

# **GEOFFREY PAYNE & ASSOCIATES**

## **Regulatory Guidelines for Affordable Shelter** Regulatory Frameworks Governing Access to Legal Low-Income Housing in Maseru

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## Glossary of Acronyms

<b>BCDA</b>	Black Community Development Act
<b>BIT</b>	Building Information Training
<b>CBD</b>	Central Business District
<b>CSIR</b>	Council for Scientific and Industrial Research
<b>DFA</b>	Development Facilitation Act
<b>DW</b>	Development Works
<b>GDoH</b>	Gauteng Department of Housing
<b>IDT</b>	Independent Development Trust
<b>LEFTA</b>	Less Formal Township Establishment Act
<b>MECs</b>	Members of the Executive Committee
<b>NBR</b>	National Building Regulations
<b>NGO</b>	Non Governmental Organisation
<b>NHBRC</b>	National Home Builders Registration Council
<b>NSDF</b>	National Slum Dwellers Federation
<b>PD</b>	People's Dialogue
<b>PHP</b>	People's Housing Process
<b>POS</b>	Public Open Space
<b>RSA</b>	Republic of South Africa
<b>SG</b>	Surveyor General

## EXECUTIVE SUMMARY

This paper presents the findings from an audit of Lesotho's regulatory framework governing access to by low-income households to legal shelter. The audit was conducted under the international Regulatory Framework research project<sup>1</sup> to explore ways of reducing the entry costs to legal, adequate, secure and appropriate shelter for the urban poor. The audit included a household survey of 309 residents in Thetsane West and Ha Tsolo, two fast growing peri-urban areas in the capital city, Maseru. Numerous in-depth interviews with key stakeholders and two workshops were also undertaken. The Lesotho project partner was Sechaba Consultants, working in close collaboration with the Department of Geography of the National University of Lesotho (NUL).

Examining the context in which the regulatory framework operates, it was found that Lesotho's period of colonial administration was primarily one of "indirect" rule, which left the authority of chiefs largely intact in most of the country. Only in the small administrative centres, including the capital Maseru, was "direct" rule applied. Today, Basotho are still governed by a dual legal system; traditional authorities, in the form of hereditary chiefs, continue to govern many facets of life, alongside government officials operating under the "received" legal system.

Since independence, a plethora of institutions and administrative procedures have developed with some responsibility for land in urban areas. Their capacity is very limited and only a fraction of the sites required annually are provided through the existing institutions. For the few that try to follow the formal route, case studies show that there are more than a dozen administrative steps that need to be followed if a person is to meet all the legal requirements to obtaining land. The system is highly centralised with all lease applications requiring Ministerial approval. This, more than any planning regulations or standards, appears to inhibit access to legal shelter.

The findings from the survey of Thetsane West and Ha Tsolo show that, with the exception of the small population living in an area developed by the Lesotho Housing and Land Development Corporation (LHLDC), virtually all households have acquired land without following statutory regulations. Although over 90 percent of site owners had a document recording their land transaction, in most cases this consisted of either a form or a letter from the local chief. The majority of residents (65 percent) believed that the role of the chiefs in land allocation was perfectly legal and part of the national regulatory framework. Proper regulations governing land acquisition (such as the need to obtain a lease) were known to less than one third of site owners and less than one tenth of renters.

The study set out to determine what planning standards, regulations and administrative procedures there might be which prevent (or constrain) access to legal shelter for low-income households. The results clearly show that the regulatory framework is largely unknown and unused by the population at large. They are able to access land efficiently, in the sense that most households spend relatively little time completing the transactions (just under 50 percent took one month or less). For low income households, rather than either constraining or facilitating access to legal shelter, it would appear that the existing framework is basically irrelevant. They pursue well-established, traditional mechanisms to access land

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<sup>1</sup> 'Regulatory guidelines for affordable shelter', a research project directed by Geoffrey Payne and Associates with funding from the UK Department for International Development. Case studies were undertaken by national teams in Bolivia, India, Lesotho, South Africa, Tanzania and Turkey. The research started in September 2000 and was completed in March 2004.

in ways that they consider to be legal, although technically these are no longer part of the modern regulatory framework governing urban areas.

The audit has been able to identify particular points within the existing system that would benefit from immediate reform. While these may not entail radical reform, they are feasible and achievable in the short term. These include:

- The removal of the requirement that the Minister or the Commissioner of Lands has to sign all lease documents;
- Decentralisation of the issuing of leases so that this can be done at district level;
- Delegation of authority for approval to lower levels; publishing in Sesotho and English brochures explaining all the steps required to be obtain land legally;
- Making moves towards Government institutions being facilitators and regulator of service provision, not a providers;
- The creation of 'one-stop-shops' in peri-urban areas initially providing information and advice, later empowered to take on more direct (delegated) responsibility in land administration; and
- Bringing the chiefs formally into the system by including them in planning, decision making and issuing of certificates of title leading to an eventual lease.

As the Lesotho study team was comprised of researchers operating outside of the bodies that are responsible for implementing the RF audit, a key activity in the second phase of the exercise was to lobby the main gate-keepers to bring about the recommended changes. This involved moving into an advocacy phase which consisted of identifying particular people within the many institutions that have a role in land allocation and administration; inviting them to participate in the workshops; ensuring they obtained copies of the report and writing to the Minister of Local Government and the Principal Secretary regarding the study process and outcomes. This had to be done within the constraints of very limited time, so it was important to focus on key players. Repeated visits to particular individuals were considered to be the most effective way of having some influence. This was done in a discreet manner to avoid any perception of the study team as political activists.

The advocacy effort did not, initially, appear to render any results. This was not surprising as the issues relating to land are complex, particularly from an institutional point of view. Reform does not come easily to any organisation, especially when fundamental changes are required. In Lesotho, reasons given for lack of progress included a general sense of bureaucratic inertia in Government, resulting in *any reforms in any sector* taking years to implement. Some informants pointed to a fear of 'rocking-the-boat', implying that people who took the initiative to bring about changes risked creating resentment from those opposed to change, and in doing so put their own jobs in jeopardy.

In the absence of progress, a Press Release was written that touched upon the role of local government in the provision of land and services in urban areas. By taking issues into the public domain through the media this attracted the attention of political decision makers. A review of progress some months later showed that the report had been read by influential decision makers whose ideas were used in formulating a new Draft Land Bill.

As suggested in our long-term recommendations, the Draft Bill *sets a new vision* for the way in which land will be allocated and administered. It accepts that, although the vast majority of the population have not followed the stipulations of the existing regulatory framework, their legal rights to the land they occupy need to be recognised and they must be brought into a more simple and accessible regulatory framework. By introducing different types of lease it makes the process far more appropriate to the situation and needs of the poor. In addition, the Bill introduces very sensible administrative reforms, such as making the Minister only responsible for policy formulation and "ensuring the execution *by officials in the Ministry* of such functions connected with the implementation of policies". This is likely to speed up the

application process considerably, as are measures designed to decentralise the land allocation and administration systems.

While it is not certain that all the provisions in the Bill will make it through the legislative process, it does appear that the study came at the right time in the country's history and was able to make an important contribution to the regulatory reform processes. This was done by systematically documenting certain facts, such as the extent to which low-income households fall outside the regulatory framework, or the amount of time taken by better-off households to obtain a lease. These findings had some influence on decision makers and may eventually result in changes that make a real difference to the lives of the poor.

## THE CONTEXT

This paper presents the findings of the Lesotho Regulatory Framework Study. The first section describes the context within which the framework operates. This covers the nature of the local land and housing market as well as the policy environment. The second section examines the regulatory framework itself, providing an overview of the existing situation before going on to describe the objectives of the research, the methods deployed and findings. The final section discusses the extent to which the framework acts as a constraint to low-income households being able to access land and housing.

### Country background

#### Population and environment

Compared to other countries involved in the study, Lesotho is a small country. Entirely surrounded by South Africa, it covers only 30,355 square kilometres<sup>2</sup> and has a population of just over two million. Two thirds of the country is sparsely inhabited, comprising rugged mountains and deep valleys with small, scattered villages. The remaining third, consisting of a 'lowland' strip bordering South Africa, is inhabited by 70 percent of the population. The majority of the population (80 percent) live in rural areas, but have strong links to urban centres in both Lesotho and neighbouring South Africa. These links are facilitated by a relatively well developed road network that covers much of the western lowlands that border South Africa, as can be seen from the national map in Figure 1.

Two thirds of the population owned land at the time of the 1996 Census. However, due to the harsh environment and erratic climate, rural livelihoods are precarious; very few households are able to depend entirely on agriculture (only 3 percent produce surplus cereals for sale). Most households have developed multiple livelihood strategies, frequently involving the migration of some members to urban areas. For decades, the main form of migration involved young men who were recruited for the mines of South Africa. Highland families wishing to be nearer to the men would often move to lowland urban areas with good transport links to mines. However, by the mid 1990s, recruitment came to an end with the overall number of Lesotho mineworkers dropping from over 120,000 to less than 50,000. Today, a new form of internal migration is taking place spurred on by the rapid development of the textile industry in Maseru, the capital city (see Figure 1). This time, the work is available almost exclusively to women, with over 36,000 currently employed in Maseru and one other urban centre.

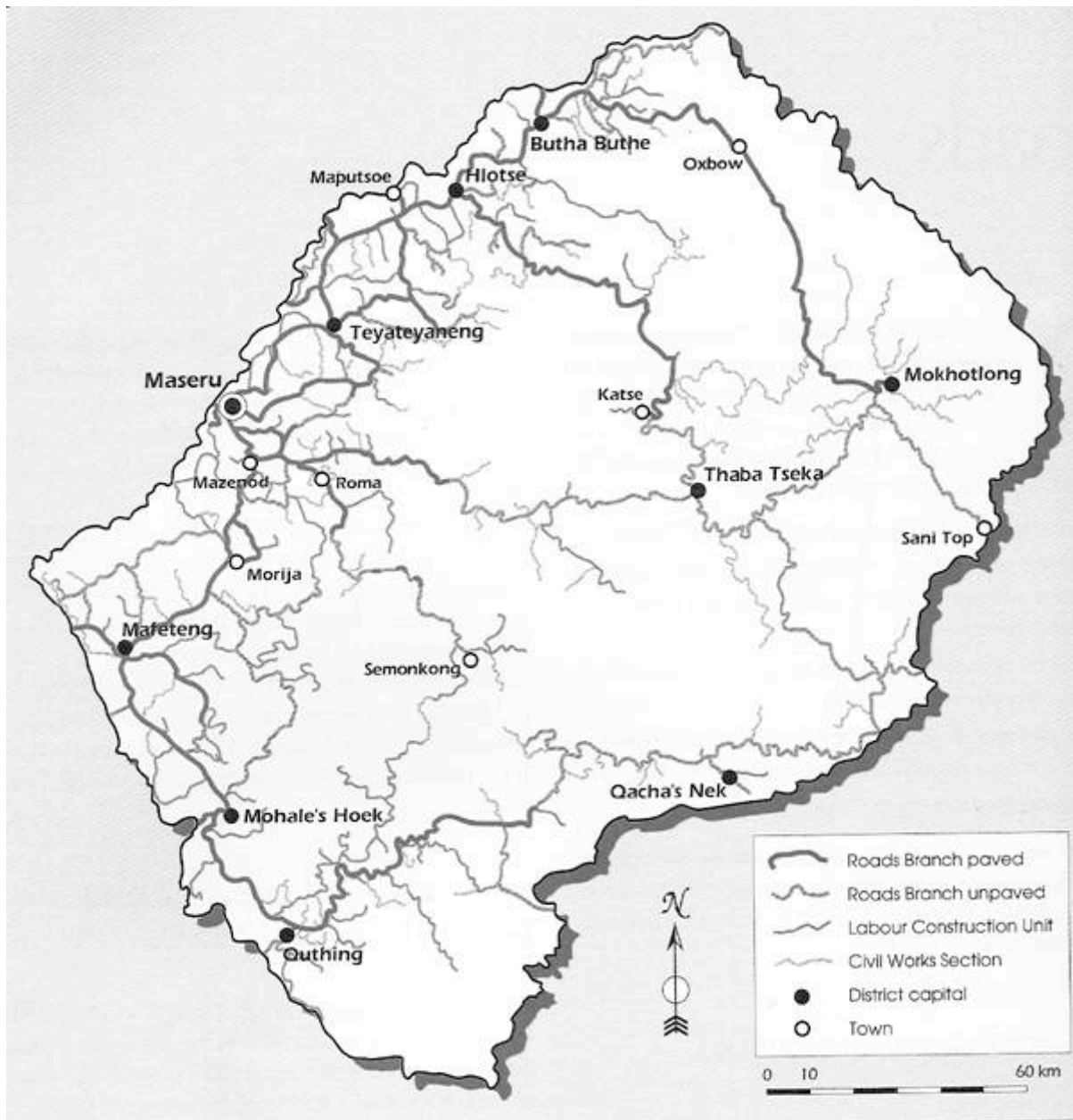
The word "urban" should be treated with some caution. Although Maseru is thought to be growing at more than 7 percent per annum, it still has no more than 350,000 inhabitants. Other "urban" areas are a lot smaller, with none of the country's 10 districts having an urban population that exceeds 25,000. All the urban areas, including the capital, are distinctly different from those of neighbouring South Africa, which has a very different political and socio-economic history. Looking around peri-urban parts of the country, one is struck by the absence of crowded shanty settlements or slums that typify other cities on the continent. Instead, peri-urban Maseru has the appearance of a sprawling village, with most houses built in plots large enough for the inhabitants to use for fruit trees, vegetable gardening, livestock rearing, block making and other 'livelihood strategies'.

#### **Figure 1: National map of Lesotho.**

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<sup>2</sup> Lesotho is about the same size as Belgium.





Source: Roads Branch

The houses of Basotho tend to be solid structures, as indeed they have to be in a country where temperatures drop below freezing at night for several months in the year. In rural areas, Basotho have traditionally had free access to natural resources that have made it possible for them to erect solid houses. These include sand, stone, earth, poles and thatching grass. While such resources may not be so readily available in urban areas, the levels of cash income are significantly higher, enabling homeowners to purchase cement blocks and corrugated iron sheets.

Although the urban population has more than doubled in the last decade, the spread is still outwards, with most new households building in the fields and hills on the edges of the city. Densification does take place to a certain extent, particularly through plot owners erecting lines of rental units (known as *maline* in the local language). However, overall plot size does not appear to diminish very significantly over time. The surface area covered by urban built-up land and residential plots increased from 6,500 hectares in 1989 to 18,000 in 1994, a 177

percent increase in five years (Government of Lesotho 2000: 61). The gazetted area of Maseru increased from 128 sq kms in 1980 to 368 sq kms in 1990, where they have remained since then.

**Figure 2: New houses built on hillside in peri-urban Maseru**



Given the limited size of the urban populations, one would imagine that the regulation of settlement would not be difficult. Unfortunately, size does not seem to matter; as we will see, Lesotho faces as wide a range of land acquisition and settlement issues as many of the larger countries participating in the study. To understand the reasons for this, some historical background is required.

### **Direct vs. indirect rule**

The history of the formation of the Basotho nation can be traced back to the early 19<sup>th</sup> century. At the time, the central region of southern Africa was in turmoil, largely as a result of the rapid expansion of the warring Zulu kingdom. Disparate clans, that had previously led relatively independent lives, took refuge in a mountain fortress under the leadership of a chief named Moshoeshoe. From this nucleus, the Basotho nation grew, fiercely fighting off would-be invaders, including the Boer settlers who began moving into the region in the 1830s. Although the Basotho clans lost much of the land they originally inhabited, they managed, through the diplomacy of Moshoeshoe, to obtain the status of a British protectorate which secured the current boundaries against further incursions.

The British approach to the governance of Lesotho was one of indirect rule. As a protectorate, Lesotho was not open to European settlement, resulting in a very different history from that of other colonies which experienced direct rule and settlement. The distinction between direct and indirect rule is of vital importance to this study as it helps to explain prevailing modes of regulating access to land. The distinction is clearly spelt out in the work of Mahmood Mamdani. First, he describes the characteristics of direct rule:

Direct rule was Europe's initial response to the problem of administering colonies. There would be a single legal order, defined by the "civilised" laws of Europe. No "native" institution would be recognised. Although "natives" would have to conform to European laws, only those "civilised" would have access to European rights. .... It involved a comprehensive sway of market institutions; the *appropriation of land*, the destruction of communal autonomy, and the defeat and dispersal of tribal populations. ... it signified an unmediated, centralised, despotism. (Mamdani

1996:17) *Own emphasis*

The indirect approach used in the protectorates (which in Southern Africa came to include Botswana and Swaziland, as well as Lesotho) was quite different:

In contrast, indirect rule came to be the mode of domination over a “free” peasantry. Here, land remained a communal – “customary” – possession. The market was restricted to the products of labour, only marginally incorporating land or labour itself. ...The tribal leadership was either selectively reconstituted as the hierarchy of the local state or freshly imposed where none had existed. ... Both were grounded in legal dualism. *Alongside received law was implemented a customary law that regulated nonmarket relations, in land, in personal (family), and in community affairs.* For the subject population of natives, indirect rule signified a mediated, decentralised, despotism. (Mamdani 1996:17) *Own emphasis.*

The manner in which land was controlled in the two approaches was quite distinct. In the former, much of the land was appropriated and came under the direct control of colonial government, which then strictly regulated access to it using “received” laws from Europe. Under indirect rule, most of land was left in the hands of traditional authorities who regulated access to it under customary law (in Lesotho these were codified in the late 19<sup>th</sup> Century and are known as the Laws of Lerotholi). Naturally, the distinction was not always clear cut; many countries with direct rule had areas set aside for “tribal” use. South Africa, for example, set aside 13 percent of its land area for this purpose under the notorious Land Act of 1913. Then, in countries with indirect rule, the small administrative centres from which towns grew, were frequently regulated by received laws, while the surrounding areas were left under customary rule.

In pre-independent Lesotho, the British administration used its powers to declare “urban reserves” around the police camps that served as a nucleus for colonial administration and law enforcement. In these areas, received laws applied. The urban reserves usually had significant areas of free land, often intended to act as buffer between the white, colonial centre of town and the outlying Basotho villages. Since independence, the government has used the land within the reserves to make grants to individuals and institutions. As we shall see, this practice continues to this day, albeit on a limited scale.

The system of legal dualism that characterised the indirect approach to governance has prevailed in Lesotho well beyond the colonial period. Today, Basotho are still governed by a dual legal system; traditional authorities, in the form of hereditary chiefs, continue to govern many facets of life, alongside government officials operating under the “received” legal system. This co-habitation has not proved to be easy as the two systems are based on inherently different logic and premises. Government has intervened over the years to make adjustments to the degree of power wielded by the different types of leadership, with the trend being towards increasing the power of elected authorities over that of traditional chiefs. Despite these efforts, the influence of the chiefs prevails, well beyond that which would be anticipated from a strict reading of the law, in both rural and urban areas. Some of the reasons for this are examined below.

### **The role of chiefs**

Although chieftainship is hereditary, a chief’s popularity (and hence influence) among his people was largely determined by the extent to which he would co-operate with his people and serve their needs. Hence the Sesotho saying: “*Morena ke morena ka sechaba*” (A chief is a chief by the people). Chiefs have been able to maintain influence, acting as important

mechanisms for the redistribution of wealth, including land and natural resources. Within the context of the rural areas, the land allocation and administration responsibility of the chief was automatic at assumption of office. More recently, with increasing urbanisation, especially in the lowlands, this role was extended into the urban context, but with rather negative implications for the formal regulation of land allocation. This is well explained by Leduka:

...Whereas traditionally chiefs were accustomed to providing land to their own subjects and to a very limited number of newcomers, that is, immigrants from other villages, the growing attractiveness of urban centres, especially those in the lowlands, meant that the chiefs now had to deal with demands for land from entirely new people, mostly new urbanites. Thus the demand for residential and commercial land by the incoming population lead to the development of an abnormal land market in which land was exchanged for money – phenomenon regarded as largely novel to Basotho custom. (Leduka, 1995:18-19)

The influence of chiefs in both rural and urban areas has been maintained also because they play an important role as local administrators, recording key events, such as births and deaths, and arbitrators in the settlement of local disputes. Their importance is recognised by government in the presence of the Department of Chieftainship Affairs within the Ministry of Home Affairs. This department is specifically responsible for the overall administration of the chieftainship institution, including promotion of collaboration between chiefs and the people, and the improvement in the quality of services executed through the chieftainship institution.

### **The right to land**

While chiefs may be valued for their administrative role by Government, it is their influence in the sphere of land allocation that is of particular interest to this study. Every married man traditionally has the right to *free land* for residential purposes and this right continues to be exercised in rural areas. Although there may be delays, it usually takes little more than an application to the chief and the elected Village Development Council (if in place), followed by a series of short meetings to identify the land, before an allocation is made. While the land officially remains the property of the nation, in practise, once an allocation is made it is in perpetuity, unless there is some gross violation of its use.

The plot sizes in villages tend to be generous, allowing for privacy and small scale farming or gardening. The principle of equity is central to traditional land allocation practices, with new households asserting their right to plots as large as those allocated to others. In addition to enjoying free land to build on, Basotho in rural areas have enjoyed the freedom to build, as they want – with no building permits required. Once the property is established, they go on to enjoy tax-free rights. In short, the rights to free land of reasonable size, freedom to build and freedom from property taxes are deeply entrenched in national practices and psyche, and have been carried from rural to new urban areas.

**Figure 3: Low density part of Maseru near new factory**



### **Attempts to moderate the influence of chiefs**

Over the years, government became concerned that chiefs had too much power in land allocation and took a series of steps to moderate their influence in this regard. This has been done through the appointment or election of local committees or councils with which the chief is expected to work. Village committees were first established in the late 1950s in accordance with the Local Government Act of 1959 (Sechaba Consultants 1995:175). At the time, they were primarily used as vehicles for promoting the newly formed political parties at the grassroots level. The development aspect was incorporated into the committees during the Basotho National Party's regime (1966-1986). These were, however, criticised for being "non-democratic agents of the ruling party" (Hall 1993:1) and were accused of mostly benefiting those community members who belonged to the then governing political party. Ironically, it was the military government that took power in 1986 that established the elected Village Development Councils (VDCs).

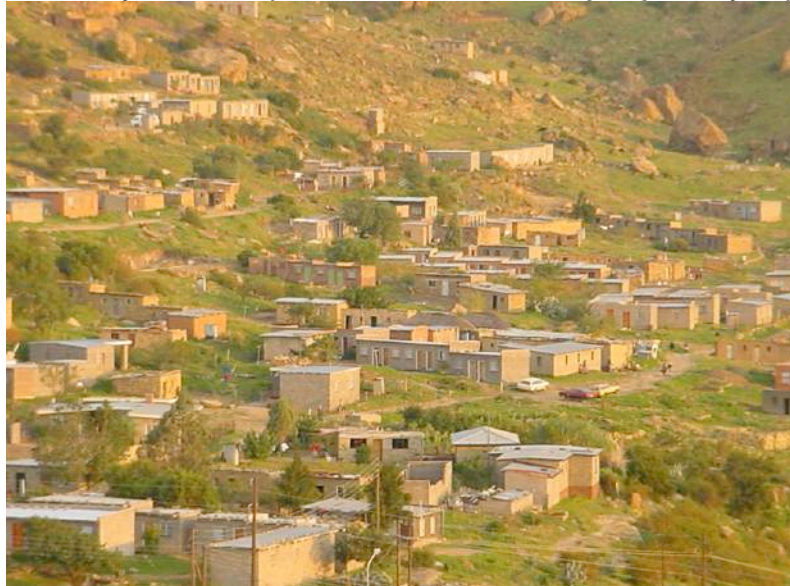
These VDCs were to act as developmental institutions at the community level with representatives elected through democratic elections. To a certain extent, the democratic nature of the VDCs limited their capacity. With each election there was the possibility of all the trained members being replaced by newly elected, untrained members - who might be quite uncertain of their roles and responsibilities, including those relating to land allocation.

At first, the chief was automatically the chairperson of the VDC, but in time this was changed, with the chiefs being made 'ex-officio' members. This move was considered necessary to prevent unco-operative chiefs from preventing VDC meetings taking place simply by not calling them (which is the role of the chairperson). Whereas the chief once had the power to allocate land, these powers were now brought under the VDCs. It is important to stress that these changes took place throughout the country, including the many peri-urban areas where chiefs and VDCs continued to play an important role.

The frequent changes that have taken place over the years, notably since 1986, have left many people in rural and urban areas confused about the exact roles and responsibilities of the different local authorities, as shown in in-depth studies conducted between 1986 and 1993 (Sechaba Consultants, 1999) Since 1993, there has been much talk of decentralisation, but very little progress in practice. In 2001, further changes were made with the VDCs being terminated and new Community Councils, representing about a dozen

communities which previously each had their own VDC. In some urban areas, new Urban Boards have been elected and given some training, but have yet to begin operating effectively.

**Figure 4: Houses in the study area (Thetsane) on land allocated by the Chief (note vehicle access, despite poor layout)**



Throughout the various changes in local government, one thing has remained constant in the lives of the people – the chiefs. They continue to play a key role regardless of past efforts to limit their influence through legislation and the introduction of various forms of local government. It is important to appreciate that this is not confined to rural areas. Most of the peri-urban areas of the fast growing lowland towns were recently rural settlements. Although the urban boundaries have officially been expanded to incorporate these old villages, the traditional land allocation practices are deeply entrenched and tend to prevail. We consider below the options facing any household seeking to acquire land and housing in Maseru, which is the focus area of this study.

### **Brief history of urban land regulation**

The provision of land through formal channels has gone through distinct phases. As noted earlier, in the urban reserves that date back to colonial times (and have subsequently been expanded as the urban boundaries were extended), the government has had direct control over areas of unused, “free” land. It has been able to use this government controlled land to make direct land grants for housing as well as other uses.

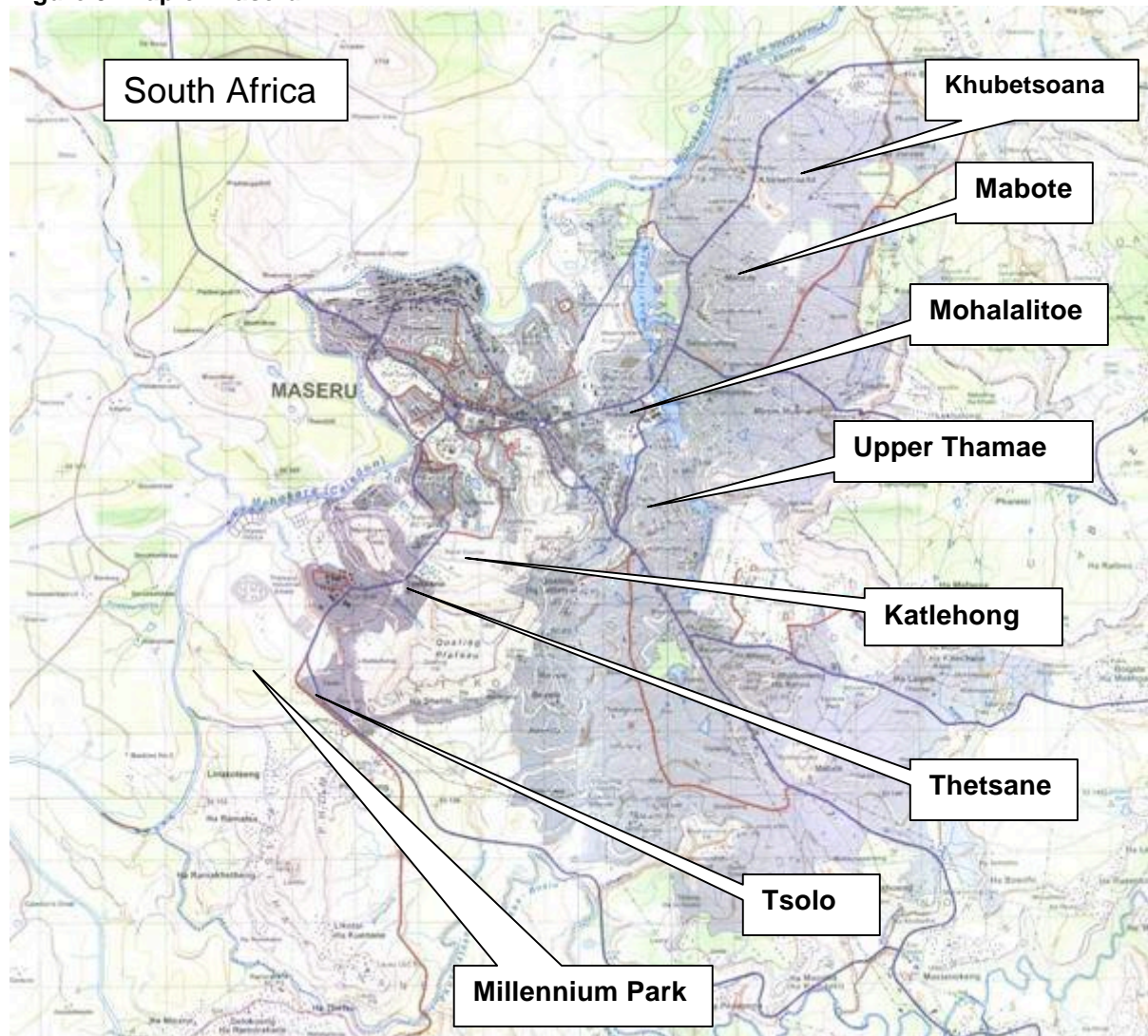
Government released blocks of land in this way in the 1970s to two parastatal housing institutions that were created to cater for low-income households, on the one hand, and middle to upper income households on the other. The former was known as the Lesotho Low Income Housing Corporation (LEH-COP) and developed two sites, one near the centre of Maseru called Mohalalitoe and one in the south east called Katlehong (these are shown on the map of Maseru in Figure 2, on the next page, along with other sites mentioned in this report). The other institution was called the Lesotho Housing Corporation and specialised in the provision of middle to upper income housing in Maseru. The two were to merge in time to form the Lesotho Housing and Land Development Corporation (LHLDC), which is discussed in more detail later.

Some blocks of reserve land were also given to parastatals, such as the Central Bank and Lesotho Bank, to develop housing for their own staff. Later, the shortage of “free land” in the

reserves made identification and grant of blocks more difficult. However, direct grants are/were also made to individuals. If someone is able to identify a piece of unused land that falls within the urban reserve that is not being used, and has not been zoned for another purpose (known as *sekoatipa* in Sesotho), they can apply to use it for residential purposes. If successful, the land is allocated free as a direct grant by the Minister.

The system of direct grants has been praised for encouraging the use of unused waste land, or open spaces. It also encourages land use according to zoning, as grants will not be made for housing unless the requested land is zoned. However, it has also been heavily criticised because grants are made entirely at the discretion of the Minister. This has encouraged nepotism, bribery and politicisation of the process (supporters of the government are more likely to have applications processed). The relative shortage of “free land” has meant a long waiting list of people hoping to get free land. This pent-up demand, coupled with a slow bureaucratic process, also encourages a black market in the sale and re-sale of grant land. It is estimated that no more than 10 grants are now made per annum (V. Mashinini, Personal Communication).

**Figure 5: Map of Maseru**



Source: Department of Lands, Surveys and Physical Planning

One of the objectives of the Land Act of 1979 was to help overcome some of the inherent problems of the Direct Grant system, including the shortage of land available. This

introduced the possibility of government declaring Selected Development Areas (SDAs) over any area of land. Once an SDA is declared, all uses and rights are frozen, giving government complete control. Government is then able to pass on the rights to any other body, such as LHLDC.

The first area where agricultural land was taken from people for housing purposes was Khubetsoana, (see Figure 2) under the aforementioned LEH-COP. Government used a combination of the 1979 Land Act and customary law to argue that the land did not really belong to the field “users” but to the nation. The field users were told they had not paid for the land in the first place and they were, therefore, not entitled to any compensation. For government, this approach had two big advantages: it was a quick and cheap way to obtain land for housing. Although there were serious objections to the approach, there was no real outlet for expressing discontent. At the time, the country was under a State of Emergency and any opposition to government projects was quelled through draconian approaches.

**Figure 6: A planned, better-off area just south of the factories in Thetsane**



Surrounding field owners noted the plight of those who had lost land without any compensation and decided that the sooner they could sell their fields the better. Although the sale of land in this way was considered to be illegal, it suddenly escalated as people perceived a danger of losing their fields to government for the provision of “low cost housing”.<sup>3</sup> In other cases land was sold as a form of opposition in a “silent war” against the government of the day. (V. Mashinini, Personal Communication).

It was the military government that came into power in 1986 that effectively put an end to the seizure of land without compensation. A Land Commission started in 1987 ensured that land taken for future SDA would be compensated for. The approach of declaring SDAs – when compensation is included – is said to have the advantage of creating a market value for urban land as it is sold (as opposed to Grant Land). It also facilitates the planning or zoning process as well as the provision of basic services. However, the SDA approach still has many problems which need to be addressed: first there is no clear compensation policy, with decisions often being made by private contractors who are brought in to value the land; second, there is no recourse if a person is not satisfied with the amount offered; third, a static view of compensation is taken that does not consider the livelihood needs of future generations (i.e. single use, single generation is the basis used); fourth there is no provision

<sup>3</sup> It is widely acknowledged that neither the Khubetsoana nor Mohalalotse schemes served low-income households. Social and political networks were key. In cases where screening was done, poorer relatives would often be put forward as a front to obtain the land by those who were better-off.



for compensating communities that may lose communal land upon which their livelihoods depend (such as rangelands). These problems contribute to prolonging the procurement process, meaning that it can be many years between the declaration of an SDA and the land actually being made available for development.

The different institutions (such as LHLDC) that obtain the land within the SDA, seek to sell it to clients at some profit, once they have covered all their development costs. This puts the price well beyond the reach of poor households, effectively meaning that the whole process is one designed for better-off households, regardless of any “low-income” labels that may be attached. This is compounded by the lack of housing finance institutions for the poor.

A final criticism of the SDA approach is that it does not help the end users obtain legal possession of the land. When purchasing the land, they still have to go through many administrative procedures (discussed in more detail later in the chapter) before they can obtain a lease, including ministerial approval.

### **Key stakeholders or gatekeepers**

Urban land management is handled by multiple institutions in Lesotho, some of which have already been mentioned. In addition to the LHLDC, there are three major institutions that should be noted before we proceed, namely: the Lands, Surveys and Physical Planning (LSSP) Department in the Ministry of Local Government; the Maseru City Council (MCC), and the Lesotho National Development Corporation (LNDC).

The LSPP was established in 1974. Its main functions are the preparation and issue of titles and leases to land; to keep records of all land transactions; cadastral surveying and mapping of urban land; making layouts and enforcement of planning standards. It also advises government institutions and the private sector on the Development Control Code in development projects (Kingdom of Lesotho, 2000: 91-92).

MCC was created in 1989. The MCC is the first and so far the only effort at decentralised urban management and planning. It performs some planning functions in Maseru city including the provision of serviced plots for housing and development. The MCC uses the SDA approach in this regard to secure land from communities and individuals, and subsequently sells the plots after the development of basic services. There is a wide overlap (and sometimes conflict) between the MCC and LSPP in terms of functions. MCC has certain delegated planning powers from LSPP. However, the capacity of MCC to regulate the urban environment is significantly constrained by the weakness of local government in Lesotho. The Council is understaffed and in financial crisis with little revenue base. The autonomy of local government may also be questioned following July 2000, when the PS Local Government expelled the elected councillors of the City Council.

LNDC started in 1967 and is mandated to oversee the industrial and small-scale enterprise development in the country. It handles land management in the context of industrial development. However, sometimes industrial development encompasses the development of residential plots for senior management as well.

Lesotho Housing & Land Development Corporation stopped building housing around 1990 and currently focuses on the provision of serviced plots. LHLDC does not build houses because the lack of access the Basotho have to end-user finance means that virtually no one can buy houses. The conservatism of the financial sector has recently been exacerbated by the privatisation of the Bank of Lesotho to South African capital.

### **Existing land and housing supply options**

From the perspective of a newly arrived migrant, there are a number of clear choices to be

made when seeking land or housing. The first choice is whether to seek to obtain one's own land for building or to rent accommodation from others. In the fast growing peri-urban areas, renting is the first option for nearly 70 percent of residents. Fortunately, the construction of rental units (*maline*) is a popular livelihood strategy for many urban land-owners and the supply of low cost units appears to keep up relatively well with demand; there is little evidence of a housing crisis in the form of squatter or street dwellers.

**Figure 7: *Maline* rental units, with a view of the city centre and formal housing in the background (open area beyond is farms in fields in South Africa)**



*Maline* are typically built on land already occupied by owners and this is a relatively widespread livelihood strategy for generating additional household income. However, in some cases, entrepreneurs develop *maline* on separate plots from those where they have developed their own housing. Although the size of the rental units is not supposed to exceed the size of the main house, this regulation is rarely followed, with the inverse being more common. Low cost varieties usually consist of one-room units joined together in a 'terrace' type of formation. Sanitation usually comes in the form of a shared latrine. Water supply varies, with some owners providing a 'tap-in-yard', while others provide nothing at all, leaving renters to access water where they can from public supplies off site. One-room rental units are generally available from between US\$5 and \$10 per month. Two-room units range from \$10 to \$25. The more expensive units may offer indoor plumbing, but these tend to be rare and cost in excess of \$50 per month.

For the better-off, housing can be rented either from individual owners or from the Lesotho Housing and Land Development Corporation (LHLDC). Prices in this category range from \$100 to over \$500 monthly, with availability being limited. LHLDC only has 180 units available and there is a long waiting list, indicating high demand for good quality housing.

For those wishing to access land for building, a fundamental choice has to be made: to follow the formal route, governed by the state, through various gatekeepers, or to follow the customary route managed by traditional authorities (chiefs). There are two possible routes to accessing land legally for those following the formal route to land acquisition. One is to procure land from a current owner and arrange for a formal transfer of lease. Opportunities to procure land in this way depend very much on informal networks and word-of-mouth communications as there are no real estate agents operating in the city. Figures on the number of transfers are not easily available. Case studies on those who have attempted to

follow this route indicate a long and frustrating experience (see Annex 2).

The other option is to work through existing institutions. One can either apply to purchase a serviced site from LHLDC or wait for the Maseru City Council (MCC) to advertise sites for sale and apply. It must be stressed that in both cases the supply is very limited, the process slow and the costs relatively high (these issues are discussed in some detail later). LHLDC, for example, offers between 300 and 500 serviced sites, *for all income levels*, per annum. MCC has fewer, with only 230 sites being sold in the last few years. Taking an optimistic total of 600 sites per annum, this represents a very small proportion of the total demand. Roughly speaking, this can be calculated as follows:

- Total Urban Population: 350,000
- Annual Growth Rate: 7.5 percent (26,250 people per annum)
- Mean Household size: 4
- Number of new households per annum: 6,562
- Number of new serviced sites available through LHLDC and MCC (600 or 9.1 percent of new households).

Clearly, the provision of land through formal institutions is very far from equalling demand. The role of the state is limited at all levels and there is no strong market-driven commercial sector operating in its place. As a result, most households have no option other than that of working through the customary system managed by local chiefs. For low-income households, (which are the focus of this study), the situation is more complex. Even if more sites were available, at current prices, they would not be affordable to poorer households. The cost of sites varies: sites for low-income households, with only water supplied, cost between \$300 to \$500 and are generally over-subscribed; middle-income sites cost between \$1,000 and \$1,400 for which there is reasonable demand, but only if buyers are given three years in which to pay. High-income sites with all services and street lighting, cost between \$2,500 and \$12,000 and take many years to sell, largely because end-user finance is very difficult to obtain<sup>4</sup> (B. Mahlaha, *Personal Communication*).

The prices need to be seen in relation to urban poverty levels. In 1999, the Poverty Study ((Gay and Hall, 2000) found that 38 percent of Maseru households earned less than \$8 per member per month; 33 percent of households had no adults with regular wages; 78 percent had no bank account and 24 percent were considered to be destitute. If 'lower income' households were to be defined as the bottom quintile (20 percent) of the population, they clearly would not be able to afford even a fraction of the costs of a serviced site.

There is clear evidence that formal avenue access is the preserve of the better-off while informal (customary) access is the preserve of the poor. In a study entitled "Access to Urban Housing Land in Lesotho: The Rules-of-the-Game and Socio-Economic Status of Beneficiaries", Leduka (2001) demonstrated that households following formal rules were better educated, had better employment and more household possessions than those using informal channels. This is quite evident from the results summed up in the following table:

**Table 1: Approach to access land by socio-economic status**

Approach to Accessing	% with Primary Education	% with University Degree	% Salaried	% Unemployed
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<sup>4</sup> Numerous observers have noted that end-user finance is hard to come by because the commercial land market does not function properly mainly because so few people have proper legal documentation for their land. The reasons for this are spelt out in some detail later in this report.

Land				
<i>Formal</i>	4.9	39.3	66.2	6.5
<i>Informal</i>	56.3	4.7	30.1	22.6

Source: Leduca, 2001

In summary, it is evident that Lesotho typifies situations where indirect colonial rule has resulted in the bulk of land transactions being dominated by customary law. The state does play a role, through different institutions, to make land formally available. However, this provides a mere fraction of demand and what is offered is unaffordable to low income households. In a society where residential land has been provided at little or no cost, the commercial land market is in its infancy.

## **THE REGULATORY FRAMEWORK**

### **Introduction**

#### **Study objectives**

As with the other case studies, the Lesotho study seeks to improve knowledge among stakeholders responsible for providing urban land, shelter and services on options for reducing entry costs to legal, appropriate and affordable shelter. The range of stakeholders includes: public officials and elected representatives, low-income households, traditional leaders, developers and estate agents, land owners, finance institutions, academics, community and private sector groupings, donors and utility service providers.

#### **Strength in diversity**

One of the strengths of the international team was its diversity. This was recognised and each team was encouraged to build on its own particular expertise. In the Lesotho case, these were primarily sociological as the team was led by Sechaba Consultants (David Hall as Team Leader) working in collaboration with the Department of Geography of the National University. As a result, this paper tends to place more emphasis on the results obtained from a comprehensive survey of peri-urban households than might be the case in those of countries where planning expertise was more prominent.

#### **Overview of the existing regulatory framework**

Results of a literature review indicate that Lesotho has volumes of received laws that can be considered of importance to the existing regulatory framework. The key legislative acts of note include:

- The Land (Procedure) Act, 1969
- The Chieftainship Act (Act 22 of 1968)
- The Land Act, 1973
- The Land Act 1979 (Act No. 17 of 1979)
- The Land Regulations 1980 (Legal Notice No. 15 of 1980)
- The Town and Planning Act, 1980
- The Urban Government Act 1983 (Act No. 3 of 1983)
- The Land (Amendment) Order, 1993 (Order No. 6 of 1992)
- Land (Amendment) Regulations, 1993 (Legal Notice No. 96 of 1993)
- The Constitution for Lesotho (Amended), 1993 (Government Notice No. 28 of 1993)
- Building Control Act, 1995 (Government Notice, No. 68 of 1995 and Act No. 8 of 1995)
- Local Government Act 1997
- The Environment Act 2002

These need to be viewed in the context of key policies, plans, regulations and standards that govern access to land and the development of housing. Key documents here include:

- National Shelter Policy First Draft (September 2000)
- Maseru Development Plan Working Paper No. 10 (Jan 1989)
- Maseru Development Plan Vol. 1 (June 1990)
- National Settlement Policy Proposals Final Draft (Dec 1990)
- Development Control Code (1989)

- Planning Standards (1990)
- State of the Environment in Lesotho, National Environmental Secretariat (1997)
- Agenda 21 Lesotho (undated)
- National Environmental Policy for Lesotho (Revised) April 1998

Rather than summarising each one of these, it is probably more pertinent to focus on the key acts and regulations that have a direct impact on land access in urban areas, with reference being made to earlier acts only where necessary.

### **The Land Act 1979**

This Act formed a watershed in the history of controlling access to land. While preserving the sole right of the Head of State to hold any title to land, it attempted to bring about a greater degree of transparency and security of tenure. The Act prescribes that in rural areas an application should be made to the chairperson of the Village Development Council, while in urban areas it should be made to the Secretary of the Urban Land Committee (ULC). In both cases, the applicant has the right to be notified of the date, time and place of the hearing of the application; if successful, a certificate of allocation entitled "Form C" is issued in respect of the land. Under the Act, an allottee is expected to apply to the Commissioner of Lands for a lease within six months of receiving a Form C. A lease can only be terminated by the Minister where the lessee is clearly in breach of any of the conditions of the lease and has failed to comply with a written notice of the Commissioner of Land calling on him to remedy the breach (Kingdom of Lesotho, 2000).

The Land Act has been praised for attempting to create greater transparency in the land allocation process and for introducing a leasehold system of land tenure in Lesotho in a bid to make land tenure more secure. However, it has also been heavily criticised for a number of reasons. First, there has never been any awareness campaign to make allottees aware of their right to a lease and very few people (especially in rural areas) have applied for leases. Second, the Form Cs have been misused, providing chiefs with an instrument which can be used for their own purposes. According to the Land Policy Review Commission (2000) the Form C "... has become a source of malpractice and a subject of forgery facilitating illegal occupations of land". Third, while introducing a democratic element to land allocation through the elected VDCs this has resulted in "a lot of acrimony between chiefs and these Development Councils as the former justifiably feel threatened in their traditional powers".

The Commission argues that "...the result of this tug of war between chiefs and development councils is inefficient land administration accounting for chaos, lawlessness and illegal occupations of land. Corruption and bribery are the order of the day as Development Councils blame chiefs and *vice versa*. Literally nobody seems to be in control of land administration." (Kingdom of Lesotho 2000: 52). While this may be the case in parts of the country, it is certainly not universal. There are many situations known to the research team where this is not the case and where strong co-operation between chiefs and elected councils has ensured proper control of the land.

The "tug of war" between chiefs and elected councils was avoided in the urban areas. Under the 1979 Act, none of the Urban Land Committee members are elected. The Principal Chiefs are the designated chairmen and the other members are all appointed. The appointment of the Principal Chiefs has been criticised as they are also members of the Senate (Lesotho's upper house) and are therefore often unable to attend meetings.

### **The Town Planning Act 1980**

If the Land Act 1979 produced less than the desired results, the same can certainly be said of the Town Planning Act of 1980. This Act made it possible for the Minister to appoint a

Town Planning Board of seven members whose duty was to prepare plans in any area designated by the Minister. The Board were not paid any remuneration, meaning they were poorly motivated. The specification that the Minister had to designate an area meant that an opportunity was lost to develop comprehensive and inclusive plans for the country. The Land Commission lost no words in describing the outcome:

“As is usually the case with other Acts in this country, the Act failed in the area of law enforcement with the result that no visible sign of town and country planning could be seen. There was no enforcement of building permits and each person, Ministry, or corporate body did as he or it liked. ... No inspectors were ever appointed with devastating results as houses sprang up in every direction without any basic planning such as allowances for streets and other necessary services. All in all it is clear therefore that the Town Planning Act has not led to efficient administration of land and land use as was intended.” (Kingdom of Lesotho 2000: 56).

### **The Urban Government Act 1983**

This Act, widely perceived as being donor driven, made a provision for the establishment and regulation of local authorities. It empowered the Minister to declare any area to be a municipality and provides for the election of councillors. The only municipality to be declared under the Urban Government Act was Maseru. After the military government of 1986 came into power there were elections for city councillors. A town hall was built for meetings, and a framework for a municipality was drawn up with help from academics at the National University. Offices were established and vehicles procured. In the last few years the offices have continued to function under the Town Clerk, but there have been no new elections for the Council members once their term of office expired.

### **The Local Government Act 1997**

The Local Government Act 1997, which repealed the Urban Government Act, was finally brought into focus on 10 December 2001. This largely regulated developments that had already taken place through the Ministry of Local Government. The Ministry had already been organising the election of community councils, as if the Act was already in place. In the case of urban areas, the Minister had relied on the Urban Government Act 1983 to create Urban Boards. These had been brought into existence by the end of 2001 in all proclaimed urban areas except Maseru, which is still without a City Council. The Urban Boards will replace the Urban Land Committees mentioned earlier.

### **Plethora of gatekeepers and administrative procedures**

The creation of the Maseru City Council added one more layer of complexity to the existing plethora of institutions with some responsibility in land allocation. The MCC found that it had to deal with no less than nine ministries when it came to matters of land, including:

- The planning section of the Ministry of Agriculture, Cooperatives and Land Reclamation;
- Surveying and valuation through the Physical Planning and Survey in the Ministry of Local Government and Chieftainship;
- The Deeds Registry in the Ministry of Justice and Human Rights;
- The Ministry of Trade, Industry and Marketing;
- The Ministry of Public Works and Transport;
- The Ministry of Natural Resources.

The Maseru City Council was not able to procure and allocate land itself as land allocation powers remained with the Commissioner of Lands and Urban Land Committee. Before the MCC can obtain any land for development it has to wait for the government to declare a Special Development Area (SDA), survey the area and compensate land users. As the

amounts paid in compensation are lower than what land users can obtain informally, there is an incentive for them to sell the land to any willing buyer, thus complicating the compensation process further. The process, managed by the Department of Lands, Surveys and Physical Planning, can take a number of years, contributing to pent-up demand and increasing the likelihood of would-be landowners opting for an informal approach to land procurement.

Once the process is complete, MCC can advertise the available plots. But, for an ordinary person seeking to obtain land in this legal manner, the number of people to deal with is bewildering, as are the number of administrative steps to be taken to obtain the correct documentation. In the course of the research (discussed in detail later) no fewer than 13 administrative steps were identified, with each one being a potential pitfall. Case studies confirmed the complexity of the process and the high levels of frustration experienced as applicants attempted to move the process forward.

The steps include:

- The public are invited, through newspaper adverts, to apply for land;
- Forms completed;
- Interviews held by land committee town clerk (affordability test);
- Notification forwarded to applicants by letter with an attached legal notice;
- MCC prepares grant to send to Minister for consent;
- MCC prepares daft lease;
- Sends to grantee for scrutiny and certification;
- Grantee pays ground rent and stamp duty;
- Commissioner sends lease to deeds registry for registration and seal;
- Collection of lease from deeds registry;
- Commissioner forwards lease to MCC;
- MCC contracts grantee to collect lease;
- Site and building plans to be approved before any construction.

### **Planning standards**

The few institutions and individuals who make it through the administrative steps described above are next faced with a list of standards to adhere to if their physical structures are to be in-keeping with the Planning Standards and Development Control Code. The items that are considered relevant in the Planning Standards and Development Control Code for new low-income housing projects are:

1. Plot size: minimum = 375 sq.m.
2. Maximum plot coverage for a plot size of 400 sq.m. = 30 percent
3. Maximum size of dwelling for a plot size of 400 sq.m. = 120 sq.m.
4. Front setback = 5m
5. Side/rear setbacks = 3.5m
6. Latrine should be at least 5m from the dwelling for a min. plot size of 375 sq.m.
7. Septic tank is permitted only for a minimum plot size of 600 sq.m.
8. Distances between buildings (on-site) = 2.5m
9. Road reserve + 5m to the plot boundary
10. On-site waste disposal
11. Communal taps to serve 20 households

There is anecdotal evidence that suggests that even the official gatekeepers do not always adhere to these standards. When undertaking low-income housing projects in the past, LHLDC claims that it has tried to adhere to the Planning Standards and Development Control Code since the Maseru City Council enforces the same guidelines when assessing applications for planning permission for new developments. However, in practice, LHLDC



noted that it is extremely difficult for the plot owners in low-income housing projects to adhere to the above-mentioned guidelines. For example, the plot sizes for the low-income housing project in the LHLDC Thetsane West (near the industrial area of Maseru) scheme range from 220 sq.m. to 300 sq.m. (far below even the minimum official plot size of 375 sq.m.). In this case, there is virtually no compliance with the 5m front setback. In addition, the houses exceed the maximum plot coverage of 30 percent, since the plot owners prefer to build bigger houses on very small sites.

Going back in time, the Lesotho experience suggests that modern, received land tenure and customary tenure are not mutually exclusive. They can be combined in creative ways. In Maseru, the neighbourhoods of Upper Thamae and Mabote have been built on foundations of a mixed approach. The chiefs of these neighbourhoods collaborated with LSPP and the Mabote Project, respectively, to mobilise participatory planning methods that involved the mapping of fields initially, then their sub-division into planned sites with a provision of services. The community were called to gatherings where individual field owners were asked to identify their fields on the map and show which sites now incorporated their fields on the new layout. The field owners were then left to sell the plots in their former fields at independently negotiated prices with interested buyers. After agreement, the deal was presented to the respective chiefs, LSPP and the Mabote Project for statutory formalisation and lease processing.

More recently, in the informal parts of the Thetsane West area, the MCC has been working with peri-urban dwellers who have not accessed housing land through the legal channels. The Council is disregarding the legal status of the housing land and is working with residents' committees to upgrade unplanned areas. This has involved surveying the area, working with the existing alignment of fences and boundaries and planning a more rational spatial arrangement (i.e. planning road alignment around existing properties). Under these circumstances, officials are working in a participatory manner to make provision for very basic infrastructure. The detailed standards listed above are of secondary concern as officials struggle to keep up with the rapid developments on the ground.

What emerges from these examples is that officials recognise a need to make adjustments in the planning standards in order to accommodate fast growing realities "on the ground". In a sense what is beginning to emerge could be described as a "third way": in addition to the customary regulation of access to land and the strictly legal one, a moderated approach, quietly sanctioned by officials, is making its appearance.

### **Millennium Park**

Many gatekeepers interviewed as part of this study hoped that a new project called Millennium Park would offer an alternative way forward. Millennium Park clusters around Maseru's southern by-pass, extending from the fast growing industrial area down to the border. The project is driven by the Ministers of Natural Resources, Trade & Industry, Local Government and Public Works and has been given high priority by government following the economic down-turn the country experienced as a result of political unrest in September 1998. The three confirmed clients for Millennium Park are LHLDC, (which plans 2,000 residential plots), the Lesotho National Development Corporation (LNDC), which is responsible for industrial development and a technical institute.

While the area holds promise, the approach taken to date may have undermined opportunities for a third way. Soon after Millennium Park was declared a Selected Development Area, government acted quickly to take action against "illegal" settlement. To date, 108 dockets (court cases) have been opened to clear lands for Millennium Park while 10 houses have been demolished. This is the first time that government has acted so dramatically to enforce the law. MCC expressed the concern that this only "served to

demonstrate to people that the time of participatory planning had given way to the current enforcement approach.” A senior official felt that such a drastic measure would only undermine a more creative approach: “Because of the enforcement approach to field-owners, an adversarial atmosphere has been created which makes the trust required for successful land pooling and readjustment impossible.” (B. Mahlaha, Interview, 2000)

The process of developing Millennium Park has been slowed by the complexities of land compensation, including the issue of how to address compensation for communal land from a livelihood point of view.

### **Recent developments**

Whilst the regulatory environment in Lesotho is fairly established and defined in statute, there are some important changes that could have a significant impact upon the housing sector. Examples of this are outlined below.

**Figure 8: Rapid development on the edge of Millennium Park**



A law has been drafted by the Law Review Commission relating to the status of women in Lesotho. A draft document is currently being circulated for comment and discussion. The aim of the law would be to promote gender equality in Lesotho and, specifically, the law changes women’s legal status as minors. This is important because of the relatively high proportion of households in Maseru that are female headed (36 percent *de jure*<sup>5</sup>) and also because, under current legislation, women’s minority status makes it unlawful to own land or immovable property or borrow money. The *Land Review Commission* noted that, with respect to access land “...It is immediately obvious that women are marginalised and discriminated against in a blatant way simply because they had the misfortune of being born women. In the view of the Commission this surely cannot be right in this day and age.” The Commission called for all discriminatory laws to be “repealed or abolished forthwith”.

The Environmental Act of 2002 is an important forward planning and development control role for an independent environmental watchdog (the to-be-created Independent Environmental Agency, which will replace the existing National Environmental Secretariat). The Act generates a second layer of regulations with an environmental focus. Also, importantly, an independent agency is likely to take a much less laissez-faire view of government’s own development projects.

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<sup>5</sup> Sechaba Consultants, 2001

The Draft National Shelter Policy of October 2000 indicates a clear recognition by the Government of Lesotho that the current situation for people requiring low-income housing is unacceptable. It also clearly indicates government's changing views on its own role in the housing sector, from that of direct provider of housing or serviced sites, to a more facilitating and strategic policy generation focus.

Given this lack of end-user finance (described earlier), LHLDC has had to start offering payment terms, extended up to three years, for people simply buying serviced plots (typically M3,000 to M5,000 (\$460-\$770) for low income and M10,000 to M14,000 (\$1,500-\$2150) for high income). Building material suppliers are also creative with respect to smoothing customer's cash flow by, for instance, breaking 'job lots' down to the smallest quantity (i.e. bricks can be bought individually).

## **Conclusions**

The Land Policy Review Commission considered the land administration system in Lesotho, as it is presently institutionalised, to be unworkable and unable to cope with the modern development challenges. It argued that:

As previously stated, the law enforcement machinery is generally non-existent with chaotic results. Coupled with this factor, there are insufficient human and technical resources necessary for building and sustaining an effective land administration. A simple exercise like registration of a lease sometimes takes upwards of six years to complete. Surveying and valuation of land is only limited to urban areas. Indeed evidence shows that even then only sporadic registration of land is presently done ...". (Government of Lesotho 2000:91)

It recognised that there were major bottlenecks in processing legal applications for land. In particular, it highlighted the lack of capacity at the Department of Lands, Surveys and Physical Planning, noting that the Department had "failed to fulfil its functions due to financial constraints, shortage of trained staff and poor salaries which do not attract quality personnel. It is also centralised, thus leading to inevitable delays especially in the issuing of leases."

The results of the research confirm a number of basic conclusions. In the absence of an efficient regulatory system, the vast majority of the population have no choice but to deal with chiefs and field owners who, as we shall see, have developed very efficient mechanisms for allocating land in their own way. A small minority of relatively rich and exceptionally patient people work their way slowly through the existing plethora of gatekeepers and administrative steps, while the poor do what they have always done – approach their chief for help. For clearer evidence of this we now consider how the research was undertaken and what results were obtained.

## **RESEARCH OBJECTIVES**

### **Questions addressed by the Maseru Case Study**

From the background presented thus far it will already be obvious that the bulk of land acquisition that takes place in Maseru does not fall within the formal framework of 'received' law. Before undertaking the research, it was evident that rapid land settlement was taking place in newly urbanised parts of Maseru without settlers following the officially prescribed laws, plans, standards and administrative procedures. Close observation of the development of peri-urban Maseru over many years made this perfectly apparent, particularly in the southern neighbourhoods where high levels of growth were stimulated by industrial development and new roads.

Before the research began, what was not apparent was the exact extent of “illegal” (i.e. non-formal) settlement. In other words, what proportion of the new settlers were (a) settling without any authority, be it formal or customary; (b) strictly following one system or another or (c) blending elements of the two. It was also not clear *why* someone attempting to obtain land would opt for one option over another (or a blend of two). Was it because of: (a) ignorance of the existing regulations; (b) or difficulties adhering to known regulations; (c) or the costs involved in adherence?

From the ordinary person’s perspective, what regulations did they feel were most important and should be maintained if any changes were to be made to the regulatory framework? What authorities (or gatekeepers) were people aware of? For those who had recent experience of accessing land, who did they work with and why? What steps were taken and how long did these take? Which authorities did they feel should be directly involved in administering the legal allocation of land? What views did the authorities themselves have of the regulatory framework and the factors influencing legal access to land? Did ordinary people make any distinction between ‘legal’ (received law) access to land and ‘legitimate’ (customary) access?

Most important, given the focus of the study, it was not known whether or not socio-economic factors had a determining influence on people’s knowledge, attitudes and practices. Were poorer and richer households likely to opt for different approaches in accessing land? To what extent did the existing regulatory framework actually inhibit and/or facilitate access to legal land by low-income households?

In other words, the focus of the study was on very fundamental issues believed to have a significant impact on the way in which land is accessed in Maseru. The study was not particularly concerned with the finer details relating to the costs of various planning standards, as these were widely perceived to impact on a tiny proportion of the population and to be of secondary importance. The peculiar nature of peri-urban Maseru as a low-density, “ru-urban” environment, where land is still a relatively cheap commodity, mean that certain topics (addressed in detail in other country studies where space is of essence) were not covered. For these reasons, data were not collected on standards such as front, rear and side setbacks. Instead, the available resources were used to focus on issues that the team and the key stakeholders felt were of immediate and fundamental importance, such as those listed above. For this reason, certain parts of the ‘regulatory matrix’ (presented in detail later in this report) were not completed as they were not considered to be significant in the Lesotho context.

From the questionnaire in Annex 1, it will be apparent that all the questions noted above were addressed to interviewees, as well as many more. The main reason for the additional questions is that the project, as already mentioned, involved collaboration with the Department of Geography of the National University of Lesotho. Together, the team agreed on core questions that were central to the study, and then went on to discuss and eventually allow the inclusion of more peripheral questions that were of interest to particular students. Below we expand on the various methods used, including the household survey.

## **Research methods**

To understand the broader context that the regulatory framework operates in and to address the questions raised above, it was felt that the study would need to employ a variety of methods. Some of the research questions posed required precise answers that could be quantified, such as the proportion of households adhering to particular regulations. On the other hand, some issues required a more open-ended approach that would facilitate an in-depth, qualitative exploration of questions that could not easily be quantified, such as people’s perceptions of legality and legitimacy. Below we describe the methods that were

adopted and why they were adopted.

### **Situation analysis**

It was important to develop an understanding of the context in which the regulatory framework is meant to operate in Lesotho. As all team members had extensive experience of researching different aspects of the urban environment, this was done largely through extended 'brain-storming' sessions during which the participants contributed their views and knowledge. The focus of these sessions was on developing a common understanding of the key characteristics of the urban environment; how these have come into being; what forces (including laws, regulations, standards) have shaped them and whose interests have been served. In many cases, participants were able to back-up their points of view with references to earlier research. Collectively, the team was able to draw up a bibliography of valuable documents to be reviewed.

### **Literature review**

For a country of its size (or perhaps *because* of its size) Lesotho is well researched. In addition to the extensive sets of government laws and regulations (published in gazettes), various research institutions and programmes have contributed a wealth of information that pertains to the administration and regulation of land use, urban development and governance, housing, supply of utilities, and so on. It was felt that some knowledge of these would enable the project to build on existing information rather than covering the same ground. The literature review enabled the research team to clearly identify gaps and to consider what topics needed further clarification or updating. As can be seen from the first section of this chapter, the literature review provided valuable material in developing an understanding of the broader context.

### **Key information interviews and stakeholder workshops**

The next step was to identify the key stakeholders who either have responsibilities for land acquisition and allocation or who play an active role in the sector. This was done by conducting a series of key informant interviews with the leaders of known institutions who then made the team aware of other players.

It was considered that the main stakeholders should be made aware of the study at an early stage so as to assist the team in developing an understanding of the issues and research questions to be explored. As mentioned earlier, they assisted in prioritising topics to be addressed given the limited time and resources available. The stakeholders were interviewed individually and were also invited to two workshops, one at the start of the project and one after the fieldwork had been completed and results were ready for presentation. The key stakeholders who were interviewed and/or participated in the workshops include the following:

- The Ministry of Local Government, including the Department of Housing and related technical directorates;
- The Lesotho Housing and Land Development Corporation (LHLDC);
- The Maseru City Council (MCC);
- Lesotho National Development Corporation (LNDC);
- Water and Sewerage Authority (WASA);
- Principal Chiefs;
- Local chiefs;
- Field owners.

## **Household survey**

Given the need to quantify responses to many of the basic research questions, it was decided that a household survey would be the most appropriate way of obtaining precise figures. The first step was to identify the research areas that were felt to best represent the focus of the study. Two neighbourhoods were selected in the fast-growing southern part of Maseru, Thetsane West and Ha Tsolo, which include a mix of recent formal and informal settlement. They were deemed to be most suitable as the study is focusing on land acquisition in *new areas* of settlement, as opposed to the upgrading of existing settlements. The co-operation of local authorities was obtained before proceeding any further.

The next step was to draw up a questionnaire that incorporated all of the research questions amenable to quantification. This was done as a team exercise, involving the collaborating university students who were also to play the role of enumerators during data collection. Initial drafts were reviewed not only by the team, but also by the UK Project Co-ordinator, with a view to ensuring that all critical issues had been addressed. The draft was then translated into Sesotho, a language common to virtually all residents of Lesotho, before being taken into the field for pre-testing. As is usually the case, the pre-testing revealed certain deficiencies and further amendments were made and tested before a final version was agreed upon.

In August 2001, a random sample of 300 households was interviewed by the team of six NUL students using the questionnaire in Annex 1. The population was considered to be 'infinite' for sampling purposes. In other words, we did not attempt to interview a fixed percentage of a known population, but rather ensured that an adequate number of households were interviewed to allow for the sample to be statistically significant when stratified during analysis.<sup>6</sup> Aerial photographs were used to ensure that all parts of the two neighbourhoods were covered and that all households had an equal chance of being represented in the sample. Although the bulk of the households were found in the informally settled areas, approximately 25 percent of the home-owners interviewed were located in a lower-income planned settlement in Thetsane West developed by LHLDC.

In addition to using a fairly structured questionnaire, the household survey included some participatory exercises that could be quantified. These were used primarily to determine three things: what regulations/standards interviewees were aware of; which they themselves had followed and which they felt were most essential. Interviewees were given a set of cards with one "regulation" written on each card. Some of these were "real" (taken from existing legislation), others were "legitimate" (coming from the Laws of Lerotholi) and others were pure "fiction". They were then asked to select, sort and (where appropriate) prioritise the cards. They were asked to explain their choices, which were recorded on the questionnaire for later quantification and analysis.

Throughout the period of data collection, the students were supervised by a Senior Research Assistant from Sechaba Consultants who has many years of experience in similar exercises and also happened to be a resident of one of the neighbourhoods. His knowledge of the area proved to be invaluable.

The students were trained in how to set up a data entry template and start entering the data. They were supervised and assisted in this by Dr Chakela of the National University's Geography Department and David Hall from Sechaba Consultants. The data were entered and analysed using the Statistical Package for the Social Sciences (SPSS) at Sechaba Consultants. Students were trained to do their own analysis. They have all gone on to produce independent reports and have now graduated from NUL. Collaboration with the

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<sup>6</sup> Here "stratification" refers to carrying out analysis on a single variable (such as 'income') according to particular categories or strata (such as 'gender' or 'occupation').

University not only made it feasible to obtain a reasonable number of interviewees while keeping within the budget, but also provided a stimulating environment for the exchange of ideas and enabled the project to strengthen local research capability. Once the data had been analysed, a report was prepared containing the key findings. This was presented as a feedback mechanism to the stakeholder workshop mentioned earlier.

### **Listing of administrative steps**

As we shall soon see, the fieldwork demonstrated that very few people indeed were adhering to the prescribed, formal administrative procedures. Where there had been some adherence it was usually partial, with one shortcut or another having been taken. Given the overall objectives of the international study described earlier, it was important that all the steps should be identified with a view to assessing the extent to which these might act as a barrier to low-income households accessing land legally. As we had not been able to identify a single low-income household that had actually tried to move through the plethora of procedures described in the last section, this became a largely academic exercise. Through interviews with better-off households (who had attempted to follow at least some of the procedures) and consultations with legal experts, it was possible to draw up the list.

As noted, 13 administrative procedures were listed that would-be land-owners need to pass through before they can obtain full legal possession of a site. However, it should be pointed out that these do not take into account the steps that the land acquisition institutions need to go through before the sites are advertised. Estimates were then made of the average length of time applicants take to pass through the 13 steps.

Collaboration was obtained from the LHLDC and MCC planning departments on estimating the relative costs of planning standards and regulations as they are most directly involved in formal housing developments, although these are not really targeted at lower income households.

## **Results**

### **Demographics and socio-economics**

The survey collected data on 956 household members living in 309 households, with 150 at Thetsane West and 159 in Ha Tsolo<sup>7</sup>. There were significantly more females than males (55 percent vs. 45 percent) which can be accounted for by the relatively large number of young women who have moved to the area to seek employment in the nearby garment factories.

Contrary to expectations, very few household members were unrelated to the household head (4 percent). This suggests that when migrants move into the area they set up their own households from the start, rather than seek accommodation within somebody else's home. The majority of members (91 percent) were living at home, with 10 percent being away working or schooling either in South Africa or in other parts of Lesotho.

Looking at adults between the age of 16 and 65 years, it was found that employment levels are well above average, which is not surprising given the proximity of the factories. 36 percent of the adults were employed as factory workers, 23 percent had waged employment elsewhere, 8 percent described themselves as self-employed, 10 percent were studying, 4 percent survived on piece work while the remainder said they were either "at home" or unemployed.

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<sup>7</sup> The 1996 population estimates for the two neighbourhoods were 3,041 for Ha Tsolo and 3,074 for Thetsane.

A socio-economic assessment was carried out on each household. This was done by the enumerators following the interview; it is based on the information gained and immediate observation. It is a method that we have used in many surveys and have found that the results correlate very strongly with other socio-economic data, suggesting it is a valid approach. The results showed that 5 percent of the sample were considered 'destitute', 58 percent 'poor', 35 percent 'average' and 2 percent 'above average'.

### **Renters vs. owners**

The random sample found that 32 percent of residents were home-owners, with the remainder being renters. The high proportion of tenants is an indicator of the rapid process of urbanisation underway in Maseru. This is especially true in the fast-growing study areas located close to the new factories. The proportion of tenants is likely to increase in the next five years as even larger factories currently being constructed are brought on line. The fact that so many new arrivals are able to find affordable housing in the form of *maline* demonstrates how rapidly site owners are responding to an investment opportunity. If all those investing in *maline* were to follow the formal administrative procedures and set standards, the whole process would be slowed down to a snail's pace, with homelessness being the inevitable result.

As the difference between owners and renters is critical to the study, much of the analysis that follows is based on this distinction.

### **Time in the neighbourhood**

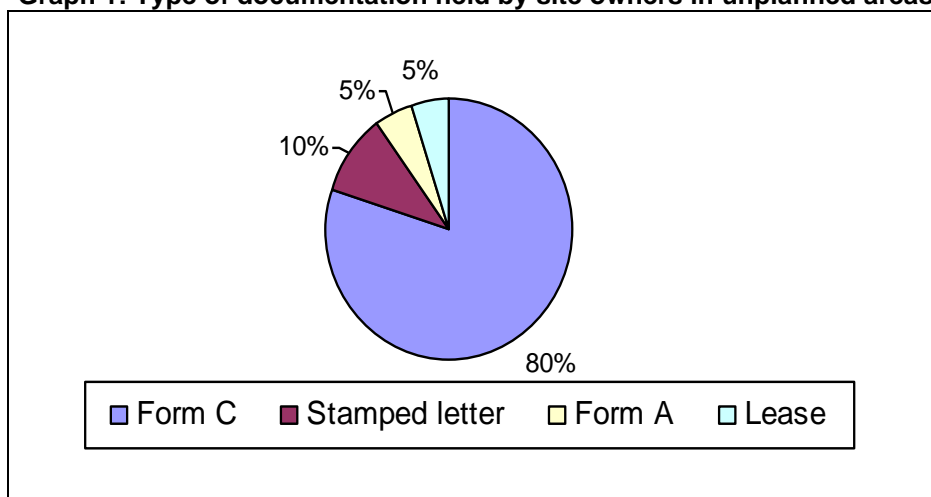
Few of the site owners had been in the area for very long. Only 8 percent had arrived some time before 1979; 23 percent had acquired their land in the 1980s, while almost one third (32 percent) had done so in early 1990s (1990-1995). A large proportion (37 percent) had acquired the land since 1995. Those who had more recently arrived (since 1995) were much less likely to have had a choice of sites to select from (53 percent for those in the early nineties, compared to only 30 percent since), suggesting a growing scarcity of land as the area became more densely settled. The speed of settlement is striking and an important indication of the level of efficiency that would be required if all new arrivals requiring land were to be processed through formal channels.

### **Evidence of land ownership**

As would be expected, virtually all the site owners living in the planned area of LHLDC (in Thetsane West) had either a lease or (in a few cases) a formal letter of transfer. More surprising was the finding that 93 percent of those living in the *informal* areas of both Thetsane West and Ha Tsolo had some form of documentation that recorded acquisition of the site. This finding demonstrates that people are not building in a totally unregulated way; instead regulation, of a sort, is taking place. When asked what type of document they had, the following results emerged:



**Graph 1: Type of documentation held by site owners in unplanned areas**



Clearly the Form C, regardless of its current legal status, is the dominant form of documentation. Only 20 percent of site owners had other forms of documentation, with the most common being a stamped letter from the chief (10 percent). Only 5 percent claimed to have a lease (and even this figure was contested by officials at the stakeholder workshop who do not believe anyone in the unplanned area has been formally issued with a lease).

### **Steps taken to obtain land**

Developing an understanding of the actual steps people take in trying to access land was a key objective of the study. The results from the households survey demonstrate that in the unplanned areas (where most land acquisition takes place) people are most likely to approach field owners and chiefs directly. The most common **first** steps to procuring land were as follows:

- ⇒ Go directly to the field owner and negotiate (49 percent);
- ⇒ Go to the Chief (30 percent);
- ⇒ Deal directly with the previous owner of a developed site (18 percent);
- ⇒ Obtain the land through traditional land allocation (2 percent).

Subsequent steps would then depend on how effective the first had been: in 6 percent of cases the second step was payment for the site, whereas this rose to 37 percent of cases where a third step was taken.

Overall 43 percent of home-owners completed their transactions in one simple step, 35 percent had to take two steps while 22 percent had to take three steps. In other words, almost half the sample were able to complete their transactions without any need to make multiple visits to those involved.

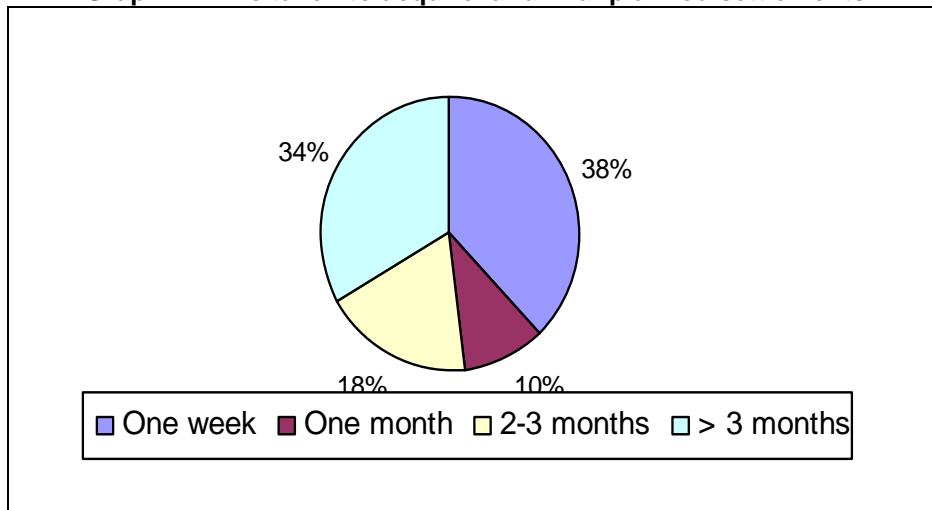
The steps taken were influenced by the socio-economic status. Better-off households were less likely to go directly to the chiefs and more likely to deal with the land-owners. Poorer households were most likely to seek help from the chiefs (39 percent vs. 26 percent). Overall, chiefs played a very significant role in assisting people to acquire land. They were involved in one way or another in 75 percent of the transactions. In 55 percent of cases, the field owners had also been directly involved, while in the remaining cases the transaction had either involved the site owners (already developed) or the site had been acquired through inheritance. Contrary to expectations, the likelihood of home-owners having the now defunct 'Form C' (provided by chiefs as evidence of land allocation in rural areas) is higher for those who have more recently acquired: with only 60 percent of the early residents have

a Form C, compared to 75 percent for those in the 1980s and early 1990s, and 100 percent for those acquiring land since 1995. In other words, those who have acquired land recently have been more careful to ensure that they have some form of documentation, possibly because they are more aware of the threat of eviction. The fact that these are no longer supposed to be issued by chiefs confirms the views of the Land Commission noted in the first section of this chapter, that the forms have become subject to misuse.

### **Time taken to acquire land**

Overall, very little time was taken in obtaining the land: 50 percent of the interviewees were able to complete the first step within seven (7) days and 72 percent were able to complete within one month. Similar results emerged for the second step taken, however the third proved to be more time consuming, with only 44 percent completing the process within a month. The data show that a very significant proportion of home-owners were able to complete their land acquisition transactions in a very short period of time:

**Graph 2: Time taken to acquire land in unplanned settlements**



Only 11 percent had to wait for more than a year to complete all transactions. The mean number of days for the unplanned area was 86, with a median of 33, considerably less than that for the planned LHLDC which was 234, with a median 45. However, it should be noted that in the case of LHLDC, 50 percent were able to complete transactions within one month, and 70 percent within one year. The high mean is caused by the 30 percent who took over a year, with a number of extreme cases exceeding two years which raised the mean significantly.

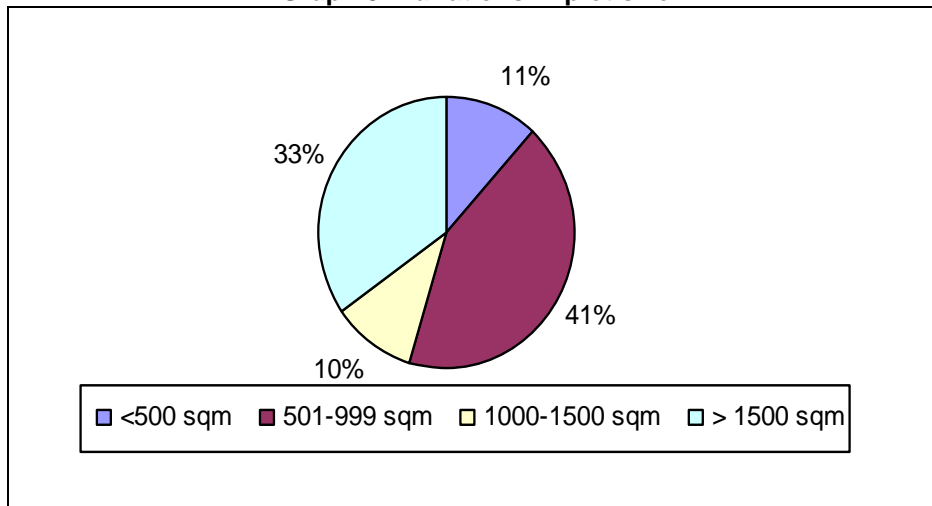
Before 1990, the mean number of days taken to acquire the land in the unplanned area was 106; from 1990 to 1995 when there was very rapid settlement (with field owners keen to sell before Government declared a Special Development Area) the figure dropped to a mean of 37 days. Since 1995, when land became scarcer, the figure rose to a mean of 94 days.

It is important to note that “time taken” refers to the calendar days one had to wait until all transactions (including documentation) were complete, not the number of days spent on the transactions themselves. Although these were not measured it is quite apparent that, generally speaking, the existing home-owners spent relatively little time on land acquisition, with two thirds completing all steps within three months.

### **Plot size**

The mean plot size (for owners) is 1,443 square metres, with the median being 930. 11 percent of the respondents had less than 500 square metres; 41 percent had plots that measured between 500 and 999 square metres; 10 percent had between 1,000 and 1,500 square metres, with the remaining 37 percent owning over 1,500 square metres. This distribution is reflected in the pie chart below which shows the predominance of those falling into the 501-999 square metre category very clearly.

**Graph 3: Variations in plot size**



Very few people saw any problem associated with large plots, confirming the view that, culturally, Basotho favour relatively large plots which allow for other on-site activities than housing. Satisfaction with plot size bore some relationship to actual size, although the correlation is not very strong. The overall proportion of respondents who felt their plot was too small was 40 percent. Not surprisingly, those with the smallest plots tended to be the least satisfied with the size (60 percent unsatisfied).

There did not seem to be any really appreciation that large plot sizes were likely to result in a significant increase in the cost of providing essential services, including water supply. Unfortunately the study did not take the opportunity to explore people's views on a possible trade-off between accepting smaller plot sizes in exchange for cheaper connection fees for water, electricity and telephones. With hind-sight this would have been a worthwhile exercise and one that will be considered in the future.

### **Price**

Overall, 79 percent of the site owners had paid something for their land. The 77 interviewees who were willing and able to reveal how much they paid were asked to do so. The price paid per square metre was then computed by dividing the amount paid by the size of the site. From the 54 cases with detailed information, it emerges that the mean price paid was M2.00 per square metre (US\$1=M10). When those who accessed land through LHLDC are included, the mean price paid doubles to M4.00 per square metre. Approximately one third paid less than M1.00; one third between M1.00 and M2.00 and the remainder over M2.00. The highest price paid was M6.67 per square metre. Within the limitations of a relatively small sample, it would appear that the price dropped during the very busy period 1990-1995 when many owners were able to acquire land fairly quickly and then it rose again in the post 1995 period. More detailed study would be needed to verify these provisional results.

### **Problems experienced**

When asked what problems, if any, they had encountered obtaining land, 28 percent of the site owners said they had not encountered any problems at all. The most common problem mentioned was financial: 22 percent had experienced difficulties raising the funds required for the purchase. 16 percent had been frustrated by what they described as “delays” in the process; a slightly lower percentage (14 percent) complained of having to wait a long time for their papers. 10 percent noted that delays were experienced while the field-owner consulted his family. There were also a number (6 percent) of cases where the new owner found that the site had already been allocated or sold to someone else, causing delays as the parties involved attempted to resolve the issue. They reasoned that because they had papers for the plot and had paid for it they had nothing to fear. Those who were concerned said it was because they had heard of people in the area having their plots taken from them. It is important to stress that interviewees who had followed the informal route did not experience problems anything like as frustrating as those described by case study participants who attempted to adhere to the formal administrative procedures.

### **Renters**

The majority of those residents interviewed in Thetsane West and Ha Tsolo were renters (210 vs. 70 owners). The vast majority (75 percent) had moved to the area in the last three years, with 23 percent having arrived in the last six months. The prime reason for moving was work (82 percent), either because a job had been secured nearby or because there was hope of finding one. In 8 percent of cases, renters had moved to follow a spouse or other relative who had earlier settled in the area. Other reasons for setting up home in the area included “wanting to be independent” (5 percent) and wanting to be nearer to services (3 percent).

The very low percentage moving to be nearer services underlines the fact that these are a low priority: employment comes first and from that point onwards people seek to improve their standard of living. When asked what problems the community faced, one issue dominates all others: water. 89 percent of respondents mentioned water as one of the top five problems facing the community. During open-ended discussions, members of the community stressed their concern about the scarcity of water supply, and their bitterness that nearby factories are supplied with water while they continue to struggle, despite numerous appeals to government for assistance.

The other most frequently cited community problem also relates to other public utilities: lack of electricity, mentioned by 38 percent of respondents. This is followed, some way down the list, by poor roads (21 percent), unemployment (21 percent) and insecurity, caused by the high level of crime in the area (18 percent).

Although the majority of residents are renters, it is worth noting that a significant proportion (33 percent) of these renters are in fact site owners elsewhere. In other words, they have experience of land procurement in a different context, but have been forced by circumstance to leave their own land behind. Renters had moved to the area from many different parts of the country: 72 percent came from lowland areas, with the remaining 28 percent originating from the mountains (figures roughly in-keeping with the national distribution of the population across these zones). Most of the renters (68 percent) originated from rural parts of the country. When asked why they are renting a house rather than owning, the vast majority (90 percent) said it was *because they could not currently afford the land and building costs*. A few (5 percent) were renting in the area specifically to reduce transport costs to work. *It is important to note that none of the renters mentioned planning or administrative procedures as a constraint and none mentioned lack of sites.*

Although they are currently short of funds, it is the clear ambition of the majority (85 percent) of renters to acquire their own land. When asked how much they expected to pay, the mean amount given was M3,260 (\$500), being somewhat higher than the mean paid by existing owners outside the Lesotho Housing area.

Renters were asked to specify what services they would expect if they were to purchase a site. The following results were obtained:

- Electricity 55 percent
- Water 54 percent
- Telephones 16 percent
- Roads 15 percent
- Sewerage line 14 percent

Once again, water emerges as a very high priority. It is interesting that roads are a relatively low priority, which is not surprising given the low levels of vehicle ownership. This partly explains why many residents appear not to be overly concerned about the ad hoc pattern of settlement which can make vehicle access to homes difficult.

When asked who should be involved in the process of land procurement, the vast majority (77 percent) immediately cited the chief as the prime player. The next most frequently mentioned party to be involved in the process was the field owner (mentioned by 33 percent of respondents). 10 percent felt that the local Village Development Committee or an elected Land Allocation Committee should be involved. Overall, only 15 percent felt that government (in one form or another) should be involved. In explaining their preferences, the interviewees argued that the chief was their leader, and should therefore be involved. They stressed that they knew the chief and the field owner they were dealing with, as opposed to government officials who were unknown to them.

The majority of respondents (54 percent) were not aware of any government involvement in the development and sale of plots for residential purposes. When the remaining 46 percent who claimed to be aware of government's involvement were asked where they would go for help (i.e. which government office) to procure a site, very many (47 percent) did not have any idea where to begin. The two offices which were mentioned - in equal proportions - were those of the Maseru City Council (26 percent) and those of the Lesotho Housing Corporation (27 percent).

### **Knowledge of 'regulations'**

In order to assess residents' knowledge of regulations governing the acquisition of land, a card selection exercise was devised. This consisted of writing brief descriptions of regulations in Sesotho on sets of otherwise blank cards. These cards (16 in all) were then placed in front of the interviewees who were asked first to select those known to them and then later to select those they considered to be most essential for the future. As Lesotho has very high levels of literacy, this is an exercise which generally works well. In the very few cases where participants could not read, the cards were carefully read out for them.

Not all the 'regulations' written on the cards are real or legal. Indeed, a number of false 'regulations' or illegal/improper practices were also included to determine the extent to which participants incorrectly thought these to be real regulations governing access to land. In addition some entitlements were included (such as "You can inherit land").

In the first column in the table below, the "known" regulations are listed, taking the order of those best known to renters. This is followed by the regulations known to owners. The next two columns show which regulations were considered essential by renters and owners. The

figures in the columns give the percentage of respondents who selected a particular card. Those 'regulations' which do not hold any legal status are shaded.

**Table 2: Results of card exercise**

"Regulation"	Known		Considered essential	
	Rent	Own	Rent	Own
You can inherit land	79	64	56	45
Everyone should have a document as evidence of ownership	76	76	64	59
Field owners can provide sites	65	62	45	36
Land is allocated by the chief	65	74	48	34
Only Lesotho citizens can get sites	62	58	76	71
Chiefs have the authority to allocate fields	56	43	42	30
Land should be registered in the names of the buyer	51	45	57	43
Land is allocated by the Village Development Council	44	52	40	30
Don't accept sites in special development areas of Govt	41	62	57	58
You can only buy a site from a field owner	24	30	43	40
Your site must be fenced to get a lease	13	36	30	33
Land is only sold if there is a lease	12	36	34	32
In development areas you should have a lease	11	23	30	26
In towns a Form C should be converted to a lease	7	24	31	31
No sale allowed of undeveloped land	3	12	19	23
A site should not exceed 100x100 feet	2	1	0	27

What is immediately evident from the above table is that certain common (but illegal) practices are thought, by the majority of respondents (be they renters or owners) to be proper regulations. Looking at the first three shaded rows, it can be seen that very many people believe that the most common, but illegal, forms of land acquisition described earlier (purchase from field owners with approval/involvement of chief) are perfectly legitimate. By contrast, some of the key regulations that should be well known are only known to less than 15 percent of renters (see bottom rows) and less than 40 percent of owners.

What emerges very clearly from the table (supported by the earlier results on people's practices) is that the regulatory framework is poorly understood, while customary practices with deep rural roots, continue to dominate. The received legal framework is clearly not well communicated to ordinary people. Indeed, it emerged during the stakeholder workshops that it is impossible to obtain a simple guide in Sesotho explaining how to go about obtaining land legally. All of the forms are in English, and can only be obtained by going to a number of different offices. One workshop participant who hoped to develop land for rental housing found that nobody could tell him what the relevant procedures or regulations were. When he found out one step, he then had to spend time finding out the next – nothing was clear. The dissemination of information on the regulatory framework (ie planning regulations, standards and procedures) is lacking in both English and Sesotho. The absence of such information clearly contributes to the confused perception people have of the customary and legal frameworks.

In the next section we briefly evaluate the findings and methods, but first we report on reactions to the household survey given by workshop participants.

### **Feedback from workshop participants**

The presentation of the survey findings generated an hour of detailed discussion. Below three points raised immediately after the presentation are noted. Additional points

concerning other presentations and workshop proceedings can be found in the Lesotho visit report of Geoff Payne (see Annex 4).

### **Social networks, chiefs and the people's perceptions of land allocation in urban areas**

The first point raised highlighted the need for the study to examine the role of social networks. These networks include the chiefs whose position is pivotal. Indeed, there is evidence to suggest that the facilitating role that chiefs play in linking field owners with would-be buyers has hardly diminished in time, regardless of the efforts made by government to dis-empower them in urban areas. One workshop participant suggested that the study should further explore people's perceptions of the various institutions that are supposed to play a role in urban land allocation. It was noted that there is existing research that can be drawn upon to address the role that chiefs play in the system.

### **Choice of routes and gender**

The study showed that a small proportion of households in the unplanned areas of Maseru acquire a lease. Assuming this has been done legally, it was considered that these households could be revisited to determine why they – as opposed to the vast majority of households that surround them – followed an apparently legal path to land acquisition. The participant also suggested that the gender dimensions of land acquisition, legal or legitimate needed to be explored.

### **Selection of "low-income households" for legal shelter**

In the course of discussions, it became apparent the LHLDC is in an impossible situation: its mandate is so broad ("provide shelter for the Basotho nation") that it is virtually meaningless. It is expected to turn a profit, but at the same time assist low-income households obtain legal shelter.

Participants argued that its affordability tests (which ensure that only those with regular wages are selected) immediately exclude poorer households who do not have access to wages. It was also felt that the choice of applicants is too often based on whether or not their families are known to the members of the interview panel. In short, nobody felt LHLDC was meeting the needs of the poor, while LHLDC members indicated a desire to have their mandate modified so this would no longer be expected of them (they suggested MCC should be responsible for this).

## EVALUATION OF FINDINGS

In this section we address a series of core questions, common to all the countries involved in the project.

### **How critical is the Regulatory Framework in facilitating or constraining access to legal housing?**

The study set out to determine what planning standards, regulations and administrative procedures there might be which prevent (or constrain) access to legal shelter for low-income households. The results clearly show that the regulatory framework is largely unknown and unused by the population at large. The formal framework, which dates back to the days of colonial rule, applies to a small elite operating primarily in the better-established urban centre. Here it, could be argued, the framework seriously constrains legal access to land as even those who are “well-connected” are so frustrated by complex and time-consuming administrative procedures that they either give up attempting to obtain a lease or do not try at all. A more streamlined system would make a significant difference and would almost certainly encourage the growth of a commercial land market with better prospects for land financing.

The majority of the population (including virtually all low-income households) live in peri-urban areas where the formal system described barely functions. Here, they are able to access land efficiently under the customary system. Most households spend relatively little time completing the transactions (just under 50 percent took one month or less). For low-income households rather than either constraining or facilitating access to legal shelter it would appear that the existing framework is basically irrelevant. They pursue well-established, traditional mechanisms to access land in ways that they consider to be legitimate, although technically these are no longer part of the modern regulatory framework governing urban areas.

For the majority of low-income households, there are constraints to legal shelter that are far more significant than the regulatory framework. These pertain to supply (a miniscule number of low-cost legal plots are available in relation to need) and price (most cannot afford even the cheapest legal sites).

### **Apart from contextual aspects (eg lack of supply), what proved to be the most significant costs/constraints to affordable legal shelter for the urban poor – regulations, standards or administrative procedures?**

Administrative procedures are by far the most significant constraint (apart from supply and cost). In a situation of relatively cheap land, standards were not seen to be a serious constraint to legal shelter. Stakeholders agree that the administrative procedures listed earlier are so cumbersome and time-consuming, and contain so many bottlenecks, that the urban poor will always be driven to use customary approaches unless very radical reforms are made. The time requirements, for the small minority who proceed through this formal route, are shown in the table below:



**Table 3: Relative cost in time of administrative steps required to obtain legal shelter**

	Administrative steps required to obtain legal shelter	Relative cost in time			
1	Applications invited (newspaper adverts) Forms completed	■			
2	Interviews held by land committee town clerk (affordability test)	■			
3	Notification forwarded to applicants by letter attached with legal notice	■	■		
4	MCC prepares grant to send to Minister/Commissioner of Lands for consent	■	■	■	■
5	MCC prepares daft lease. Sends to grantee for scrutiny and certification	■			
6	Grantee pays ground rent and stamp duty	■			
7	Commissioner sends lease to deeds registry for registration and seal	■	■	■	
8	Collection of lease from deeds registry	■			
9	Commissioner forwards lease to MCC	■	■	■	
10	MCC contracts grantee to collect lease	■	■		
11	Site to be fenced within 6 months	■			
12	Site and building plans to be approved before any construction	■	■	■	■

**What specific regulations, standards or procedures represented the largest costs/constraints and in what ways?**

Stakeholders agreed that the over-centralisation of procedures, especially the requirement of ministerial approval of leases, was by far the largest constraint. This results in endless delays as the Minister is frequently not available, and when available can only sign a limited number of documents.

**What agencies act as the gatekeepers responsible for formulating, implementing – and changing these aspects?**

Many of the key agencies mentioned would need to be involved, notably the:

- Ministry of Local Government, including the Department of Housing and related technical directorates;
- Lesotho Housing and Land Development Corporation (LHLDC);
- Maseru City Council (MCC);
- Deeds Registry in the Ministry of Justice and Human Rights.

**Evaluation of methods**

The focus of the Lesotho study was on the household survey, reflecting the experience and skills of the sociologist who led the team. This made it possible to determine, with considerably accuracy, the extent to which the formal and customary systems regulate access to housing. By collecting socio-economic data, it was possible explore how interviewees’ levels of poverty influence their approaches to accessing land and what the main constraints for different categories of households.

The inclusion of the participatory “card sorting” exercise livened up the interviewees and provided valuable results that could be quantified regarding people’s knowledge and understanding of the regulations.

Overall, it can be concluded that the household survey enabled us to address all the key quantifiable questions set at the start of the study. Uncertainty about the extent to which the populations in the peri-urban followed formal and/or customary systems was resolved. The findings put concerns about the impact of standards and administrative procedures into

perspective. While these clearly constrain access to legal shelter, the data show that only a small proportion of the peri-urban population are affected, with the bulk being served by the customary system in a relatively efficient manner. For the few who do follow the formal route, the regulatory matrix (Table 2) showed that the most obstructive administrative procedure was considered to be the requirement that ministerial (or Commissioner of Land's) approval be obtained for each lease. Issues relating to planning regulations and standards did not raise as much interest, possibly because so little land and housing is made available through their application. In short, in the Lesotho context, people felt there were more fundamental issues relating to land procurement and allocation that needed to be addressed before planning regulations and standards could be given more detailed attention.

The information that emerged from the household survey concurs with that recorded during the country-wide Land Policy Review Commission. The former was able to quantify issues that the public raised during the Review Commission. Again, this has the advantage of putting issues into perspective.

The data from the household survey were checked in the field, by the supervisor, and again in the office before being entered. The consistency of the responses and the logical patterns derived would indicate a relatively high level of statistical reliability. Only a fraction of the data collected has been used for the purposes of this report. A considerable body now exists that can be analysed further by interested parties working the sector. It is a valuable exercise in places where data are not readily available on issues that pertain to the regulatory framework.

## **Recommendations for action made at end of the research phase**

At the end of the research phase, the team made recommendations for both long-term and short-term measures. These are presented below. In the next section we report on the implementation phase where an effort was made to convince key gatekeepers to act on some of the recommendations described below.

### **Long term**

In the long term, the profound differences between the customary and formal approaches to land allocation that are so apparent in the urban areas need to be reviewed and reconciled. Lesotho needs to search for creative ways in which the conflicting components of the colonial mix of direct and indirect rule can be reconciled. There have been quite successful attempts at blending the two systems in the past, but these have not been extended because they have not had broad-based support. The Land Policy Review Commission underlined the importance of far-reaching reforms. The Commission's recommendations need to be taken in to the public arena and debated. A new vision needs to be developed through an inclusive dialogue, similar to the "2020 Vision" process.

The new approach will have to give high priority to creating more efficient mechanism for obtaining and allocating land. The SDA approach needs to be reviewed and reformed, with particular attention being paid to the formulation of a clear compensation policy to guide the process. On the institutional side, we can only support the recommendations of the Review Commission, which argued that all matters relating to land, as well as land administration and the environment should be the responsibility of a new Ministry of Lands and Environment. The roles and responsibilities of land management institutions will need to be reviewed and streamlined under this new Ministry with significantly more capacity being provided to key areas. A conducive environment for competition in land delivery needs to be

developed.

### **Short term**

While this study supports the need for long-term reform, it is recognised that this is a process that will take many years. However, the audit has been able to identify particular points within the existing system that would benefit from immediate reform. While these may not entail radical reform they are feasible and achievable in the short term. Most of the points below, were made by stakeholders during interviews and at workshops in support of the household survey findings which identified many of them:

- Remove the requirement the Minister/Commissioner of Lands has to sign all lease documents;
- Decentralise the issuing of leases so that this can be done at district level;
- Delegate authority for approval to lower levels;
- Publish in Sesotho and English brochures explaining all the steps required to obtain land legally;
- Make moves towards LSPP being a facilitator and regulator of service provision, not a provider;
- Create a 'one-stop-shop' for peri-urban areas initially providing information and advice, later empowered to take on more direct (delegated) responsibility in land administration;
- Bring the chiefs formally into the system by including them in planning, decision making and issuing of certificates of title leading to an eventual lease;
- Increase the capacity of land delivery institutions.

### **Implementation**

The conclusion reached at the end of the first phase of the Lesotho case study (described in the previous section) was that fundamental changes would be required to the regulatory framework (RF) if it were ever to facilitate – rather than hinder – access to legal, low-income housing. As the Lesotho study team was comprised of researchers operating outside of the bodies that are responsible for implementing the RF, a key activity in the second phase of the exercise was to lobby the main gate-keepers to bring about the recommended changes. In this section we discuss how this was done, what constraints were encountered and what the outcomes have been.

### **The need for change**

As noted above, the research findings from Phase One revealed a number of critical points: over 90 percent of residents in the study area acquired land without following the formal regulatory framework; they hold documents recording their lands transactions, but none of these would be officially recognised; the vast majority of standards and regulations are unknown or are considered irrelevant. The very small minority who attempt to follow the RF are relatively wealthy and 'well-connected'; even they take between two to seven years to complete the process of legal acquisition.

Given these findings, the Lesotho team concluded that very *fundamental changes* would be required if the long-term objective of legal land provision for low-income groups were ever to be achieved. While the regulatory audit revealed particularly severe bottlenecks – particularly with regard to the highly centralised administrative procedures – it was felt that adjusting these would have only a limited impact. In other words, the extent of the problems revealed by the audit were such that any tinkering with administrative steps would obviously only benefit a small minority of better-off households who follow the RF, leaving the bulk of the urban poor to fall back on the informal and customary mechanisms that result in

technically illegal occupation of land. For this reason, it was considered important to move from research to advocating for fundamental changes to the system.

### **From research to advocacy**

As researchers, the Lesotho team were not in any position to implement the Phase One recommendations directly themselves. For this reason, their key role in the implementation stage of the project was to advocate for change by making gatekeepers fully aware of the research findings and the report's recommendations. This advocacy work consisted of:

- Identifying particular people within the many institutions that have a role in land allocation and administration;
- Inviting them to participate in the workshops;
- Ensuring they obtained copies of the report;
- Visiting them to determine their reactions to the report and to discuss how they might use it in promoting change;
- Writing to the Minister of Local Government and the Principal Secretary regarding the study process and outcomes;
- Participating in the workshops organised by other organisations working on land issues.

### **Resistance to change**

The advocacy effort did not, initially, appear to render any results. This was not surprising as the issues relating to land are complex, particularly from an institutional point of view. Reform does not come easily to any organisation, especially when fundamental changes are required. In any situation of change there will be 'winners and losers' as some role players will stand to gain from the changes, possibly at the expense of others. In Lesotho, there was anecdotal evidence suggesting that the slow administrative procedures actually encouraged frustrated applicants to make unofficial payments to officials to speed the process up. Naturally, such officials would oppose changes, particularly if these were to result in a devolution of their powers.

Interviews with key gatekeepers suggest that while most appreciate the need for changes in the regulatory framework, they are sceptical about the prospects of success, especially in the short term. Reasons given for this included a general sense of bureaucratic inertia in Government, resulting in *any reforms in any sector* taking years to implement. Some informants pointed to a fear of 'rocking-the-boat', implying that people who took the initiative to bring about changes risked creating resentment from those opposed to change, and in doing so put their own jobs in jeopardy. Others felt that taking initiative was risky as any 'mistakes' might bear a political cost, particularly in terms of one's position and future in the civil service. As a result, officials say they tend to be extremely cautious and conservative when making decisions: rather than taking the initiative and striving for change – even when the need for this is blatant – officials 'stick to the rules' and refer decision making upwards so that others carry the risks. In addition, when asked about lack of progress in implementing reforms, officials talked of 'other priorities', resulting in less immediate concerns – such as reform of administrative procedures – being indefinitely shelved.

In a situation where gatekeepers constantly defer decision making to higher authorities, change can only really be achieved by influencing the higher authorities themselves. This is in itself problematic as accessing higher authorities – particularly Permanent Secretaries and Ministers – is not easy. Initially, the approach used in Lesotho was to request formal appointments. Some progress was made as meetings were eventually held with both the PS and the Minister of Local Government. During these meetings, the research findings were shared. However, as the Minister's time was highly constrained it was not feasible to discuss issues in depth, and the team left with the impression that very little progress had been made.

### **Moving into the public domain**

In the absence of progress, a Press Release was written that touched upon the role of Local Government in the provision of land and services in urban areas. By taking issues into the public domain through the media this attracted the attention of political decision makers (the Minister in particular), who then made contact with the research team to clarify certain points. While this provided an opportunity for further dialogue, it is important to note that this strategy also carried risks. A fine line had to be walked to try and ensure that the team's credibility as researchers was not brought into question by their engagement in advocacy.

Initially, advocacy efforts did not appear to bear any fruit. Meetings with various gate-keepers suggested that there was little progress in initiating reform. At this point the team considered further advocacy methods that included: more press releases/articles; public debates with live broadcasts and radio phone-in shows. All of these would probably have had the intended result of increasing pressure on the top decision makers to implement some of the recommendations made in the report. However, because of the risk to the team's credibility as *researchers* there was some reluctance to proceed further on this route unless no other alternatives were possible. This created something of a dilemma for the research team who felt it important to maintain their credibility as entirely neutral parties. It is also underlined the importance of identifying 'champions of change' who would be prepared to advocate for reform, without jeopardising their position as neutral parties engaged only in research.

### **Reviewing influence**

Before taking the risk of further action on the advocacy front it was decided that it would prudent to revisit key gate-keepers to determine the extent to which, in the interim, they had read and used the Phase One report. From this the following emerged:

- ...the *Commissioner and Lands* read the report and discussed it with senior staff, particularly the recommendations regarding delegating authority to a lower level;
- the *Head of Housing* in the Ministry of Local Government read the report and "found it extremely useful", and discussed the recommendations on changes to administrative steps with the *Minister of Local Government*, who was "very receptive";
- the *P.S. Local Government* read the report and had "many discussions" with the Minister on the recommendations on "how to remove bottlenecks and simplify the process".

Further interviews revealed that key ideas from the report did have an impact on significant legislative processes underway in the country. In particular, the report's findings were taken into account by those engaged in the DFID-supported Land Management Project that was assisting Government in developing a Draft Bill for a new Land Act. According to the Permanent Secretary of the Ministry of Local Government: "...ideas from the Regulatory Framework (Phase One) report were incorporated in the Draft Bill for a new Land Act". This being the case, rather than reviewing the entire Bill, it is worth looking at the extent to which our recommendations appear to have been considered, at least in part.

The Draft Bill recognises the need for a fundamental overhaul of the system that goes well beyond the administrative changes suggested by a regulatory audit. If passed, it would be a legislative watershed with far reaching consequences. Below we consider the significance of the Bill as well as the extent to which our recommendations appear to be addressed by its provisions.

### **Reforms reflected in the Draft Bill for new Land Act**

First and foremost, as suggested in our long-term recommendations, the Draft Bill sets a

*new vision* for the way in which land will be allocated and administered. It accepts that, although the vast majority of the population have not followed the stipulations of the existing regulatory framework, their legal rights to the land they occupy need to be recognised and they must be brought into a more simple and accessible regulatory framework. This is done through a stipulation that all persons occupying land "...peaceably, openly and uninterruptedly for a period of not less than three years" will be entitled to a primary lease. Notably, this includes those allocated land by chiefs, "as a result of deliberate misuse", or through purchase from an occupier. Through these provisions, the Draft Bill aims to end the duality of land allocation that results in those who have accessed land through customary practices (or traditional authorities) being considered "illegal" while those who have followed modern procedures are considered "legal".

The introduction in the Draft Bill of different lease types is another very fundamental step towards simplifying the regulatory framework. The intention of the Bill is that ordinary households requiring land purely for residential purposes should be able to obtain a "primary release" from local authorities at virtually no cost. Significantly, they will not be required to have their land surveyed before a lease is provided, nor will they be required to travel to the capital to visit half-a-dozen different Government offices. Only those requiring large tracts of land or wishing to use land for non-residential purposes will have to follow more complex procedures.

Looking at the recommendations for immediate action (in the Phase One report), perhaps the most important was that Government should: "Remove the requirement that the Minister or Commissioner of Lands has to approve land grant documents." The need for reform in this area has clearly been appreciated by the drafters of the Draft Bill. The proposal for the new legislation is that: "...the Minister shall be responsible for policy formulation and for ensuring the execution *by officials in the Ministry* of such functions connected with the implementation of policies..". Even if this were the only clause in the Draft Bill to pass into legislation it would be a significant improvement to the current situation where lease applications are held up for years waiting for ministerial approval.

Another Phase One recommendation was that Government should: "Decentralise the issue of leases so this can be done at district level". The Draft Bill addresses the concern of an over-centralised administration by proposing that: "A Community Council shall...be responsible for granting and confirming primary leases and demarcated leases". The significance of this is that Commissioner of Lands, instead of processing all applications for leases would now only be responsible directly for State land.

In addition to decentralising administration (at least to district level) the Lesotho team recommended that, as far as possible, authority for the approval of land transfers should be delegated to lower levels. The response by the authors of the Draft Bill has been to make local authorities in both rural and urban settings responsible for the adjudication of boundaries (without requiring surveys), for approving almost all leases and for maintaining records (Deeds Registry) at a local level.

The Phase One results showed that ordinary people, *especially low income households*, felt far removed from the country's regulatory framework, partly because they did not understand the various steps involved. None of the different offices involved in processing applications has produced guidelines on the overall process. The team recommended that the process – even if it were to be simplified by administrative reforms – should be clearly explained in a document published in Sesotho and English that should be made widely available. The Draft Bill goes beyond this by proposing that: "The Commissioner shall determine and publicise the times during working hours when one or more officers will be available to provide advice and assistance to members of the public in connection with the completion of forms provided for by this Act...".

Given the plethora of steps and offices involved in land administration, the Lesotho team proposed that 'one-stop-shops' be created in one or more peri-urban area where local authorities could work together with the assistance of Government planners or land officers. The Draft Bill does not go to this extent, but does suggest that local authorities should have "standing committees" dealing with land and that these should be assisted by Government land officers.

A final recommendation was that Government should increase the capacity of land delivery institutions so that the land could become more widely available to in a legal manner for low-income households. The Draft Bill responds to a similar concern by proposing that: "The Public Service Commission shall appoint as many public officers in the public service as may be considered necessary to ensure the efficient, effective, economical, impartial and transparent management of land in accordance with the provisions of this Act."

### **Reflections on the impact of the project**

Looking at the extent to which the Team's recommendations appear to been taken on board in the Draft Bill it would be tempting to conclude that Regulatory Framework project had a significant impact in Lesotho. This would, however, be too facile. The reality is that the team only had limited time and resources on the project and as independent researchers they were not in a position to make any changes themselves. What does appear to have happened is that the study came at the right time in the country's history and was able to make an important contribution to other processes, particularly by systematically documenting certain facts, such as the extent to which low-income households fall outside the regulatory framework, or the amount of time taken by better-off households to obtain a lease. Overall, the following factors resulted in the Draft Bill proposing such far-reaching reforms:

- A recently elected Government with a new Minister of Local Government who was determined to bring about reforms (including decentralisation);
- Key gatekeepers who were well aware of the need for reform and who were familiar with the findings of the RF study;
- Significant (well resourced) reform projects working on RF issues.

What remains to be seen is how far the reform process will go. One weakness of the Draft Bill is that, for the envisioned Land Act to function, significant progress will first have to be made with regard to implementing the Local Government Act of 1997. To date, key provisions of this Act have not been brought into force and the structures envisioned for the Land Act are simply not in place. While the timing of the study might have been right to influence the formulation of land policy and legislation, the lack of progress in dependent areas (local government reform) means that progress will be constrained. In short, it may be some years before a new Land Act sees the light of day despite the efforts of so many key players. In the meantime, low income households are most likely to continue to depend on customary or informal land allocation practices.

### **Conclusions**

Experience from Lesotho suggests that it is possible for a group of independent researchers with limited resources to have some influence on the State's decision makers. Essentially, this influence is dependent on conducting solid research and ensuring that the results reach the right people at the right time. Whether or not this influence eventually results in real reforms that will truly benefit low-income households is less certain and remains to be determined.

An important element in the limited success experienced in Lesotho was the identification of

particular role players that the team felt could actually have some influence on decision makers, even if they were not able to bring about reforms themselves. Identification of change-makers needs, therefore, to go beyond listing institutions/players towards a fairly detailed assessment of programmes and processes underway (lifetime, resources, relevance, potential to champion the cause) and the likelihood of these to initiate changes. Once identified, these players need to be kept part of the research process and should be closely involved in discussions of the results and formulation of the strategies. In short, as far as is possible, they need a full sense of ownership of the project in order to use the outcomes to promote change at a higher level.



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**ANNEXES**  
**Annex 1: Household Questionnaire**

**Regulatory Framework Study**

**Household Questionnaire for Lesotho**

Area: \_\_\_\_\_ Name of Interviewee: \_\_\_\_\_

Position in Household \_\_\_\_\_ Name of household head: \_\_\_\_\_

Date on interview: \_\_\_\_\_ Start time: \_\_\_\_\_ End time: \_\_\_\_\_

Done by: \_\_\_\_\_ Checked by: \_\_\_\_\_

Date of Data entry: \_\_\_\_\_ Done by: \_\_\_\_\_ Checked by: \_\_\_\_\_

**HOUSEHOLD INFORMATION**

Total number of members: \_\_\_\_\_

	Sex	Age	Relation to head	Marital Status	Highest School	Type of Work/Occupation	Where Working/Schooling
Head							
1.							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							

- 1. Male
- 2. Female

- 0. Head
- 1. Related
- 2. Unrelated

- 0. Unmarried
- 1. Married
- 2. Divorced/Separated
- 3. Widowed

- 1. At home/unemployed
- 2. Self employed (Explain)
- 3. Factory worker
- 4. Wage workers (Explain)
- 5. Piece work
- 6. Recently Retrenched
- 7. Pension
- 8. Scholar
- 9. Other (Explain)

- 1. Maseru
- 2. Other Lesotho
- 3. RSA
- 4. At home
- 5. Other

Assessment of poverty level: 1. Destitute 2. Poor 3. Average 4. Above average

For All: Size of site: \_\_\_\_\_ metres by \_\_\_\_\_ metres

Paper for site? 1. Yes 2. No Type: \_\_\_\_\_

hall/c:/reg frame/rf household questionnaire for Lesotho2

**A. MIGRATION**

1. Where does this household originally come from? *Complete below* Year of moving \_\_\_\_\_

**District** \_\_\_\_\_ **Eco-zone** 1. Lowlands 2. Mountains 1. Rural 2. Urban

Reasons for moving to town (if not originally from Maseru) \_\_\_\_\_

\_\_\_\_\_

2. Did you live elsewhere in Maseru before moving to this site? 1. Yes 2. No

If yes, when did you move to this site? \_\_\_\_\_ Year ..... *and* what were your reasons?

\_\_\_\_\_

3. Are you the owner of this site? 1. Yes 2. No If yes, continue. If not move to Section C.



**B. OWNERS**

1. In which year did you acquire this site? \_\_\_\_\_ 2. Did you have any choice of sites? 1. Yes 2. No

If yes, what things made you choose this site as opposed to others? Explain these things in full:

\_\_\_\_\_  
\_\_\_\_\_

3. Can you describe the different steps you had to take and how long each one took?

Step 1. \_\_\_\_\_ Time \_\_\_\_\_

Step 2. \_\_\_\_\_ Time \_\_\_\_\_

Step 3. \_\_\_\_\_ Time \_\_\_\_\_

4. Circle parties involved in the process: 1. Chief 2. Field Owner 3. Gov \_\_\_\_\_ (Specify)

4. Family (Inherited) 5. VDC/LAC 6. Previous Owner 8. Others (Specify \_\_\_\_\_)

5. Why did you choose to use the means above? \_\_\_\_\_

6. What problems did you encounter (what caused delays)? \_\_\_\_\_

\_\_\_\_\_

6a. Are you aware that you are supposed to transform your 'Form C' in a lease in the urban areas?

7. Did you have to make any payment for the site? 1. Yes 2. No.

If yes do you mind telling me how much you had to pay? \_\_\_\_\_

8. Did you have to borrow money for this? 1. Yes 2. No

If yes, where from? 1. Bank loan 2. Gov. loan 3. Employer loan 4. Family Loan 5. Other \_\_\_\_\_

9. What percent of the loans is paid off? \_\_\_\_\_

10. Has the site ever been surveyed? 1. Yes 2. No If not, why not? \_\_\_\_\_

11. Do you have other sites elsewhere? 1. Yes 2. No If yes, where?  
**District** \_\_\_\_\_ **Eco-zone** 1. Lowlands 2. Mountains 1. Rural 2. Urban

12. Are they developed? 1 Yes 2 No

13. Buildings

Type of house	Year built	Built by	Total rooms	Rooms used by owner	Rooms rented out	Rooms vacant
Flat						
Opdak						
Heisi						
Rondavel						
Mokuku						

1. Self 2. Informal builder 3. Contractor

15. What business activities are being conducted on the site? (Estimate amount for each in the year):

- |                         |                              |                   |
|-------------------------|------------------------------|-------------------|
| 1 Brewing/Shebeen _____ | 4 Dressmaking/handwork _____ | 7 Food sale _____ |
| 2 Café _____            | 5 Livestock _____            | 8 Rental _____    |
| 3 Blocks _____          | 6 Garden/Fruit trees _____   | 9 Other _____     |

16. Are there plans for further construction in the next 2 years? 1 Yes 2 No

If yes, how many rooms? \_\_\_\_\_ For what? \_\_\_\_\_

17. Who will construct? 1. Self 2. Informal builder 3. Contractor

18. Do you have any fears at all about losing your site (having it taken from you)? 1. Yes 2. No

Explain either response: \_\_\_\_\_

19. What do you think of the size of your site? 1. Too small 2. Adequate 3. Bigger than required.

Explain either response: \_\_\_\_\_

20. Do you see any disadvantages to people having large sites? 1. Yes 2. No Explain

**CARD EXERCISE FOR OWNERS**

1. Ask the interviewee which regulations he knows
2. Which ones he actually followed

3. Which ones he feels are most essential (i.e. the ones that should be kept by Govt).
4. Ask him to explain why (record in your field note book).

**For Site acquisition**

Regulations know	Regulations followed	Regulations considered essential

**For building**

Regulations know	Regulations followed	Regulations considered essential

Size of house used for household residence \_\_\_\_\_ metres by \_\_\_\_\_ metres

**C. RENTERS**

1. How many rooms rented? \_\_\_\_\_ Total Rent out per month \_\_\_\_\_

Size: \_\_\_\_\_ m x \_\_\_\_\_ m      Size: \_\_\_\_\_ m x \_\_\_\_\_ m      Size: \_\_\_\_\_ m x \_\_\_\_\_ m

2. What brought you to live in this area? \_\_\_\_\_

3. Why are you renting this site (i.e. why do you not have a home of your own?) Explain in full. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. Do you own a site at all ?      1 Yes 2 No      If yes where?

**District** \_\_\_\_\_ **Eco-zone** 1. Lowlands 2. Mountains 1. Rural 2. Urban

If no, do you hope to acquire a site?      1 Yes 2 No      Where?

**District** \_\_\_\_\_ **Eco-zone** 1. Lowlands 2. Mountains 1. Rural 2. Urban

When? \_\_\_\_\_ How much do expect to spend? \_\_\_\_\_ Will you have to borrow the money? 1. Yes 2. No

If yes, where from? 1. Bank loan 2. Gov. loan 3. Employer loan 4. Family Loan 5. Other \_\_\_\_\_

5. What do you think of the size of this site? 1. Too small 2. Adequate 3. Bigger than required.

Explain either response: \_\_\_\_\_

If you get a site what size are you hoping it will be? 1. Bigger than current 2. Smaller 3. About the same

6. Do you see any disadvantages to people having large sites? 1. Yes 2. No Explain

\_\_\_\_\_

7. Can you describe the different steps you think you will have to take to get a site and how long each might take?

Step 1. \_\_\_\_\_ Time \_\_\_\_\_

Step 2. \_\_\_\_\_ Time \_\_\_\_\_

Step 3. \_\_\_\_\_ Time \_\_\_\_\_

8. Who do you think should be involved in making sites available?

Circle parties involved in the process: 1. Chief 2. Field Owner 3. Gov \_\_\_\_\_ (Specify)  
4. Family (Inherited) 5. VDC/LAC 6. Previous Owner 8. Others (Specify \_\_\_\_\_)

Explain why? \_\_\_\_\_

7. Explain what problems you think you might encounter in getting a site (what causes of delays)?

8. Do you hope to build a house? 1 Yes 2 No When?

9. How much would you expect to spend on building a house? \_\_\_\_\_

### 10. CARD EXERCISE FOR RENTERS

1. Ask the interviewee which regulations he knows
2. Which ones he will actually followed
3. Which ones he feels are most essential (i.e. the ones that should be kept by Govt).
4. Ask him to explain why (record in your field note book).

#### For Site acquisition

Regulations know	Regulations to be followed	Regulations considered essential

#### For building

Regulations know	Regulations to be followed	Regulations considered essential

### FOR ALL INTERVIEWEES

Condition of main house used for household habitation

Type of house	Condition	Comment
Flat		
Opdak		
Heisi		

Rondavel		
Mokuku		

1. Very Poor 2. Adequate 3. Good

1. What do you think are the main things that attract people to this area? \_\_\_\_\_

2. In your view what are the five biggest problems facing the community? \_\_\_\_\_

3. In your view what are the five biggest problems facing your household? \_\_\_\_\_

8. Primary source of water for domestic use \_\_\_\_\_

- |                        |                    |                    |
|------------------------|--------------------|--------------------|
| 1 tap in house         | 6 storage tank     | 11 dam             |
| 2 tap in site          | 7 other roof water | 12 purchase        |
| 3 communal tap         | 8 well             | 13 delivery        |
| 4 own borehole         | 9 spring           | 14 neighbour's tap |
| 5 neighbour's borehole | 10 stream          | 15 other (explain) |

9. How long does it take to draw water? \_\_\_\_\_minutes/day How reliable? 1. Unreliable 2. Reliable

11. Do you have to wait at the water source? 1 No 2 Short time 3 Long time

12. If you have a secondary source of water what is it? (Use codes above) \_\_\_\_\_

13. What is the secondary source of water used for?

- 1 Watering garden 2 Animals 3 Washing clothes 4 Blocks 5 Other

14. How do you dispose of waste water?

- |                  |                   |             |
|------------------|-------------------|-------------|
| 1 Ground on site | 4 Store it        | 7 City line |
| 2 Pit on site    | 5 Ground off site | 8 Ash heap  |
| 3 Garden plot    | 6 Septic tank     | 9 Other     |

15. Type of sanitation: 1. Inside wc 2. VIP latrine 3. Pit latrine 4. Bucket 5. Outdoor

16. Is latrine shared with other households? 1 Yes 2 No Number of people sharing \_\_\_\_\_

17. What problems have you encountered with your facility?

Explain in full: \_\_\_\_\_

18. How do you dispose of your rubbish?

- |                 |                     |
|-----------------|---------------------|
| 1 Town collects | 5 Dump outside site |
| 2 Hole on site  | 6 Dump on site      |
| 3 Burn          | Rubbish heap        |



4 Compost

8 Other

17. How do you travel to work?

0 None

4 Taxi

1 Walk

5 Bus

2 Bicycle

6 Sharing

3 vehicle

7 Other

18. How long does it take? \_\_\_\_\_min

19. What is your opinion on the security in this area? (Concerns) \_\_\_\_\_

Explain cause(s)

\_\_\_\_\_

\_\_\_\_\_

20. Are you aware of sites sold by the state? 1. Yes 2. No

If yes, which office would you go to for help? \_\_\_\_\_

How much would expect to pay? \_\_\_\_\_

What services would expect with the site? \_\_\_\_\_

## **Annex 2: Case Study of the Land Acquisition Attempts of the Seliba Sa Boithuto (SBB)**

In May 1999 Mr T 'Musu, director of the Lesotho Academy of Arts (LAA), informed SSB that the Government had allocated the above-mentioned site to LAA. He offered to plot for sale to the SSB.

The LAA had, however, not obtained a lease. On 5 May 1999 the LAA Board wrote a letter to the Executive Officer of the Department of Land Allocation and Housing of the Maseru City Council with the request to grant the site to SSB.

After two months, in July 1999, the Maseru City Urban Land Committee visited the site and again two months later, on 3 September 1999, the Committee decided that the site was to be leased to LAA first and then transferred to SSB, in spite of the request to grant the lease to SSB directly.

The minutes of the meeting were lost, but Mr 'Musu searched the Committee's computer and they were found again. The minutes were then used to request the Minister of Local Government to declare the land a Selected Development Area, because the land would be used for educational purposes. This declaration was finally published in Supplement No.1 to Gazette No.12 of 18<sup>th</sup> February 2000.

After this it took 8 months before the lease was granted to the LAA, in spite of nearly daily visits to the offices of the Land Survey and Physical Planning (LSPP) Department. The reasons were varied:

- The relevant officers were not in the office, or
- Errors were made in the papers and had to be re-done, or
- The messenger, who brought the papers to the Minister to be signed, could not be found, or
- The messenger dropped the files on the road to the minister, and all the papers got mixed up and had to be sent again after a new covering letter was signed, etc.

Mr 'Musu spent days waiting in the offices of the LSPP, so that some officers got pity on him and took him to the Commissioner of Lands. However also she couldn't get her office to produce results.

Also the Chairperson of SSB visited LSPP offices nearly every day to check on progress. On 30 October 2000 the lease was finally granted to LAA.

Then the battle for the transfer to SSB began, with the same reasons for delay as above. The Ministry of Home Affairs approved the transfer after three months in January 2001.

Then the lawyers had to be paid to draw up an agreement of Sale and a Deed of Transfer. It took the lawyers 2 months to get the deed of transfer from LAA to SSB signed by the Registry of Deeds: 30 March 2001.

Two years after the first steps, SSB could finally start using the site.

But, as required by the lease, the site still needed to be fenced. SSB then identified the survey points of the site and found that, being on the side of a mountain, the site stretched over three levels separated by two rocky ridges. SSB experienced difficulties with all of its three neighbours:

One part of the site was just in front of the house of a neighbour, cutting off his access to the escarpment. After 4 months of negotiations, an agreement was signed that the fence would be constructed along the rocks of the ridge, giving the neighbour free access to the end of

his plateau, while SSB would be able to use part of his site, so that a road to the lower part could be easier constructed. However, when the fencing started he suddenly reneged on the agreement, because he wanted the fence at the bottom of the escarpment, which is impractical.

Another neighbour had taken land away from the site to extend his garden. An agreement was reached for the neighbour to keep his garden and SSB to be able to use an unfenced part of his site.

Fencing started in November 2001.

The third neighbour's site has not been surveyed, but she claims that the lowest level of the SSB site belongs to her. She called the police and LSPP and they instructed, without consulting SSB, the fencing contractor to stop working. On two occasions LSPP made an appointment to meet with SSB at the site to look at the survey points. However, SSB waited in vain. SSB went to LSPP Chief surveyor. He made one surveyor to come with SSB and he found that the points used for fencing were correct. The third neighbour was informed, but she still threatens to send her son to kill SSB members, or alternatively destroy the fence, instead of negotiating with LSPP. The fencing is still not completed to date.

## Annex 3: Example of Key Informant Interview

### MEETING NOTES

**Participants:** Planning Officials

**Contract:** Tel 317386 or 325410 or 867570

**From:** Maseru City Council

**Date / Time:** Friday 17<sup>th</sup> Dec 2000 @ 16:00hrs

**Subject:** Regulatory Frameworks for Affordable Shelter

### Issues:

1. Housing issues in peri-urban Maseru include the fact that, in some locations, rental units comprise up to 60 percent of all dwelling units. The developers of these units are often retrenched mine-workers who are investing their severance packages. The sub-divided rental units (i.e. the 'lines') can present a problem because there may be a disinclination on the part of the owner to upgrade services.
2. In the Tetsane area, the MCC is working with peri-urban dwellers who have not accessed housing land through the legal channels. This has involved surveying the area, forgetting the existing alignment of fences and boundaries and planning a more rational spatial arrangement (i.e. planning road alignment around existing properties).
3. Government appears to be increasingly concerned with the issue of low-income housing. A meeting on 'low income housing in Lesotho' was recently called by the PS Local Government – although the meeting was postponed;
4. MCC is not responsible for land allocation (only the Commissioner of Land is mandated). Under the Land Act, field owners are compensated when the government acquires land for housing, but at very low prices (which provides an incentive for field owners to bypass the official system and sell land directly to the public).
5. MCC has bought land for 150 plots in Maseru South and has sold to the public for M10/m<sup>2</sup>, at Ha Tetsane a further 80 plots have been purchased, which range in size from 375m<sup>2</sup> to 1000 m<sup>2</sup>. The development of Khubetswana at average plot sizes of 110m<sup>2</sup> was regarded as too high density as the Basotho, particularly the poor, need access to resources other than a cash income (i.e. Maseru is a rural city);
6. In Tetsane, most of the plots are some 27m x 27m and purchased by women (often widows) or retrenched miners at a cost of M3 000 to M3 500 on which a 16m x 2m property is built (lines?). The purchase of land is problematic because of the lack of finance available. Land purchases can be made with severance packages, invalidity or death benefits, stockveld (community saving schemes) and lay-bys (i.e. staggered payment for land). Building materials can often be purchased in very small lots & also on a lay-by basis.
7. There is no market for housing in Lesotho.
8. 'There is no planning in Lesotho'. MCC was donor-driven by World Bank in 1989. The Military Council agreed to Council as part of a conditionality for investment – and MCC still is not fully supported by national government (i.e. Minister for Local Government expelled all councilors from MCC in July 2000); and

9. Millennium Park was intended to be a case study for land pooling & adjustment & a participatory approach.

**Monday 5<sup>th</sup> March 2001**

#### **Annex 4: Visit to Lesotho 02-08 February 2002, by G. Payne**

I left Johannesburg on the morning of Saturday 02 February by car and arrived on Sunday 03 February. My first meeting was with David Hall on Monday 04, during which the programme for the visit was agreed and details of the local workshop confirmed. I returned by car to Johannesburg on Friday 08 February ready to fly to Dar es Salaam the next day. The schedule of activities during the visit is listed in Annex 1.

A film crew appointed by TVE visited Maseru for three days during the workshop and covered the workshop, as well as filming a range of locations and stakeholders.

##### **Meetings and visits**

I visited DLHUD/LSPP for informal meetings with the Commissioner of Lands, Me Buti and also Me Ramonaheng. Several senior staff have left and the level of morale among those left seems very low.

Honourable Justice Ramodibedi granted an interview during which he proposed a “revolution in land management to prevent corrupt chiefs from allocating land”. The White Paper on land had been presented in September 2000, but there has been no progress since and none is likely before the elections in May this year.

He indicated that urban land boards will be allowed to sell land at market rates, though he accepts that this will deny some people access to land. The boards will replace chiefs and should be able to double the allocations they and field owners make. He claimed that people nationally are very unhappy with chiefs, many of whom hold large areas of land for themselves.

We visited Thetsane West and Tikoe to meet the local chiefs. This proved unsuccessful as the first chief was instructed by a member of his committee not to speak to us as he had not obtained agreement by his committee. It is likely that this was because the film crew were in attendance. However we also failed to meet the other chief and were informed by his deputy that a written application for a meeting had to be submitted at least 14 days in advance.

During an extended meeting with the PS of Local Government, I was informed of his proposal for reorganising local land management in ways which do not officially include the chiefs but allows them to have a role if elected by local residents. There have been many proposals of this sort in recent years, so the key will be whether or not the proposal is adopted and then if it is implemented.

I had a meeting with Manfred Leupolt of GTZ at the Maseru Sun hotel. He is about to retire and is here to wind up his office. Manfred expressed caution in terms of possible progress on changes in land management policies and practices in the near future.

##### **The workshop**

This took place at Melesi Lodge, Thaba Busio on Wednesday, 07 February and was attended by over twenty participants representing public, private and community sector stakeholders (see Annex 5 for a list of participants). David Hall presented a summary of the key findings of the household survey and interviews with key stakeholders, after which a number of case studies were presented.

Discussions on the main report covered a wide range of aspects, of which the following were noted:

- The research report covered the findings of the survey, but did not explain them. Analysis and interpretation of the information needs to be improved so that options for change can be evaluated on a professional basis.
- It was claimed that obtaining leases is extremely difficult, but it was not explained how those who did obtain a lease managed it.
- It was not clear **why** people follow the informal route in obtaining land for housing. Is it due to a lack of availability (which may or may not be a reflection on the regulatory framework) or other factors. This needs to be addressed.
- It was felt that the gender issue was overlooked. (David stated that they had information on this but had not included it in the present report; this will be rectified in the final version).
- The role of key institutions was not mentioned (eg DLHUD/LSP, LHLDC, MCC, WASA, etc). The report needs to list the regulations, standards and administrative procedures which they seek to maintain and their views on the current situation. Which specific rules, regulations, standards and procedures do people ignore and **why**?
- The study gave little attention to the formal low-income area developed by Lesotho Housing. (David replied that 25 households had been interviewed in this area and would make more detailed reference to the material obtained in revising the report. One of the student interviewers commented that respondents had felt that the plots were too small and that toilets were too close to houses).
- The report claimed that most people trusted the local chiefs. However, if the majority of settlers were newcomers to the area, how did they know the chief well enough to trust him?
- It was not clear in the report how low-income was defined.
- It was not clear how LDLDC houses were allocated and what procedures were employed in identifying and selecting beneficiaries.
- Too little information was given about the costs of the formal and informal methods of obtaining land, housing and services. Apart from time, what other costs are involved (eg social costs, financial costs, environmental costs)?
- The study should identify **all** legal forms of land supply for housing **and** those intended to benefit low income groups.

The case study by a person seeking to develop an educational institution made the following points:

- Nobody could tell him what the relevant procedures or regulations were for developing rental housing. When he found out one step, he then had to spend time finding out the next – nothing was clear. It appears that dissemination of information on the regulatory framework (ie planning regulations, standards and procedures) is lacking in both English and Sesotho.
- He managed to obtain a lease within 6 months, but the complete legalisation process took 2 years.

The case study by a site developer who works in both the formal and customary sectors made the following points:

- It has taken him 2 years so far for one development and it is still not finalised. LSP/DLHUD is the problem. Its who you know that matters – without contacts, nothing happens. Why cannot a simple, clear and efficient service be provided to people?
- There are 13 steps involved in obtaining a lease and there is too much red tape in transferring a lease from one person to another.

- Institutional loans are not available without a lease. However, even **with** a lease loans may be difficult to obtain as banks often find it impossible to sell repossessed properties.

In general discussion, a number of other points were also made, including the following:

- The SDA system has not been audited. Who has the power to declare an SDA and allocate land in it? In an SDA, land titles are nullified and compensation – when it comes – is limited, so people sell to settlers illegally.
- It is clear that there are two legal systems operating independently in the Maseru area. In Ha Fosa, for example, land is legally allocated by the local chiefs as it is outside the municipal administrative boundary. However, if and when the boundaries are extended, this becomes illegal. At what point do Form Cs become illegal?
- It was claimed that the regulatory framework in Lesotho is designed to help the elites and people of substance with contacts in the bureaucracy or government to obtain access to land at the expense of others. This was achieved by putting up barriers which most people cannot even identify let alone negotiate their way past. However, chiefs have traditionally acted as facilitators and have replaced the formal agencies such as DLHUD/LSPP which have become politicised and corrupt.
- The regulatory framework promotes conflict, not harmony. Our study is at a superficial level and needs to address the central issues.
- Professional, such as planners are generally more comfortable with European type standards, regulations and procedures, but we are not living in Europe and must strengthen the roles of chiefs, not undermine them.
- The duality of the legal system is something that people have learned to exploit for their own interests by playing one system off against the other to their individual advantage. Until the system is clarified, this will continue. It is not even clear if the people who obtained leases from LHLDC went through formal procedures.
- The gap between the number of formal/legal plots allocated and the demand for land is simply too great. MCC allocated 150 plots at Thetsane West and received over 1500 applications, and these were for high income plots. An estimated 300 plots were allocated annually between 1980-91 and formal supply has not increased substantially since then.

Following group discussions, participants were requested to identify options for change. Recommendations by the three groups included the following:

1. Remove the requirement that the minister signs all leases and delegate this responsibility to district level.
2. Create and maintain a Land Information System (LIS) so that all land holdings and interests can be identified and the management of land be made more transparent, thereby improving urban governance.
3. Support the traditional system of allocating land, possibly by forming committees involving field owners, chiefs and local residents.
4. Introduce land pooling or land readjustment projects under which field owners can benefit directly from urban development and land can be managed in ways which do not require public land acquisition and compensation.
5. Permit multi-occupancy and smaller individual plots or plot subdivision, especially in prime locations where demand is highest.

In conclusion, it seems that the overwhelming conclusion of the workshop – and other discussions with a wide range of stakeholders during the visit, is that the role of the chiefs in allocating land needs to be officially recognised in some way within urban as well as rural areas. This suggests that some form of integration of the customary and statutory systems of



land allocation, development and management is offers the best way forward. The question is whether this will be acceptable to the government.

Geoff Payne  
February 2002.