



NAMIBIA
UNIVERSITY
OF SCIENCE AND
TECHNOLOGY



Land Governance in Southern Africa

NUST-NELGA Hub Conference

Windhoek, Namibia – July 2018

Land Governance in Lesotho

R. C. Leduka¹, M. Ntaote², S. N. Takalimane³

¹National University of Lesotho, rleduka@gmail.com; ²National University of Lesotho, ntaotem@gmail.com 2; ³National University of Lesotho, stakalimane@gmail.com

Paper prepared for presentation at the

“2019 Land Governance in Southern Africa Symposium”

The NUST-NELGA Hub - Windhoek, Namibia, July, 2018

ABBREVIATIONS/ACRONYMS

MoPWT	Ministry of Public Works and Transport
GOL	Government of Lesotho
HfHL	Habitat for Humanity Lesotho
LACA	Land Acquisition and Compensation Act
LAA	Land Administration Authority
LHWP	Lesotho Highlands Water Project
LHLDC	Lesotho Land and Housing Development Corporation
LO	Longitude of Origin
MUP&T Study	Maseru Urban Planning and Transport Study
MCC	Millennium Challenge Corporation
MoLG	Ministry of Local Government
MTICM	Ministry of Trade and Industry, Cooperatives and Marketing
SOLA	Solutions for Open Land Administration
TCPA	Town and Country Planning Act
UNDP	United Nations Development Programme
UN-HABITAT	United Nations Centre for Human Settlements

1 Background

Lesotho is a tiny land locked Southern African country of 30 350km² with an average altitude of over 1 000m above sea level. Approximately 9% of the national surface area is arable, and 1.1% is water (Ministry of Health, 2014). The topography of Lesotho has led to agro-ecological classification that consists of four regions, namely, the Mountains, the Foothills, the Senqu River Valley and Lowlands. The Mountains occupy approximately 59% of the country and has volatile temperatures with extreme cold in winter and moderate temperatures in summer. Communities in the Mountains are predominantly rural and utilize the vast amount of land for

livestock farming. The Highland areas consist of rugged terrain which makes accessibility difficult.

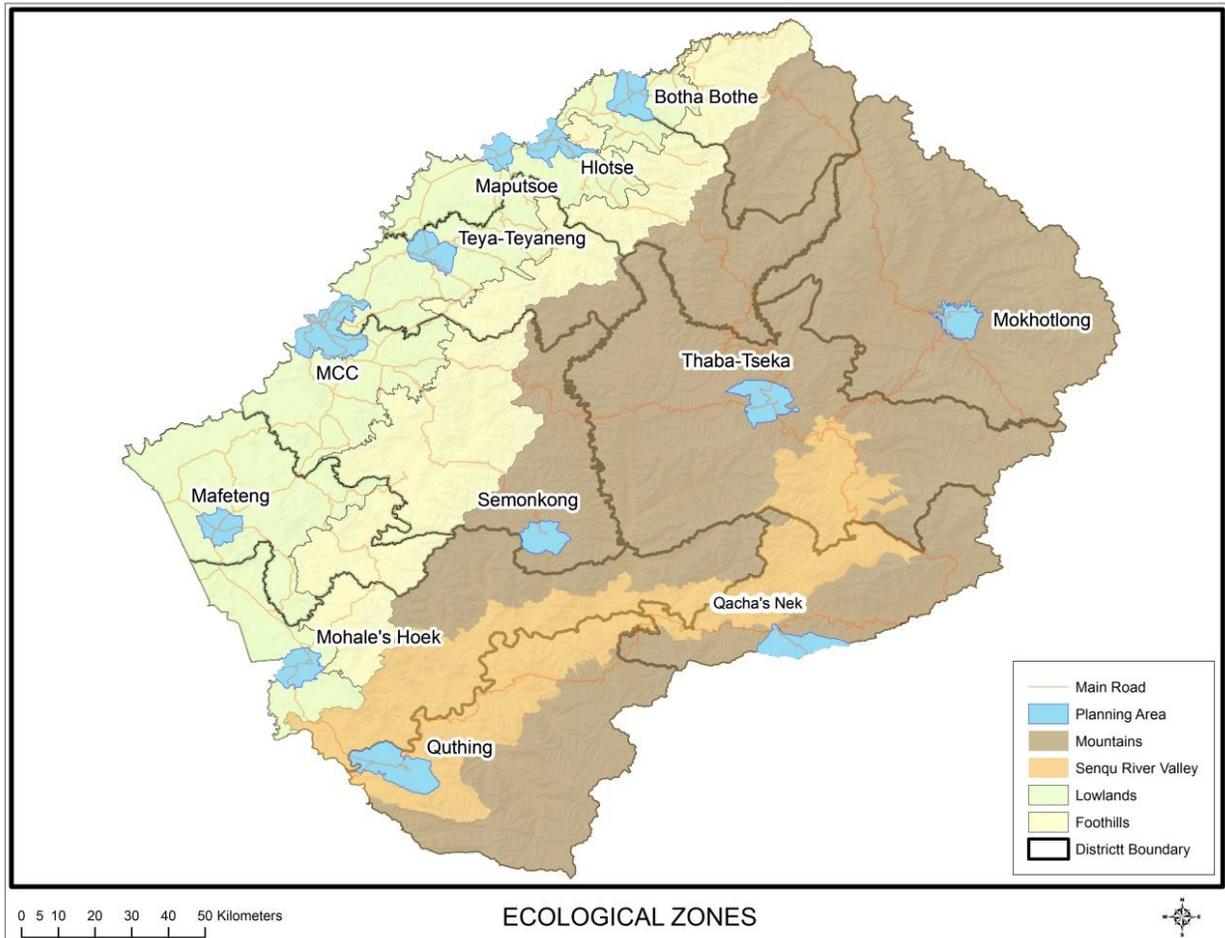


Figure 1: Ecological Zones of Lesotho

The Senqu river valley is the area along the Senqu River from Quthing up the river into the Thaba-Tseka district. It occupies 9% of the total land area of Lesotho. It has been designated as a lone standing topographic area because it displays unique characteristics of very rich and fertile soil that is intensively used for crop agriculture, mainly sorghum and maize, as well as livestock. Fishing is also a commercial activity of note in areas covered by the Lesotho Highlands Water Project (LHWP).



Picture 1: Part of Senqu River Valley in the Quthing District (with the Lekhala-la-Quthing [*Aloe ferox* Mill.] in the foreground)

https://www.google.co.ls/search?q=senqu+river+valley+lesotho&tbm=isch&source=iu&ictx=1&fir=PKlhHs32qQA4QM%253A%252CqSRTTmBAaDXbHM%252C_&usq=A14_-kSmIR3q3PKqCqasmtdbaQBIE6yF8Q&sa=X&ved=2ahUKEwj1u9Ky-JffAhURqXEKHZVGCryQ9QEWA3oECAYQBA&biw=1352&bih=642#imgsrc=T-RB3sI9-Yw0iM:

The foothills and lowland zones lie between altitudes of 1 380m and 2 000m. Along with the foothills, the lowlands make up 35% of the country and contain 70% of the national population. The greatest proportion of the best arable land is found in these two zones. As of 2006, arable land made up only 9% of the country, having declined from 11% recorded at independence in 1966, largely due to degradation and encroachment by human settlements.

Based on the 2016 preliminary census results, Lesotho has approximately 2,263,253 people with a growth rate of 1.6%. The population is predominantly rural. As of 2016, 68.3% of the national population lived in the rural areas while 31.7% lived in urban areas. Mortality rate is relatively high due to the HIV and AIDS pandemic. A 23% HIV infection rate ranks Lesotho as the second highest country in the world. Life expectancy is also relatively low at 39.6 years. The

population of Lesotho is also significantly youthful, with approximately 40% comprised of the youth (15-35 years). Literacy rates are relatively high at 80% for men and 97% for women in the age-group of 15-49 years (GOL, 2015; UNDP, 2015).

Lesotho is a constitutional monarchy, in which the King has only ceremonial powers. It operates a parliamentary representative multi-party democracy with the Prime Minister as head of the executive arm of government. There is also a two-chamber legislature consisting of a National Assembly of 120 elected members and a Senate of 33 nominated members. For administrative purposes, the country is divided into ten administrative districts, each with its own administrative town. Local government exists in the form of one (1) municipal council (for Maseru, the capital city), 11 urban councils and 64 community councils. These are statutory bodies provided for in Section 106 of the constitution and enabled under the Local Government Act 1997 (Act No. 41 of 1997) (as amended). Municipal and urban councils are levels one and two authorities in a three-tier local government system consisting of Municipal, Urban and Community Councils. The functions of municipal/urban councils are specified under Section 5 (First Schedule) of the Local Government Act 1997 (as amended) and of community councils in Section 5 (Second Schedule).

There are no readily available figures on registered land parcels in Lesotho. The 2016 Population and Housing Census reports that 20% of households had registered leaseholds (including title deeds); while 41% had only unregistered certificates of allocation to their land (predominantly residential plots). A similar proportion (39.0%) had neither unregistered certificates nor formal leasehold titles to their land parcels. These registered parcels and unregistered land parcels are predominantly for non-agricultural uses. There is, therefore, extensive land that is used for crop farming and communal pastures that is not formally registered, including a significant proportion of public land.

2 INSTITUTIONAL FRAMEWORK ON LAND GOVERNANCE AND ADMINISTRATION IN LESOTHO

2.1 Description of the Mandates of Organizations in Land Governance

At the helm of land governance in Lesotho is the Ministry of Local Government and Chieftainship, which is responsible for policy formulation and coordination of all other institutions involved in land governance. The Ministry is also mandated to acquire and expropriate land for both public and public purpose uses (Section 3.4). Central government land agencies that fall under the jurisdiction of the Ministry of Local Government are the following:

- i) The Department of Lands Survey and Physical Planning – the Physical Planning section of this department is responsible for urban land use planning and control in Planning Areas. This is provided for under Sections 2, 5 and 9 of the Town and Country Planning Act 1980 (Act No. 11 of 1980). The Land Use Planning section is responsible for coordinating planning in rural (community) council areas.
- ii) The Land Administration Authority (LAA) – this is a parastatal land agency that is responsible for national cadastre, mapping, land administration, and the registration of land titles and deeds. The LAA’s mandate is defined in the Land Act 2010 (Act No. 8 of 2010).
- ii) The Lesotho Housing and Land Development Corporation (LHLDC) – it is parastatal agency that is mandated to undertake land development (site-and-services) and housing for to all income groups, either for sale or rental; and to assist the private sector entities to develop land and housing for similar purposes.
- iii) Principal Chiefs – these are customary authorities whose main mandate in land matters is to control and issue grazing permits for mountain rangelands in accordance with the Animal Husbandry Act 1969 (Act No. 22 of 1969). Mountain rangelands do not fall under the jurisdiction of any local government structures.

- iv) Local councils – these are also mandated to undertake physical and land use planning and site allocation functions in their respective areas of jurisdiction. They derive their powers from the Local Government Act of 1997 (as amended).

There are 4 levels of local government structures which are namely – District, Municipal, Urban and Community Councils. There is one Municipal Council, 11 Urban Councils and 64 Community Councils in Lesotho. The mandate of Councils in land governance is provided for in the Local Government Act 1997 First Schedule, for municipal and urban councils and Second Schedule for community councils. The First Schedule and Second Schedule activities that directly relate to land governance are shown in Table 1.

Category of Council	Land Governance-related Activities
District	None
Municipal/Urban	<ul style="list-style-type: none"> • Control of natural resources (e.g. mining/extraction of sand, stones) and environmental protection (e.g. rehabilitation of dongas and control of pollution); • Physical Planning • Land/Site allocation • Control of grazing • Control of building permits
Community	<ul style="list-style-type: none"> • Control of natural resources (e.g. mining/extraction of sand, stones) and environmental protection (e.g. rehabilitation of dongas and control of pollution); • Land/Site allocation • Control of grazing

Table 1: Land Governance Responsibilities of Councils

As can be seen from Table 1, District Councils have no role in land governance and hence are not included in the description provided below. The role of community councils is also limited relative to that of municipal/urban councils. Notably, community councils have neither planning nor development permit functions, these being the reserve of municipal and urban councils.

Two other government ministries that are significantly involved in land governance are the ministries of Forestry and Land Reclamation and Tourism and Culture. The ministry of Forestry and Land Reclamation is responsible for soil and water conservation operations throughout the country; and the management of rangeland resources through the promotion of community-based natural resources management (adjudication of cattle posts and management and protection of wetland areas). Through the Department of Environment, the Ministry of Tourism and Culture is responsible for environmental protection and establishment of nature conservation areas.

Table 2 shows the key institutions in land governance, identifies the type of land that is covered by their mandates, outlines their key responsibilities and comments on the clarity of these responsibilities.

Institution	Type of Land	Responsibilities	Clarity of responsibilities
Ministry of Local Government and Chieftainship	All types of land (rural and urban)	Policy formulation and coordination of all other institutions involved in land governance and acquisition of land for public purposes (Land Act 2010)	Responsibilities are not very clear. There are numerous overlaps and conflicts with other line ministries and government departments, such as Ministries responsible for agriculture, forestry and land conservation; mining and water resources.
Department of Lands Survey and Physical Planning	All types of land with the exception of Government owned land – Lesotho Government is exempt from development control TCPA (Development) Order 1991 First Schedule Class IX	The Physical Planning section is responsible for urban land use planning and control in gazetted Planning Areas (TCPA 1980 s. 2, 5, and 9). The Land Use Planning section is coordinator of planning in Community Council area	Responsibilities of this department are also not very clearly defined. Overlaps and conflicts over mandates occur regularly between this department and local authorities, especially urban councils.
Land Administration Authority	All types of land	Land administration, land registration, cadastre, mapping, and survey (Land Administration Authority Act 2010 [Act No. 8 of 2010])	Areas of responsibility are very clearly spelt out in founding legislation and enabling and regulations

Municipal/Urban/ Community Councils	All types of land in Council areas, with exception of Government-owned land	Land/site allocation, land use planning and control of building permits, control of natural resources and environmental protection, and grazing control (Local Government Act 1997-First Schedule)	Responsibilities of councils on land governance are very narrowly defined in founding legislation. Conflicts over mandates occur regularly with the Department of Land Survey and Physical Planning.
Lesotho Housing and Land Development Corporation	Land owned by the Corporation	Land development (site-and-services) and housing for to all income groups, either for sale or rental; and to assist the private sector entities to develop land and housing for similar purposes.	Land responsibilities of are clearly defined but often conflict of interest occur with local councils in terms of land acquisition and allocation functions. In the Maseru Municipality, competition often arises in terms of provision of serviced plots, with the two agencies often competing to discharge this mandate.
Principal Chiefs	Highlands rangelands under the jurisdiction of Principal Chief	Control of highlands rangelands (Animal Husbandry Act 1969)	Responsibilities of principal chiefs merge with those of community councils and conflicts often arise
Department of Range Management	All rangelands in Lesotho	Public awareness, and advisory services on implementation of sustainable rangelands use.	Responsibilities are clearly
Department of Environment	All types of land	Land use control for purposes of environmental protection, establishment of nature conservation areas, and enforcement of environmental restoration notices, policy coordination	Responsibilities for environmental protection are shared with other line ministries, coordination is problematic.
Private Real Estate Agents/ companies	Urban and peri-urban land and to smaller degree, brown-field land in inner city areas.	Land planning and allocation,	Real estate companies do not have specialized legislative provisions. Though poorly developed some estate companies are serving high income population in gated estates with high tech security installations and for the middle income with basic sub-divisions and surveyed plots
Field Owners and Customary Chiefs	land in peri-urban areas customarily owned as fields	Land planning and allocation	This is an extra-legal activity and takes over the legal responsibility of Municipal/urban councils

Table 2: Institutional Framework on Land Governance and Administration

However, despite the Land Act of 2010 (Section 3 of this report) and the institutional framework of land administration that it created, the governance and management of land remains chaotic at best, with numerous agencies and government ministries and departments in one way or the other claiming some stake in land matters. The 2000 Land Policy Review Commission for instance, notes that the management of land was the responsibility of no less than nine different government agencies, each making decisions independently. For example, Land Use Planning, which was until recently located in the Ministry of Agriculture; the Directorate of Lands, Surveys and Physical Planning (the lands and surveys part of the former LSPP that now partially constitutes the Land Administration Authority – LAA, along with the Deeds Registry, which was moved from the Ministry of Justice and Human Rights); the Ministry of Public Works and Transport, Trade and Industry, Natural Resources, Tourism, Sports and Culture, Environment, Gender and Youth Affairs, Education and Finance, Maseru Municipal Council (MMC) and the Lesotho Housing and Land Development Corporation. To this could be added the Ministry of Local Government, which also routinely acts alone outside of the LSPP and local authorities, and urban and community councils, as well as customary chiefs (GoL, 2015).

The MTICM (2015) reiterates further that land-related management is uncoordinated, siloed and the site of struggle among government agencies. At national level, for instance, control of land use/physical planning is entangled in struggles between agencies in the Ministry of Local Government and Land Administration Authority. At local levels, similar struggles exist between local councils and customary chiefs. Table 1 above provides a highly simplified map of government agencies that in some way or the other claim responsibility over some aspect of land management.

3 LEGAL FRAMEWORK ON LAND TENURE

3.1 Tenure Regime

Chapter IX of The Constitution lays the foundation for the governance of land. It provides that all land in Lesotho is vested in the Basotho Nation and is held by the King as trustee, who may allocate land to all Basotho. In practice though, these allocation powers are exercised by local councils, including customary chiefs. There are two major tenure regimes in Lesotho: statutory (leasehold) and customary tenures. Section 6(1) of the main land statute - Land Act 2010 provides for entities that may hold title to land in Lesotho. These are:

- the Government of Lesotho;
- citizen of Lesotho who is not less than 18 years old¹;
- Foreign enterprises for investment purposes, which has at least a 20% Basotho shareholding;
- Companies, partnerships, associations and cooperatives registered and doing business in Lesotho;
- Foreign organisations or governments with a beneficial relationship with Lesotho.

Section 32 (1) of the Land Act 2010 specifies the length of time an individual or legal person has rights to land. These are:

- 90 years, where the lease is for residential purposes, agricultural purposes, purposes of exercising a profession or calling or, religious, benevolent, educational, recreational, charitable and medical purposes;
- 60 years, where the lease is for heavy industrial purposes, commercial or light industrial purposes, other than the sale of petroleum by retail; or hotel purposes;
- 30 years, where the lease is for purposes of the sale of petroleum or oil; or purposes of wholesale storage of petroleum or oil.

¹ Exceptions to this rule are in cases where a person under the age of 18 is married, or receives such land as inheritance or gift (the Land Act 2010 Section 6(1)(b) i-iii)

No leasehold may be issued for a period that is shorter than 10 years and no lessee has rights to water and minerals that may occur on the land. Leasehold rights allow land holders to undertake various transactions with and on the land, including pledging such rights as collateral for bank loans. Such rights are also inheritable by nominated beneficiaries of a deceased person or by individual/individuals nominated by the deceased's family in the absence of a legal will. Lessees may also create minor interests in their land by way of sub-leaseholds, upon consent by the Director of Lease Services in the LAA. Non-Basotho citizens are entitled only to sub-leasehold rights, to which Basotho are also equally entitled. There is no provision for land ownership by natural persons who are not citizens of Lesotho (HfH Lesotho, 2016).

Section 9(1) of the 2010 Act also provides for creation of subsidiary rights in the form of sectional-titles. The purpose of these minor titles is to enable separate ownership of a section or sections of a building in a building complex without necessarily owning the land on which the building stands. Although initially provided for under Section 9(1) of the 2010 Act, sectional titles are now the subject of a separate and more detailed Sectional Titles Bill 2011 (draft), which is said to be based on the South African sectional titles legislation, and for good reasons: first, because banks and insurance houses that operate in the Southern African region are familiar with the South African sectional titles practice; and second, because South African court judgments are routinely followed by the Lesotho courts as established precedents (LHLDC, 2011).

The amount of residential land that an individual may hold under leasehold is also circumscribed by law through what are called land ceilings. These are provided for in Part VII of the Land Act 2010 and detailed in Regulation 31 of the Land Regulations 2011 (LN 20 of 2011). Provisions for ceilings stipulate that no lease may be issued on a residential plot that exceeds 1 000m² and that no one individual would be allowed to cumulatively hold residential land in excess of 5 000m² in Lesotho as a whole. Maximum limits for commercial and industrial landholdings are 2 000m² (or five separate leaseholds) and 4 000m², (or 3 separate leaseholds),

respectively. However, there are exceptions to these general ceilings, such as for land held by parastatals or where, even in the case of individuals, the Minister responsible for lands may use his/her discretion and directs that the ceilings be exceeded (HfHL, 2016). In practice these restrictions have been extremely difficult to enforce. Evidence adduced by, amongst others, the Ramodibedi Commission in 2000 shows an instance where an individual businessman owned a total of 32 commercial plots in a single urban area. Using the legal minimum size of 200m² for a commercial plot, this would have meant that the businessman had amassed well over 6 000m² of commercial land, which would have been over three times the ceiling that is legally permissible (Leduka, 2012).

Under customary tenure land is allocated to land users by customary authorities (chiefs), and it is, therefore, categorized as communal tenure. Customary tenure is active in rural areas where people respect each other's land boundaries despite the fact that they are largely unmarked. The legitimacy of occupation of the land is derived from the fact that the land-user uses the land and all the neighbours know about and respect the legitimacy of the possessory claim. Unlike the leasehold, customary tenure does not allow land or immovable property to be used as collateral. However, customary rights in land can also be inherited, with inheritance ordinarily following the principle of primogeniture. As discussed in Section 3.5, the Legal Capacity of Married Persons Act 2006 (Act 9 of 2006) has removed the minority status of women with respect to joint family estates and confers equal rights to land and property for both men and women who are married in community of property under customary, civil or any law.

Although national legal and policy frameworks exist to promote and safeguard gender equality, the Habitat for Humanity Lesotho (HfHL) (2018) reports that at local (presumably household) levels, where these frameworks are not compatible with customary law or some cultural practices, women's rights are regularly undermined. The HfHL attributes this to patriarchy, where women assume subordinate positions in key decision-making at family, as well as

economic and political levels. This patriarchal dominance undermines women's land tenure security by making it difficult for institutions to uphold and enforce the legal and policy frameworks that are meant to advance gender equality.

Another significant factor noted by the HfHL, which undermines the practical enforcement of gender equality is Lesotho's legal pluralism, where 'the family, custom, state, international community, the church and customary law are all sources of regulation and law in the country' (HfHL, 2018: 13). Legal pluralism has opened a series of loopholes that different actors are able to manipulate to disadvantage women and other vulnerable groups and have exacerbated the complexity of land governance. The HfHL (2018: 13) argues that 'where the claims pit a man and a woman against each other in for example – a boundary dispute, the women (sic) often lost their claim'. This also often applies to some widows who are often pushed off their land by the traditional leadership and or children and relatives of their deceased husbands.

Group rights exist under Lesotho's customary tenure as communal rights of access to grazing land or pastures, both around the homesteads and fields, as well as the cattle posts in the mountain zone. It used to be common practice in the past for crop fields to also form part of communal grazing of crop residue after harvest. However, this practice has gradually waned, especially in the lowlands and foothills where mechanized farming and the use of commercial fertilisers and seeds have made crop residue to become a pricey possession that is often harvested along with the crops as animal feed. Extant practice is also that an increasing number of farmers either plough their fields or plant winter crops soon after the harvest of summer crops, which automatically prevents communal access to such fields for grazing.

3.2 Land registration

Land registration is the responsibility of the LAA, which was established on 15th June 2010 through the Land Administration Authority Act 2010 and became fully operational as of the end of November 2011. It is a state-owned agency that merged all government departments that until then dealt with cadastre, national mapping and deeds registration. The LAA has a Director

General who reports to a Board of Directors, that in turn reports to the Minister of Local Government and Chieftainship. Non-land administrative functions; such as land use and physical planning, as well as non-land deeds registration remain the responsibility of the Ministry of Local Government and Chieftainship. As outlined in its strategic plan (2012-2015) the LAA undertakes the following functions:

- To issue leases and consents for lease transactions;
- To register land deeds;
- To regulate land surveys and provide maps and geospatial information;
- To provide dispute resolution services for land matters; and,
- To advise the Minister and the Government of Lesotho on land administration laws and land policies. (LAA Strategic Plan 2012-2015:2)

These functions are rendered equally to the Government, business entities, and to citizens of Lesotho. The purpose of these services is to facilitate the ‘operation of a land market where immovable property is described, acquired, sold, subleased, mortgaged and however otherwise land-rights holders may wish to deal with their landed property as permitted by law’(LAA Strategic Plan 2012-2015:2). The authority keeps a register of these and other documents or deeds (leases) as evidence of transfers and transactions in land, thereby ensuring significant degrees of security of tenure.

The LAA is organized around five divisions, each headed by a director who reports to the Director General. The five divisions are:

- i) Customer Services and Leasing
- ii) Customer and personnel services
- iii) Legal and Registration Services
- iv) Survey and Mapping Services
- v) Finance and Administration

The Legal and Registration Services division is responsible for lease and deeds registration, as well as all legal matters of the Authority, including advice to clients on all legal matters relating to land. Registration is guided by the Deeds Registry Act 1967 (Act No. 12 of 1967). This Act

empowers the authority to manage and maintain land assets registry and records of registered land parcels in Lesotho.

Land registration occurs through two principal channels. The first is systematic regularisation and the second is sporadic regularisation. As outlined in Section 3.2, systematic regularisation is facilitated through Part XI of the Land Act 2010 and detailed further in the Systematic Regularisation Regulations 2010 (LN 103 of 2010). The purpose is to enable retrospective legalization of informal land allocations, and has had positive impacts on tenure security.

The Legal and Registration Services Division undertakes the registration of leases, variations to leases, lease surrenders and other land transactions. The deeds registration process involves the registration of transactions on leased property, including transfers, bonds and sub-lease agreements. The law requires that this process be assisted by a legal practitioner. On first registration of leases, clients are required to produce various forms of identification to ensure that they are the rightful owners of the land parcel that is being registered. These are listed in Table 3.

Allocation Title	Identity documents	Other documents
Form C (for beneficiaries born before 1961. After 1961 the Form C must be accompanied by verification by council signed by the town clerk/chairperson	Passport/voter's card/national identity card/drivers licence/naturalisation certificate (for citizenship not acquired by birth)	Plan of survey S10
Or chief's letter accompanied by council minutes		
Or letters from three (3) persons who have lived in the area for thirty (30) years		
Or title deed		
Or affidavit signed by Town Clerk/Council chairperson		
Or approved grant by minister of Local government		
Or Court order		
Or verification of master of high court for minors/orphans maturity		

Table 3: Application for Lease

Source: Compiled from *Deeds Registry Brochure*. Land Administration Authority. <http://laa.org.ls.dedi713.jnb2.host-h.net/services/legal-and-deeds/>. 07/12/2018

On land transactions that involve lease transfers, sublease, land parcel subdivision, land consolidation, surrender, variation and inheritance, the required documents are listed in Table 4.

Type of Transaction	Identity documents (owner)	Other documents
Lease Transfer	Passport/voter's card/national identity card/drivers license/naturalization certificate (for citizenship not acquired by birth)	Passport of buyers, marriage certificate for different surnames; valuation report for free of consideration; court order
Sub-lease		Certificate of incorporation by beneficiary; power of attorney
Subdivision		Approval from physical planning; Subdivision S10
Consolidation		Lease to be consolidated/S10; Extension of the site to be consolidated; approval from council
Surrender [NB. Surrender occurs when lease number changes/wrong plot allocated; by order of court]		Original lease; reason for surrender
Variation [NB. Lease variation is required when the area of land is incorrectly captured; during change of use; change of location]		Original lease; approval from council (if it involves the council); change of name (gazette as evidence of change of name); cancellation of marital status, i.e, decree of divorce)
Inheritance		Covering letter; council minutes; death certificate

Table 4: Applications for Transactions on leased land

Source: Compiled from *Deeds Registry Brochure*. Land Administration Authority. <http://laa.org.ls.dedi713.jnb2.host-h.net/services/legal-and-deeds/>. 07/12/2018

It is worth noting that the Authority does not provide or allocate land, but only registers such land following allocations by local councils and other statutory bodies, such as the LHLDC. Before the LAA, it used to take more than 12 months to register a leasehold following allocation. This period had been significantly reduced to about 60 days as of 2011/12, with the

LAA aiming to reduce this time even further to an average of 20 days by 2014/15, and the time to register a deed (transaction) from 9 days in 2012/13 to 5 days in 2014/15 (LAA Strategic Plan 2012-2015).

The fees charged for registration of new leaseholds and transfer of leaseholds and deeds and transfer duty tax are presented in Tables 5, 6 and 7 respectively. The fees shown for the registration of new leaseholds do not include the cost of land parcel survey and associated examination charges, which vary according to the type and size of parcel survey required and prescribed charges for the services of private surveyors.

Lease application or preparation:	Category	Price (M²)
Residential		M50
Commercial or industrial purposes	Grade 1	M600
	Grade 2	M200
	Grade 3	M100
Other purposes (not specified in Regulations)		M100
Agriculture	Irrigated	M500
	Other	M100
	Non-irrigated	M50
For preparation of any other title document		M100
Consent application or preparation		M50
Publication		Actual or estimated cost

Table 5: Lease Application/Preparation fees

Source: <https://www.laa.org.ls/laa-price-list/>

Type	Price (per deed or item)
Registration Fee (per deed of transfer, mortgage, etc.)	M50.00

² M stands for Maloti, the currency of Lesotho. US\$1 = M15.18 (as of 01/09/2019).

Search Fee	M10 (register index) M20 (deed) M100 (all)
Certified copy	M50

Table 6: Deeds Registry Fees

Source: <https://www.laa.org.ls/laa-price-list/>

Document Description	Description of tax	Rate	Examples
Deed of transfer of a lease	Value of the land or property is less than or equal to M100,000	Nil	1. Transfer value of M200,000 = M2,500 2. Transfer value of M800,000 = M25,000
	Value over M100,000 to and including M500,000	2.5%	
	Value over M500,000	5%	
Transfer duty not payable on transfers to:	Heirs (inheritance), surviving joint owner, surviving spouse, for “natural love and affection” (i.e. natural sons and daughters) government, religious, charitable, educational, medical organizations correction of errors; court orders; etc. (refer to the Act)		

Table 7: Transfer Duty Tax on Leases and Deeds

Source: <https://www.laa.org.ls/laa-price-list/>

The transfer duties shown are based on the values that are payable on the land or amount quoted as payable by parties to the transaction, with deference at all times being to the higher value between the two. The value that the LAA uses for the computation of transfer duties is said to be fair market value, and that where quoted transfer prices are less than fair market value, then the market value is used. This means that where parties to a transfer agree on a transfer price that is less than fair market value, then the LAA defers to fair market value, notwithstanding what the transacting parties might have agreed on.

3.3 Enforcement of Land Rights

There is no readily accessible inventory of registered individual properties in urban areas, let alone in rural areas. At national level, the 2006 population census shows that 63.1% of households had the Form C.³ ; 4.2% had leaseholds, 2.9% had title deeds⁴ and 29.0% had no title to their land. In the 2016 Population and Housing Census, the figures had changed to 41% for Form Cs; 16% for leaseholds; 4% for title deeds and 39.0% for those with no title to their land (see Figure 2) (African Housing Finance Yearbook, 2018).

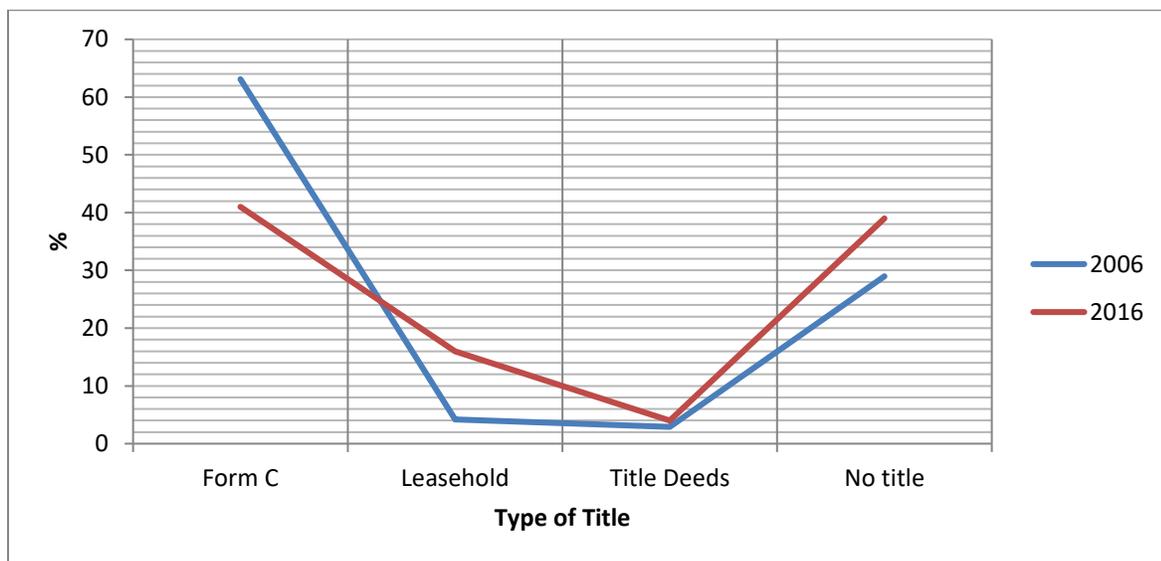


Figure 2: Pattern of national land ownership rights for the years 2006 and 2016

Figure 2 shows that in 2006, most households reported ownership of Form Cs, followed by those who had no title. In 2016, the proportion of households with Form Cs had decreased from 63.1% to 41%, while the proportion of households with leaseholds had increased four-fold

³ An unregistered certificate issued by a chief (customary authority) to a (rural) land holder as proof of customary land allocation.

⁴ Registered deeds of title with respect to all land in urban areas and commercial land in rural areas).

over the ten-year period. It is difficult though to explain why the proportion of households without titles was higher in 2016 than it was in 2006.

The general picture that emerges from Figure 2 is that an increasing number of households had registered their land parcels over the ten-year period between 2006 and 2016 compared to the period between 1980⁵ and 2006. The increase in the proportion of registered leaseholds could be attributed to the systematic regularisation project of 55 000 land parcels in Maseru and other smaller towns in Lesotho, which took place between 2008 and 2013. The scheme was funded under the Millennium Challenge Corporation's (MCC) assistance to Lesotho, which commenced in September 2008 and ended in September 2013. Since 2013 only sporadic regularisation now takes place, including the registration of land allocated under the various land development schemes by the LHDC and local authorities.

For the capital city of Maseru (Figure 3) it is noted that in 2010 68% of households had the Form Cs; 16% had leaseholds; 3% had deeds of title and 13% had no title at all (Ministry of Public Works and Transport [MoPWT], 2010). Clearly, therefore, in terms of access to land and ownership, the chiefs and local councils are still the most predominant sources of unregistered land in both rural and peri-urban areas.

⁵ Leasehold titles were introduced for the first time in Lesotho on the eve of June 16th 1980 when the Land Act of 1979 (Act No. 17 of 1979) came into force. It is the predecessor of the current Land Act of 2010.

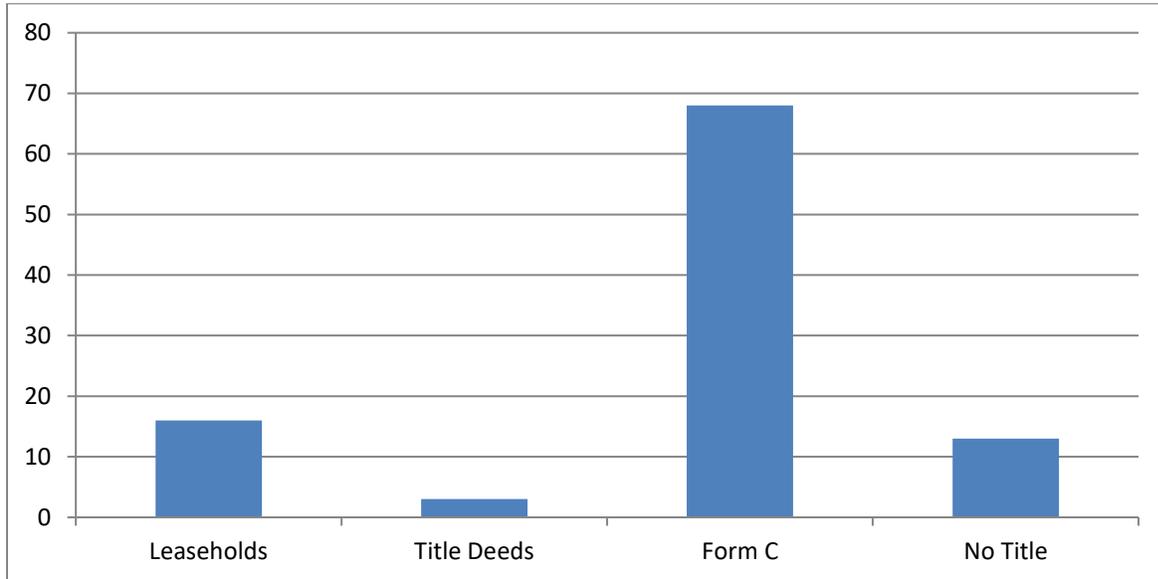


Figure 3: Pattern of land ownership right for the capital city Maseru in 2010

Although accepted as legitimate certificates of land allocation in predominantly peri-urban and rural areas, the Form Cs are widely perceived to be insecure in contrast to leaseholds. Drawing from the results of surveys undertaken in 2000 and 2004 in Maseru, Leduka (2004) asserts that majority of peri-urban households who had only Form C certificates on their land parcels were acutely aware that such certificates would be useless as evidence of ownership in a dispute if a contending party had leasehold on the same parcel of land.

The proportion of land reported as registered in the population 2016 population census (see Section 3.3) refers to land parcels are predominantly used for residential, commercial, industrial and other non-agricultural uses. Most rural land that is used for crop farming, consisting of small-landholdings (family fields) and land that is used communal pastures, as well as homesteads is not formally registered. And there is no that requires such land to be registered.

3.4 Expropriation

Section 17 of the Constitution protects citizens from arbitrary seizure of movable and immovable property without due process and payment of full compensation. The section also

provides conditions under which compulsory acquisition of property might take place, whilst also providing avenues for recourse to the courts by persons whose property is taken.

Part IX of Land Act 2010 outlines provisions for the expropriation of land for public purpose or public interest uses. Public purpose uses for which land may be appropriated with payment of appropriate compensation are provided for in Section 51(1) of the 2010 Act (see Box 1)

- roads, aerodromes, railways, canals, water supply, drainage, sewerage;
- social services including but not limited to schools, hospitals, hostels, cemeteries, playing fields, parks, swimming baths, nature reserves, low income housing;
- water conservation by means of watersheds, water catchment areas, reservoirs;
- land conservation through afforestation, and erosion prevention;
- Government housing for; residences, offices, storage; research and agricultural stations; and defense and security requirements;
- sport, culture, industry and tourism, including the provision of hotels;
- any public utility service;
- alleviation or eradication of consequences of natural disaster; and,
- any service which is in the public interest or would enhance or promote national resources and prosperity.

Box 1: List of Public Purpose Uses

Section 51(2) outlines the following three purposes as representing public interest uses (Box 2):

- (a) setting aside land for the development of agriculture by modern farming techniques;
- (b) construction or development of a new residential, commercial or industrial area; or
- (c) development or reconstruction of existing built-up area.

Box 2: List of Public Interests Uses

Section 41 of the Act also provides for change of land use if such change is consistent with town and country planning (or physical planning) objectives of the area in question. However, Part IX of the 2010 Act is a source of disquiet amongst some key stakeholders in Lesotho. In particular, Section 51(1) is said to give unlimited discretion to the Minister responsible for lands to make

land grants to virtually anybody whom s/he fancies, as long as a ‘public purpose/interest’ declaration has been made. The law does not also expressly require that land set aside for allocation through ‘public purpose/interest’ grants be advertised (Leduka, 2014).

At the moment there are numerous compensation systems in Lesotho. For instance, the Lesotho Highlands Water Project has its own land acquisition and compensation policy. In 2003 the MoPWT had a draft Compensation and Resettlement Policy Framework. In 2003 the Ministry of Local Government (MoLG) prepared a draft compensation bill yet to be enacted into a Land Acquisition and Compensation Act (LACA), the fate of which is not known. The LACA had aimed to address these fragmented policies by providing for a unified national standard of land acquisition and compensation, which not only met constitutional prescriptions of justice and fairness and transparency, but also local and international best practices. In the main, the LACA had proposed comprehensive provisions relating to:

- powers of the state to acquire land;
- the taking of possession;
- compensation for acquired land;
- procedures for determination of compensation;
- dispute relating to compensation;
- temporary occupation or use of land;
- special provisions for land acquisition by local authorities and other promoters, including private developers;
- miscellaneous matters relating to land acquisition and compensation (MoPWT, 2005:36).

Box 3: Areas covered by LACA draft

In the absence of a policy framework by the MoLG as the parent ministry, the main beneficiaries of public land acquisitions, namely, the urban councils and the LHLDC, have each adopted land acquisition and compensation practices that are largely governed by exigencies surrounding the land to be acquired. However, the fragmented nature of acquisition and compensation is clearly cause for concern and does not augur well for good land governance.

3.5 Equity and Non-discrimination

Under Lesotho’s customary law, women cannot own fixed property, including land, as of right, but can only do so through their husbands or fathers. However, the main land statute (Land Act 2010) does not discriminate between persons based on gender, although persons under the age of 18 years may not hold immovable property as of right, but only through their parents or legal guardians. The Legal Capacity of Married Persons Act of 2006 (Act 9 of 2006) has provided further guarantees of equal rights to spouses married in community of property, and requires them to obtain the consent of the other when entering into any transaction concerning joint estates.

Some evidence exists to show that the Legal Capacity of Married Persons Act 2006 has significantly empowered women, especially following the enactment of the Land Act 2010. Figure 4 demonstrates, for instance, that prior to the Land Act 2010, few leases (4%) were jointly held by couples that were married in community of property. The largest proportion (73%) of leaseholds was held by men alone, in contrast to 23 % that were held by women. However, from 2011 to 2015, 25% of leaseholds were jointly held by couples that were married in community of property. Only 14 % of new leaseholds went to men alone, compared with 34 % of such leases that went to women alone (Fogelman, 2016: 39).

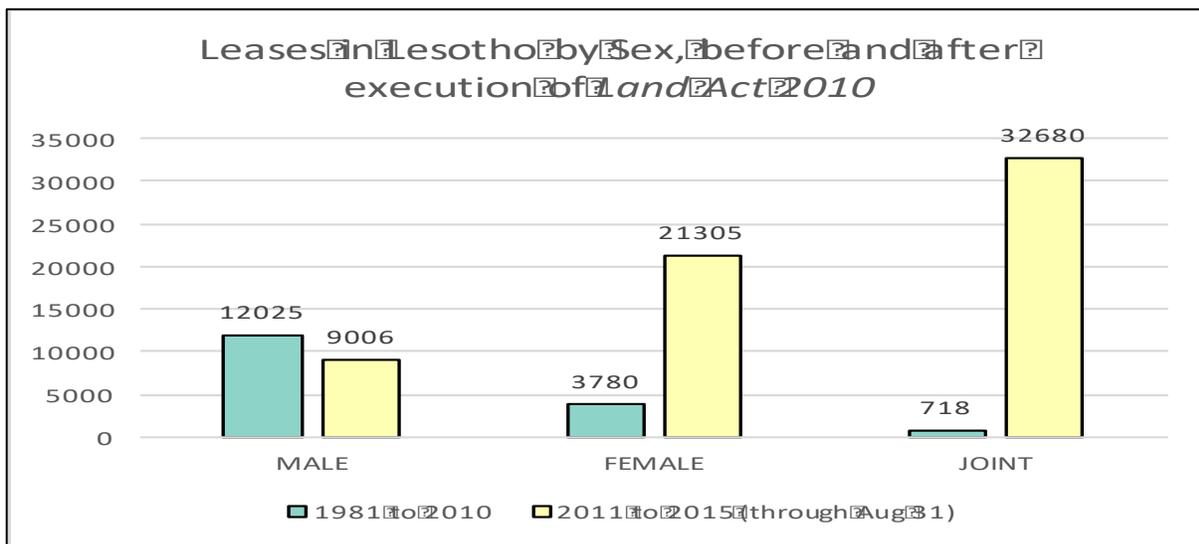


Figure 4: Leases in Lesotho by Sex, Before and After Execution of Land Act 2010

SOURCE: Fogelman, C. (2016) 'Measuring Gender, Development and Land: Data-Driven Analysis and Land Reform in Lesotho'. *World Development Perspectives*. 1: 36-42.

Fogelman (2016) concludes, and legitimately so, that the Land Act 2010 seems to have operated the way it was intended, being to secure increased land rights for women. This was also made possible by the Legal Capacity of Married Persons Act, which also ensured that women could hold leases as of right, including inheriting the lease rights of their deceased next-of-kin. The Acts have also ensured that the names of couples married in community of property appear on the land titles (leaseholds), rather than only the name of the husband as was the case before the two Acts came into force.

3.6 Land Markets

Land markets in Lesotho are characterized by the co-existence of different modes of land supply. Customary land tenure remains important in all areas, especially in rural and peri-urban areas. However, customary systems have been so convoluted that some commentators have come to consider them as no longer customary, but as neo-customary. Neo-customary systems are generally understood to be a combination of reinterpreted customary practices with other informal and formal practices. The legitimacy of neo-customary practices derive from shared trust and confidence in customary institutions, sometimes alone, but also often in combination with formal institutions (Durand-Lasserve, 2004: 2-3). The distinction has further been seen as leading to a continuum of market types, ranging from formal land markets on the one extreme to informal land markets on the other, with different land delivery modes and transactions in between these two extremes.

Formal markets generally trade in real rights, that is, those appearing on deeds registries (leaseholds). In contrast, informal markets deal in rights (entitlements) that derive not from deeds registration, but from a myriad of socially sanctioned processes. It is widely believed that

in urban Lesotho, over 70% of the population obtain land through informal means, and that it is not only the urban poor who do so, but recent evidence from recently (2012) completed regularisation scheme in Maseru also points to active participation of relatively wealthy people. As noted earlier, land tenure registration occurs through two principal channels. The first is systematic regularisation and the second is sporadic regularisation. At the end of 2012, 55 000 urban land parcels, making up 2% of national land coverage, had been registered through systematic regularisation. Since the end of the Millennium Challenge Corporation's (MCC) financed systematic regularisation project, an estimated average of 2200 land parcels are being registered through sporadic regularisation annually (Chaka, et al, 2017:4)

There is significant paucity of data on land market activity in Lesotho, including Maseru. Some rudimentary data was put together by the MOPWT (2010) consultants, but even they seemed to have been at pains to present a reasonable picture of market activity in Maseru. They show that beyond the old Maseru urban boundaries (colonial reserve), the property market exists in isolated areas and land values in the city in general are marginal, with those on the urban fringe being merely symbolic. For instance, in 2003, Aliber, *et al* (2003) showed that in Lesotho, less than 170 properties were transferred per year between 1993 and the first quarter of 2003. It is possible that land transaction figures are much higher now with a streamlined registration and deeds process under the LAA.

Market activity has, until fairly recently, been constrained by slow title registration process. Work by Swedesurvey (2006) shows that the volume of registered leases was very low, as approximately 10 000 leases had been registered over the 25 year period since 1980 when the Land Act 1979 came into force. Over the same period, 27 000 lease applications had been lodged and over 40 000 plots had been surveyed, for which leases were yet to be prepared. Prior to the advent of the LAA, it took an average of one (1) year to register a new lease for land allocated from planned and surveyed layouts and anything up to eight years for land obtained through informal means. However, it would seem that the time taken to register land and property had been significantly reduced to an average of 60 days as of 2011/12 under the LAA.

It was anticipated that the number of days to register a new lease would have been reduced to 20 days by 2014/15, with the time taken to register a deed (transaction) on land reduced to 5 days in 2014/5 from 9 days in 2012/13 (LAA Strategic Plan 2012-2015).

4 LAND DISPUTE RESOLUTION

Land dispute in Lesotho are settled through two mechanisms, namely mediation and litigation.

4.1 Mediation

The formal mediation process was introduced with the establishment of the LAA in 2010. Its objectives are to reduce the cost and time required to resolve land disputes, with intention to come up with win-win solutions to disputes. In summary form, the mediation entails the following steps: i) the complainant approaches the Legal Department of the LAA with a compliant, where s/he will be requested to produce his/her land title documents; ii) having satisfied the LAA that s/he has rights on the land in dispute, s/he is the required to fill a dispute form which requires the particulars of both the complainant and those of the respondents. The information may be a telephone number, the name of area in which they reside or the particulars of the chief of the area; iii) the Mediator then contacts the respondent to make his/her own representations; iv) then the Mediator convenes a joint meeting of the complainant and the respondent; v) if the parties reach an amicable settlement, then a mediation agreement is drafted and signed and the signed mediation agreement becomes binding on the parties; vi) If a settlement cannot be reached the parties are directed to the land court (<https://www.laa.org.ls/services/legal-and-deeds/>).

4.2 Litigation Process

The land dispute litigation system was established by section 73 of the Land Act 2010. It consists of the Land Court and District Land Courts. The Land Court is a specialised court with jurisdiction on land and related matters and is a division of the High Court of Lesotho. The District Land Courts are subordinate courts that deal with land related disputes at district level. In terms of case load and disposal, the LAA's data indicates that between 2012 and 2018, 37

cases were lodged with the Land Court and were all finalized. In the District Land Courts a total of 1 789 cases were lodged, but only 33 percent were finalized (<https://www.laa.org.ls/services/legal-and-deeds/>).

5 VALUATION AND TAXATION

In Lesotho property tax is legislated by the Valuation and Rating Act 1980 (Act No. of 19). According to this Act, property tax can only be levied on properties that are located urban areas, and that have been designated as ratable areas by the Minister responsible for lands. The Act creates a Valuation and Rating Authority, which also comes into being by ministerial order. Only when an area has been declared a ratable area and the Valuation and Rating Authority undertake the valuation of land and property that is subject to property tax for the purpose of creating a valuation roll. The valuation roll should contain ownership, size, land use and value of property in the designated area. Property tax rates are classified by land use type. A property that is used for residential purposes is taxed at a rate of 0.25 percent; commercial property at 2.0 percent and industrial property at 2.75 percent (UN-HABITAT, 2015).

Since the enactment of this legislation, areas that have been designated as ratable urban areas are the Maseru municipality, and Teyateyaneng and Mafeteng urban areas. Of the three only the Maseru Municipality is a Valuation and Rating Authority, albeit with a rating coverage of only 16 per cent of the municipality (Figure 4).

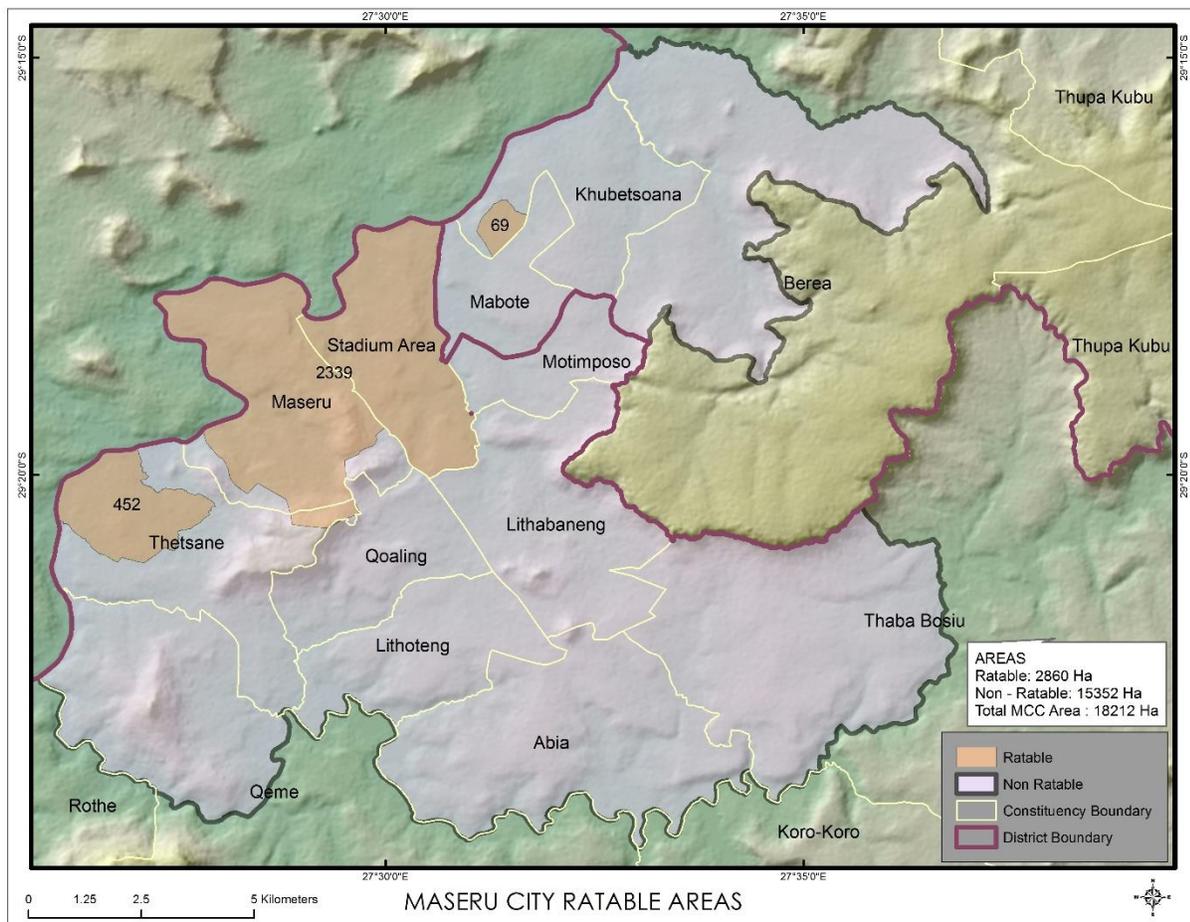


Figure 4: Gazetted Property Tax Areas in Maseru Municipality

Source: Digitized from Maseru Municipal Council Gazetted Areas Map

In practice, however, the Maseru Municipality is only able to collect rates from 10 per cent of the properties in the 16 percent ratable its area. The first reason is that a large part of the gazetted area consists of land and properties that are owned by the central Government of Lesotho. These are exempt from this tax because the government pays annual grants in lieu of tax on its properties to the municipality. The grants by central government are, however, far below what the municipality could collect in rates. For example, between 2005 and 2012, government grants to MMC ranged between M15 and M27 million, compared to M193 million

that the MMC could have collected in rates based on the value of government property that is located in in ratable area (UN-HABITAT, 2015).

The second reason is that the MMC is unable to collect from most residential land owners (except for company and corporate residential properties) because of poor enforcement, which may be attributed to numerous factors, key amongst which are: i) an outdated valuation roll; ii) financial billing system that is devoid of effective sanctions; iii) lack of capacity to sanction defaulters and; iv) shortage of staff in terms of numbers and appropriate skills (UN-HABITAT, 2015).

6 LAND USE PLANNING AND CONTROL

There are two frameworks that govern land use planning in Lesotho. These are based on whether the area is urban or rural. In urban areas the Department of Lands, Survey and Physical Planning of the Ministry of Local Government and Chieftainship is historically and is still currently responsible for urban land use planning (locally known as Physical Planning). Urban planning operates within the legal framework of the Town and Country Planning Act of 1980 (Act No. 11 of 1980) (TCPA 1980). In rural areas the Land Use Planning Division of the Ministry of Agriculture was historically responsible for land use planning. The function is not based on any legal framework, but on a manual – the Technical Manual for Land Use and Settlement Planning.

6.1 Land Use Planning Framework and Control

6.1.1 Urban Land Use Planning Framework and Process

The TCPA 1980 is the principal legislation that regulates land use planning in urban areas. The TCPA 1980 does not apply to the whole country but to areas that are designated by the Minister of Local Government as Planning Areas under Section 2 of the Act by publication in a government gazette. Presently there are 12 urban centers designated as Planning Areas. These are: Maseru (Maseru Municipal Council), Teyateyaneng, Maputsoe, Hlotse, Butha-Buthe,

Mokhotlong, Thaba-Tseka, Qacha's Nek, Quthing, Mohale's Hoek, Mafeteng and Semonkong (Figure 5).

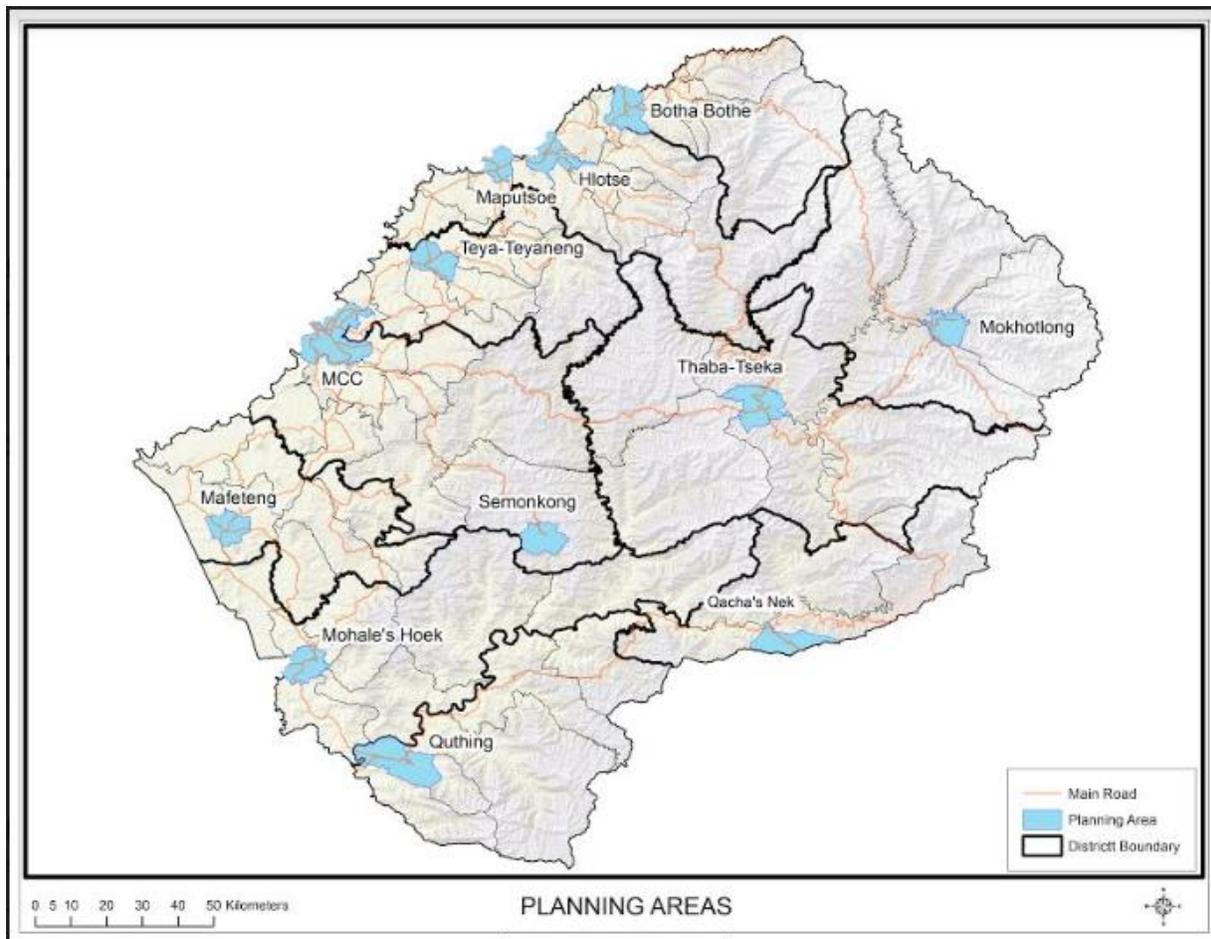


Figure 5: Gazetted Planning Areas.

The TCPA 1980 gives the Planning Authority⁶ the legal mandate to prepare development plans for areas that are designated as Planning Areas (section 5 of the TCPA 1980). The Act also

⁶ The planning authority is currently the Commissioner of Lands for all areas that have been designated as 'planning areas'. This was meant as a temporary arrangement in 1980 pending the establishment of local councils. However, the first urban local council was established in 1989 and only for Maseru, the capital city, under

establishes a Town and Country Planning Board for the purpose of examining development plans and making recommendations to the Minister responsible for local government for approval. In terms of Section 5(2) of the TCPA of 1980, a development plan should indicate *‘...the manner in which it is proposed that the area in question shall be used and developed, and the stages by which the development shall be carried out’*. In terms of public participation, the legislation compels the Planning Authority to publish in a government gazette and in at least one national newspaper an invitation to the public to lodge objections or comments in writing. The publication should indicate the land affected by such plans and the place where the plans are displayed for inspection. A period of two months is given for written objections to be presented to the Planning Authority in terms of section 7(1) of the TCPA 1980.

Once the development plan, with objections having being dealt with and finalized, the Minister approves the plan, which will in turn be published in a government gazette and a national newspaper (Section 7(2) TCPA 1980). Thereafter the development plan becomes a legally binding document to which all land development within the planning area must conform.

Several plans have been prepared in line with the requirements of this legal framework. Table 8 below is a summary of the plans that have been prepared to date.

Urban area	Plan	Date Developed	Adopted	Revision
Maseru				
	Maseru Development Plan	1989	1994	none
	Maseru CDB West Local Plan	1994	N/A	none
	Maseru CBD East Local Plan	1994	N/A	none
	The Maseru Urban Planning and Transport Study (MUP & T)	2010	No	none

the Urban Government Act of 1983 (Act No. 3 of 1983). The present system of local government as outlined in Section 2 of this report only came into place in 2005. Local councils do not automatically become planning authorities; they have to be appointed as such by legal notice by the minister responsible for local government. As of now, no local council has been legally appointed as a planning authority over its area of jurisdiction although in practice the councils (correctly municipal/urban councils) have acted and continue to act as if they were planning authorities.

Hlotse				
	Hlotse Structure Plan – Final Draft	1998	N/A	none
Butha-Buthe				
	Butha-Buthe Structure Plan – Final Draft	1997	N/A	none
Mafeteng				
	Mafeteng Planning Area: Structure Plan	2000	N/A	none
Maputsoe				
	Maputsoe Structure Plan	1996	N/A	none

Table 8: Urban Plans in Lesotho

Source: National Urban Profile (2015)

Not all the development plans listed above comply fully with the requirements of the legal framework. For example, none of the plans have undergone the 5-yearly review process that is prescribed by section 8(1) of the TCPA of 1980. With the probable exception of the Maseru Development Plan, also none of the plans went through the formal legal approval process in accordance with section 7(2) of the TCPA of 1980. Recent reviews of achievement show that none of these plans have been implemented as result of lack of political, administrative and financial support, as well as lack of institutional capacity at virtually all levels of government (Habitat III National Report 2015). Out of the 12 planning areas for which the development plans ought to have been made, the Planning Authority has only been able to prepare 5 such plans, which is further evidence of limited institutional capacity.

The Maseru Urban Planning and Transport Study (MUP&T Study) was also an unconventional type of plan. First, it was conceived under the auspices of the Ministry of Public Works and Transport, and not the Ministry of Local Government. Second, the conception and carrying out of the study/plan did not follow the legislative route explained above. This could explain why the study/plan was never legally approved as prescribed by law. However, the plan/study has been hailed as an excellent piece of professional work that had proposed practical

and implementable solutions to most planning problems of the capital city of Maseru (MTICM, 2015: 2019).

6.1.2 Rural Land Use Framework and Process

Land use planning was traditionally practiced in rural areas based more on land suitability assessment concentrating on preserving good agricultural land. The Land Use Planning Division was at the time based in the Ministry of Agriculture and Food Security. With the enactment of the Local Government Act 1997 the division was transferred to the Ministry of Local Government. The purpose of unifying the Department of Lands, Survey, and Physical Planning with the Land Use Planning Division has organizationally succeeded, but not in terms of unifying the different planning traditions (GoL, 2011).

In the pursuit of land use planning for rural areas (referred to as Community Councils) the Technical Manual for Land Use and Settlement Planning states the following objectives:

- To provide guide to land allocation and management;
- To enhance the orderly growth and development of settlements;
- To promote harmony among various uses of land to enhance productivity and facilitate access to services; and
- To protect the destruction of arable land, wetlands, watersheds, and other sensitive ecosystems (GoL, 2009).

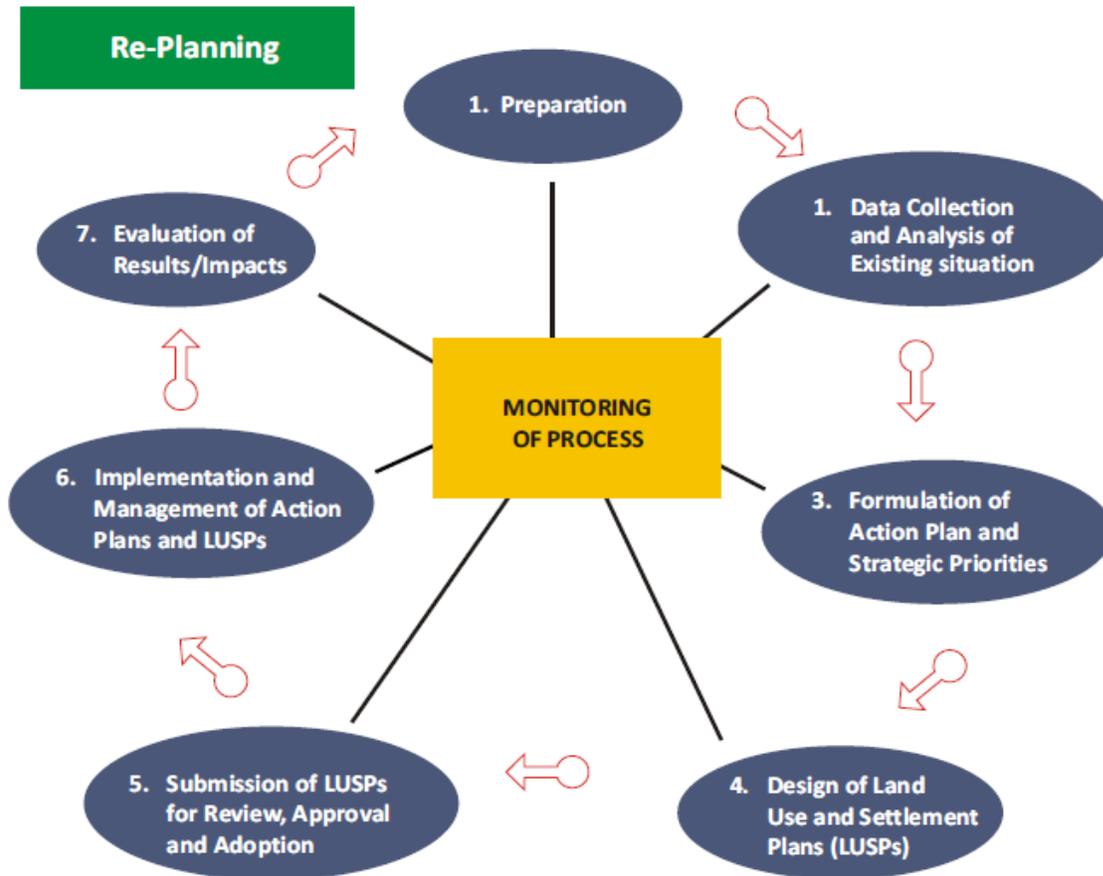


Figure 6: Land Use and Settlement Planning Process (LUSP)

Source: Government of Lesotho 2009

The introduction of the LUSP process was through pilot plans in Community Councils in the districts of Maseru, Botha-Bothe, Leribe, Berea, Mafeteng, Mohale’s Hoek and Quthing. With support from the GTZ, 99 Assistant Physical Planners were trained, and a cumulative 100 settlement layouts were prepared.

The planning challenges that have since been identified are:

- Weak institutional arrangement for LUSP process to succeed. Community Councils do not have the authority and the finance to implement settlement plans;

- The planning function is still centralized in the Planning Authority and all plans require approval at central level, which creates significant bottlenecks; and
- Change of priorities by Government in that there seems to be reluctance to fully decentralize the planning function because of the fear that unplanned encroachment into agricultural land might increase (Lerotholi & Putz, 2013).

6.2 Delivery of Services

As shown in section 6.1 the urban land use process and institutions have not been able to follow the prescripts of the legal framework. Land use planning is:

- poor financing – the Planning Authority has never had a budget for planning apart from recurrent spending;
- poor staffing in terms of numbers and specialised skills; and
- chaotic in that there are several institutions that make decisions that have an impact on planning but do so in isolation (UN-Habitat, 2015).

As a result of poor planning the major settlement problem in Lesotho is haphazard urban sprawl rather than slum conditions. The result is that the retrofitting of infrastructure services will be expensive (UN-Habitat, 2015).

6.3 Development Permits

As indicated in Section 6.1, the principal legislation that regulates and guides the development permits in areas that have been designated as 'planning areas' is the Town and Country Planning Act (1980) (T&CPA). As indicated in Section 6.1.1, the T&CPA mandates the Planning Authority to prepare development plans for the development of land in its area of jurisdiction. As soon as a development plan is approved, it becomes a legally binding document to which all development of land within the area to which it relates has to conform.

Another important piece of legislation in the development permit system is the Building Control Act 1995 (Act No. 8 of 1995). In broad outline, the Act prescribes building standards in order to ensure structural safety. Amongst other things, the Act sets standards on building materials,

fire resistance, ventilation, sanitation, plumbing and drainage. In order to ensure that standards are upheld, the Act establishes a Review Board, a Building Authority and Building Control Officers and spells out their roles and functions. Penalties for non-compliance are also prescribed.

As indicated in Section 6.1, once a development plan has been prepared, and made known to the public for their input and thereafter approved as required by law, all development in areas covered by the plan have to conform to it. In order to ensure that this happens, a system of development control is put in place, in which applications for planning permission are sought from the municipal and urban councils prior to any development taking place. The Commissioner of Lands as the Planning Authority, through the office of the Chief Town Planner, reserves the right to ‘call in’ any application for planning permission if they so wish.

However, the ability of the municipal and urban councils to perform this planning function is circumscribed by numerous problems. Key amongst these being widespread corruption and non-compliance with the requirements to obtain planning and building permissions, for which councils are ill-equipped to deal with due to limited physical and financial resources; significant political interference by central government agencies, such as those reported by the Ramodibeli Commission in 2000 in the case of the Maseru Municipality Council (Box 4).

Besides the corruption of some key officers in the Maseru Municipal Council, the Ramodibedi commission found that all the five major commercial buildings in the CBD of Maseru that were the subject of the inquiry had been constructed/re-constructed without prior approval in writing of both the planning and building authorities. The construction/reconstruction was, therefore, found to have contravened Section 18 of the Building Control Act of 1995 read with Section 4(1) and (2) of Town and Country Planning (Development) Regulations No. 233 of 1991 as amended. These buildings are: MetCash Building; Tradorette Wholesale Development Building; Pick and Pay Hypermarket Building; Husted’s Building and the LNDC Building. These were amongst the numerous building structures that were significantly destroyed by arson during the 1998 political riots in Lesotho (GoL, 2003)

Box 4: Example of Non-compliance with Planning and Building Regulations.

Another major drawback that was highlighted in Section 6.1, is that not all councils have development plans for their planning areas, which makes it difficult to manage development permits without the necessary planning frameworks.

6.4 Land Use Control

Section 9 of the TCPA of 1980 requires that permission be sought before there is a change in land and/or building use and the carrying out of development in a Planning Area. The Town and Country Planning (Land use and Building use Classes) Order 1991, provides details of what constitutes change of land and/or building use, and the Town and Country Planning (Development) Order 1991 outlines the procedure for application for planning permission, as well as specifying uses that are considered as permitted development, for which application for planning permission is not required. The intension is to reduce the load of applications for planning permission by giving blanket permission to what is considered to be minor development, including development by statutory undertakers, such as the military and police and the roads, electricity and water authorities.

The legal framework is further buoyed by quasi-legal documents in the form of the Development Control Code of 1989 and The Planning Standards of 1990. The Development Control Code of 1989 is a mechanism to control the relational aspects of building structures and the plots on which they are located, including the nature of the built environment around newly proposed development. This is achieved by prescribing minimum setbacks, number of units in a plot, sanitation and other infrastructure services to be provided. The Planning Standards of 1991 set minimum standards below which development would not ordinarily be permitted. They regulate such issues as plot size, roads, public facilities, commerce, industry and related issues.

Although the legal framework to control land use exists in Lesotho, the evidence on the ground reflects dismal lack of enforcement. Some of the reasons for this failure include, but are not limited to, lack of capacity to enforce development control regulations, lack of institutional coordination in implementing control of urban development, and lack of financial, administrative and political support for the planning function (UNHABITAT, 2015).

6.5 Climate Change and Environmental Management

The Lesotho National Climate Change Policy 2017 -2027, through its policy statement 12, (climate proofing human settlements and infrastructure) aims to mainstream climate change into future land use plans (GoL, 2017). This is proposed because past land use planning efforts have not taken climate change issues into account. The policy identifies the following key challenges in Lesotho:

- Settlements and infrastructure are not safeguarded against consequences of climate change;
- Lack of infrastructure and poor access to services exacerbates vulnerabilities of communities to disasters caused by climate change;
- Urban and rural planning policies are inadequately enforced; and
- Most communities are highly dependent on climate sensitive sectors e.g. agriculture.

In an effort to confront these challenges, the policy outlines the following objectives:

- Climate proofing of housing and infrastructure by ensuring that their designs two are climate resilient;
- Revision of building codes in an effort to incorporate climate factors;
- Enhancing proper planning of settlements (rural and urban);
- Instituting climate change related disaster management programmes for communities;
- Establishing climate change awareness programmes for communities and all stakeholders; and
- launching plans for disaster management and preparedness for relocation during climate change induced disasters;

Apart from the National Climate Change Policy 2017 – 2027, the Environment Act 2008 (Act No. 10 of 2008) further builds on the commitments in Section 36 of the Lesotho Constitution to develop policies designed to protect and enhance the natural and cultural environment of Lesotho. The provisions of the Act that have a bearing on land use planning are:

- the setting aside of land for nature conservation;
- the control of land uses with adverse environmental impacts (waste disposal and other polluting activities);
- the establishment and enforcement of environmental quality standards;
- the development and implementation of management procedures for land identified as at risk from environmental degradation; and
- the issuing and enforcement of environmental restoration notices in cases where land users are in contravention of the act.

6.6 Enforcement of Environmental Protection

The Environmental Act 2008 outlines the enforcement of environmental protection on all aspects of the environment except solid waste. Furthermore, environmental units within line ministries are tasked with enforcing compliance with environmental standards and guidelines. However, the enforcement of environmental protection has to date been minimal and the land use plans that have been prepared in the recent past have not taken climate change into account.

7 MANAGEMENT OF PUBLIC LAND

7.1 Public Land Inventory

There is no known inventory of public land in Lesotho. However, the custodian of such public land is the Commissioner of Lands, who, under the Land (Amendment) Act 2014 is mandated to deal with acquisition of land under Part VIII of the Land Act of 2010, which deals with acquisition of land by government, as well as Part IX, which deals with acquisition and expropriation of land for public purposes. Along with acquisition of land, the Commissioner is mandated to prepare or execute and keep records of all public servitudes; records of land held by the government inside and outside Lesotho, as well as dealing with land interests on behalf of the State and to keep appropriate records of such dealings. The main categories of land held

by the State include land for government offices, government housing, public schools, public health facilities, urban and national parks, national forests, mining, water reservoirs, and the police and military installations.

7.2 Allocation of Public Land

All urban and rural councils and the state-owned LHLDC are direct beneficiaries of land acquired under parts Part IX of the Land Act 2010 for subdivision, servicing and final disposal. Once serviced, such land is normally made available for sale through advertisement and any member of the public is free to apply for such advertised plots. Criteria for allocation are usually proof of ability by applicants to pay for the land, with selection normally being on a first-come-first-served basis. Highlighted briefly below are processes of land allocation by the LHLDC, which has a relatively well-documented set of procedures compared with local councils.

7.2.1 Lesotho Housing and Land Development Corporation (LHLDC)

The LHLDC was set up in 1988, pursuant to Section 3 of the Lesotho Housing and Land Development Corporation Order (Commencement) Notice No 87 of December 8th 1988. The LHLDC is a merger of the then Lower Income Housing Company (LEHCO-OP) and the Lesotho Housing Corporation (LHC). The merger meant that the LHLDC inherited the assets and liabilities of the two founding companies. The corporation operates without any capital grant or funding from government as it was conceived as a self-financing entity, which was mandated to undertake land development (site-and-services) and housing (including cooperative housing) on self-financing bases.

Additional mandates of the LHLDC as spelt out in Section 5 of the founding law include:

- Assisting private parties to develop land and deliver housing;
- Engaging in the development and management of rental housing schemes where it is deemed to be in the economic interest of the Corporation to manage the property;

- Assisting in the mobilisation of capital available to the shelter sector by emphasizing in its activities efficiency and cost-recovery programmes to ensure a good return on investment; and
- Developing a long-term capital program that will assure the Corporation’s continuing financial viability and ability to remain a vital participant in Lesotho’s shelter sector.

As a state-owned land and housing developer, the LHLDC benefits from formal land allocation by government as free grants, as well as assistance to acquire greenfield land by the Directorate of Lands, Surveys and Physical Planning, for which the corporation pays compensation to landowners (usually arable land). It thereafter deploys its own internal rules and beneficiary selection criteria. However, the imperative to be financially self-sufficient has compelled the LHLDC to consider affordability as the only criterion for access to its serviced sites and houses. This could explain why the corporation has not been able to develop and deliver housing to very low-income households as had been anticipated (LHLDC, 2011).

7.2.2 Maseru Municipal Council

The MMC’s main involvement in land delivery has been to facilitate the acquisition of land for servicing and development by other agencies, such as the LHLDC. Direct involvement of the council in land subdivision, servicing and allocation has so far been relatively minimal. The absence of vacant land for acquisition by the MMC within council boundaries and the lack of financial resources with which to pay compensation for acquiring masimo (fields) land are constraints that hamper the MMC from delivering any significant amount of land into the market. It is not clear how active the urban councils outside the Maseru municipality are in terms of land acquisition and allocation.

8 LAND INFORMATION

8.1 Public Provision of Land Information

Datasets of cadastral data are mainly in the form of ESRI shapefiles. The standard coordinate system used is the Longitude of Origin (LO) coordinates system with either 27° or 29° as the

central meridian, using the Cape Datum. The major challenge with the Cape Datum is that it introduces some data shifts of about 300m (eastings) and 20m (northings) when its data are combined with external datasets that use newer global datum, like the World Geodetic System 84 (WGS 84) Datum. These datasets are digitized from 2016 orthophotos with spatial resolution of 35cm. Apart from these orthophotos, satellite images with a spatial resolution of 5m are available. However, these shapefiles do not have enough attribute data associated with them or any metadata.

The software that is mainly used within the LAA to manipulate this data is ArcGIS version 11. Other software in use are Manifold, Solutions for Open Land Administration - SOLA (Coordinates 2015) and Landfolio Land Management Software. SOLA further provides access to land information to authorized external institutions, such as financial institutions utilities companies, tax authorities, courts of law, and others, without compromising the security of the cadastral data (Chaka *et al.*, 2017).

The cadastral information is used for the purposes of relating plots to owners through the registration of leases. The land information system records the position of the plot, the precise boundaries, plot size, land owner, land use and land transactions relating to it. Property registration procedures, processes and fees are freely available to the public on-line. There is, therefore, a high degree of publicity of property registration data. Information on land ownership (for registered properties only) can be obtained by anyone who pays the official fee as prescribed by the LAA. This is an indication that accessibility to land information is above average. The land information system is not very reliable because not all land plots in the country are formally registered. The proportion of registered is much higher in urban areas and much less in rural area. The information is also not reliable because the land information system is unable to provide an electronic database on encumbrances (for example lien, restriction and related issues) (World Bank, 2019).

8.2 Land Administration Services

Maps of land plots can be inspected by anyone at the LAA offices free of charge. But in the event that any person requires a copy, it can be made available at prices shown in Table 7.

Map Scale	Type	Date	Price (per flat paper sheet or digital raster image or vector file)
1:250,000	National satellite image, colour, 2 sheets (north and south)		M100 M200 (per set)
1:2,500	Urban areas, colour, excluding cadastral plots		M200 (digital per A0 sheet) M100 (A0 size print) M75 (A1 size print) M50 (A2 size print) M30 (A3 size print) M20 (A4 size print)
1:2,500	Urban areas, colour, excluding cadastral plots		M150 (digital per A0 sheet) M75 (A0 size print) M50 (A1 size print) M35 (A2 size print) M25 (A3 size print) M15 (A4 size print)

Table 7: Map Prices

Source: <https://www.laa.org.ls/laa-price-list/>

Other GIS datasets are made available to the public and institutions at no cost. Typical examples are datasets that were offered to Open Street Map (Open Street Map Wiki 2019).

9 LAND GOVERNANCE: KEY CHALLENGES IN LESOTHO

9.1 INSTITUTIONAL AND POLICY OVERLAPS AND CONFLICTS

Despite the Land Act of 2010 (Section 3 of this report) and the institutional framework of land administration that it created, land management remains chaotic at best, with numerous agencies and government ministries and departments in one way or the other claiming some

stake in land matters. The MTICM (2015), for instance, notes that land-related management is uncoordinated, with overlapping and often conflicting mandates between government agencies. At national level, the control of land use/physical planning is entangled in struggles between agencies in the Ministry of Local Government and the Land Administration Authority. At local levels, similar struggles exist between local councils and customary authorities (hereditary chiefs). There is therefore, urgent need to streamline land management functions and delineate clear lines of responsibility and enforce them.

9.2 ENFORCEMENT OF ENVIRONMENTAL PROTECTION

Despite the Environment Act of 2008 and the National Climate Change Policy 2017 – 2027, the enforcement of environmental protection has to date been very minimal and land use plans that have been prepared to date have not taken climate change into account.

9.3 LACK OF LAND USE PLANNING CAPACITY

There are 12 planning areas for which development plans ought to have been prepared, but only 5 planning areas have such plans. However, even these are terribly out of date. Not all the development plans also comply fully with the requirements of the legal framework, such as the need to review the plans every five years. Also, with the probable exception of the Maseru Development Plan of 1990, none of these plans went through the formal legal approval process as required. Recent reviews of achievement also show that none of these plans have been implemented as a result of lack of political, administrative and financial support, as well as lack of institutional capacity at virtually all levels of government. Other challenges include, but are not limited to:

- Weak institutional arrangement for planning, with councils having no authority and the finance to prepare and implement settlement plans;
- The planning function is still centralized in the Planning Authority and all plans require approval at central level, which creates significant bottlenecks; and

- Apparent reluctance by the central government to decentralize planning functions because of the fear that unplanned encroachment into agricultural land might increase.

Where some planning functions do take place, such as in the Municipality of Maseru, the ability of the municipality to perform is also hampered by corruption, and the culture of non-compliance with the requirements to obtain planning and building permissions, for which the council is ill-equipped to deal with due to limited physical and financial resources, including significant political interference by central government agencies.

9.4 INCOMPLETE LAND REGISTRATION

Land registration occurs through two principal channels. The first is systematic regularisation and the second is sporadic regularisation. As outlined in Section 3.2, of the report, systematic regularisation is facilitated through Part XI of the 2010 Land Act and is detailed further in the Systematic Regularisation Regulations 2010. The purpose was to enable retrospective legalization of informal land allocations. This has had positive impacts on tenure security. At the end of 2012, 55 000 urban land parcels, making up 2% of national land coverage, had been registered through systematic regularisation. Since the end of the systematic regularisation project, an estimated average of 2200 parcels is being registered through sporadic regularisation every year.

However, most land in rural areas is neither registered nor recorded in any form. The proportion of land reported as registered in the population 2016 population census refers to land parcels that are predominantly used for residential, commercial, and industrial and other non-agricultural uses. Most land that is used for crop farming, consisting of small-landholdings (family fields) and land that is used communal pastures is not formally registered, including most land that is owned by the government.

9.5 LACK OF COMPENSATION POLICY

Lesotho lacks a unified compensation policy. At the moment there are numerous compensation systems in Lesotho. For instance, the Lesotho Highlands Water Project has its own land acquisition and compensation policy. In 2003 the MoPWT had a draft Compensation and Resettlement Policy Framework in place. In the same year the Ministry of Local Government (MoLG) prepared its own draft compensation bill that is yet to be enacted into law. The fate of the two drafts is not known. In the absence of a policy framework by the MoLG as the ministry that is responsible for land, the main beneficiaries of public land acquisitions, namely, the urban councils and the LHLDC, have each adopted land acquisition and compensation practices that are largely governed by exigencies of each and every land acquisition project. However, the fragmented nature of acquisition and compensation practices does not augur well for good land governance.

9.6 IMPROVEMENT IN THE LAND MARKETS FUNCTIONS

Incomplete registration has direct bearing on land market activity. Until fairly recently, slow title registration and the registration of deeds had significantly constrained land markets. Work by Swedesurvey (2006) shows that the volume of registered leases was very low, as approximately 10 000 leases had been registered over the 25 year period since 1980 when the Land Act 1979 came into force. Over the same period, 27 000 lease applications had been lodged and over 40 000 plots had been surveyed, for which leases were yet to be prepared. Prior to the advent of the LAA, it took an average of one (1) year to register a new lease for land allocated from planned and surveyed layouts and anything up to eight years for land obtained through informal means. However, it would seem that the time taken to register land and property had been significantly reduced to an average of 60 days as of 2011/12 under the LAA. It was anticipated that the number of days to register a new lease would have been reduced to 20 days by 2014/15, with the time taken to register a deed (transaction) on land reduced to 5 days in 2014/5 from 9 days in 2012/13 (LAA Strategic Plan 2012-2015). The LAA is also recording the registration of over 2200 land parcels per year under sporadic regularisation, this

is in addition to the inventory of 50 000 titles that had been registered under systematic regularisation project that ended in 2013. This is likely to energise the nascent land market that currently exists in Lesotho.

9.7 ACCESS TO LAND FOR WOMEN

Although the Land Act 2010 and the Legal Capacity of Married Persons Act 2006 (Act 9 of 2006) have removed the minority status of women with respect to joint family estates and conferred equal rights to land and property for both men and women who are married in community of property, the minority status of women still persists at local (family) level. The Habitat for Humanity Lesotho (HfHL), for instance, reports that at local levels, national policy and legal frameworks are ignored, with deference being routinely to customary law or some cultural practices where women's rights are undermined. As noted in the report, the HfHL attributes this to patriarchy, where women assume subordinate positions in key decision-making at family, as well as economic and political levels. This patriarchal dominance undermines women's land tenure security by making it difficult for institutions to uphold and enforce the legal and policy frameworks that are meant to advance gender equality.

Another significant factor noted by the HfHL, which undermines the practical enforcement of gender equality is Lesotho's legal pluralism, where 'the family, custom, state, international community, the church and customary law are all sources of regulation and law in the country' (HfHL, 2018: 13). Legal pluralism has opened a series of loopholes that different actors are able to manipulate to disadvantage women and other vulnerable groups. These loopholes have also exacerbated the complexity of land governance in Lesotho. Therefore, there is need to ensure that national policy and local level practices are reconciled in order to safeguard the land and property rights of women (especially widows) and other vulnerable groups (such as orphans).

9.8 Managing Urban Sprawl⁷ (Case Study)

This is the story about a site-and-service project that went terribly wrong and ended up as guided land-development scheme, but with telling lessons of experience. It is a story of a new approach to the planning of peri-urban settlement in Maseru in the area now popularly known as Mabote. Mabote was initially conceived as a site-and-service scheme but the land use conflicts that eventually ensued during the process of implementation forced a change in approach, expectations and outcomes. This section highlights these conflicts and summarises the approach that was eventually adopted and the final outcomes. I argue in this section that had we taken a cue from this legacy and improved on it, Maseru, and indeed the rest of urban Lesotho, would not be the mess that it is today. The management of the peri-urban interface would have also been much improved.

9.8.1 Guided Land Development: Learning from Home-grown practice

The site for the Mabote (Plate 1) site-and-services project is a 640-hectare site at Ha Mabote⁸, which is adjacent to the Khubetsoana World Bank low-income housing area, where, as noted elsewhere (Leduka 2000), land was successfully acquired by the government without compensation. Note that before 1986, urban agricultural land was held under licence rights, for which compensation was not payable in the event that the government the land for public projects. Devas (1989) argues that the turn of events at Ha Mabote was set in motion by experiences at Khubetsoana:⁹

⁷ Source: Leduka, R. C. (2008) “Urban Land Use Planning and Settlement Upgrading in Maseru”. Paper presented to the *Sustainable Maseru City Programme Consultation Workshop*. Maseru, Feb. 5-7

⁸ The first author was a member of the counterpart team that was seconded by the LSPP to the project when it was launched in 1984 –1985 and participated in the feasibility studies commissioned by the ODA, as well as the compilation of an inventory of land allocations by chiefs and the on-site identification and mapping of masimo by owners and allottees. The second author worked for the Mabote Project as Town Planner for several years. Therefore, these two authors are intimately familiar with the issues involved.

⁹ The area known as Mabote Project includes arable land belonging to three villages: Khubetsoana, Ha Mabote and Sekamaneng. Some residents of the Khubetsoana village who lost their land to the low-income project, also had

When the masimo-owners in Mabote area [which at that stage was virtually undeveloped] saw that their neighbours in Khubetsoana had lost their land without compensation, they feared the same fate and rushed to sub-divide their masimo and sell plots for private development. (Devas, 1989: 210)

land in the area falling under the Mabote Project and, because they had already lost land to state for the low-income project, they obviously were not willing to lose the rest of their land in the same way.



Plate 6 Ha Mabote Area

Indeed, as Devas (1989) suggests, government had to act. In 1984 Ha Mabote was declared a selected development area and project activities commenced in September of the same year under the co-sponsorship of the British Overseas Development Administration (ODA) and the Lesotho government. As alluded to in the introduction, the project was initially conceived as a site-and-service scheme, but it ended up as a form of a ‘guided development’ that aimed “to work with - rather than ignore the existing processes of private sub-division” (Devas, 1989: 211).

Theko (1998) tells us that land sub-division at Ha Mabote as having been “triggered by the anger of the traditional leaders following the usurpation of their authority” (1998: 10) and not, as Devas (1989 above) and this author would argue, by the appropriation of land without compensation at Khubetsoana across the road. Nevertheless, whatever the factors behind illegal development at Ha Mabote were, experiences from the implementation of the project are interesting in their own right because they illustrate how chiefs and their subjects were able to cope with onerous enforcement of state rules, namely, appropriation without compensation. First; we consider how chiefs and their subjects mobilised the army,¹⁰ when forceful removal of illegal occupations at Mabote was imminent. Second, we consider how chiefs and their subjects manipulated the project to their advantage through what James Scott (1985) would have called ‘false compliance’, which was made possible by contradictions in the law and inconsistencies in enforcement strategies.

According to Theko (1998), following the declaration of Ha Mabote as an SDA in 1984, the Minister of Interior (responsible for lands) was advised to remove illegal occupations and occupants from the project area. However, while preparations for eviction were in progress, one of the chiefs of the area had secretly approached one of the army barracks to announce that the price of urban plots in her area had been reduced to a quarter of the going price (then US\$400 to US\$100). “Her aim ... was to ensure that government would find the place too hot to

¹⁰ The army then was described by many as unruly and corruptible (see for example Matlosa, 1999).

touch.... [And] on the morning that trucks and convict labour [prisoners] were being assembled for action on the site, the Minister of Interior called off the process” (Theko, 1998: 14), by direct order from the Prime Minister. Thereafter it was resolved that illegal occupations would be accepted and regularised. According to Theko (1998), therefore, chiefs and their subjects accepted the project only after an undertaking that existing illegal allocations would be recognised, with the price to plot holders being to accept the reduced plot sizes that were to result from the re-planning process.

However, as known from the experience of the author, Theko (1998) stops short of indicating that, in order to sell the project to the Ha Mabote’s masimo and plot owners, the executing officers not only ignored on-going sub-divisions, but, as an additional sweetener, they also urged masimo-owners who had not yet sub-divided their masimo to do so quickly, whilst allowing for road reserves to be demarcated. This opened up opportunities for masimo owners, especially those towards the outermost periphery of the project area, where demand for plots was virtually non-existent at that time, to draw up extensive lists of fictitious plot buyers, which had no relationship to the size of individual masimo, and many masimo owners were able to make significant windfall gains as a result. Reflecting on the issue, one planning observer recently quipped that “even in the Mabote project, you remember that one sometimes had to step outside the law and this is why some semblance of planning exists in this area” (identity withheld).

With a pledge from government that illegal allocations would be accommodated, chiefs were able to persuade their followers to hasten the sub-division process, albeit still under the pretext that government was going to take their land without compensation if it found the land unsold. Theko (1998) argues, therefore, that chiefs embraced the project not because of general benefits that would accrue from it, but only as a ploy to focus demand for housing land on their area and were thereby able to extract the greatest pecuniary benefits. To the chiefs, these benefits were fees for backdated allocation certificates (about US\$20 in 1984/85 prices for each

certificate) and a plot from every masimo sub-divided for the chief to sell for himself/herself (Theko, 1998).

But the story does not stop there. It would appear that chiefs and land-owners merely took advantage of the contradictions inherent in formal rules, which recognized certificates provided under repealed law (the Form C) as evidence of valid allocation in some cases and withheld recognition in other but similar cases. Therefore, with this much room for maneuver, chiefs, masimo-owners and their clients not only accelerated the sub-division process, but went a step further to sell Form Cs that did not relate to any specific piece of land on the ground or numerous Form Cs that related to the same piece of land, and left it to the project to accommodate such cases in the scheme. Unfortunately for the project, the emerging ‘chaos’ (Theko, 1998), which the project could not resolve, forced the ODA to withdraw its support and the infrastructure and service provision components of the project collapsed.

An international observer has, nevertheless, remarked that, despite the technical problems that confronted the implementation of the project, it was by working with, rather than against existing property interests that the Mabote Project achieved some success in ensuring a rational layout of plots (Devas 1989). When the project was changed to a department of Urban Development Services (UDS) in 1990, it had provided 3 600 planned sites for a beneficiary population of 18 360 people (4 400 households). This represents an average of 900 plots per year over four years (1986-1990), quite a feat compared to the system of urban land committees and direct grants by the lands Minister. Theko concludes, and correctly so, that, “[i]n the end, it was not the designation of the area as a Selected Development Area that allowed the project to work, but it was the patience with negotiations and the readiness to adapt to prevailing circumstances” (1998: 16). One could add further that at the initial stages of the project, the process of implementation was a hazardous undertaking, with project personnel having to endure incessant abuse from both masimo owners and their clients, including physical assault. Therefore, over and above painstaking negotiations and readiness to

adapt to extant circumstances, there was a risk premium that the project staff had to pay as a price for people's compliance. Are modern day planners up to the challenge?

10 REFERENCES

African Housing Finance Yearbook (2018) *Housing Finance in Lesotho*.
<http://housingfinanceafrica.org/countries/lesotho/> downloaded 17/01/2019.

Aliber, M., Bohloa, T. and Makhakhe, T. (2003) *Economic Implications of a New Land Act for Lesotho*. APCBP Lesotho Land Policy Harmonisation and Strategic Plan Project. Maseru: Mimeo.

Chaka, M., Lepheana, M. & Tlali, T. (2017) 'Delivering Land Administration Services At Scale' *Paper Prepared For Presentation At The 2017 World Bank Conference On Land And Poverty* The World Bank, Washington Dc, March 20-24, 2017

Devas, N. (1989) 'The Evolution of Urban Housing Projects in Lesotho', *Land Use Policy* 6(3), pp. 203-216.

Durand-Lasserve, A. (2004) 'Can Neo-customary Land Delivery Systems Provide Land for the Low-incomes in Sub-saharan African Cities'.
https://www.google.co.ls/url?sa=t&rct=j&q=&esrc=s&source=web&cd=10&ved=2ahUKEwiun47tq57kAhUSsXEKHYiQCCIQFjAJegQIBxAC&url=https%3A%2F%2Fwww.fig.net%2Fresources%2Fproceedings%2F2004%2Fnairobi_2004_comm7%2Fpapers%2Fts_01_1_durand_lasserve.pdf&usg=AOvVaw0wsBm55EyN9fH80FdcF8yg. Accessed 24/08/2019

Fogelman, C. (2016) 'Measuring Gender, Development and Land: Data-Driven Analysis and Land Reform in Lesotho'. *World Development Perspectives*. 1: 36-42.

Government of Lesotho (1995) *Building Control Act 1995*. Act No. 8 of 1995. Maseru: Government Printers.

Government of Lesotho (2003) *Report of Commission of Inquiry (Reconstruction of Maseru City Centre)*. Maseru: Ministry of Local Government.

Government of Lesotho (2009) *Technical Manual for Land Use and Settlement Planning Process*.

Maseru: Ministry of Local Government, Chieftainship, and Parliamentary Affairs

Government of Lesotho (2011) *Draft National Land Use Policy*. Maseru: Ministry of Local Government, Chieftainship, and Parliamentary Affairs

Government of Lesotho (2015) *Habitat III National Report*. Maseru: Ministry of Local Government, Chieftainship, and Parliamentary Affairs

Government of Lesotho (2017) *National Climate Policy*. Maseru: Ministry of Energy and Meteorology.

Habitat for Humanity Lesotho (2016) *Understanding Current Land Ownership Policy, Systems and Gaps*. Maseru: Habitat for Humanity Lesotho.

Habitat for Humanity Lesotho (2018) *Women's Access to Land and Housing in Lesotho*. Maseru: Habitat for Humanity Lesotho.

Land Administration Authority (2012) *Strategic Plan 2012-2015*. Maseru: LAA.

Land Administration Authority (2018) <http://laa.org.ls/dedi713.jnb2.host-h.net/services/legal-and-deeds/downloaded> 07/12/2018

Leduka, R. C (2014) 'Planning & Settlement Upgrading In Maseru'. *Maseru City Slum-Upgrading Consultation Programme*. May 14th. Manthabiseng Convention Centre. Maseru

Leduka, R. C. (2000) 'The Role of the State, Law and Urban Social Actors in Illegal Urban Development in Lesotho', *Unpublished PhD Thesis*, University of Wales, Cardiff.

Leduka, R. C. (2004) *Informal Land Delivery Processes and Access to Land for the Poor in Maseru, Lesotho*. University of Birmingham: International Development Department.

Leduka, R. C. (2004) *Informal Land Delivery Processes and Access to Land for the Poor in Maseru, Lesotho*. University of Birmingham: International Development Department.

Leduka, R. C. (2008) 'Urban Land Use Planning and Settlement Upgrading in Maseru. Paper presented to the *Sustainable Maseru City Programme Consultation Workshop*. Maseru, Feb. 5-7.

Leduka, R. C. (2012) 'Privatising Land Rights In Pursuit Of Poverty Reduction: Commentary On The 2010 Lesotho Land Reform Project'. Paper presented to the Urban LandMark conference on *Investing in Land and Strengthening Property Rights* Johannesburg, 12-13 April, 2012. https://www.google.co.ls/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwifz9XQgp_kAhWaSxUIHTGhCTMQFjAAegQIABAC&url=http%3A%2F%2Fwww.urbanlandmark.org.za%2Fconference%2F2012_presentations%2Fclement_paper.pdf&usg=AOvVaw3GcZcUmunAHCKHjRb_TJh4. Accessed 24/08/2019.

Leduka, R. C. (2012) 'Privatising Land Rights in Pursuit of Poverty Reduction: Commentary on the 2010 Lesotho Land Reform Project'. Paper presented to the Urban LandMark conference on *Investing in Land and Strengthening Property Rights* Johannesburg, 12-13 April, 2012. https://www.google.co.ls/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwifz9XQgp_kAhWaSxUIHTGhCTMQFjAAegQIABAC&url=http%3A%2F%2Fwww.urbanlandmark.org.za%2Fconference%2F2012_presentations%2Fclement_paper.pdf&usg=AOvVaw3GcZcUmunAHCKHjRb_TJh4. Accessed 24/08/2019.

Lerotholi P. J. and Putz J. (2013) *Final Report of GIZ's Support to Land Use and Settlement Planning Process in Lesotho*. Maseru: GTZ

Lesotho Housing and Land Development Corporation (2011). 'Partnering With the Lesotho Housing and Land Development Corporation: Opportunities, Constraints and Prospects'. *Position Paper to Be Presented To the Inaugural Conference of the BOLESWANA Housing Association Namibia*. Maseru: LHLDC.

LSPP, (1990) *Maseru Development Plan: Development Proposals Vol. 2*. Maseru. LSPP.

Ministry of Health (Lesotho] and ICF International (2016) *Lesotho Demographic and Health Survey 2014*. Maseru: Ministry of Health and ICF International.

Ministry of Public Works and Transport (MPW&T) (2010) *Maseru Urban Planning and Transport Study*. ROM Consulting.

Ministry of Trade and Industry, Cooperatives and Marketing (2015). *Master Plan Readiness Study and Terms of Reference 2015 Inception Report*. Maseru: MTICM.

Ministry of Trade and Industry, Cooperatives and Marketing (2019). *Lesotho Urban Agenda Support Programme: Draft Costed Proposal*. Maseru: MTICM.

SwedeSurvey (2006) *Status of Land Information Systems and Land Registration Systems in Lesotho: Baseline Study Report*. Maseru: Ministry of Finance & Development Planning.

Theko, M. (1998) *The Mabote Project: Coping with Rapid Urbanisation in Maseru*. UN-HABITAT Best Practices Database Website <http://www.bestpractice.org/cgi-bin/bp98.cgi?cmd=detail&id=4722...>

UNDP (2015) *Lesotho National Human Development Report: Leveraging the Power of Youth to Promote Human Development*. Maseru: UNDP.

UNHABITAT (2005) *Land Tenure, Housing Rights and Gender in Lesotho*. Nairobi: UN-HABITAT

UN-HABITAT (2015) *Lesotho National Urban Profile*. Maseru: Ministry of Local Government, Chieftainship, and Parliamentary Affairs

World Bank (2019) *Doing Business 2019: Economic Profile Lesotho*. World Bank Group. www.doingbusiness.org. Downloaded 23rd November 2018.

Cited Government Acts and Regulations

Government of Lesotho (1967) *Deeds Registry Act 1967 (Act No 12 of 1967)*. Maseru: Government Printers.

Government of Lesotho (1980) *Survey Act 1980 (Act No. 14 of 1980)*. Maseru: Government Printers.

Government of Lesotho (1980) *Town and Country Planning Act 1980 (Act No. 11 of 1980)*

.Maseru: Government Printers

Government of Lesotho (1991) *Town and Country Planning (Development) Order 1991*. Maseru:

Government Printers

Government of Lesotho (1991) *Town and Country Planning (Land Use and Building Use Classes)*

Order 1991. Maseru: Government Printers

Government of Lesotho (1993) *Constitution of Lesotho*. Maseru: Government Printers

Government of Lesotho (1997) *Local Government Act 1997 (Act No. 41 of 1997)* (as amended).Maseru: Government Printers.

Government of Lesotho (2006) *Lesotho: Legal Capacity of Married Persons Act 2006 (Act 9 of 2006)*. Maseru: Government Printers.

Government of Lesotho (2010) *Land Act 2010 (Act No. 8 of 2010)*. Maseru: Government Printers.

Government of Lesotho (2010) *Land Administration Authority 2010 (Act No. 43 of 2010)*. Maseru: Government Printers.

Government of Lesotho (2010) *Systematic Land Regularisation Regulations 2010 (Legal Notice 103 of 2010)*. Maseru: Government Printers.

Government of Lesotho (2011) *Land Regulations 2011 (Legal Notice 20 of 2011)*. Maseru: Government Printers.

Government of Lesotho (2011) *Sectional Titles Bill (2011) (Draft)*. Maseru: Ministry of Local Government

Government of Lesotho (2013) *Deeds Registry (Amendment of Schedule) Regulations 2013*: Maseru: Government Printers.