

INGONYAMA TRUST BOARD ANNUAL PERFORMANCE PLAN



**INGONYAMA
TRUST BOARD**

TRUST BOARD
INGONYAMA

2021 - 2022

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Accounting Authority Statement

Ingonyama Trust Board is a Schedule 3A entity in terms of the Public Finance Management Act, 1999 as amended (PFMA). The mandate of the Board is to administer Trust land and the affairs of the Trust. The Kwa-Zulu Ingonyama Trust Act of 1997 created the Board. How the Amendment Act ended up being written like this boggles the mind. The objective of the Act, among others, provides that the amendment was to create "a Board" to administer the Trust and its assets in conjunction with the Ingonyama. The Amendment Act as such limits the mandate of the Board. It is thus questionable whether the Amendment Act is not open to legal challenge. This legal argument aside, there is a tendency among others to conflate Ingonyama Trust with the Ingonyama Trust Board. While these are related, they remain two separate entities.

The Ingonyama Trust is a legal entity created by legislation to own land for and on behalf of certain clans who are part of the Zulu Nation. The King is the sole Trustee. The Board is an entity created to administer the Trust land and the affairs of the Trust. The members thereof are not trustees and are appointed by the Minister (the Executive Authority) for a period of four years and unless there are adverse circumstances, members are eligible for reappointment. The Trust is not listed in terms of the PFMA.

There are many reasons why the Trust is not listed under the PFMA. Among others, the land owned by the Trust is administered in terms of Zulu customary law by Traditional Councils. Therefore, in my opinion if the Trust were to be listed, this will also require more responsibility and details as to how the Traditional Council administer land. This could be a tedious process. What all this points to is the complexity of Ingonyama Trust as well as the general lack of information about this institution by many people.

For the reasons and information narrated above, the preparation and drafting of the Strategic plan for the Ingonyama Trust Board is a challenge because there are conflicting and in some instances ill-founded expectations. Notwithstanding the aforesaid we shall try our best. The fundamental challenge of the ITB is that there are no funds to support the programs of the Trust. This issue requires further and broader engagement with the stakeholders, and this is one of the most critical issues which require urgent attention.

We remain optimistic that as we move forward there will be a better understanding of this institution and therefore a solution to the issues at hand which are considered problematic.



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MR S. J. NGWENYA

CHAIRPERSON OF INGONYAMA TRUST BOARD

Official Sign – Off

It is hereby certified that this Annual Performance Plan:-

- Was developed by The Board of Ingonyama Trust and the Secretariat under the guidance of the Department of Agriculture, Rural Development and Land Reform.
- Was prepared in line with the Strategic Plan of the Ingonyama Trust Board 2020 – 2025.
- Accurately reflects the performance targets which Ingonyama Trust Board will endeavour to achieve given the resources made available in the budget for 2021 – 2022.

Mr A Mia

Chief Financial Officer

Signature:



Mr S Gabela

Acting Head of the Secretariat

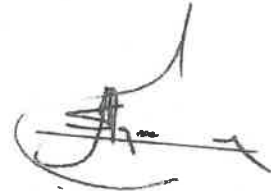
Signature:



Mr S J Ngwenya

Chairperson of the Board

Signature:



Mr T. Ndove

Deputy Director General: Land Redistribution and Tenure Reform

Signature



Mr M. Ramasodi

Acting Director General: Department of Agriculture, Land Reform and Rural Development

Signature:



Approved by

Ms Didiza A T (MP)

Minister: Agriculture, Land Reform and Rural Development

Signature:



PART A: OUR MANDATE

Ingonyama Trust Board is a Schedule 3A entity:

(National Public Entity means a National government business enterprise, or a Board, commission, company, corporation, fund or other entity (other than a national government business enterprise which is established in terms of the national/provincial legislation and is fully or substantially funded either from the National/Provincial Revenue Fund, or by way of a tax, levy or other money imposed in terms of national legislation, and is accountable to the oversight department and to Parliament). What mandate of government Ingonyama Trust Board is carrying on remains a matter for discussion for a later date.

CONSTITUTIONAL MANDATE

The Ingonyama Trust is about land ownership, equality, human dignity, freedom of association and freedom of movement and residence in terms of the Constitution.

The Trust is a statutory legal instrument which was created prior to the current South African constitutional era to hold and preserve land which is collectively owned and communally settled by various tribes and communities which constitute part of the Zulu Nation. In a way this was a re-enactment of the Zulu Native Trust which was originally contrived and created by the British Colonial power in the early days of the colonization of the Zulu Kingdom. It is noteworthy that even at that time the colonial government recognized that under customary law, land is indivisible and inalienable. Furthermore, it is worth recording that when the KwaZulu Ingonyama Trust Act (1994), was passed by the erstwhile KwaZulu Legislative Assembly, South Africa was not a constitutional state as it currently obtains. During the constitutional state, the administration of the Act was assigned to the Minister responsible for land affairs simply because the Trust is a landowner in law.

LEGISLATIVE MANDATE

As stated above, the Trust predates the Constitution. Post the Interim Constitution, the modern constitutional State, thought it fit to amend the founding original Act.

The objectives of the amendment are stated as follows:

“To amend the KwaZulu Ingonyama Trust Act, 1994, enacted by the KwaZulu Legislative Assembly, so as to redefine “INGONYAMA” and “REGISTRAR” and to include certain additional definitions; to redefine and extend the categories of beneficiaries of the Trust; to create a Board to administer the Trust and its assets in conjunction with the Ingonyama and in view thereof to repeal the Ingonyama’s power to delegate; to provide that Trust land shall be subject to National land programme; to prohibit infringement of existing rights; to reassign functions in respect of certain land; to provide that the Act shall not apply to land in a township, in private ownership or intended for State Domestic purposes; to provide for the vesting and transfer of land so excluded; to validate certain transactions in respect of Trust land prior to the amendment of the Act; and to provide for matters connected therewith.”

The general nature of the KwaZulu Ingonyama Amendment Act (1997) proved disastrous in its interpretation and implementation. The legal drafters ended up rewriting the whole Act calling it the KwaZulu Natal Ingonyama Trust Amendment Act. Readers of this Act would be right to assume that this is the only Act. The Amendment Act among others created the Board (Ingonyama Trust Board) to administer the affairs of the Trust and Trust land. It is again misleading to conceive of a Board administering the Trust land in the situation that is obtained here. This provision overlooks the fact that on daily basis Trust land is administered by the various Traditional Councils. These in turn are accountable to the MEC for Co-operative Government and Traditional Affairs. This is another reason for confusion and anomaly. As if this is not enough there is no budget for Traditional Councils to administer land in as much as there is none for the Ingonyama Trust.

The governance of Ingonyama Trust land starts with the application of Zulu customary law. The other laws of the country follow. In this context, Zulu customary law recognizes the King (in this context also the sole Trustee), to whom all Amakhosi owe allegiance from the time of King Shaka. Below Amakhosi are Izinduna and then families who are headed by family heads. Furthermore, under Zulu customary law within a family an individual is either a family head or family inmate. It is among others for this reason that land is communally owned. The system of Traditional leadership and therefore customary law is recognized by the South African Constitution. It is thus beyond question that the administration of Ingonyama Trust owned land in terms of Zulu customary law is protected by the Constitution.

INSTITUTIONAL POLICIES AND STRATEGIES OVER THE FIVE-YEAR PLANNING PERIOD

Due to the complex nature of the Trust from a policy point of view, over the next five years, the Trust together with other stakeholders will have to seek legislative amendment and realignment. For instance, the mandate that Trust land should "be administered for the benefit, material welfare and social well-being of the members of the tribes and communities" will remain a pipe dream. Therefore, among other things to be done is to challenge some legal provisions which are unconstitutional and prejudicial to the Trust. In particular policies and legal provisions on the following require priority attention.

- a) Proper funding of the Trust to enable it to accomplish its mandate.
- b) Clarity on the legislation relating to municipal property rates.
- c) Clarity on ownership of mineral royalties.
- d) Constitutionality of some provisions of the Amendment Act which alienate land from the Trust without compensation.

It follows from what is said above, that in some instances the Trust will be left with no option but to seek legal remedies in Court.

RELEVANT LEGISLATION

Intergovernmental Relations Framework 13 of 2005	National Environmental Management Act 107 of 1998
Public Finance Management Act 1 of 1999	Traditional Leadership and Governance Framework Act 41 of 2003
Spatial Planning and Land Use Management Act 16 of 2013	KwaZulu-Natal Traditional Leadership and Governance Act 5 of 2005
Mineral and Petroleum Resources Development Act 28 of 2002	Conservation of Agricultural Resources Act 43 of 1983
Local Government Municipal System Act 32 of 2000	National Forests Act 84 of 1998
Local Government: Municipal Property Rates Act 6 of 2004	National Water Act 36 of 1998
National Veld and Forest Fire Act 101 of 1998	KwaZulu-Natal Heritage Act 4 of 2008
Fencing Act 31 of 1963	World Heritage Convention Act 41 of 1999
Mineral and Petroleum Royalty Act 28 of 2008	KwaZulu-Natal Roads Act 4 of 2001
Deeds Registries Act 47 of 1937	Land Survey Act 8 of 1997
KwaZulu Ingonyama Trust Act (Act No. 3 of 1994)	KwaZulu – Natal Ingonyama Trust Amendment (Act No 9 of 1997)

POLICY MANDATE

The broad policy Mandate of the Ingonyama Trust and the Board is derived from the Constitution first. In terms of the Constitution it (the Constitution) is the supreme law of the Republic; law or conduct inconsistent with it is invalid; and the obligations imposed by it must be fulfilled. Furthermore, any land policy of general application and subject to the Constitution applies to land owned by the Ingonyama Trust.

RELEVANT COURT RULINGS

In the *Mandeni Municipality v Ingonyama Trust* 6894/2015 (KwaZulu Natal High Court, Pietermaritzburg) the Municipality instituted a claim against Ingonyama Trust for the rates that were in arrears in terms of the Local Government: Municipal Property Rates Act ("the Rates Act"). In term of the Rates Act, the Municipality has powers to levy rates on all ratable property within its jurisdiction. The court however held that for the Municipality to have comply, it must show that it had satisfied a number of statutory provisions of the Act. Which means that it must set out in a succinctly statement the grounds upon which the claim is based. Once this is done, it will enable a party (i.e., Ingonyama Trust) to know the grounds upon which a claim is based.

In the *Duduzile Baleni & Others v Minister of Mineral Resources 73768/2016* (High Court of South Africa, Gauteng Division, Pretoria) wherein the community was opposing mining activity on their ancestral land without their consent as envisaged in the Interim Protection of Informal Rights to Land Act, because granting of a mining right will amount to deprivation. The Respondents which included a Company that has applied for a mining right argued that in terms of Mineral Petroleum Resources Development Act ("the MPRDA"), the Community must be just consulted before the mineral right is awarded to the applicant therefore a consent is not required. However, the community argued that this interpretation fails to recognize the difference between customary communities and common law owners. The court held that Mineral Petroleum resources Development Act and Interim Protection of Informal Rights to Land Act must be read together. In keeping with the purpose of the IPILRA to protect the informal rights of customary communities that were previously not protected by the law, the applicants in this matter therefore have the right to decide what happens with their land. Further, the court held that the Minister of Mineral Resources does not have any lawfully authority to award a mining right in terms of MPRDA unless a full and informed consent from the community has been obtained.

In the case of *Rahube v Rahube and others (2018)*

Pursuant the provisions of section 2(1) of ULTRA first respondent had his deed of grant converted into a full right to ownership of the subject property. The applicant challenged the constitutionality of section 2(1) of ULTRA. Applicant raised a number of claims on the property. The High Court and Constitutional Court confirmed the constitutional challenge to section 2(1) of ULTRA in so far as it provides for the automatic conversion of land tenure rights into ownership without any procedures to hear and consider competing claims. The court order was made retrospective to 27 April 1994.

Furthermore, the order was suspended for a period of eighteen months to allow Parliament to introduce a constitutionally permissible procedure for the determination of rights of ownership and occupation of land to cure the constitutional validity of the provisions of section 2(1) of ULTRA.

In the *eThekweni Municipality v Ingonyama Trust 2014 (3) SA.240 (CC)* the Court in this case reaffirmed that the subdivision of Agricultural land Act, does not apply to Ingonyama Trust. Furthermore, that the Rating of the State Property Act, which came to an end in July 2005, was applicable to the land owned by the Ingonyama Trust. Therefore, based on this piece of legislation Ingonyama Trust land was not rateable up to its expiry. In *Ingonyama Trust v Radebe and others [2012] 2 All SA 212 (KZP)*, the Court found that Inkosi and his Council has jurisdiction only on land which falls within his proclaimed jurisdiction. Furthermore, where the land is owned by Ingonyama Trust but no proclaimed tribal jurisdiction, Ingonyama Trust/Board has exclusive jurisdiction even if there may be a neighbouring proclaimed tribal jurisdiction. In this case the Court further concluded that the Traditional Council concerned was irregularly established. Instead, the court established that the said Traditional Council (Amahlubi Traditional Council) has erroneously assumed the role of the Community Authority (Ubuhlebozinyathi) which was still legally valid.

In *Alexkor Ltd and another v Richtersveld Community and others 2004 (5) SA 460 (CC)* the Constitutional Court among others held that customary law is not a static system of law but like everything in life it evolves but needs to be developed. In *BHE and others v Magistrate, Khayelitsha and others 2005 (1) BCLR1 (CC)* the Court confirmed that in matters of inheritance a Black female can no longer be discriminated on grounds of gender.

PART B: OUR STRATEGIC FOCUS

UPDATED SITUATIONAL ANALYSIS

External Environmental Analysis

Communities living on Ingonyama Trust land as tribes are part of the South African Citizenry. Whatever affects the country, affects them in the same way as all South Africans. The added disadvantage is the apartheid legacy where tribal land was treated as a dustbin and African people as non-human. The current poor economic growth, lack of resources and relevant skills coupled with lack of job opportunities makes the task of executing the mandate of the ITB even more daunting. The legal complexity, unfair adverse publicity and attack on the Institution of Ingonyama Trust and Traditional Leadership does not make the situation any better. In this context among others the ITB must come out with a strategy of warding off the relentless attack on the King (the sole Trustee), the institution of Traditional Leadership and the Ingonyama Trust. This will have the effect of changing the perception on what Ingonyama Trust is. The exercise here is aimed at dealing with what the true nature of Ingonyama Trust is. Furthermore, the outbreak of the COVID-19 virus has changed the way things are being done. Consequently, with the stringent lockdown regulations, which amongst others limits travelling and meetings. The ITB will not be able to properly engage its key stakeholders like TC's and Amakhosi, on critical land administration matters.

Internal environment factors

Currently the ITB is treated as a program by the Department of Agriculture, Rural Development and Land Reform. As such administratively there is very little effort to focus on the activities and mandate of the ITB. If one notes the magnitude of the task at hand in so far as land administration is concerned it would be observed that substantial financial resources need to be ploughed in this direction. This is even more complex when one takes into account that land administration in the context of the ITB, is coupled with people administration. This together with the lack of financial resources makes the task of the Board even more challenging. Unless the underlying course of the problem is adequately addressed, preparing a strategy for the ITB will remain relegated to a matter of compliance.

Despite all the shortcomings around Ingonyama Trust, there are many positives outcomes from its operations. Among these, are the issues regarding communal land management and ownership and the rateability of the communal land.

In conclusion, we hold that the Duduzile Baleni judgement vindicates our view on the communal land tenure and the beneficiaries thereof.

PART C: MEASURING OUR PERFORMANCE

Institutional Programme Performance Information

Programme 1: Administration

Purpose: The purpose of this programme is to provide administrative support to the Board in order to execute and discharge its mandate.

Annual and MTEF Targets:

Outcome	Output	Output indicators	Audited / Actual Performance			Estimated Performance	MTEF Period		
			2017/18	2018/19	2019/20		2020/21	2021/22	2022/23
Improved stakeholder relations	Relationship agreements signed	Number of relationship agreements signed by the TCs, Government Departments, entities, municipalities, private sector, and the Board	New indicator	New indicator	New indicator	10	10	10	10
Improved corporate governance and service excellence	Capacity building to traditional councils provided	Number of traditional councils capacitated	New indicator	New indicator	New indicator	10	10	10	
	Sound corporate governance	Unqualified audit opinion	New indicator	New indicator	Qualified audit opinion	unqualified audit opinion	unqualified audit opinion	unqualified audit opinion	unqualified audit opinion
		Number of policies approved by the Board	-	3	2	5	5	5	5

Output Indicators, Annual and Quarterly Targets

Output indicators	Annual Target	Q1	Q2	Q3	Q4
Number of relationship agreements signed by the TCs, Government Departments, entities, municipalities, private sector, and the Board	10	2	3	2	3
Number of traditional councils capacitated	10	2	3	2	3
unqualified audit opinion	Unqualified audit opinion		Unqualified audit opinion		
Number of policies approved by the Board	5	2	1	1	1

Explanation of Planned Performance over the medium-term period

- Regulate how the Board (public entity) deals with the stakeholders.
- Better understanding between the parties in order for the Ingonyama Trust Board to execute its mandate.
- Promote understanding of the procedures regulating access to Ingonyama Trust communal land and development opportunities on Trust land.
- The planned performance is expected to be achieved in phases due to the initial expected challenges.

Programme Resource considerations

- Internal and external resources where necessary will be utilized to achieve the planned performance with assistance / consultation with traditional councils.
- Funding will be sourced in various way.

Programme 2: Land and tenure management Purpose

The purpose of this programme is to provide property management, land tenure administration and valuation services to the Board.

Annual and MTEF Targets

Outcome	Output	Output indicators	Annual Targets					MTEF Period	
			Audited / Actual Performance			Estimated Performance	MTEF Period		
			2017/18	2018/19	2019/20		2020/21		2021/22
Improved security of land tenure	Secured tenure rights on Ingonyama Trust land	Number of land tenure rights approved by the Board	715	1713	1409	600	1000	1000	1000
Improved coordination of human settlement on communal land	Developed and approved Human settlement plans	Number of TC's with developed and approved human settlement plans	New indicator	New indicator	New indicator	5	5	3	15

Output Indicators, Annual and Quarterly Targets

Output Indicators	Annual Target	Q1	Q2	Q3	Q4
Number of land tenure rights approved by the Board	1000	250	250	250	250
Number of TC's with developed and approved human settlement plans	5	1	1	2	1

Explanation of Planned Performance over the medium-term period

- This programme performance will assist in the development of functional effective traditional councils that will be able to utilize land for the benefit of the tribes and communities living on communal land.
- It will also enhance understanding of administering the communal land both in terms of Zulu customary law and other laws of the country.

Programme Resource considerations

- Internal and external resources where necessary will be utilized to achieve the planned performance with the assistance / consultation of the Traditional Councils.
- Funding will be sourced in various ways.

UPDATED KEY RISKS

The greatest risk facing the Ingonyama Trust is the threat to disestablish it. The Board has a fiduciary duty to ensure that adequate information is publicly available regarding its mandate and governance.

Potential risks have been identified in the following areas:

RISKS	MITIGATE	
Uncertainty of laws that impact ITB	Clarifying laws and approaching court if all else fails	
Lack of adequate human and financial resources	Identify better income generating activities or avenues.	

- (i) Where there is a dispute on a legal interpretation of a piece or pieces of legislation, the ITB will take a legal opinion, and where necessary approach the courts for an appropriate relief,
- (ii) In some instances, Intergovernmental dispute will be declared with the relevant government departments and / or state institutions.

PUBLIC PRIVATE PARTNERSHIPS

There are No Public Private partnerships with the Ingonyama Trust Board at this stage.

PART D: TECHNICAL INDICATOR DESCRIPTIONS

Indicator title	Number of relationship agreements signed by the TCs, government departments, entities, municipalities, private sector, and the Board
Definition	The indicator refers to the signed relationship agreements with stakeholders. The agreements will regulate the relationships on specific matters between the parties.
Source/collection of data	Database of interested / affected stakeholders
Method of calculation/assessment	Simple count of signed relationship agreements.
Assumptions	The signing of agreements will encourage investments in communities under the Ingonyama Trust
Disaggregation of Beneficiaries (where applicable)	<ul style="list-style-type: none"> - Target for women N/A - Target for youth N/A - Target for people with disabilities N/A
Spatial transformation (where applicable)	Not applicable
Reporting cycle	Quarterly
Portfolio Evidence	<ul style="list-style-type: none"> • Signed agreements
Desired performance	10
Indicator responsibility	Chief Executive Officer

Indicator title	Number of Traditional Councils capacitated
Definition	The indicator tracks the number of Traditional Councils capacitated by the Ingonyama Trust Board. Capacitation will be in a form of a training provided to various TC members on different aspects, relating to their responsibilities.
Source/collection of data	Capacity building records
Method of calculation/assessment	Simple count of TC's capacitated.
Assumptions	- Capacitation will assist the Traditional Councils to discharge their duties effectively and efficiently.
Disaggregation of beneficiaries (where applicable)	<ul style="list-style-type: none"> - Target for women N/A - Target for youth N/A - Target for people with disabilities N/A
Spatial Transformation	Not applicable
Reporting cycle	Quarterly
Portfolio Evidence	<ul style="list-style-type: none"> • Training Manuals • Attendance Registers
Desired performance	10
Indicator responsibility	Chief Executive Officer

Indicator title	Unqualified audit opinion
Definition	This indicator tracks the improvement of the audit opinion of the organisation
Source/collection of data	<ul style="list-style-type: none"> - Previous financial year Auditor General Audit Report - Previous financial year audit improvement plan
Method of calculation/assessment	Audit process
Assumptions	<ul style="list-style-type: none"> - That the audit will be concluded within the legislated timeframes
Disaggregation of beneficiaries (where applicable)	<ul style="list-style-type: none"> - Target for women N/A - Target for youth N/A - Target for people with disabilities N/A
Spatial Transformation	N/A
Reporting cycle	Annual
Portfolio Evidence	<ul style="list-style-type: none"> • Auditor General Audit Report
Desired performance	Clean audit opinion
Indicator responsibility	Chief Executive Officer

Indicator title	Number of policies approved by the Board
Definition	The indicator refers to the number of policies that governs the activities of the Ingonyama Trust Board approved by the Board. These policies are Land Tenure Management, Asset Management, Revenue Management, Credit Control and Risk Management.
Source/collection of data	<ul style="list-style-type: none"> - Amendments to applicable legislations - Relevant Court judgements - Internal control and compliance assessment reports
Method of calculation/assessment	Simple count of approved policies.
Assumptions	<ul style="list-style-type: none"> - It is assumed that the approval, implementation and monitoring of policies will lead to sound corporate governance
Disaggregation of beneficiaries (where applicable)	<ul style="list-style-type: none"> - Target for women N/A - Target for youth N/A - Target for people with disabilities N/A
Spatial Transformation	N/A
Reporting cycle	Quarterly
Portfolio Evidence	<ul style="list-style-type: none"> • Approved policies • Board resolutions
Desired performance	5
Indicator responsibility	Chief Executive Officer

Indicator title	Number of land tenure rights approved by the Board
Short definition	The indicator refers to the number of secured land tenure rights approved by the Board
Source/collection of data	<ul style="list-style-type: none"> • Application forms • Survey, GIS and Mapping reports
Method of calculation	Simple count of approved land tenure rights.
Assumptions	The assumption is that secure land tenure rights will lead to an increase in economic activity, food security and job creation
Disaggregation of beneficiaries (where applicable)	<ul style="list-style-type: none"> - Target for women : N/A - Target for youth : N/A - Target for people with disabilities: N/A
Spatial transformation (where applicable)	Not applicable
Reporting cycle	Quarterly
Portfolio of evidence	Board Resolutions
Desired performance	1000
Indicator responsibility	Chief Executive Officer

Indicator title	Number of TC's with developed and approved human settlement plans
Definition	The indicator refers to the number of human TC's with developed human settlement plans
Source/collection of data	<ul style="list-style-type: none"> • Traditional Council areas identified. • Use of land parcels identified.
Method of calculation	Simple count of developed and approved human settlement plans.
Assumptions	The assumption is that proper human settlement will unlock development on trust land.
Disaggregation of Beneficiaries (where applicable)	<ul style="list-style-type: none"> - Target for women N/A - Target for youth N/A - Target for People with Disabilities N/A
Spatial transformation (where applicable)	Coordinated planning on Ingonyama Trust land for ease of development
Reporting cycle	Quarterly
Portfolio of evidence	<ul style="list-style-type: none"> • Human settlement plans • Board resolutions
Desired performance	5
Indicator responsibility	Chief Executive Officer