

30 years on, the Land Tenure Rights Act has not done enough to meet expectations

By Thandeka Mbabama – DA Shadow Deputy Minister of Agriculture, Land Reform and Rural Development

Honourable Speaker,

The principle upgrading of Land Tenure Rights Act (ULTRA) 112 of 1991 is in itself a very bad law. This law which sought to “make insecure tenant rights secure” was hastily put together and promulgated on the eve of the democratic dispensation by an outgoing apartheid government. Dr Rosalie Kingwill said, and I quote “*ULTRA is dead in the water legislation whose whole process is faulty, impotent and ineffective*”, close quote.

The very definition of insecure in tenant rights was flawed in that it considered everything that is not recorded in the South African Deeds Registry System as insecure or “off-register” rights. This thinking did not take into account informal land ownership rights that were inherent in indigenous communities. It also upholds an underlying socialist evolutionist bias which presumes that individual freehold ownership of land is inevitable for all social contexts. Tenure security should not necessarily mean title as it is often more valuable to the vulnerable poor.

Almost thirty years later this inherently BAD LAW is still in the statute books although it failed to live up to its expectations. So essentially a BAD LAW is being amended to have parts of it pass constitutional muster without looking at it holistically. Section 1(a) and 1(c) of the Amendment Bill stipulates that the conversion of the ownership of land applies to land that is in a formalized township as well as land which has been surveyed but does not form part of a township.

This automatically excludes land in the former TBVC states (Transkei, Bophuthatswana, Venda, Ciskei) and Ingonyama Trust land that is under tribal authority and/or customary rights as this land is currently not surveyed and therefore not registerable in its current form. The citizens living in these areas must note that ULTRA even as amended will not assist them in gaining full ownership or some form of secure tenure to their land. The status quo will remain.

In the public hearings, citizens were very much concerned with the powers vested on the Minister. Should an objection arise the Minister of Agriculture, Land Reform and Rural Development is to institute an enquiry and then make a decision on the matter. The people would have liked to see more involvement of social structures on the ground in the dispute resolution process.

Amongst other objectives, the Amendment Bill seeks to “*provide for application to court by an aggrieved person for appropriate relief*”. The Democratic Alliance raised its voice in the Portfolio Committee on behalf of the citizens who cannot afford to seek recourse courts. We felt that not enough had been done to protect their interests and ensure that section 25(1) of the South African Constitution is upheld. Unfortunately, our voice was drowned by the majority thus compelling the DA to wonder if the concept of a BAD LAW was not being perpetuated in the amendment.