

Media Statement Legal Challenge to Ingonyama Trust 7 November 2018

The Legal Resources Centre (LRC) yesterday (6 November 2018) filed an application Court in the Pietermaritzburg High Court on behalf of Council for the Advancement of the South African Constitution (CASAC), the Rural Women's Movement (RWM) and Seven Informal Land Rights Holders challenging the conversion of Permission to Occupy (PTO) or informal land rights to long term lease agreements by the Ingonyama Trust.

A number of persons hold a PTO or informal land rights on land vested or registered in the name of the Ingonyama Trust. In this case CASAC, RWM and the Seven Informal Land Rights Holders (the Applicants) act in their own interest, as members of and in the interest of the group constituted by persons who hold PTO's or informal rights to land vested or registered in the Ingonyama Trust; on behalf of members of that group who cannot act in their own names; and in the public interest.

During November 2017, the Ingonyama Trust published advertisements in various KZN newspapers "inviting" holders of PTOs to approach the Ingonyama Trust Board "with a view to upgrading these PTOs into long term leases in line with Ingonyama Trust tenure policy".

The Applicants are of the view that the conversion of existing land rights into leases will undermine the tenure security of the people affected:

- Whereas they currently have land rights indefinitely, the leases proposed by the Ingonyama Trust are for a fixed period of time;
- They will be forced to pay rent, which they are not currently required to do;
- Should they fail to pay, they risk losing their right to the land they currently occupy and use;
- They will be compelled to fence the properties;
- They may not build without the permission of the Ingonyama Trust; and
- If they vacate the premises, all buildings and structures erected on the land will belong to the Ingonyama Trust.

This conduct of the Ingonyama Trust in inducing rights-holders to enter into such leases is unlawful for a number of reasons, including the following:

- It undermines their rights under section 25(6) of the Constitution and the Interim Protection of Informal Land Rights Act 31 of 1996 (IPILRA). As an organ of state the

Ingonyama Trust is required to respect, protect, promote and fulfil the rights in the Bill of Rights.

- It will result in a breach of the provisions of IPILRA.
- It is in breach of section 2(8) of the Ingonyama Trust Act, which provides that the Ingonyama shall not infringe upon any existing rights or interests.
- It will result in a breach of Upgrading of Land Tenure Rights Act (“ULTRA”) No. 112 of 1991, which provides that any land tenure right mentioned in Schedule 2 of the Act shall be converted into ownership by the registrar of deeds by the registration of such erf or piece of land in the name of such person. Schedule 2 of ULTRA includes any permission to occupy any allotment within the Black Areas Land Regulations, 1969 (R.188 of 1969).

In their notice of motion, CASAC, RWM and Seven Informal Land Rights Holders are seeking the following order:

1. Declaring that Ingonyama Trust has acted unlawfully and in violation of the Constitution by
 - 1.1 Cancelling Permission to Occupy rights (“PTO rights”), and
 - 1.2 Concluding residential lease agreements with the holders of PTO rights and/or of informal land rights protected under the Interim Protection of Land Rights Act 31 of 1996 (“IPILRA rights”) without the genuine and informed consent of such rights-holders
2. The Ingonyama Trust is ordered to publish and distribute the notice inviting people to cancel lease agreements already concluded in the following manner:
 - 2.1 By publication of the lease cancellation notice in both English and Zulu in the Witness, the City Press, the Mercury, Sowetan, Sunday Tribune, Isolezwe, UmAfrika and Ilanga newspapers at least once a week in each newspaper for a period of two months from the date of this order
 - 2.2 By having the lease cancellation notice read in Zulu on the radio stations known as Ukhozi FM, Inanda FM, Izwi Lomzansi FM, and Gagasi FM, and to be read in English on East Coast Radio FM, Radio 2000, Metro FM and SA FM, at least twice a week on each station for a period of two months from the date of this order
 - 2.3 By placing the lease cancellation notice in a prominent position at all offices of the Ingonyama Trust throughout KwaZulu-Natal within 5 (five) days of the date of this order; and
 - 2.4 By distributing the lease cancellation notice to all churches, traditional councils, community-based organisations and non-governmental organisations in KwaZulu-Natal that are known to the Ingonyama Trust or are nominated by the LRC.
3. The Ingonyama is ordered, upon the request of any person who held or holds a PTO right or IPILRA right in Trust-held land, which request may be made and must be received at any office of the Ingonyama Trust or local Traditional Council or Co-Operative Governance and Traditional Affairs:
 - 3.1 To cancel any residential lease agreement concluded between such rights-holder and the Trust;
 - 3.2 To restore to the rights-holder(s) concerned occupancy and use rights, held under statutory and/or customary law, in respect of any portions of Trust-held land that were terminated by, or in the process of, the conclusion of a residential lease agreement

4. Upon the cancellation of any lease the Ingonyama Trust is directed to
 - 4.1 Refund any and all money paid by the lessee as rental or otherwise for or under the cancelled lease agreement, which refund must be issued with a receipt and recorded in the Trust's books of account; and
 - 4.2 To maintain a written record of the land rights restored on the cancellation of leases on Ingonyama Trust-held land.

For more information please contact:

Thabiso Mbhense/ Tad Khosa – LRC – 071 109 9340/ 081 346 0180

Lawson Naidoo – CASAC – 073 158 5736