

PORTFOLIO COMMITTEE ON AGRICULTURE AND RURAL DEVELOPMENT

PRESENTATION ON THE AMENDMENT OF THE
UPGRADING OF LAND TENURE RIGHTS ACT 112 1991
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WHAT IS ULTRA

- ULTRA constitutes land reform which commenced during the final years of apartheid era.
- Its object was to grant Africans a secure form of land tenure, which until then they could not have, owing to discriminatory laws of that era.
- Brought relief to millions of Africans who had insecure rights to land

WHAT IS ULTRA

- ULTRA was passed at the time when RSA was balkanised into TBVC states.
- “ULTRA was enacted to give black people secure rights in land. It permitted them to convert their rights into ownership.
- Difficulty was the limited operation to old RSA.
- In 1998 an amendment corrected this difficulty

WHAT IS ULTRA

- ULTRA extended to cover the entire country.
- However, three sections (3, 19 & 20) were omitted from the extended application.
- The result being that those located in former TBVC couldn't convert their occupation and other insecure rights into secure rights.

WHAT IS ULTRA

- In the quest of upgrading land tenure rights, ULTRA also provided for automatic conversion of holders of any deed of grant or any right of leasehold into holders of rights of ownership.
- This applied to urban and peri-urban areas (Townships in Black Areas).

CONSTITUTIONAL COURT CHALLENGE

- ULTRA was challenged in two key Constitutional Court Decisions:
- ***RAHUBE V RAHUBE & OTHERS***
- Section 2(1) of ULTRA unconstitutional as it excluded African women from the property system and resulted in gender discrimination in contravention of s 9 of the Constitution

CONSTITUTIONAL COURT CHALLENGE

- *RAHUBE CONT....*
- Order of Invalidity retrospective (April 1994).
- Court did not invalidate transactions done ito ULTRA in good faith (finalised sales, inheritance ito admin of estates etc).
- Parliament granted 18 months to remedy the defect (April 2020) which was extended by 12 months. [**OUR EMPHASIS**]

CONSTITUTIONAL COURT CHALLENGE

- *HERBERT & OTHERS V SENQU MUNICIPALITY & OTHERS*
- Court confirmed the EC HC's decision that section 1 of the Land Affairs General Amendment Act 61 of 1998 and section 25A of ULTRA invalid to the extent that it did not extend the application of s 3 throughout the RSA.

CONSTITUTIONAL COURT CHALLENGE

- *HERBERT// SENQU CONTINUED....*
- From the date of the court's decision (2018), s25A is read as if it does not refer to section 3. [**OUR EMPHASIS.**]
- The law as it currently pertains has extended the application of s3 of ULTRA to apply throughout the territory.
- NB to note that decisions of the Concourt are *functus officio*.

ULTRA AB B 6-2020

- Essentially the AB is introduced in response to the two Constitutional Court decisions.
- Mainly the RAHUBE decision which gave Parliament the defect the remedy the defect within a specific time. **COURT IMPOSED DEADLINE [OUR EMPHASIS].**
- Clauses 1, 2 and 3 give effect to the *RAHUBE* decision.

ULTRA AB B 6-2020

- Clause 4 of the Bill purportedly deals with updating the statute book to reflect the *Herbet // Senqu* decision.
- There is significant public interest in clause 4 which amends s25A of ULTRA. (Making the entire section applicable throughout the RSA.

COMMON CAUSE ISSUES

- Bill introduced as a result of the Concourt Decisions;
- Amends the Act to remedy the gender discrimination in *Rahube*.
- Also updates the statute book to reflect *Senqu*.
- *Dept has undertaken to introduce the Communal Land Rights Bill*

COMMON CAUSE ISSUES

- The promised Bill will cover issues of Land Administration in communal areas, including issues of tenure security.
- Section 19 and 20 of ULTRA touch on the area of significant public interest (obtaining property in “tribal areas” and the transfer of tribal land to a tribe”
- The NB of these two sections is because they touch on the subject of tenure security in communal lands. A matter to be fully regulated by dedicated legislation as undertaken by the Dept.
- IPILRA s 2 effect very important as a stop gap measure....

WAY FWD

- Court imposed calendar to pass an AB to remedy the defect.
- Public interest on other aspects may have a delay effect which might lead to non compliance with the court imposed deadline
- Not in the best interest of justice to not comply with Court deadlines (contempt).
- Given the significant public interest on issues of tenure security in communal areas, it may be prudent to exclude such matters from this amendment process and keep the Bill a technical one which gives effect to court judgments.
- IPLRA continues to operate pending Amendment//Repeal.

The END

THANK YOU

VERY MUCH