

REPUBLIC OF SOUTH AFRICA

**KWAZULU-NATAL INGONYAMA
TRUST AMENDMENT BILL**

(As amended by the Portfolio Committee on Land Affairs (National Assembly))

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 12F—96]

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWETSONTWERP OP
DIE KWAZULU-NATAL
INGONYAMA TRUST**

(Soos gewysig deur die Portefeuljekomitee oor Grondsake (Nasionale Vergadering))

(MINISTER VIR LANDBOU EN GRONDSAKE)

[W 12F—96]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

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 programmes; to prohibit the infringement of existing rights; to re-assign 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.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 3 of 1994 (KwaZulu)

1. Section 1 of the KwaZulu Ingonyama Trust Act, 1994 (Act No. 3 of 1994), enacted by the KwaZulu Legislative Assembly (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion before the definition of ‘Ingonyama’ of the following definition:

“ ‘Amendment Act, 1997,’ means the KwaZulu-Natal Ingonyama Trust Amendment Act, 1997;”;

(b) by the substitution for the definition of ‘Ingonyama’ of the following definition:

“ ‘Ingonyama’ means a person referred to in section 13 of the KwaZulu

- (c) by the insertion after the definition of ‘Ingonyama’ of the following definitions:
- “ ‘Minister’ means the Minister for Agriculture and Land Affairs of the National Government, or another Minister designated by the President;
- “ ‘Premier’ means the Premier acting in consultation with the other members of the Executive Council of KwaZulu-Natal;”;
- (d) by the substitution for the definition of ‘Registrar’ of the following definition:
- “ ‘Registrar’ means **[the Registrar of Deeds (Pietermaritzburg) appointed in terms]** a registrar as defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);”;
- (e) by the insertion after the definition of ‘Registrar’ of the following definition:
- “ ‘township’ means any township established and approved or proclaimed as such in terms of any law.”.

Amendment of section 2 of Act 3 of 1994 15

2. Section 2 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
- “(1) A corporate body, to be called the Ingonyama Trust, hereafter referred to as the Trust, is hereby established with perpetual succession and power to sue and be sued **[in its corporate name]** and, subject to the provisions of this Act, to do all such acts and things as bodies corporate may lawfully do.”;
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) The Trust shall, in a manner not inconsistent with the provisions of this Act, be administered for the benefit, material welfare and social well-being of the members of the tribes and communities as contemplated in the KwaZulu Amakhosi and Iziphakanyiswa Act, 1990 (Act No. 9 of 1990), referred to in the second column of the Schedule, established in a district referred to in the first column of the **[said] Schedule [as well as the subjects of the Ingonyama]** and the residents of such a district.”;
- (c) by the substitution for subsection (3) of the following subsection:
- “(3) The Ingonyama shall be the **[only] trustee of the Trust [, who shall administer the affairs of the Trust,]** which shall be administered subject to the provisions of this Act **[with the power to delegate any of his powers and functions as trustee to any other individual or an executive authority in KwaZulu or Natal established by law, as he may deem expedient]** by the Ingonyama and the board established by section 2A of this Act.”;
- (d) by the substitution for subsection (4) of the following subsection:
- “(4) The Ingonyama **[, as trustee,]** may, subject to the provisions of this Act and any other law, deal with the land referred to in section 3(1) in accordance with Zulu indigenous law or any other applicable law.”;
- (e) by the substitution for subsection (5) of the following subsection:
- “(5) The Ingonyama shall **[, as trustee,]** not encumber, pledge, lease, alienate or otherwise dispose of any of the said land or any interest or real right in the land, unless he has obtained the prior written consent of the traditional authority **[of the tribe]** or community authority concerned, **[or of any other person who holds or has a right in or over that land]** and otherwise than in accordance with the provisions of any applicable law.”;
- (f) by the substitution for subsection (6) of the following subsection:
- “(6) In dealing with any trust property the Ingonyama, as trustee, shall be exempted from furnishing any form of security and the provisions of the Trust Moneys Protection Act, 1934 (Act No. 34 of 1934), and the Trust Property Control Act, 1988 (Act No. 57 of 1988), shall not apply to the Ingonyama as trustee or to the Ingonyama Trust established by section 2(1).”;

(g) by the addition of the following subsections:

“(7) Notwithstanding the provisions of this Act, any national land reform programme established and implemented in terms of any law shall apply to the land referred to in section 3(1): Provided that the implementation of any such programme on the land referred to in section 3(1) shall be undertaken after consultation with the Ingonyama. 5

(8) In the execution of his or her functions in terms of this section the Ingonyama shall not infringe upon any existing rights or interests.”.

Insertion of section 2A in Act 3 of 1994

3. The following section is hereby inserted after section 2 of the principal Act: 10

KwaZulu-Natal Ingonyama Trust Board

2A. (1) There is hereby established a board to be known as the KwaZulu-Natal Ingonyama Trust Board.

(2) The Board shall administer the affairs of the Trust and the trust land and without detracting from the generality of the foregoing the Board may decide on and implement any encumbrance, pledge, lease, alienation or other disposal of any trust land, or of any interest or real right in such land. 15

(3) The Board shall consist of—

(a) the Ingonyama or his or her nominee who shall be the chairperson of the Board; and 20

(b) four members appointed by the Minister after consultation with the Ingonyama, the Premier and the chairperson of the House of Traditional leaders of KwaZulu-Natal; and

(c) four members appointed by the Minister, with due regard to regional interests, in consultation with the Premier, who shall consult with the Ingonyama and the chairperson of the House of Traditional Leaders in this regard: 25

Provided that if a vacancy exists in respect of a member referred to in paragraph (b) or (c), this shall not prevent the Board from carrying out its functions: Provided further that the members appointed in terms of paragraphs (b) and (c) shall be appointed from amongst officers in the employ of the governments of the Republic of South Africa or the province of KwaZulu-Natal or from other persons who do not hold office in or on behalf of a political party or have a high political profile, who have knowledge and experience relevant to the administration of the trust land. 30

(4) The Minister shall designate one of the members of the Board appointed in terms of subsection (3)(b) as vice-chairperson of the Board.

(5) The Board may appoint one or more advisory committees to advise it regarding the performance of any of its functions.

(6) The Board may delegate or assign, subject to such conditions as the Board may determine, any of its powers generally or in a specific case, to a committee of the Board or a member of the Board or to an official in the public service, a local authority, or an official in the service of a local authority or to a traditional authority. 40

(7) The Minister may make regulations as to— 45

(a) the circumstances under which a member of the Board, appointed under subsection (3)(b) or (c), shall vacate his or her office;

(b) the manner in which meetings of the Board shall be convened;

(c) the powers and duties of the chairperson, vice-chairperson and acting chairperson at meetings of the Board; 50

(d) the quorum and procedures for meetings of the Board;

(e) the keeping of minutes, registers and records of the Board;

(f) such other matters as are necessary or useful to be prescribed for the attainment of the objects of this Act, the generality of this provision not being limited by the provisions of the preceding paragraphs.”. 55

Amendment of section 3 of Act 3 of 1994**4. Section 3 of the principal Act is hereby amended—**

(a) by the substitution for subsection (1) of the following subsection:

“(1) Notwithstanding the provisions of section 2 of the KwaZulu Land Affairs Act, 1992 (Act No. 11 of 1992), or any other law— 5

(a) any land or real right therein of which the ownership immediately prior to the date of commencement of this Act vested in or had been acquired by the Government of KwaZulu shall hereby vest in and be transferred to and shall be held in trust by the Ingonyama as trustee of the Ingonyama Trust referred to in section 2(1) for and on behalf of the members of the tribes and communities and the residents referred to in section 2(2); 10

(b) **[any land or real right therein of which the control immediately prior to the date of commencement of this Act vested in the Government of KwaZulu shall hereby be under the control of the Ingonyama and shall be held as such in trust by the Ingonyama as trustee of the Ingonyama Trust referred to in section 2(1) for and on behalf of the said tribes and communities]** any functions which, in respect of land or any real right therein, were performed by a department of the Government of KwaZulu in terms of any law immediately before the date of commencement of this Act, shall be performed by the national or provincial government department succeeding such KwaZulu department in terms of the Constitution.”; 15 20

(b) by the substitution for subsection (3) of the following subsection: 25

“(3) All land and real rights referred to in subsection (1) shall be transferred to the Ingonyama as trustee of the Ingonyama Trust referred to in section 2(1) for and on behalf of the members of the said tribes and communities and the said residents, without payment of transfer duty, stamp duty or any other fee or charge, but subject to any existing right or obligation on or over such land and subject also to the provisions of this Act.”; and 30

(c) by the substitution for subsection (4) of the following subsection:

“(4) The Registrar shall endorse the title deed to any land referred to in subsection (1) to the effect that the land referred to therein shall vest in the Ingonyama as trustee of the Ingonyama Trust referred to in section 2(1) for and on behalf of the members of the said tribes and communities and the said residents, and shall, in accordance with the provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937), make the necessary entries in his or her registers, and thereupon the said title deed shall serve and avail for all purposes as proof of the title of the Ingonyama in trust to the said land.”. 35 40

Amendment of section 4 of Act 3 of 1994

5. The following section is hereby substituted for section 4 of the principal Act:

“**Administrative costs** 45

4. The [Government of KwaZulu-Natal and its successors in-law shall out of funds in an annual budget voted for by its legislature provide for financial assistance to the Ingonyama as trustee] Department of Land Affairs shall bear the cost of the administration of the Ingonyama Trust to administer the Trust Board.”. 50

Insertion of section 4A in Act 3 of 1994

6. The following section is hereby inserted after section 4 of the principal Act:

“Application of Act, Savings and Validation

4A. (1) This Act shall not apply to land in a township or to private land or to land used for State domestic purposes before 24 April 1994.

(2) If any group of pieces of land, or of subdivisions of a piece of land, which vests in the Trust, is combined with public places and used mainly for residential, industrial, business or similar purposes, the Ingonyama may after consultation with the Premier request the competent provincial authority to declare or proclaim such land a township.

(3) Any allocation, transfer, alienation, mortgage or other transaction in respect of tenure rights relating to land referred to in section 3(2) which was effected during the period 24 April 1994 to the date of commencement of the Amendment Act, 1997, by any person or authority in good faith and purportedly in terms of—

- (a) The Regulations for the Administration and Control of Townships in Black Areas (Proclamation R.293 of 1962);
- (b) the KwaZulu Land Affairs Act, 1992 (Act No. 11 of 1992);
- (c) a regulation issued in terms of that Act; or
- (d) any other law,

shall be deemed to have been effected by the Ingonyama in terms of section 2(4) and (5).

(4) Any land or real right in such land which, prior to the Amendment Act, 1997, vested in the Ingonyama in terms of section 3(1) and which has not been registered in private ownership, shall hereby—

- (a) if the land is situated in a township, vest in the local authority having jurisdiction over such township; and
- (b) if the land was used for State domestic purposes before 24 April 1994, be deemed to have vested in the national government or in the provincial government of KwaZulu-Natal in accordance with section 239 of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993).

(5) Any land in a township or any real right in such land shall vest in the local authority having jurisdiction over such township—

- (a) if the township exists as such on the date of commencement of the Amendment Act, 1997, on such date of commencement; and
- (b) if the township is established and approved or proclaimed as such after the date of commencement of the Amendment Act, 1997, upon such establishment and approval or proclamation.

(6) The land or real rights referred to in subsections (3) and (4) shall be transferred or ceded from the Ingonyama Trust to the local authority or government concerned in accordance with the provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937), without payment of transfer duty, stamp duty or any other fee, but subject to any existing right or obligation on or over such land.

(7) Where the township referred to in subsection (3) or (4) comprises all the land held under a particular title deed, the Registrar of Deeds shall, notwithstanding the provisions of subsection (5), on application by the local authority or government and on production of the title deed—

- (a) endorse the relevant title deed to the effect that the land or real right in such township vests in such local authority or government: Provided that where the applicant is unable to produce such title deed such applicant shall produce to the Registrar an affidavit to his or her satisfaction that possession of the title deed could not be obtained and the Registrar shall thereupon endorse such vesting on the registry duplicate of such title deed, and if the original title deed is at any time lodged in his or her office for any purpose he or she shall make a similar endorsement thereon;

(b) make the necessary entries in respect of the land or real right in such township in his or her registers in accordance with the provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937).

(8) Anything validly done in terms of a provision of this Act before the amendment or substitution of such provision by the Amendment Act, 1996, shall remain valid notwithstanding such amendment or substitution, and any rights acquired thereby shall not be extinguished by such amendment or substitution.”

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Substitution of section 5 of Act 3 of 1994

7. The following section is hereby substituted for section 5 of the principal Act: 10

“Short title

5. This Act shall be called the [KwaZulu] KwaZulu-Natal Ingonyama Trust Act, 1994.”

Short title

8. This Act shall be called the KwaZulu-Natal Ingonyama Trust Amendment Act, 1997, and shall come into operation on a date to be determined by proclamation in the Gazette. 15

**MEMORANDUM ON THE OBJECTS OF THE KWAZULU
INGONYAMA TRUST AMENDMENT BILL, 1996**

1. The KwaZulu Ingonyama Trust (hereafter referred to as the Trust) was established by the KwaZulu Ingonyama Trust Act, 1994 (KwaZulu Act No. 3 of 1994) (hereinafter referred to as the Act). The aim of the Trust was to ensure that land owned or occupied by tribes would vest in them, and not become national government land when the Constitution came into effect. The intention was to create a mechanism to preserve tribal interests in land within the framework of traditional authority structures.

2. In terms of the Act the Ingonyama holds the land as the sole trustee of the Trust.

3. The Act transferred almost 3 million hectares of land into the ownership of the Trust: this amounts to approximately 93% of the territory of the former KwaZulu. The land so transferred was not limited to tribal or communal land; it included land in urban townships, government buildings, commercial and industrial sites, roads, dams and parks.

4. The result is that housing and industrial and commercial development are being stifled in the area of the former KwaZulu.

4.1 Financial institutions will not provide loans to holders of land in these areas because any bonds registered over the property are invalid; and

4.2 people living in these areas do not qualify for housing subsidies because they are not able to obtain registered title to their homes.

5. It is not practically possible for people who need homes or land to become the legal owners or holders of land in these areas, because no land may be alienated or leased without the permission of the Ingonyama, and the Ingonyama does not have the administrative facilities to deal with the very large number of requests which would be received.

6. A further consequence is that the benefits of national land reform legislation may not be available to the residents of the former KwaZulu because the land is now "private" in the hands of the trustee.

7. The purpose of the Bill is—

7.1 to ensure that the purpose of the Act, namely to preserve tribal interests in land in the framework of traditional authorities, is achieved;

7.2 to deal with the practical problems created by the Act;

7.3 to correct certain technical defects in the Act, for example relating to the registration of deeds; and

7.4 to do this in a manner which puts the validity of the Act beyond dispute.