9ddb-63f36f20fc52>

You can view "Annexure NW & NC\_B - Reviewed Government Notices R188.doc" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:a95dd906-7d9d-4aa7-bb35-731d14a39f88>

You can view "Annexure NW & NC\_C - contacts and interviews.doc" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:45b59ff6-82a4-4e3f-b4df-12deb38de271>

You can view "Annexure NC\_5 (b) - Mothibistad Diagrams.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:c30ff46f-365c-4d5a-8160-2bd0b8b66e02>

You can view "Annexure NC\_1 (a) .xls" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:392639f4-5b23-4adf-a1a6-eb16bd10f0ae>

Case studies W Cape 11

You can view "Annexure WC Case Study 2.doc" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:abd931bd-517d-474d-ab71-8c45e5b0233e>

You can view "Annexure WC Case Study 1.doc" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:0cdc67f8-f556-4d32-95bf-4c4b90f84322>

Case studies Kanyamazane 12

You can view "Annexure Kanyamazane 4.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:6d1cf4d6-eae0-493e-b48e-616776095fec>

You can view "Annexure Kanyamazane 1.doc" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:74f58ae7-81f3-4ccb-a3a8-afe2dd2fb77d>

You can view "Annexure Kanyamazane 2.doc" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:5738e7c9-aa7e-4db7-b5c8-b331ff16e77e>

You can view "Annexure Kanyamazane 3.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:8444598a-2d32-4cd3-8567-ea87971a6e56>

Case study Mdantsane 13

You can view "Annexure Mdantsane Contacts.doc" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:2b88bc0b-b0b0-43be-bea8-ecbc4ca225a2>

You can view "Annexure Mdantsane 1.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:2f37665e-c84e-41f2-8c29-a8ccb919a80a>

You can view "Annexure Mdantsane 2.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:614a026a-c416-42f6-b02a-9877a11c37e5>

You can view "Annexure Mdantsane 3.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:1a74c706-c49c-4eab-b667-f0a8304cdc8c>

You can view "Annexure Mdantsane 4.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:b6981479-dea1-4a21-b274-b0a1e4162e12>

You can view "Annexure Mdantsane 5.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:b27579da-2e1d-4b84-9f03-d62d94faf304>

You can view "Annexure Mdantsane 6.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:87638bb0-0568-4970-8eef-586597610b2c>

You can view "Annexure Mdantsane 7a.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:f2defb71-f44f-4070-a195-d17421341bc7>

You can view "Annexure Mdantsane 7b.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:87876974-7707-4f9f-8404-bde2ab11e340>

You can view "Annexure Mdantsane 8.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:5360d5a6-23db-4445-8fde-f632bb7a5057>

You can view "Annexure Mdantsane 9.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:82484988-8581-480a-b8fd-ddfbfa2c993c>

You can view "Annexure Mdantsane 10.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:bb91e224-e540-430a-af7a-75b1e3cc22b6>

You can view "Annexure Mdantsane 11.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:2f6ff427-85b0-46be-8ff7-9d16a87da20a>

You can view "Annexure Mdantsane 12.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:4bbe1f88-58d7-48b7-bf17-9a71870dbdef>

You can view "Annexure Mdantsane 13.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:a58bd766-d8f6-4c8b-9f47-698e2febb4d3>

You can view "Annexure Mdantsane 14.pdf" at: <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:b19ab67e-cadb-4319-85a2-e2f5cd327d23>

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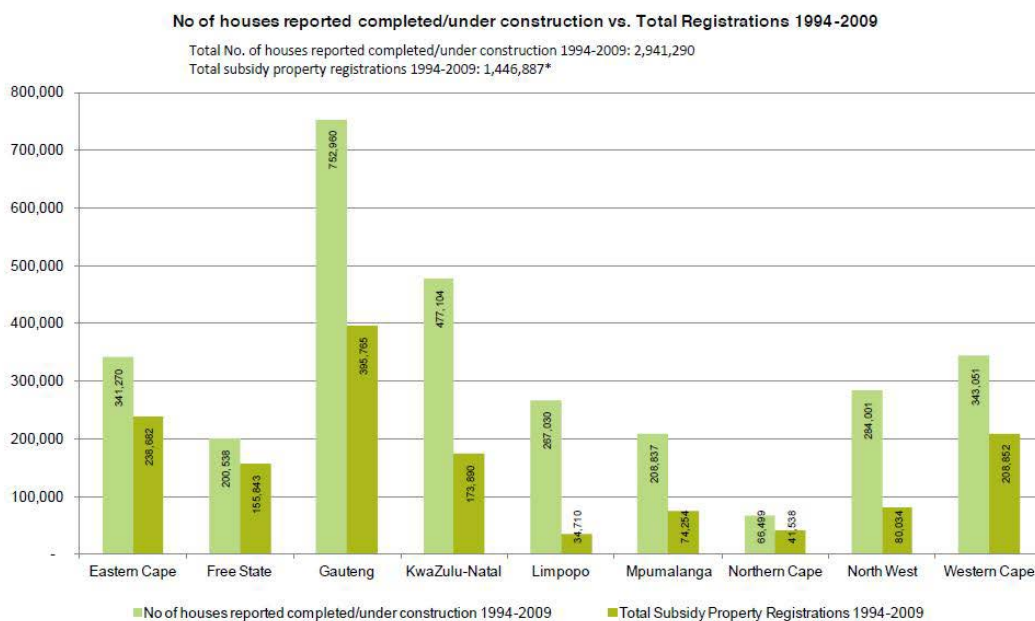
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Figure 6: Total Registrations vs number of houses reported by Province: 1994 – 2009<sup>9</sup>

<sup>9</sup> The gap reflected between the number of houses reported and total registrations is more significant than shown in the diagram due to the fact that total registrations includes Discount Benefit Scheme properties which are not included in the number of houses reported

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Between 2003 and 2010, the number of both civil and customary marriages registered annually with the Department of Home Affairs declined by 8%. More significantly and much more dramatically, the number of customary marriages declined from 17 283 to 9 996, a decline of 42%.

<sup>1</sup> the way we 19:49 are amending the the Act the way the 19:54 bill is framed with regard to section 19:56 two is that what the court has said 20:00 indicating it unquestioning is that 20:04 because it is a is an automatic 20:07 conversion it does not allow interested 20:10 peasants to object to the conditions and 20:15 therefore we must find a mechanism that 20:20 provides for interested persons who may 20:22 wish to object to conditions to object 20:25 the conditions so add Clause 1 of the 20:32 bill 6 to 2 which amends section 2 of 20:35 the principal act is to provide that 20:38 instead of the conversions occurring 20:41 automatically a person's wish to convert 20:45 that piece of grant will apply to the 20:48 minister for the conversion of the deeds 20:54 of grants and once an application is 20:58 received by the minister the minister 21:00 will publish such an application in the 21:03 government Gazette to notify interested 21:05 persons who may wish to object the 21:08 conversion to do so and once the 21:15 application is made and one other person 21:18 is entrusted objects to the confession 21:22 the minister will probably institute an 21:25 inquiry to determine the facts around 21:27 the application and the objection with a 21:30 view to make a determination as to who 21:33 is the legitimate order of the deed of 21:36 grant and on the basis of that the 21:41 application either succeed for a 21:44 convention