

# Ingonyama Trust to remain

**O**N June 15 the cabinet committee, formed to investigate the Ingonyama Trust, presented its recommendations and report to the cabinet. Key elements of the cabinet committee's findings were that the Trust would remain and that King Goodwill Zwelethini should be retained as guardian of the almost 3 million hectares of land involved in the Trust.

The cabinet committee further recommended that the Ingonyama Trust Act should be amended to achieve the following:

- the Ingonyama (King of the Zulus) should continue as guardian of tribally occupied land
- the Act should govern all tribally owned land falling within the territory of the former KwaZulu, subject to the existing rights of occupants of that land
- the Act should provide that the land is dealt with in accordance with an agreed set of principles. These are still to be made public.
- legislation should create a structure which is sufficiently broad-based for managing the land and to ensure that unwarranted interference or manipulation of the land is not possible.



**Minister of Land Affairs, Mr Derek Hanekom, chaired the cabinet committee investigating the implications of the Ingonyama Trust. The committee recommended, among others, that an amended Act should govern all tribally-owned land within the former territory of KwaZulu.**

The legislation around the Trust should be the subject of consultation between the national and provincial government, the cabinet committee said.

Land Affairs Minister, Mr Derek Hanekom, said the committee found that the goals for establishing the Trust were to ensure that

➤ to page 10

land occupied or owned by tribes would continue to vest with them when the new South African constitution became effective. The intention was to create a mechanism to preserve tribal interests in the land and there was no intention to give the Trust the powers of government, he said.

The stance of the cabinet committee was not unexpected, given views expressed in submissions made to it. None called for the Act to be overturned or for the Zulu monarch to be removed as trustee. Instead, there were suggestions for technical changes to be made.

Land and Agricultural Policy Centre Coordinator in KwaZulu/Natal, Ms Tessa Marcus, said a possible solution was to set up an advisory which would counsel the king on the land in question. The Ministry of Land Affairs could set up such an advisory. It should include a range of people who are politically and socio-economically acceptable and include ordinary people who live on the land.

"Essentially, it should reflect broad community interests and ensure that no tribal land is excluded from the Reconstruction and Development Programme. An advisory could democratise the king as benefactor," Marcus said.

Submissions to the technical committee drew out three major problems with the Ingonyama Trust Act as it presently stands.

Firstly, the Act vests power over land in traditional authorities. This power over land vested in traditional authorities could be used to prevent the emergence of

elected local authorities within rural areas.

It could also limit the options open to rural local government development since dealings about the land must happen through the traditional authorities.

Secondly, there is no mechanism in the Trust which enables the voice of the ordinary rank and file to be heard, nor is there any provision for democratic decision-making.

Thirdly, the claim is made that the Ingonyama is a traditional position, but the edifice upon which the Trust rests is controlled by the provincial political process.

AFRA recommended that the issue be resolved at a national level, "if possible in close consultation with the king and with due consideration of the interests of his subjects" so that further politicisation of the issue is curbed.

Mr Alistair McIntosh, National Land Committee local government researcher and member of the TEC's Subcommittee on Local Government and Traditional Leaders, pointed out in his submission that the Act could limit rural government options.

McIntosh said that chapter 10 of the interim constitution provided for democratic election of local government in demarcated areas and for such local government authorities to provide community access to water, sanitation, transport and other services. Chapter 11 recognised traditional authorities and provided for their ex-officio representation on local government structures and for them to act as advisory bodies through Houses of Traditional Leaders at

provincial and national levels.

McIntosh pointed out that the different roles of elected local government representatives and traditional authorities were not specified, except by reference to other laws.

These laws included those enacted within self-governing territories and TBVC states and generally provide wide powers to traditional authorities, including judicial, dispute resolution, land allocation and service delivery powers.

He said one interpretation of the separation of chapters 10 and 11 and the specification of a service delivery role for elected local government was that the role of traditional leaders should not include service delivery or matters directly affecting local government service delivery, except in an ex-officio capacity.

Instead, traditional leaders would fulfil judicial, dispute resolution and ceremonial functions associated with the particular traditions and customs of particular communities.

This interpretation would concur with the necessity to distance traditional leaders from party political matters, enabling them to play a unifying role.

Suggestions for dealing with land at local government level, McIntosh said, include establishing community land trusts, under private law, or the establishing land boards.

Land boards would be operate in a situation where the land remains state

▼ from page 10

owned but is administered through boards comprising elected or user representatives.

Traditional leaders and their indunas would serve on the boards in an ex officio capacity, enabling broader decision-making over land allocation and management, while allowing traditional leaders to retain their role as custodians.

However, the separation of functions is complicated by the fact that the custodianship over land by traditional leaders - which underlies land allocation and management powers presently vested in traditional leaders - has been so central to these traditions. This is because land impacts directly on service delivery and planning and vesting control over land exclusively in traditional leaders would enable them to directly influence decisions on development, planning and service delivery issues.

The KwaZulu Amakhosi and Iziphakanyiswa Act, referred to in the Ingonyama Trust Act, provides for the establishment of tribal, community and regional authorities and gives them wide ranging powers related to service delivery, acquisition, control, settlement and development of land within their jurisdiction.

McIntosh said this was a departure from past practice, where the role of the regional authorities was largely that of advisor to the KwaZulu government.

McIntosh said vesting ownership of KwaZulu land in a Trust under the king potentially limits the options open to rural local government development

since its dealings with the land must take place through the traditional authorities. It could also be used to prevent the emergence of elected local authorities within rural areas, he said.

Mr Peter Rutch, of the Legal Resources Centre in Durban, said that although the Ingonyama Trust may have been intended to be a traditional mechanism, legally it was controlled by the provincial premier.

"The Self Governing Territories Act of 1971 vested power with the KwaZulu Legislative Assembly to appoint, recognise and depose chiefs. In effect this meant the Chief Minister, in consultation with his cabinet had sole legal power.

"Under the new interim constitution, traditional matters are reserved to provinces and the power to appoint, recognise and depose chiefs would now rest with the provincial premier, in consultation with his executive committee.

"This means the power to appoint the inkosi of the Usuthu Tribe and thus the Ingonyama and the trustee of the Ingonyama Trust, vests in law with the premier and not the Usuthu Tribe. This includes the power to depose the inkosi of the Usuthu tribe. So while the claim is made that the Ingonyama is a traditional position, the whole edifice upon which the Trust rests is controlled by the political process," Rutch said.

He recommended that "legislative steps be taken, if the Ingonyama Trust is to remain in existence, for the position of the Ingonyama to be placed beyond the reach of the political process so as to ensure that interests of the

beneficiaries on the Trust, who are the ordinary people residing on the land in question, are protected from arbitrary political acts".

Rutch also pointed to difficulties arising from the Act's heavy reliance on tradition and custom. "Zulu tradition is hierarchical and patriarchal in nature," he said. "Persons of lower rank tend to be overshadowed by senior members of the tribe and find it difficult, if not impossible, to resist decisions made by higher ranks, such as inkosis and indunas, even where such decisions are not in their best interests.

"There is no mechanism in the Trust which enables the voice of the ordinary rank and file to be heard, nor is there any provision for democratic decision-making. Where an inkosi and his tribal authority function well, democracy operates as part of the tribe's tradition of inclusive debate. But it is well known, particularly as a result of the distortions to the traditional system of tribal government brought about by former state policy, that there are many amakhosi and tribal authorities who are not democratic.

"The traditional system also excludes women from direct participation in decision-making. Whilst it is true that in its pure form, the decision-making unit is the family, and women are therefore included in the process, the fact is that in rural communities women are often overlooked," Rutch said. Rutch asked for provision to be made in the Trust Act for effective and efficient interaction between the provincial and local government and the trustee.