

Natal's land used as election bargaining chip

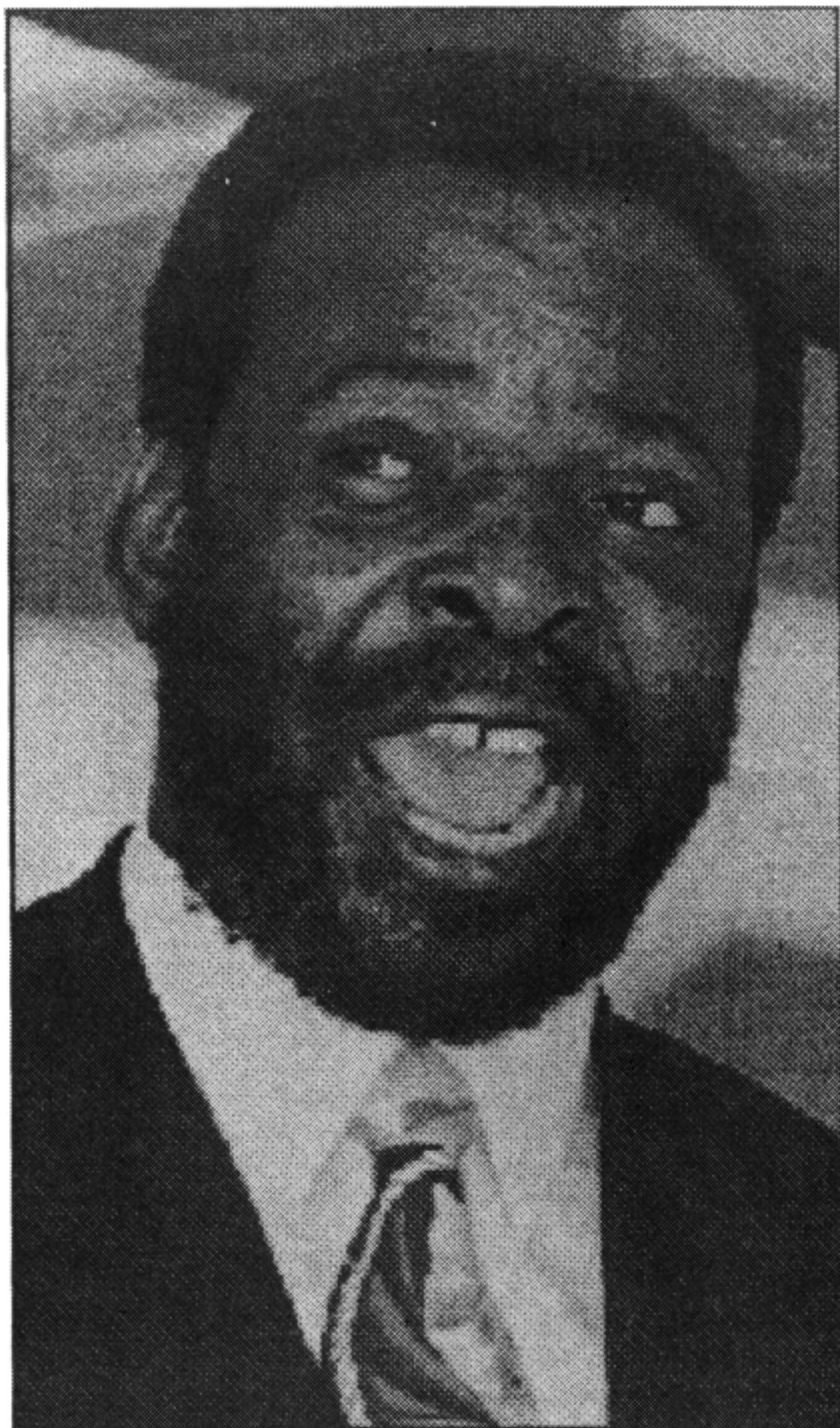
ABOUT 3 million hectares of land, a third of Natal and almost the whole of KwaZulu, was effectively removed from central government control and transferred to King Goodwill Zwelithini on the eve of South Africa's first democratic election.

And a local newspaper reported on May 23 that IFP MP, Velaphi Ndlovu said the IFP would not have participated in the election if the deal had not been clinched.

The KwaZulu Ingonyama Trust Act, 1994 is set out in KwaZulu Government Notice No. 26 of 1994 and is Act 3 of 1994 in the KwaZulu Legislative Assembly. It was assented to by former state president de Klerk on April 25 1994.

It provides for King Goodwill to administer all land in the area for which the KwaZulu Legislative Assembly was established in terms of the Self-Governing Territories Constitution Act, 1971 and land acquired by the KwaZulu government under Proclamation R232 of 1986 and Proclamation R28 of 1992 or any other law.

Mr Kobus van Vuuren, the state legal adviser, said that the former Minister of Land Affairs, Andre Fourie, asked him if it was possible to transfer land to the king. Van Vuuren told him it was possible, theoretically. A few days later, van Vuuren was approached by the KwaZulu Legislative Assembly (KLA) to draft legislation effecting such a transfer of land. Van



The KwaZulu Ingonyama Trust Act removes almost the whole of KwaZulu from central government control and places the land under King Goodwill Zwelethini.

Vuuren refused to do so, on the basis that the KLA had its own legal people.

Van Vuuren was eventually instructed to go to Ulundi to help draft the Act. He said he understood that the KLA adopted the legislation on April 20, whereafter it was assented to by former state president de Klerk.

The transfer was effected without the knowledge of

key players in land issues and ANC leaders and appears to have been rushed through with a great deal of secrecy.

The former head of the ANC's Land desk and recently appointed Minister of Land Affairs, Derek Hanekom, said that he was shocked by the transfer. "As head of the ANC Land Desk I was not aware of this at all and the new Ministry of



FW de Klerk assented to the Ingonyama Trust Act on April 25, a day before the election.

Land Affairs is receiving notice of this for the first time," he said. Hanekom said that he was not aware of others in the ANC having knowledge of the transfer.

"Effectively the land that was KwaZulu is no longer state land. It's in private ownership, held in trust by the King. Can it be reversed? We'll have to see what to do. As the constitution stands, the National Assembly can repeal laws. I think the Act was an attempt to appease the King and to get the IFP to participate in elections.

"My ministry will be raising the issue politically and will be carrying out a full

investigation to find out on whose ultimate authority the transfer was authorised. We have consistently tried to get a moratorium on the transfer and sale of state land, but we never thought that bantustan land would be transferred. There are potentially grave political implications and we're deeply concerned. At a legal level, we'll be consulting various interested parties and see what needs to be done," he said.

Chief Zibuse Mlaba of Ximba, near Camperdown, one of the chiefs affected by the transfer deal also expressed surprise. "I am very shocked," he said. "I was not aware that this had

happened. Those who took this decision were not mandated by us. They cannot just deal with our land without consulting us. As far as I'm concerned, we have a new national government and we will have new local government and provincial government. The land should not be controlled by chiefs or the king, but by the new government."

The ANC's Jacob Zuma, who has been deeply involved in negotiations with the IFP said it was the first time he had heard about the transfer deal. "It is very surprising that it happened just before elections," he said. He said that he was not aware of anyone else in the ANC who had knowledge of it.

The ANC Midlands DIP head, Blade Nzimande, condemned the way in which the deal was effected. "The fact that this was done behind the backs of people and through an illegitimate bantustan structure seems to indicate that it aimed at undermining any constitutional accommodation of the king by the ANC.

"I don't believe it was done in the interests of the king. I think it was another attempt to use the institution of the king as a political base. It seems to have been aimed at ensuring that the KwaZulu Legislative Assembly retains actual control of the land even if KwaZulu gets disbanded. The Act should be reviewed, if necessary," he said.

Coenie de Villiers, Director-General of Land Affairs said that such transfers were not his direct responsibility. "Nobody consulted me about this Act

and I was not aware of it," he said.

Others in senior positions in the Department expressed concern about possible implications of the deal and the fact that they had known nothing about it.

According to Peter Rutch, of the Legal Resources Centre in Durban, King Goodwill now effectively holds title to the land. "The Act has removed the land from control by the new Minister of Land Affairs, although the national government would have the power to change this law. The question is," he said, "who has legislative control over the Act, passed in the KwaZulu Legislative Assembly?" Rutch said that although the Trust Act restricted the Ingonyama to use of the land for the benefit, material welfare and social well-being of the tribes and communities on it, he could do with the land what he pleased.

What the KwaZulu Ingonyama Trust Act says

SPECIFICALLY the Act provides for the following:

1. The Ingonyama Trust is established with perpetual succession and power to sue and be sued in its corporate name.
2. The Trust shall be administered for the benefit, material welfare and social well-being of the tribes and communities as contemplated in the KwaZulu Amakhosi and Iziphakanyiswa Act 1980.
3. The Ingonyama shall be the only trustee of the Trust and will administer the affairs of the Trust, with powers to delegate any of his powers and functions as trustee to any individual or executive authority in

KwaZulu or Natal established by law.

4. The Ingonyama, as trustee, may deal with the land in accordance with Zulu indigenous law or any other applicable law.

5. The Ingonyama shall not pledge, lease, alienate or otherwise dispose of the land or any interest or real right in the land without first getting written consent of the traditional authority of the tribe or community concerned or any person who holds or has rights to the land.

6. All land and real rights shall be transferred to the Ingonyama for and on behalf of the tribes and communities concerned, without payment of transfer or stamp duty or any other fee or charge.

7. The Registrar of Deeds (Pietermaritzburg) shall endorse the title deed to any of the land concerned to the effect that the land in question is transferred to vest in the Ingonyama for and on behalf of the tribes and communities affected. Title will rest with the Ingonyama.

8. The government of KwaZulu and its successors in law will provide financial assistance to the Ingonyama to administer the Trust. The funds for this financial assistance will come out of the annual budget voted for by the legislature.

Ingonyama means, "a person referred to in section 13 of the KwaZulu Amakhosi and Iziphakanyiswa Act 1980 (Act No. 9 of 1980) or a person who acts on behalf of the Ingonyama in terms of Zulu indigenous law, and 'the King of the Zulus' has a corresponding meaning," the Act explains.

Natal's land: who controls what?

FIGURES from the Department of Regional and Land Affairs in Pretoria show that there is no state land in Natal which falls under the new Ministry of Land Affairs.

- The total land area of KwaZulu/Natal is 9 148 100 hectares.
- The total SADT land in Natal/KwaZulu is 510 022 hectares of which about 260 000 hectares has been transferred to the Department of Agriculture and is presently being planned and prepared for farmer settlement. Another estimated 240 000 hectares was transferred to the NPA and comprises urban areas that have already been settled.
- The Department of Defence controls 7 181 hectares.
- The Department of Environmental Affairs controls about 757 282 hectares.
- Water Affairs and State Forestry controls 229 625 hectares in Natal and 130 085 hectares in KwaZulu, but these figures do not take recent privatisation into account.