

INGONYAMA TRUST BOARD

STRATEGIC PLAN



2020-2025

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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.



JUDGE S. J. NGWENYA

CHAIRPERSON OF INGONYAMA TRUST BOARD

Official Sign – Off

It is hereby certified that this Strategic 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.
- Takes into account the relevant policies, legislation and other mandates for which Ingonyama Trust Board is responsible;
- Accurately reflects the Impact, Outcomes and Outputs which the Ingonyama Trust Board will endeavour to achieve over the period 2020 – 2025.

Mr. D Heeralaal

Signature:



Supervisor Finance Unit

Mr S E Gabela

Signature:



Acting Head of the Secretariat

Judge S J Ngwenya

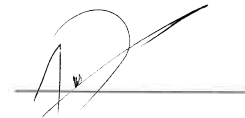
Signature:



Chairperson of the Board

Mr M. Shabane

Signature:



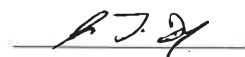
*Director General : Department of Agriculture, Rural
Development and Land Reform*

Approved by

The Honourable Didiza, A T (MP)

Minister for Agriculture, Rural Development and Land Reform

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.

REVELANT 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 19998	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.

MANDATE

The Board through the Secretariat in collaboration with the Traditional Councils shall administer the land consistent with the laws of the country and international law.

(Vide Section 2 (2), (3), (4), (5) of the KwaZulu Ingonyama Trust Act No.3 KZ of 1994) read with (Section 2A (2) of the KwaZulu-Natal Ingonyama Trust Amendment Act 9 of 1997.

RELEVANT COURT RULINGS.

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 (Ubuhlebonzinyathi) 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

VISION

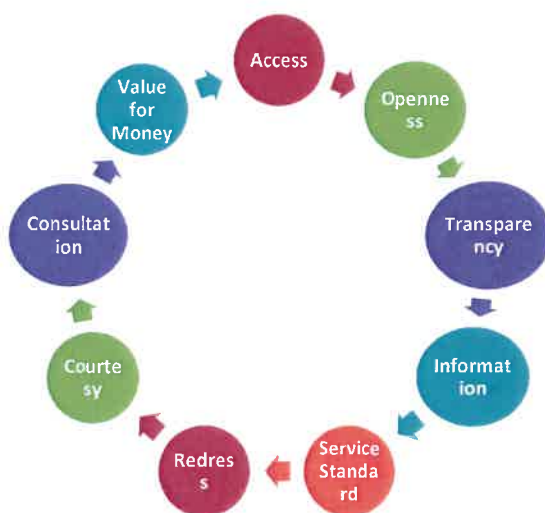
To become a leader in communal land management.

MISSION

- ❖ To contribute to the improvement of the quality of life of the tribes and communities living on Ingonyama Trust land by ensuring that land management is to their benefit and in accordance with the laws of the land.
- ❖ To develop progressive business models for the social and economic upliftment and the empowerment of the tribes and communities on land administered by Ingonyama Trust Board on behalf of the Trust.

VALUES

The Board through the Secretariat in collaboration with the Traditional Councils is committed and dedicated to providing quality service that will enhance stakeholder relations. At all times, the services will be provided in accordance to the Batho Pele principles as noted below: -



SITUATIONAL ANALYSIS

a) 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.

b) Internal environment analysis

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? Had Ingonyama Trust not been there, the ordinary people living communally in terms of culture and custom would have been deprived of their rights and remain homeless.

PART C: MEASURING OUR PERFORMANCE

Institutional Performance Information Impact

IMPACT STATEMENT
Functional Traditional Councils which will be able to utilize land for the benefit of the relevant tribes.

a. Outcome, outcome indicators and five-year target.

Outcome		Outcome Indicator	Baseline	Five-year target
1.1	Improved corporate governance and service excellence	Number of Traditional Councils capacitated / supported	New indicator	50
1.2	Improved stakeholder relations	Number of relationship agreements signed by relevant stakeholders	New indicator	50
1.3	Improved security of land tenure	Number of land tenure rights approved by the Board	1000	5200
1.4	Improved coordination of human settlement on communal land	Number of TC's with human settlement plan	New indicator	30

Explanation of Planned Performance over the Five-year Planning Period

The planned performance outcomes of the Ingonyama Trust Board (ITB) are aligned to the Guidelines for the implementation of the revised framework for strategic and annual performance plans and were prepared under the guidance of the officials from the Department of Agriculture, Rural Development and Land Reform.

Ingonyama Trust is the only institution in South Africa specializing in communal land administration primarily administered in terms of culture and custom. There are relentless campaigns to demonize African way of life under the modern post-colonial environment. Therefore, the Ingonyama Trust Board, which works with Traditional Councils, is at the focal point of this attack. In the five-year period coming it will be at the center of trying to mitigate these attacks and disinformation campaigns.

KEY RISKS

The greatest risk facing the Ingonyama Trust is the threat to disestablish it. The Board will do all in its powers within the available means to resist any forms of risk threatening the existence of the Trust.

Potential risks have been identified in the following areas:

RISKS	MITIGATE
1. Uncertainty of laws that impact ITB	1. Clarifying laws and approaching court if all else fails
2. Lack of adequate human and financial resources	2. Identify better income generating activities or avenues

PART D: TECHNICAL INDICATOR DESCRIPTIONS

Indicator title	Number of Traditional Councils capacitated / supported
Definition	The indicator tracks the number of Traditional Councils capacitated / supported by the Ingonyama Trust Board
Source/collection of data	- Capacity building records and assessments
Method of calculation/assessment	Number of Traditional Councils capacitated
Assumptions	- Capacitation will assist Traditional Councils to be effective and efficient when discharging their duties.
Disaggregation of beneficiaries (where applicable)	- 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	• Training Manuals • Attendance Registers
Desired performance	50
Indicator responsibility	Chief Executive Officer

Indicator title	Number of relationship agreements signed by relevant stakeholders
Definition	The indicator refers to the signed agreements with stakeholders
Source/collection of data	Database
Method of calculation/assessment	Number of agreements signed
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	Signed agreements
Desired performance	50
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	Quantitative
Assumptions	The secure 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	5200
Indicator responsibility	Chief Executive Officer

Indicator title	Number of TC's with human settlement plans
Definition	The indicator refers to the number of human settlement plans developed by TC's
Source/collection of data	<ul style="list-style-type: none"> • Traditional Council areas identified • Use of land parcels identified
Method of calculation	Number of land parcels incorporated into human settlement plans
Assumptions	The assumption is that properly planned 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 plan • All necessary approvals
Desired performance	30
Indicator responsibility	Chief Executive Officer