

SECURING LAND RIGHTS FOR THE POOR AND
MARGINALIZED IN LESOTHO

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1. INTRODUCTION

I wish to express my heartfelt and sincere gratitude to World Bank for inviting me to this year's annual conference on land policy and land administration. I also express my deepest appreciation to the Millennium Challenge Corporation of the United States of America for facilitating my participation at this conference. I strongly believe that my participation at this august conference will enhance the land reform process that is underway in Lesotho under the generous financial support from the government and people of the United States of America through the Millennium Challenge Corporation (MCC).

The intention of this presentation is to explain the objectives and main components of the on-going land reform process in Lesotho. But first it is necessary to provide a brief background on Lesotho.

Lesotho is situated in Southern Africa where it covers 30,355 square kilometers. The country has two most notable geographic facts. (1) It is land-locked and totally surrounded by one country – the Republic of South Africa. (2) It is the only independent state that lies entirely above 1,000 meters in elevation. It has the highest lowest point in the world of

1,400 meters above sea level. 75% of the total area of Lesotho is mountains and gorges. The population of Lesotho is about 1.8 million (2006 census). The country has limited natural endowments and these are mainly water and diamonds. The country is also susceptible to persistent drought. The economy is predominantly subsistence agriculture. The industrial sector is dominated by textile manufacturing which produces goods for export mainly to the United States of America under the African Growth and Opportunity Act (AGOA). These industries generated significant employment from the late 1990s until recently when the global economic recession hit the world.

Faced with the many odds in terms of small size, rugged terrain, limited natural resource endowments and persistent droughts it is only logical that the country strives for optimum and efficient utilization of its few resources. Land is one such resource that would contribute to Lesotho's development if it were managed properly. Land is one of the fundamental factors of development in varying fields of development. It was mentioned earlier that Lesotho is endowed with diamonds. In diamond mining land plays a critical and crucial role. Lesotho is endowed with water. Land plays a critical and crucial role in projects related to harnessing water for various industrial purposes. Lesotho is predominantly a rural agricultural economy in many households derive their means of livelihood from crop and animal farming. Land is the basic and predominant factor in agriculture. It was mentioned earlier that 75% of the total area of Lesotho is mountains and gorges and that Lesotho is characterized by high altitude. These two characteristics are advantages in the contemporary world of tourism. People now travel from one

continent to another for relaxation. In the contemporary world the sporting industry contributes a lot to employment generation and accumulation of wealth. Land plays a critical and crucial role in the development of both the tourism and the sports industries.

Lesotho introduced local government in 2005. For almost four decades since independence in 1966 Lesotho's development and management was centralized and driven from Maseru the national capital and from the headquarters of the ten administrative districts of the country. One major reason given for the decision to introduce local government was that decentralization would improve and accelerate service delivery. That through decentralized governance would involve communities in the planning and implementation of development programs.

It is important to explain that though governance and development have been centralized this was not the case with land management. Land management has always been decentralized. This was the case in pre-colonial Lesotho, during colonialism and during independence. But as much as we hail decentralization a lot of damage to land has happened under a decentralized dispensation.

2. LAND MANAGEMENT IN LESOTHO

2.1 Historical Background

The government of Lesotho tabled the Land Bill to the National Assembly in August 2009. The Bill is intended to improve efficiency in land administration and land management in Lesotho. The Land Bill

2009 is an outcome of an extensive consultative process that includes the establishment a commission of inquiry in 1999 chaired by Justice Michael Mathealira Ramodibeli (then judge of the High Court of Lesotho)¹.

The Land Bill 2009 is intended to replace the 1979 Land Act. Land is a critical factor of social development and economic growth. Hence land reform in any country generates political debate from differing social clusters and for varying purposes. There are those on the one hand who participate in the process genuinely to flag constructive issues of concern. There are also those on the other hand who believe that the debate on land reform is such a controversial issue that could have negative consequences for the government of the day and therefore raise issues for purposes of scoring political points.

Lesotho has a dual land tenure system with customary and statutory land tenure systems existing side by side. The basic tenet of Lesotho's customary land tenure system is communal land ownership. Land in Lesotho is communally owned and as such cannot be sold. This has been so since the founding of the Basotho nation by Moshoeshoe I. King Moshoeshoe I had the firm belief that all land belonged to the Basotho nation and regarded himself as holding it in trust for the nation. Apparently, King Moshoeshoe's belief emanated from the circumstances brought about by the incessant land invasions mounted by the white settlers from the Cape who coveted his land. All able bodied male

¹ Justice Ramodibeli is now President of the Appeal Court of Lesotho.

Basotho fought fearlessly to quell those invasions until they managed to salvage the little that is left of Lesotho today.

The principle of communal ownership has been so fundamental in Lesotho's history that it formed the basis of all subsequent pieces of legislation during colonialism and in independent Lesotho. Mention can be made here of:

- the Laws of Lerotholi;
- the Basutoland (Constitution) Order in Council 1959;
- the Basutoland Order 1965;
- the Land (Advisory Boards Procedure) Regulations 1965;
- the 1966 Constitution;
- the Deeds Registry Act 1967;
- the Land Procedure Act No.24 of 1967;
- the Mining Rights Act 1967;
- the Land Husbandry Act 1969;
- the Administration of Lands Act No.16 of 1973²;
- the Land Act 1973 (this repealed the Land (Procedure) Act 1967);
- the Land Act 1979
- the 1992 Constitution

When Lesotho attained independence from Britain in 1966 all land was constitutionally vested in the Basotho Nation. Sections 92 and 93 of the 1966 Constitution pronounced that power to allocate land was also

² According to the Report of the Land Policy Review Report this Act was never implemented because though it maintained the principle that land is irrevocably vested in the Basotho nation it removed all powers of land allocation from chiefs. Chiefs opposed the Act and as a result it was never implemented until it was repealed by the 1979 Land Act.

vested in the Basotho Nation but the power to make grants of interests or rights in or over land and to revoke those rights was vested in the King in trust for Basotho Nation. The power that was vested in the King could be exercised by him and on his behalf by the Chiefs. Chiefs played a major and leading role in the management of land.

In 1992 the military government amended the 1979 Land Act and established Village Development Committees and District Development Committees. These committees took over the land allocation function from chiefs. In 2005 Lesotho introduced democratic local government. According to the Local Government Act, 1997, councils are responsible for land allocation.

2.2 Objectives of Land Reform in Lesotho

The current land reform program in Lesotho is driven by the desire to achieve social growth and development on the one hand and economic growth and development on the other.

At the heart of Lesotho's land problems lie deficiencies and weaknesses in the administration and management of this critical asset. Performance failures by those mandated to administer and manage land over the years since independence have contributed to the urgent need for land reform. Chiefs, Development Committees and local councils have had serious challenges of magnitude and emanating from a number of factors. The result is unplanned settlements, illegal encroachment of settlements on agricultural land (which is already quite

insufficient as stated earlier), encroachment of settlements and grazing on wetlands, and poorly managed rangelands.

The new land is also intended to secure the rights of Basotho, especially the poor and marginalized groups. These are in particular women and orphans. Until 2008 women were not allowed to hold immovable property. Through the assistance of MCC funding Lesotho enacted the Married Persons Equality Act, 2008. The Act accords married persons exercise equal rights to property.

The Land Bill that is intended to achieve the following:

- To do away with the customary land tenure system that allows men only to hold land titles. Under this system only sons can inherit rights to land after their father's death. Women and girls are considered legal minors under customary law. The proposed reform is a significant milestone in an endeavor to improve the imbalances that were deeply rooted in Sotho society.
- To regularize informal allocations mainly in the peri-urban areas. Through regularization allocations will be formalized and titles will be issued. This will be followed by proper planning of the areas in order to provide infrastructure in the form of roads, electricity, water, communications;
- To register all allocated land in Lesotho. Because of the dual nature of the land tenure system currently registration of land ownership is not binding. The intention of the proposed law is to have all land in the urban areas held under lease. The Act will bind allocating authorities to issue leases on new allocations. The 1979

land Act made leasehold mandatory in the urban areas but left the onus on the allocated people to seek to register their land. Registration of land will encourage people to develop their properties and use those properties as economic assets;

- To protect orphans upon death of their parents
- To improve land records through the establishment of the Land Administration Authority;
- To dispose of land matters and disputes speedily and efficiently through the establishment of land courts
- To register land holding in the rural areas in the form of certificates and leases and to allow the transfer of land ownership on the basis of a la certificate
- To allow for registration of sectional titles
- To attract foreign investment. Currently foreign companies are allowed to hold minority shares on land. The proposed law will allow foreign companies to hold up to 80% shares in land ownership. This will boost foreign investment in areas of tourism, industrial and manufacturing sectors.

3. Conclusion

The Land Bill 2009 has generated a lot of controversy but it is clear that Lesotho stands to benefit from the proposed land reform. Many governments have refrained from land reform. The government of Lesotho under the leadership of The Right Honorable Pakalitha Mosisili, Prime of Lesotho, has taken a bold decision to tackle the

mismanagement of land that has bedeviled and undermined development efforts for many years.

The proposed Act will be a critical tool and help us turn all land in Lesotho into an economic asset with the ultimate aim of changing the lives of all Basotho for the better. The lengthy nationwide consultative process has confirmed that security of tenure issue will encourage both national and foreign investors to develop their properties and use them as economic assets. Furthermore, the new law will be a proper and necessary tool in our endeavor to manage land effectively and efficiently. Most importantly we believe that land registration and gender-balanced inheritance in land ownership will go a long way to secure the rights of poor and vulnerable groups.

I thank you.

