

*Ulawulo Lomthetho/Ngokomthetho*  
*Puso ya Molao*  
*Oppergesag van die Reg*



**7 August 2020**

**SUBMISSION TO THE  
COMMITTEE ON AGRICULTURE, LAND REFORM,  
AND RURAL DEVELOPMENT  
ON THE  
UPGRADING OF LAND TENURE RIGHTS  
AMENDMENT BILL, 2020**

Attn: [pnyamza@parliament.gov.za](mailto:pnyamza@parliament.gov.za)

**BOARD OF ADVISORS** Former Judge Rex van Schalkwyk (Chairman) | Eustace Davie | Adv Norman M Davis SC  
Adv Greta Engelbrecht | Judge Prof Douglas Ginsburg | Leon Louw | Temba A Nolushungu | Candice Pillay  
Adv Frans Rautenbach | Jasson Urbach | Martin van Staden | Prof Robert Vivian

**Johannesburg** PO Box 4056 | Cramerview 2060 | **Tel** 011 884 0270 | **Email** [martinvanstaden@fmfsa.org](mailto:martinvanstaden@fmfsa.org)  
NPO No 020-056-NPO | PBO & Section 18A(1)(a) No 930-017-343

## Submission

The Free Market Foundation (FMF) appreciates the opportunity to comment on the Upgrading of Land Tenure Rights Amendment Bill, 2020 (hereinafter ‘the Amendment Bill’), which amends the Upgrading of Land Tenure Rights Act, 1991 (hereinafter ‘ULTRA’). This submission takes the form of a very short note of clarity.

### About the Free Market Foundation

The Free Market Foundation (FMF) is an independent public benefit organisation founded in 1975 to promote and foster an open society, the Rule of Law, personal liberty, and economic and press freedom as fundamental components of its advocacy of human rights and democracy based on classical liberal principles. It is financed by membership subscriptions, donations, and sponsorships.

Most of the work of the FMF is devoted to promoting economic freedom as the empirically best policy for bringing about economic growth, wealth creation, employment, poverty reduction, and greater human welfare.

### Clause 1 of the Upgrading of Land Tenure Rights Amendment Bill

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. Various other clauses make reference to conversions that occurred after 27 April 1994.

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 remains is for them to receive the title deeds that confirm the already-existing factual and legal position. The FMF’s Khaya Lam Land Reform Project has therefore made use of ULTRA since 2013 to assist homeowners in obtaining title deeds to their property.

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, purport, and values underlying the Constitution.

Prepared by:

Martin van Staden  
Head of Legal (Policy and Research)  
Free Market Foundation