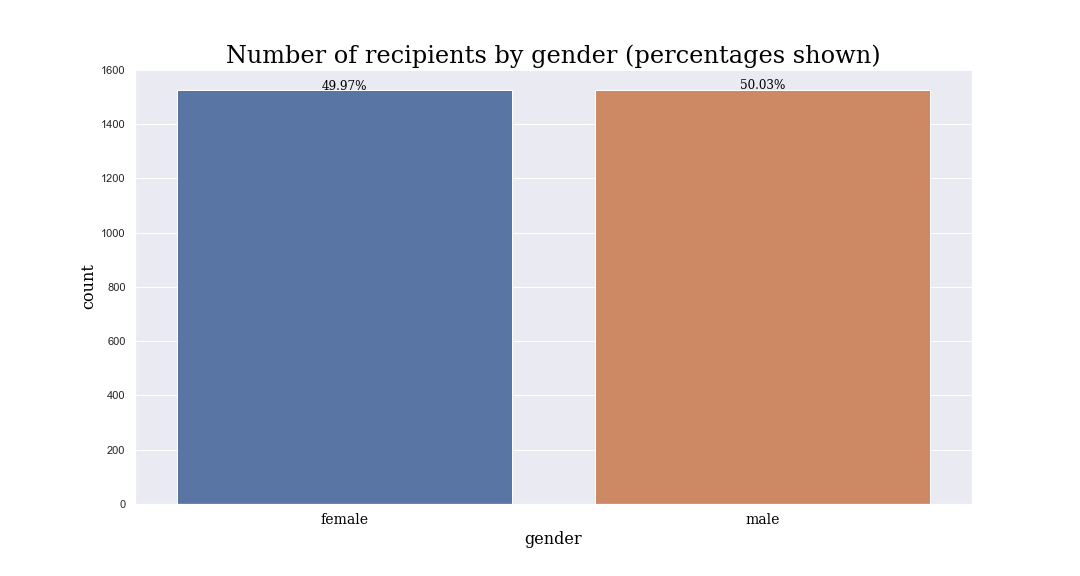
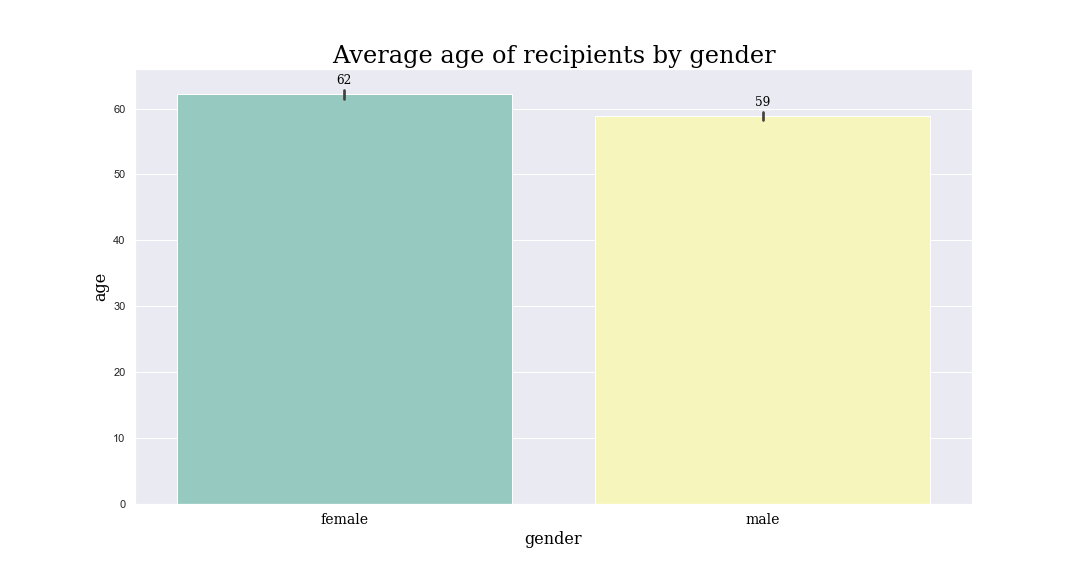
**9 September 2020**

**Parliamentary Portfolio Committee on Agriculture, Land Reform and Rural Development –** **Hearing on 18 August 2020 on the Upgrading of Land Tenure Rights Amendment Bill, 2020**

1. **Follow-up evidence**

The records maintained by the Free Market Foundation’s Khaya Lam Land Reform Project of title deeds issued in partnership with the Ngwathe Municipality in the Free State under the Upgrading of Land Tenure Rights Act (ULTRA), reveals that women were the recipients of 1,524 (49.97%) of a total of 3,050 title deeds issued by the Ngwathe Municipality during the years 2014 to 2020 (see graphs). The rate of issue increased significantly in the most recent years as the potential recipients came to understand and trust the process.





The figures also reveal that the average age of female recipients was 62 while males were slightly younger at 59.

1. **The significance of the ages of the recipients of the title deeds via ULTRA**

The significance of the ages is that the average recipients would have been in their mid-twenties in 1991 when ULTRA was adopted. As an example, Mrs Maria Mothupi, was 99 years old when she received her title deed. She was born 5 years after the iniquitous 1913 Land Act became law, which prohibited her from owning property for the greater part of her life. ULTRA became law when she was 72 years old and not only gave her the right to own property but made her the owner of the house she and her husband had built many years before. However, it took another 26 years, to when she was 99 years old, before the Mayor of Ngwathe presented her with the title to her property, in the presence of the donor who had paid the cost of transferring the property into her name. The joy displayed by Mrs Mothupi and her daughter and granddaughter, who were present, was clear for all to witness. Mrs Mothupi said, “I will sleep well now”, showing that she no longer needed to worry about her family’s future.

The above figures reveal that a negative bias against women cannot be assumed, based on the *Rahube* case and other instances of redress sought in the courts by female applicants who have suffered a disadvantage relating to ownership of property. The Ngwathe local authority experience reveals that women are receiving title deeds to properties at a significant rate, equal to that of men. It is possible, given the average age of the recipients, that many of the women who receive title deeds are widows or divorcees. If that is so, it is imperative that, in order to provide them and their families with security of tenure, the process of transferring their properties into their hands should not be slowed down or brought to a halt by the proposed amendment to the Act.

On behalf of every living individual who is an intended beneficiary of the 1991 ULTRA, who has not yet received a title deed to the properties they own, whatever the cause of that omission might be, we appeal to the Committee to find a way to satisfy the concerns of the Court expressed in the *Rahube* case. This should be done in a manner that does not expropriate the rights of the thousands of intended beneficiaries, many of whom are women, as revealed by the Ngwathe local authority data. We also appeal, on behalf of the thousands of intended ULTRA beneficiaries living in municipal low-cost housing townships, for government to adopt legislation that will reduce the cost of the process of transferring ownership to the intended beneficiaries.

Liebenbergstrek

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**OFFICE OF THE MUNICIPAL MANAGER**



**NATIONAL COUNCIL OF PROVINCES**

**QUESTIONS FOR WRITTEN REPLY**

**QUESTION NUMBER 2019/177**

**DATE OF PUBLICATION: 11 OCTOBER 2019**

**NCOP: Ms D C Christians (Northern Cape: DA) to ask the Minister of Cooperative Governance and Traditional Affairs:**

How many title deeds were handed over to housing beneficiaries in each municipality in the Free State (a) in the (i) 2016/17, (ii) 2017/18 and (iii) 2018/19 and (b) from 1 April 2019 up to the latest specified date for which information is available?

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Ngwathe LM** |  |  |  |  |  |
|  |  | Numbers | Issued by External Stakeholder | Numbers | Issued by Government Department |
|  | 2016 / 2017 | 742 | Kayalam Foundation | 0 | Department of Human Settlement |
|  | 2017 / 2018 | 664 | Kayalam Foundation | 401 | Department of Human Settlement |
|  | 2018 / 2019 | 676 | Kayalam Foundation | 166 | Department of Human Settlement |
|  | 2019 / 2020 | 460 | Kayalam Foundation | 0 | Department of Human Settlement |
|  | **TOTAL** | **2542** |  | **567** |  |

Kind regards,

BW Kannemeyer

The above figures are included to substantiate the volume of titled deeds processed by Khaya Lam for the municipality to present to residents. It also provides evidence to substantiate the difficulties that will be experienced by municipalities, such as Ngwathe, with the issue of title deeds if each individual title transfer were to be subjected to advertising and Ministerial approval. Ngwathe is the municipality where the Khaya Lam Project was first launched. The Project is now active in assisting many different local authorities in different provinces. It is for this reason that Khaya Lam can quantify the task that the Amendment Act is intent on imposing on the Minister and her staff.

1. **The Minister and the Department of Agriculture, Land Reform and Rural Development will be subjected to an impossible task**

If the Amendment Act were to be adopted in its current form, the Minister and Department would be swamped by a deluge of requests for approval of title transfers. A process is being proposed that is not necessary and will deprive many women of title deeds instead of assisting them to obtain titles. Would the more than 1,500 women in Ngwathe on the Khaya Lam list now have title deeds to their homes if the Amendment Act had been in place 5 years ago?

We wish to propose that the Department investigate what the consequences would be for those residents of Ngwathe, who do not yet have title deeds to their properties but are entitled to them, if the Amendment Act in its current form were to become law. That such an investigation be carried out as part of an economic impact assessment aimed at determining potential consequences. A matter that would need to be considered in carrying out the assessment would be to determine whether the intended ULTRA beneficiaries who do not yet have title deeds would have a right of action against the state for unconstitutionally expropriating their property.

1. **Clarification of factual misunderstandings that were revealed during the Hearing on 18 August 2020 on the Upgrading of Land Tenure Rights Amendment Bill, 2020. The benefits given to the occupants of government-owned housing in townships country-wide**

The ULTRA legislation, in 1991, gave ownership of property to an unknown number of people (probably millions countrywide), occupants of government rental and other properties on which they were acknowledged tenants and occupants. Unfortunately, the beneficiaries of the property grant were generally not informed that they were owners of the properties on which they were living. Many people today still do not know.

The Khaya Lam Land Reform Project was established specifically to assist “ULTRA” property owners to obtain titles. More than 10,000 title deeds have already been registered by Khaya Lam and presented to new owners in partnership with municipalities countrywide. With the applications being handled in bulk, the costs are considerably reduced. Once the COVID-19 lockdown is over, Khaya Lam aims to increase the number of titles dealt with to above 500 per month.

1. **What the consequence will be of implementing the proposed Amendment Bill in its current form**

Instead of simplifying the procedure, the method of dealing with applications as described in the proposed amendments to ULTRA, would deprive thousands of property owners of their right to expeditiously receive title deeds. The process would be made cumbersome and slow.

In giving oral evidence to the Parliamentary Portfolio Committee on Agriculture, Land Reform and Rural Development on 18 August, Free Market Foundation director, Eustace Davie, elaborated on the cautionary note contained in the FMF’s previously submitted written submission. According to the FMF, the Bill, in its current form, endangers the rights of all the people intended to benefit from the provisions of the original 1991 Act who have not yet received title deeds to their properties.

The FMF submission said, “We trust that this position is clear, and that the Amendment Bill sees itself as applying only to any new properties that might, from the day of its enactment, qualify under ULTRA. If it is applied retrospectively, a great injustice would come about, as it would amount to the unilateral expropriation without compensation of millions of private residences. This would be unlawful and inconsistent with the spirit, purpose, and values underlying the Constitution.”

On behalf of the beneficiaries of the work of Khaya Lam, Davie appealed to the Committee to make the process easier and less costly, and not more difficult and costly, to ensure that the intended beneficiaries receive title deeds to their properties.

1. **The adoption of the 1991 ULTRA transferred ownership of the designated properties to the legal occupants**

The original Act automatically converted to ownership all the properties listed in the Act, which determined that “as from such conversion the ownership of such erf or piece of land shall vest exclusively in the person who, according to the register of land rights in which that land tenure right was registered in terms of a provision of any law, was the holder of that land tenure right immediately before the conversion.”

The Act constituted, in part, a giant transfer of ownership of property in housing from the Apartheid state and its local authorities to the occupants of state-owned rental properties in the townships attached to the towns and cities around the country. A weakness in the Act was that it did not appoint a state agency to ensure that the legal occupants received title deeds to secure their ownership rights. It did, however, provide provisions for reducing the costs of transfer of the properties, mostly from municipalities to the legal occupants.

1. **The amendment to the ULTRA will retrospectively remove the ownership rights from the rightful owners and their descendants, in practice expropriation without compensation**

In its submission to the Portfolio Committee, the FMF described the drastic and possibly unintended consequence of the Bill as it is currently worded: “Clause 1 of the Amendment Bill purports to change the automatic conversion of land tenure rights listed in Schedule 1 into ownership, to an application for conversion into ownership. In so doing, it vests the Minister with a discretion to either approve or reject such application.”

“The evident problem with this is that all conversions happened from the moment of ULTRA coming into operation in 1991. In law, in 1991, all the holders of properties that qualify under Schedule 1 of the Act were automatically converted into ownership. In other words, factually and legally, the holders became owners. All that remained was for them to receive the title deeds that confirm the already-existing factual and legal position”.

1. **Participants expressed concerns during the hearing that males could be given preference in the granting of title to property**

During the hearing, participants expressed concerns that males could be given preference in the granting of title to property. It was explained that the Minister and Department of Agriculture, Land Reform and Rural Development had been instructed by the Constitutional Court to amend ULTRA to ensure that gender equality would be maintained in the process of title transfers under the Act.

Instead of the automatic existing conversion which states that “as from such conversion the ownership of such erf or piece of land shall vest exclusively in the person who, according to the register of land rights in which that land tenure right was registered in terms of the provision of any law, was the holder of that land tenure right immediately before the conversion,” the Amendment Act proposes that the automatic conversion be removed.

The Amendment Act proposes that a conversion that was carried out in 1991, giving thousands of families and individuals title to their properties, should withdraw ownership rights from those unfortunate individuals, families and descendants of the original occupants because of the failure of the governance system at the time to provide them with a title deed to their property or to inform them that they had been granted ownership of the properties on which they legally resided. The Act goes on to require such owners to apply to the Minister for approval of the issue of the title deed to which they are entitled.

1. **No evidence was led, other than the notorious *Rahube* case, to the effect that ULTRA, in practice, results in a bias against women**

Members said the upgrading of the ULTRA Bill would be a relief and victory for women and children who were vulnerable in this country. It was unfortunate that it had taken a legal challenge to initiate this process of enforcing government to consider a review of the legislation, they said.

Instead, if adopted, the amendment will require every single application for a title deed in terms of ULTRA to be made to the Minister, who will be required to advertise the application and grant ministerial approval if there are no objections.

Where, in one fell swoop, ULTRA converted into ownership an estimated 5 million properties (nobody seems to know the real number) across the length and breadth of South Africa, making the legal and legitimate occupants the owners of those properties, the amended Act seeks to adopt a process that will be unfair to the owners seeking titles. It will also be unfair to the Minister and the Department to burden them with the task of monitoring the titling of all ULTRA properties.

Gender equality can be ensured at the municipal level where municipal officials currently sign off on property transfers. At joint Khaya Lam and municipal events, women are very well represented among the title recipients. This fact is confirmed that at least 50% of all title deeds in the Ngwathe local authority, processed by Khaya Lam in partnership with the municipality, are presented to female recipients.

1. **The rights of women are being well-secured at the municipal level**

It does not appear necessary, as evidenced by the ULTRA property transfers taking place in Ngwathe and elsewhere, to make radical changes to the Act in order to secure the property

rights of female owners. All the transfers occur at the municipal level and as the Khaya Lam experience shows, women receive at least 50% of the title deeds that occur under ULTRA. In certain cases, properties are transferred into the joint ownership of husband and wife. These transfers have been excluded from the properties described in (1) above.

If the Department and the Court are concerned about the strict observance of gender equity in ULTRA-related property titling, municipal officials can be required to establish that males receiving titles to ULTRA properties are the rightful heirs of properties inherited from deceased prior owners of the properties.

Most importantly, the expropriation of properties for which the rightful owners have not yet received title deeds, will result in a massive deprivation of the rights of thousands of relatively low-income families. The properties in question are what the Peruvian economist, Hernando de Soto, has described as “dead capital” because they cannot be used as security by the occupants, there is no positive incentive to upgrade the properties, and they tend to represent a liability to the government entity that is the nominal owner.

With the occupants as owners the position changes dramatically. The properties as assets become “live capital”. The owners can borrow against the security of their properties. If registration of bonds against low value properties is not considered worthwhile, the owners will be given some level of credit because of the stability that automatically comes with property ownership. If we look at the 3,050 properties depicted in the above illustrations and place a modest average value of R160,000 on each property, we find that the new owners have become wealthier in assets by a total of R560 million. Over time, ownership of these assets will make a substantial difference to the families living in them but will also convert into new wealth-creation activities by which the entire municipal area will benefit.

As all the ULTRA-owners in the country receive the title deeds to their properties and have their ownership rights secured, poverty will decline, and economic activity will accelerate. The economy of South Africa will benefit substantially from giving title deeds to the thousands of owners created by the ULTRA legislation, a great many of whom are women, to confirm their ownership rights to the properties.

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