

REFORMING LAND ADMINISTRATION IN LESOTHO: REBUILDING THE INSTITUTION

Sean JOHNSON and Motlotlo MATELA, Lesotho.

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SUMMARY

Land tenure, law and organisational arrangements are much the same in Lesotho as they are throughout the Southern Africa region. The state of affairs is not quite the same. Tenure insecurity, informality and inefficient service delivery characterise land administration in Lesotho.

Reviews and donor support led to capacity building efforts to improve matters but all proved difficult to realise. More radical change – rebuilding the institution of land administration – would be necessary.

A new Land Act builds upon the same foundation – a mix of urban leases and rural customary tenures – streamlining procedures and invoking systematic adjudication and regularisation of land titles. Systematic adjudication of land and parcels is an established and effective procedure but expensive. Fortunately, Lesotho is the beneficiary of a grant from the Millennium Challenge Corporation, a development agency of the United States Government.

The Land Administration Reform Project is also supporting the merger of the government departments responsible for cadastre, national mapping and deeds registration, forming a new parastatal agency called the Land Administration Authority. The LAA has ambitious plans to improve land information and land administration service delivery and, in time, recover all costs for doing so.

Emerging unscathed is the cadastre. Boundary and survey law is retained from the old Land Act and the Land Survey Act remains unchanged; however, a little-used provision for general title surveys makes it possible to quickly and relatively cheaply survey and define up to 55,000 parcels of peri-urban land over the next 3 years for owners and occupiers to receive registered leases.

INTRODUCTION

Being a small country means that land assumes a special importance in the history, politics, society, and economy of Lesotho. Dividing the land area (30,350km²) by the population (1.7 million) would be an inappropriate indicator because three-quarters of the country consists of rugged uncultivable mountains. Land, therefore, has always been and remains a sensitive issue for Basotho, and changes to land institutions are undertaken with much circumspection.

Institutional change has begun, for reasons that this paper will touch upon but not dwell upon. The paper will also précis the land issue in Lesotho and will not be precise in recounting the history, forms and development of land, tenure and institutional arrangements up to the present time. The purpose of this paper is to describe the institutional changes that are underway and what the outcomes are likely to be. A future paper will report on the reality of these outcomes.

Institutions are the rules that shape human interaction (North, 1990). These rules can be formal or informal, and organisations are formed or can form for enforcing or exploiting institutions. The institution of land comprises tenure, laws, and practices that are defined by society and shaped by societal changes. For instance, there are formal rules for land administration that are enforced by formal organisations – cadastre and registration agencies – which when faced with rising and unmet demand for land, often gives rise to increasing informality and tenure insecurity.

Land administration – the keeping of land records to support the management of land – in Lesotho is, like almost everywhere else, the responsibility of agencies of the state. The establishment and development of the institution of land administration and the agencies that maintain land records is also similar in Lesotho to other countries in the Southern African region. The legal background, registration of deeds and cadastral systems are essentially the same, notwithstanding that formal title to land is held only through a lease rather than freehold. Title to land can also be held under customary forms of tenure and, all too prevalently, by informal means. The conversion or regularisation of informal or irregular tenures to formal leasehold tenure is an initiative of current reforms highlighted in this paper.

The principles of deeds registration in Lesotho are the same as South Africa; the Deeds Registry Act of 1967 although different from South Africa's Deeds Registries Act of 1937 has the same intent, and in some sections, the same wording. The law governing land surveying and land surveyors is also constituted with the same principles although different in detail, but with one significant exception, as will be explained later.

Similarly, there are significant challenges facing land administration and land management in Lesotho, as there are elsewhere in the region. In general, the formal land administration system remains inaccessible to large numbers of people due mainly to cost and complexity. Moreover, the system has not responded to societal changes such as HIV/AIDS, increasing urbanisation, and increasing demand for land (Aliber, 2003).

The primary purpose of the Land Act of 1979 was to improve land administration and to control indiscriminate allocations of land, and it provided for an elaborate organisational structure as well as tenure reforms and other innovations to do this (Leduka, 2004). Implementation of the Act, even in its early years, proved problematic, with lack of support and funding (Mosaase,

1986) and increasing inefficiency and corruption in land administration (Adams, 2007).

A review commission (LARC, 1987), recognising “unsatisfactory services” by the agencies responsible for land allocation and administration, made numerous recommendations; and so too a review commission in 2000 (LPRC, 1999), but neither led to meaningful results or action except for the drafting of a new Land Bill (Leduka, 2004). The Land Bill, 2004 was innovative in both what it did and produced; regularisation would formalise urban tenures and different types of lease would provide different access points to the formal system depending on people’s needs and means; however, the Bill was a reform too far and it didn’t receive the support necessary to progress to law (Adams, 2006).

The need to address the problems of land administration in Lesotho meant that a new Land Bill soon emerged and with the encouragement and support of a new donor partner – the Millennium Challenge Corporation (MCC), a foreign aid agency of the Government of the United States of America – a new Land Act 2010 and Land Administration Authority Act 2010 recently became law.

THE MILLENNIUM CHALLENGE COMPACT

The Compact, or agreement, between the MCC and the Government of Lesotho signed in 2007 includes a project for private sector development. Within this project there is an activity for land administration reform that has four sub-activities: (i) policy and legal reform; (ii) systematic regularisation of land in urban areas and improvement of rural land allocation processes; (iii) modernisation and improvement of land administration services; and (iv) public outreach and training (MCA-Lesotho, 2010).

Policy and legal reform has effected institutional change through the enactment of new laws, rules and procedures. The policy of moving to leasehold tenure in urban areas through regularisation of tenure, or the conversion of informal or irregular land titles to formal registrable titles, is provided in the Land Act 2010. The Land Administration Authority Act, 2010 empowers a new land agency to implement the land administration parts of the Land Act (land allocation is decentralised to municipal councils in urban areas and community councils in rural areas, with councils comprising elected representatives and local Chiefs).

The Land Administration Authority (LAA) is merging and replacing the existing departments of Lands and Surveys and the Deeds Registry. The statutory positions of Commissioner of Lands, Registrar of Deeds and Chief Surveyor will be located in the LAA and organisationally the persons occupying these positions report to a Director General, who reports to a Board that in turn reports to the Minister of Local Government and Chieftainship. Financial sustainability of the Authority is a 10-year goal with income coming mainly from ground rents payable on leases and also, but less significantly, from services fees and the sale of products such as maps and data (LAA, 2010).

Improved performance, measured against targets for customer service, lease preparation, deeds registration and Lesotho's ranking for 'doing business' (see www.doingbusiness.org) are key objectives. In effect, the LAA is a public enterprise or government-owned executive agency, constituted for the public good but mandated to be self-sustaining.

Achieving LAA's goals and objectives relies to a large extent on the success of the third component of the land administration reform activity – systematic regularisation of land in urban areas. Regularisation is a process that adjudicates existing land rights and land holdings and converts informal or irregular landholdings into leases. The Land Act and Land Regulations give the criteria for regularisation, one of which is actual possession of the land. Customary allocations and informal transactions are also recognised. It is not compulsory, so persons must apply to benefit, and early indications are that there is broad support and participation in the peri-urban communities at which regularisation is directed.

Regularisation is also directed at the spatial component of tenure and title. The facts of land occupation and boundary features as they exist on the ground are legitimised and adopted into the cadastre.

CADASTRAL SURVEY

The new land administration paradigm does not include reforms to the Land Survey Act and land tenure regularisation is working within the legal and procedural framework of the existing law and procedures for cadastral surveying.

Because Lesotho has long had a problem of informal and unplanned settlements, the 1979 Land Act and the 1980 Land Survey Act made provision for two types of cadastral surveys: Precise surveys where numerical data is needed to record the position of new boundaries created by subdivision or where existing boundaries are 'fixed' by the Chief Surveyor; and general title surveys where numerical precision is relaxed because land parcels are properly demarcated by physical objects and features. (The majority of informal settlement occupiers protect their landholdings by constructing well-defined boundary features).

Land survey practice has tended to focus on and favour the use of precise title surveys; this is unsurprising given that most surveys are for new parcels and planned settlements. The current initiative to regularise the tenure of 55,000 unplanned and informal plots in peri-urban areas is using both precise title surveys of fixed boundaries, where these exist, and general title surveys of general boundaries where boundary features exist but surveys do not.

The current Chief Surveyor's Directions, prepared in accordance with the Land Survey Regulations 1982, stipulates that a general title survey shall contain sufficient data to satisfy three requirements: (i) evidence of plot demarcation either in the form of a description or an annotated sketch or site plan; (ii) a plan showing the occupied parcel with perimeter measurements

shown to between 0.1 and 1.0 metres depending on circumstances; and, (iii) the absolute location of the parcel on either the 1/2500 scale cadastral [index] map in urban areas or other suitable map or appropriate method in rural areas.



Figure 1: Cadastral parcels in the Khubetsoana regularisation area (red indicates new surveys; green existing surveys)

The land tenure regularisation activity is making full use of new technologies. Private sector land surveyors are using both terrestrial and satellite-based methods (facilitated by a continuously-operating GPS reference station at LAA) to prepare cadastral and site plans that are submitted to the Chief Surveyor for approval. Use is also made of orthophotomaps in the checking and approval processes and the final results are maintained in a digital cadastral database (DCDB).

OUTPUTS AND OUTCOMES

The activity for modernisation and improvement of land administration services has moved from the design into the building phase of the project: The LAA has been established and will soon start recruiting staff. The land leasing, deeds registration and surveying and mapping functions will gradually migrate from the existing government departments to LAA over the next 6 months. Prior to the end of the Millennium Challenge Compact in 3-year's time, the activity will be expected to have created a Land Administration Authority that is:

- professionally managed and operated;
- operated in a largely autonomous manner in accordance with its objectives;

- capable of providing cost-effective and efficient services to the public and land information users (including the poor);
- able to hire and retain qualified managerial and technical staff; and,
- self-sustaining.

The systematic urban land tenure regularisation activity is currently nearing the end of a pilot or testing phase. The first adjudication records, comprising parcel maps and lists of landholders entitled to be regularised and granted a lease, have been submitted to the Commissioner of Lands. About 5,000 parcels are included in the pilot phase; a further 50,000 parcels will be surveyed and regularised over the next 3 years.

At the end of the Compact the land administration reform activity is expected to have achieved these main objectives or outputs – a new, modern, and efficient land agency effectively administering largely formal leasehold titles in the Maseru urban area. Achieving the project's purpose – the outcome, in other words – will be a longer term goal; moreover, it is not a forgone conclusion.

The project's desired outcome is to increase the marketability and economic potential of land. The beneficiaries of the current project – citizens with better access to land, landowners with secure and marketable titles, financial institutions providing loans secured by mortgages, and increased private sector investment – must also play their part and respond positively to the reforms: Land supply by allocation or through the emerging market must improve to meet demand; titles that have been formalised must remain formal and registered in the Deeds Registry; collateralised lending must increase; and, small- and medium-sized enterprises must leverage the “dead capital” in real property to create jobs and economic growth (De Soto, 2000). An effective land administration institution is a necessary precondition for this, but it is not sufficient.

Earlier investments in land administration in Lesotho, with the support of the World Bank and other donors, have not brought positive returns. The current investment in land administration being made by the Government of Lesotho in partnership with the Millennium Challenge Corporation is being underpinned by institutional reform – a necessary precondition for sustainability in the Lesotho context.

REFERENCES

Adams, M. & S. Turner, 2006. Legal Dualism and Land Policy in Eastern and Southern Africa, Land Rights for African Development: From Knowledge to Action, Capri Policy Brief, <http://www.undp.org/environment/sustainable-land-management-library.shtml>

Adams, M. & R. Palmer, 2007. Independent Review of Land Issues, Volume III, 2006-2007 Eastern and Southern Africa. <http://www.sarpn.org.za/documents/d0002625/index.php>

Aliber, M., Bohloa, T., & Makhakhe, T, 2003. Economic Implications of a New Land Act for Lesotho, APCBP Lesotho Land Policy Law Harmonisation and Strategic Plan Project, Ministry of Local Government & Chieftainship

De Soto, H., 2000. The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else, Bantam Books, London.

LAA, 2010. Business Plan 2010-2020, Land Administration Authority, Lesotho

Leduka, C., 2004. Informal Land Delivery Processes And Access To Land For The Poor In Maseru, Lesotho. Working Paper 5, Informal Land Delivery Processes in African Cities, The University of Birmingham (UK).

MCA- Lesotho, 2010.

http://www.mca.org.ls/projects/LAND_ADMINISTRATION_REFORM_ACTIVITIES.php, Millennium Challenge Account, Lesotho

The Government of the United States of America & Government of Lesotho, 2008. Millennium Challenge Compact, Lesotho,

<http://www.mcc.gov/documents/agreements/compact-lesotho.pdf>

Mosaase, A., 1982. Lesotho's Land Policy Under the Land Act 1979 and its Implications for the Agricultural Sector. Land Policy and Agriculture in Eastern and Southern Africa (Ed. by Arntzen, J W, et al), United Nations University Press

North, D. C., 1990. Institutions, Institutional Change and Economic Performance. Cambridge University Press

Biographical notes:

Sean Johnson is Director General and Chief Executive of the Land Administration Authority of Lesotho. Contact: Land Administration Authority, PO Box 876, Maseru 100, Lesotho; telephone +266 223 22376 ext 209; email dg@laa.org.ls or sean@johnsonline.co.uk

Motlotlo Matela is Chief Surveyor in the Department of Lands, Surveys and Physical Planning, of the Ministry of Local Government and Chieftainship, Lesotho. Contact: LSPP, PO Box 876, Maseru 100, Lesotho; telephone +266 223 22376 ext 223; email matela@lspp.gov.ls