PRIVATISING LAND RIGHTS IN PURSUIT OF POVERTY REDUCTION: COMMENTARY ON THE 2010 LESOTHO LAND REFORM PROJECT

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1.0 INTRODUCTION

The paper reviews Lesotho’s current land reform project that is assisted by the Millennium Challenge Corporation (MCC) of the government of the United States of America, specifically the potential impact of the reforms on poverty reduction and access to formal collateralized credit markets by the urban poor. The paper is significantly based on the Lesotho Urban Land Market Scoping Report (2012) that the author prepared for the Urban LandMark in 2011. The paper is divided into five sections, including this introduction, which outlines the purpose of the paper. Section 2.0 provides brief background information on urbanisation in Lesotho. Section 3.0 isolates and discusses interventions in the MCC’s assisted land reforms that are likely to have some influence on poverty and urban land market activity in Lesotho. Drawing on international experience with similar program interventions, Section 4.0 of the paper provides some speculative observations on the potential impact of the interventions on poverty reduction and access to credit markets by the urban poor in Lesotho. Section 5.0 summarises the paper and identifies issues that may inform the involvement of Urban LandMark in Lesotho.

2.0 URBANISATION IN LESOTHO

2.1 Emergence of Towns: A brief history

With few exceptions, contemporary urban centres in Lesotho are British colonial creations that were meant for the exclusive occupation of colonial magistracies and police. These settlements were spatially set apart from the rest of the countryside as colonial ‘government reserves’ that were directly controlled by British District Commissioners. Land within the reserves could be privately owned, while outside the reserves only occupancy or use rights under customary tenure prevailed. However, alienated colonial reserve land was a source of continuous consternation between the British colonial authorities and customary chiefs, who considered the government reserves as ‘paballo’ land that would ultimately return to their custody as soon as colonial settlement ended (Duncan, 1960; Machobane, 1990).

Most colonial towns, especially those that were founded prior to and during the period of Lesotho’s (then Basutoland) annexation to the Cape Colony (1871-1883), are located in the lowlands and close to the border with the Republic of South Africa. Several factors could explain this peripheral location:

1 ‘Paballo’ comes from the verb ‘ho baballa’ (to keep or look after something, usually on someone’s behalf). In terms of land, it was taken to mean that where a chief had ceded the use of land under his jurisdiction for use by subjects of a neighbouring chief, but without the ceding chief losing control over the ceded territory. Hence colonial reserves were accordingly regarded as land under the ‘paballo’ of the colonial administration and that such land would revert to its customary administrator (the chief having jurisdiction) once the colonial master had either left or no longer required the land (see Duncan, 1960)
1. the security concerns of British colonial officers who were stationed in Lesotho, as peripheral location would have ensured quick exit in times of unrest, as was the case during the gun war (Machobane, 1990);

2. facilitation of communication with the Cape Colony, then the headquarters of British colonial administration in Lesotho;

3. facilitation of import and export of goods and services, as traders also chose to locate in the reserves;

4. the imperative to keep expenditure on infrastructure in Lesotho to the barest minimum, which would have been in keeping with British colonial policy that there should be no significant expenditure beyond what Basutoland could finance from its own resources; or

5. the convenience of recruitment and transfer of migrant labourers to the South African mines.

Therefore, a parallel would seem to exist here with towns that developed as ports elsewhere in Africa; in that border location could similarly be taken to reflect a space economy with strong external orientation².

2.2 Contemporary Urbanisation in Lesotho

Urbanization is understood to refer to a process by which an increasing proportion of a country’s population ends up living in towns or cities. However, substantial differences exist in the way in which different countries divide their populations into urban and rural. Different criteria have been used in various countries, including population size, dominant economic activities/functions and legal declaration. In Lesotho, legal declaration is used to define urban areas, with the inherent drawback that often such definition is neither based on functional nor statistical criteria. It is, therefore, arbitrary and ad hoc, with urban areas often proclaimed as such one day only to be legally reclassified as rural the next. For instance, Lesotho had 11 proclaimed urban centres up to June 1980, after which an additional 5 rural settlements with a combined population of over 30 000 people were proclaimed as urban, thereby bringing the total number of urban centres in Lesotho to 16. However, following the military coup in 1986, the 5 urban centres that had been added in 1980 were again reclassified as rural villages, thereby bringing the number of urban centres back to 11.

² Similar observation has recently been made by consultants of the Ministry of Public Works and Transport in 2010.
These shifts make it extremely difficult to compute the level of Lesotho’s urbanization with any degree of certainty. Even in Lesotho itself, government departments have tended to define urban areas differently. For instance, the Department of Lands, Surveys and Physical Planning (LSPP), which is responsible for town and regional planning, strictly utilizes legal proclamation, while the Bureau of Statistics defines urban areas as all administrative district headquarters and other settlements of rapid growth and predominantly engaged in non-agricultural activities. The Water Resources Management survey of 1996, defined urban centres in terms of concentrated settlements of at least 2,500 people with a density of at least 1,000 persons per square kilometre.

At independence in 1966, only 7% of Lesotho’s population lived in towns. By 1976 it had grown to 11%; 14% in 1986, 19% in 1996 and 23% in 2006. The UN-HABITAT (2010) estimates the level of urbanisation at nearly 27% in 2010, growing 34% in 2020 and nearly 60% in 2050 (Figure 1).

**Figure 1**: Southern African Nation’s Urbanisation 1950-2050 (%)

![Southern African Nation’s Urbanisation 1950-2050 (%)](image)


In sub-regional context, the level of urbanisation in Lesotho is relatively low although the rate of urbanisation is acknowledged to be one of the region’s highest (UN-HABITAT, 2010).

Urbanisation drivers in Lesotho mainly consist of rural-urban migration, natural growth and variations in settlement classification. However, the greatest composition of growth is rural-urban migration. Most
internal migration surveys emphasize the importance of rural poverty as a push-factor leading to migration to Maseru and secondary towns. Several studies note that factors, such as the decline in agriculture, superior services, family problems, rampant livestock theft (especially in the mountains which often leaves many households without the means to cultivate their fields), have all combined to push people out of the rural areas to urban or peri-urban locations in the lowlands (Sechaba Consultants (Gay, 1998; Turner, 2001).

Table 1 below shows the population growth trends of Lesotho’s most important urban areas. The capital city of Maseru is clearly the most populated urban area, followed by Teyateyaneng (TY) and the Maputsoe-Hlotse corridor. Maseru and Maputsoe provide significant employment opportunities in garment manufacturing and consequently attract the majority of rural job-seekers (BOS, 1996).


<table>
<thead>
<tr>
<th>Urban Area</th>
<th>1976</th>
<th>%</th>
<th>1986</th>
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<th>1996</th>
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<td>Butha-Buthe</td>
<td>7 740</td>
<td>6.4</td>
<td>8 340</td>
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<td>4.0</td>
<td>14 070</td>
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<tr>
<td>Hlotse</td>
<td>6 300</td>
<td>5.4</td>
<td>8 080</td>
<td>4.4</td>
<td>23 120</td>
<td>7.4</td>
<td>55 180</td>
<td>13.1</td>
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<tr>
<td>Maputsoe¹</td>
<td>15 820</td>
<td>13.6</td>
<td>11 200</td>
<td>6.1</td>
<td>27 950</td>
<td>9.0</td>
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<tr>
<td>Teyateyaneng</td>
<td>8 590</td>
<td>7.4</td>
<td>12 930</td>
<td>7.1</td>
<td>48 870</td>
<td>15.6</td>
<td>61 270</td>
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<tr>
<td>Maseru</td>
<td>55 030</td>
<td>47.2</td>
<td>109 200</td>
<td>59.6</td>
<td>137 840</td>
<td>44.1</td>
<td>195 300</td>
<td>46.3</td>
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<tr>
<td>Mafeteng</td>
<td>8 200</td>
<td>7.1</td>
<td>12 180</td>
<td>6.6</td>
<td>20 800</td>
<td>6.7</td>
<td>31 760</td>
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<td>Mohale’s Hoek</td>
<td>5 200</td>
<td>4.5</td>
<td>7 900</td>
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<td>Quthing (Moyeni)</td>
<td>3 500</td>
<td>3.0</td>
<td>4 310</td>
<td>2.3</td>
<td>9 860</td>
<td>3.2</td>
<td>13 490</td>
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<tr>
<td>Qacha’s Nek</td>
<td>4 840</td>
<td>4.1</td>
<td>4 600</td>
<td>2.5</td>
<td>4 800</td>
<td>1.5</td>
<td>8 100</td>
<td>1.9</td>
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<tr>
<td>Mokhotlong</td>
<td>1 480</td>
<td>1.3</td>
<td>2 390</td>
<td>1.3</td>
<td>4 270</td>
<td>1.4</td>
<td>8 490</td>
<td>2.0</td>
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<tr>
<td>Thaba-Tseka</td>
<td>-----</td>
<td>----</td>
<td>2 150</td>
<td>1.2</td>
<td>4 450</td>
<td>1.4</td>
<td>6 750</td>
<td>1.6</td>
</tr>
<tr>
<td>TOTAL</td>
<td>116 620</td>
<td>100</td>
<td>183 200</td>
<td>100</td>
<td>312 440</td>
<td>100</td>
<td>422 100</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Notes: 1. Population of Maputsoe in the 2006 census has been added to the population count of Hlotse.

2. Thaba-Tseka district and town were gazetted in 1980.

Most rural-urban migrants and newly formed households settle in peri-urban neighbourhoods, where, until 1980, the control of land was by local chiefs using customary land tenure rules. In peri-urban areas, housing land can easily be informally or extra-legally bought from sub-divided fields (masimo) and due to scarcity of land supplied through formally planned plots, between 70 and 80 percent of urban development in Lesotho could now be occurring this way. However, perceived scarcity of cultivable land (estimated at a decreasing 9% of Lesotho) and the location of towns on prime agricultural land has over time compelled government authorities and their donor partners to ‘do something’ about informal peri-urban growth and ribbon development along major roads. Coupled with the need to protect arable land has often been concern with issues such as the absence of formal land markets, tenure security, and the disorderly and inarticulate residential layouts resulting from land subdivisions sanctioned by customary chiefs. Policy responses by the government have historically taken the form of legislation, beginning significantly with the now repealed Land Act of 1979, which has been discussed extensively elsewhere (see for example Leduka 2000; 2004).

The latest reforms were instituted in 2010 as part of the Millennium Change Corporation (MCC) assistance to Lesotho. There is strong conviction that the MCC’s approach to land reform departs significantly from earlier approaches in that land reform is specifically aimed at formalising individual land rights and strengthening land administration systems through adopting so-called ‘holistic approach’. This entails a “package of interventions’ in the design of land administration programs – for example, the packaging of cadastre and registry modernization with conflict resolution measures, revision of legal and regulatory frameworks, information outreach, and capacity building of land administration staff” (Jones, no date: 7). The ensuing section of this paper summarises the salient features of the MCC’s assisted land reform project of 2010 before highlighting possible implications on poverty and access to credit by the poor through the use of regularized title as collateral.

3.0 THE 2010 LAND REFORM PROJECT MILLENNIUM CHALLENGE CORPORATION’S ASSISTED LAND REFORMS

3.1 Introduction

The Millennium Challenge Corporation (MCC) was established by the government of the United States of America (USA) in 2004 for the purpose of managing USA’s foreign aid in a new way. Its main focus is to eradicate poverty through sustainable economic growth. Eligible countries establish their own
implementing agencies, and in Lesotho this is the Millennium Challenge Account-Lesotho (MCA-L). The funding agreement between for MCC and the Lesotho government, called ‘the Compact’, was endorsed on September 17th 2008 and is scheduled to end in September 2013. The priority sectors of the Lesotho compact are Health, Water and Private Sector Development (PSD). The Land Administration Reform Project (LARP) is part of the PSD and in line with the MCC’s holistic approach to land reform, aims to achieve the following:

- Improving land laws and policies;
- Improving people’s awareness of their land rights, especially women;
- Enhancing the efficiency of issuing lease titles to people in urban areas of Lesotho, beginning with Maseru; and
- Supporting the establishment of a Land Administration Authority (LAA) for the purpose of providing improved land administration services.

It is anticipated that improved land administration services will help reduce land-related transaction costs and inefficiencies and thereby unlock markets in leasehold rights. To this end, significant legislative and organisational reforms have been undertaken to date, culminating in a series of new Acts (and draft bills) and the establishment of a new land administration authority. Some of these are:

Land Administration Authority Act 2010
Land Act 2010
Land Regulations 2011
Land Court Regulations 2011
Sectional Titles Bill 2011 (Draft)

3.2 Land Administration Authority Act 2010

The Land Administration Authority Act 2010 has merged government departments that deal with cadastre, national mapping and deeds registration into a new parastatal agency called the Lesotho Land Administration Authority (LAA). The LAA adopts an organizational structure that is similar to the Lesotho Revenue Authority, with a Director General (DG) who reports to a Board of Directors, that in turn reports to the Minister of Local Government and Chieftainship. The LAA is now firmly established, with all departmental managers in office as of the end of August 2011 and most operational staff as of November 2011. The responsibilities of the LAA are to:
- Administer the land registration system;
- Administer surveying and mapping functions;
- Perform functions created under the Deeds Registry Act 1967 in so far as they relate to land administration;
- Solve registration and cadastre complaints and disputes;
- Collect ground rent, fees and issue notices from time to time prescribing the fees be paid for the Authority’s services;
- Advise the Minister and the Government of Lesotho on suitable changes and additions to land administration laws and policies;
- Cooperate with the Ministry and other governmental and private bodies with regard to all matters relating to land administration (Section 5(2), Land Act 2010).

It is anticipated that once fully operational, the authority would deliver improved land administration and information services and recover all associated costs from the services that it provides. It is anticipated that full and effective cost recovery should at some future date enable the LAA to become self-financing.

### 3.3 Land Act 2010

The history of the Land Act 2010 begins with the Ramodibedi Commission’s Report (2000) which, similar to earlier commissions, had unearthed serious implementation constraints and endemic corruption with the implementation of the now repealed 1979 Land Act. The initial reform that followed the Ramodibedi commission was funded by the British Department for International Development (DfID), with the final output being a draft land bill of 2004. However, the bill remained dormant until it was revived in 2009 under the MCA’s LARP and finally gazetted as the Land Act 2010 in June of the same year. Preparations for the enactment and the actual implementation of the Land Act 2010 have also been rather drawn out, resulting in most stakeholders not being certain if land matters are currently being dealt with under the 2010 or the repealed 1979 Act. What is widely known now is that similar to the Land Act of 1979, which was enacted only following threat by the World Bank to withdraw a loan of nearly M6 million for the Khubetsoana Low-Income Housing and Thamae Upgrading Projects (Leduka 2000), government’s ambivalence towards the enactment of the Land Bill in 2009 ended when the MCC also threatened to withdraw its land sector reform funding from Lesotho (Emery, no. date).
The main objective of the 2010 Land Act is to modernize land administration, to regularise peri-urban land and settlements, facilitate investment, including foreign investment and create land markets and to abolish customary land tenure in rural areas. The preamble states the purpose of the Act as to

...repeal and replace the law relating to land, provide for the grant of titles to land, the conversion of titles to land, the better securing of titles to land, the administration of land, the expropriation of land for public purposes, the grant of servitudes, the creation of land courts and the settlement of disputes relating to land; systematic regularisation and adjudication; and for connected purposes (GoL, Land Act 2010: 387).

The remaining parts of this section briefly outline those main provisions of the 2010 Act that are likely to have direct bearing on the delivery of regular titles and immediate impact on urban land markets in Lesotho. These are: ministerial consents, title regularisation, foreign land ownership, land ceilings and sectional titles.

3.3.1 Minister’s Consents

The conditionality of leaseholds is crucial to security of tenure, and in order to achieve greater degrees of tenure security, leases must be as free from limiting conditions as possible. Until the 2010 Act, transactions involving leases in Lesotho were circumscribed by requirements for prior consent, which could only be granted by the Minister responsible for Lands. However, people have had to wait for months or years for consents by ministers, which caused unnecessary delays in transactions and became a major drag on the leasehold market and mortgage lending. Therefore, consent requirements tended to limit the ability of landholders to respond to land market demands (Bruce, 2007).

However, a little caveat on the consent powers in the repealed Land Act 1979 seems appropriate here. The requirement for consent was included in the act for altruistic purposes that were meant to protect unsuspecting land owners from unscrupulous land deals/transactions. However, the process of granting consents slowed down transactions as there was no time limitation within which the Minister for Lands ought to grant such consents. Therefore, consents became a serious obstacle the delivery of registered titles, as well as on land market transactions and mortgage lending.

The Land Act 2010 abolishes consents to most transactions in leased land rights, and those concerning transfers (Part VI) have been delegated to the Director of Lease Services, also for altruistic motives that are fairly similar to those under the repealed Land Act 1979. Even in these cases, the 2010 Act compels the Director of Leases to grant consent within 30 days of application, with provisions for appeal to the Minister for Lands where the Director fails to do so. This is a important improvement, even
through there is no time limitation within which the Minister should make determinations of appeals. It is expected the abolition of consents will shorten the time for transactions and make them more transparent and secure. This is a significant reform in terms of land administration in Lesotho. Several studies and reviews leading to the MCA LARP, as well as some estate agents who were consulted during the preparation of the scoping report, have welcomed the abolition of consents, especially on mortgage transactions.

Bankers who are represented on the LAA Board, are also reported to be happy with the LAA as consents for mortgages are no longer required, and better records will be kept, which means that the bank’s interests will equally be protected. Nevertheless, the 2010 Act is yet to be fully implemented and outcomes are likely to take some time before being significantly felt. For instance, the Act stipulates that the preparation of a lease should take a maximum of 3 months from the date of allocation, but the LAA aims at a turn-around period of 1 month from the date of application for a lease, assuming that matters relating to allocation are in order.

3.3.2 Systematic Regularisation

A third significant innovation ushered in by the 2010 Land Act, which is likely to change the nature of the urban land market in Lesotho is regularisation. This is provided for in Part XI of the 2010 Land Act and detailed further in the Systematic Regularisation Regulations 2010. It is generally considered as a significant innovation because it facilitates retrospective legalisation of historic, as well as contemporary informal land allocations. Regularisation is defined in the Act to mean one or both of the following:

i) the process of surveying, planning, adjudicating and registering the boundaries and rights associated with a parcel of land informally occupied or;

ii) readjustment of boundaries for the purpose of town planning (Land Act 2010: Part I)\(^3\).

Regularisation schemes are prepared by the Commissioner of Lands (CoL)\(^4\) following consultations with local councils having jurisdiction for approval by the Minister for Lands. Once such a scheme has been prepared, the law requires that it should be published in a government gazette.

\(^3\) A narrower definition of regularisation in the context of Lesotho is offered by Sean and Matela (undated) as: ‘a process that adjudicates existing land rights and landholdings and converts informal or irregular landholdings into leases’.
A regularisation (in effect mass titling) scheme of 50 000 land parcels in the capital Maseru is about to commence, with possible extension to urban areas that are yet to be selected. The mass titling scheme follows a pilot regularisation scheme of 5 000 informally allocated peri-urban land parcels that has been underway in Maseru for over a year now. The pilot scheme is generally considered a success, with nearly 4 500 leases out of 5 000 targeted households being distributed. Fraudulent Forms Cs, old Title Deeds and uncontested physical occupation were all accepted as evidence of legitimate claims to land. During the pilot and roll-out phases, regularisation (titling) was and will continue to be free, except for a minimal stamp duty fees. Disputes in the pilot phase are noted to have been relatively few and were significantly between family members rather than unrelated individuals (intra-household disputes rather than inter-households disputes). Most disputes were also successfully dealt with through mediation.

Interestingly, close to 10% of plots in the pilot regularisation areas are reported to be without claimants, with some of these plots held under formal leasehold titles. Explanations were sought from project staff as to the possible reasons for the unclaimed plots. The following are some of the important explanations that were given:

i) Leased plots for which the original lessees had either transferred their leases informally without following procedures laid down by law;

ii) Disputes over plot ownership;

iii) Individuals who seemingly did not wish to pay ground rent, especially plots on which rental units stood alone, hoping that if the project did not identify them now then they would be left alone and not be required to pay any ground rent.

Frantic efforts are reportedly underway to identify the claimants failing which the unclaimed land parcels will revert to the state. That notwithstanding, the pilot regularisation project has seemingly revealed aspects of the land market that have until recently only been speculated on, namely, land hoarding and speculation. The project has also uncovered the existence informal transactions that involve the transfer and exchange of formal property titles and rights without following the processes that are

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4 Although the Land Act 2010 and its various regulations make reference to the Commissioner of Lands for purposes of implementation, the actual implementing agency is the Land Administration Authority which has a Director of Leases for purposes of executing all activities and undertaking all duties that the law currently assigns to the Commissioner of Lands. The position of the Commissioner of Lands remains a statutory position within the Ministry of Local Government and Chieftainship with no direct role in land administration anymore. It is widely anticipated that the Land Act 2010 is likely to be amended to reflect this state of affairs.
established by law. Reversion to informal market transactions of formal titles could be a real risk to the sustainability of the land reform project, especially in the post-Compact period (see also Section 4.0).

3.3.4 Land Holding by Foreign Entities

The initial draft bill provided for unqualified landholding (land ownership) to foreign enterprises/corporate entities in Lesotho. However, this provoked heated debates in both the National Assembly and civil society groups. This led to postponement of assembly debates on the bill for further public consultations. A final compromise position was that foreign ownership became (as was the case in the repealed Land Act of 1979) qualified in terms of shareholding requirements by Basotho in foreign enterprises.

Section 6 (1) (c) of the Land Act 2010 provides that foreign enterprise may hold land in Lesotho “provided Basotho, whose land may be valued so that it may form part of the shareholding in such a partnership, form at least 20% of the membership or shareholding of the enterprise”. In addition, in allocating land to foreign enterprises, several factors are to be taken into account, as provided for in Section 6(4) (a-f). These are:

a) The magnitude and origin of the tangible and intangible assets;
b) Employment generation;
c) Strategic nature of the enterprise;
d) Whether the business in relation to the application provides for the transfer of business expertise;
e) Advancement of business undertakings owned by citizens; and
f) Environment (sic) protection.

In the final analysis, the substance of foreign land ownership under the repealed 1979 Land Act still remains significantly intact, the only change has been the reduction in the quantum of shares that must be held by Basotho, from 51% under the Land Act of 1979 to 20% under the 2010 Act if a foreign company desires to hold land in Lesotho. Another new addition is that the value of land owned by Basotho will form part of the shareholding agreement.

Some key stakeholders consulted during the preparation of this report argued that the reduced shareholding quantum was enough as an incentive to encourage foreign investors into Lesotho. Others stakeholders were not so hopeful, arguing that even unqualified foreign ownership was unlikely to
attract any meaningful foreign investors into Lesotho. To some observers, qualified foreign ownership was a serious flaw in the law and made little sense given that Lesotho is situated in the middle of South Africa where ownership is available to foreign investors. There is still no provision for land ownership by natural persons who are not citizens of Lesotho, which also limits small investment, such as in the residential property market (see also Section 6.8).

3.3.5 Land-Holding Ceilings

Land ceilings are provided for in Part VII of the 2010 Act and detailed in Regulation 31 of the Land Regulations 2011. Provisions for ceilings stipulate that no lease will be issued on a residential plot of land that exceeds 1 000m² and that no one individual will cumulatively hold residential land in Lesotho in excess of 5 000m². Maximum limits for commercial and industrial landholdings are 2 000m² and 4 000m², respectively. There are exceptions to these general limitations, such as for land held by parastatals or where, even in the case of individuals, the Minister for Land grants consent for the ceiling to be exceeded. These ceilings are similar to those provided in the repealed Land Regulations 1980, with the exception of industrial land holdings where the maximum limit has been increased from 3 000m².

Land ceilings are essentially problematic, especially where the law gives politicians significant discretionary powers to vary the ceilings at will. As Bruce (2007: 32) notes, land ceilings are notoriously difficult to implement consistently and fairly, and ‘If implemented at all, it will likely be found that, as has happened elsewhere, they will be applied selectively and possibly for political reasons’. As a matter of fact, evidence exists in Lesotho to show that enforcement of ceilings has not worked in the past. For example, the Ramodibedi Commission (2000) reports an instance where an individual businessman was found to have held a total of 32 business plots in a single town. Assuming a minimum size of 200m² for commercial plot, this would have meant that the businessman had amassed well over 6 000m² of commercial land, over three times the legal limit. Bruce (2007) had recommended that provisions for ceilings be removed from the draft bill, but this has obviously not happened.

3.4 Sectional Titles

The purpose of sectional titles legislation is to enable separate ownership of a section or sections of a building in a building complex without necessarily owning the land on which the building stands. It is hoped that once enacted, this new law will open up new property market opportunities that have never existed in Lesotho before now. This is another significant innovation under the MCA-L’s LARP. Although initially provided for under Section 9(1) of the 2010 Act, sectional titles are now the subject of
a separate and more detailed Sectional Titles Bill 2011 (draft), which is said to have been modelled along the South African sectional titles legislation, and for good reasons: first, because banks and insurance houses that operate in the Southern African region are much accustomed to the South African sectional titles practice; and second, because South African court judgements are routinely followed by the Lesotho courts as established precedents.

From the foregoing analysis, and reading from its mandate, the LAA has no role in land allocations (access), which remain the responsibility of the Ministry of Local Government and the various community and local councils. Sean and Matela (no date) unequivocally maintain that the mandate of the LAA is to “implement only the land administration parts of the Land Act 2010”, while allocation and management remains with central and local government. Incidentally, while reforms are clearly visible are significant with respect to land administration, matters relating to land management remain significantly similar to those under the Land Act of 1979. Expectations are that a lot more land in the short-run would come from spontaneous subdivisions and sale of existing but newly titled urban and peri-urban plots. Increased security of tenure and aggressive public outreach is also expected to unlock the market for second-hand (subdivisions) land.

4.0 Title Regularisation and Poverty Reduction: International Experiences and Lessons for Lesotho

4.1 Introduction

Jones (no date) shows that the mission of the Millennium Challenge Corporation is ‘to reduce global poverty through the promotion of sustainable economic growth’, but focus on growth rather than equity, has meant that the land projects do not primarily target poor people, but rather [private sector-led] growth opportunities. Similar to other international aid agencies, such as the World Bank and AusAID, the MCC’s land reform approach is underscored by a neo-liberal view of private property rights. The basic argument goes as follows:

(…) promoting the titling of property rights (…) increase[s] tenure security for the land owner, as well as for potential credit institutions. This is expected to increase the value of the land itself, as well as improving access to credit. Furthermore, it is anticipated that increased tenure security and improved access to credit will raise the level of investment in land, as well as further increasing land value. In response to the improved level of information on property rights (through titles and cadastral and registry systems), land market transaction costs are said to be reduced. Finally, legal reforms associated with land administration projects often remove any restrictions related to the alienability of land, in order to make the land market more dynamic and fluid (…). [For the poor], the mainstream discourse on land titling assumes
that once the[y] are given the ticket (title) to the market they will take part in the game, and that it is better to be in than outside the game. (Broegaard, 2009: 150-153)

This section of the paper speculates on the possible lessons for Lesotho’s on-going regularization project drawing from international experiences on the potential strengths and pitfalls of regularization, especially on the poor. Since international experiences are varied, and regularization so new in Lesotho, it is only possible to speculate on very few issues. These are: home improvement and access to formal credit; poverty reduction and program sustainability.

4.2 Home Improvement
Evidence abounds that most regularization interventions show positive impact on house improvement, but that the finances for improvement are from regular household savings and not credit. In terms of poverty, improved housing now could act as potential investment for the future and could contribute to poverty reduction at some future date if the markets are right. (Galiani & Schargrodsky, 2009; Hutchison, 2008; Gilbert, 2002; Ward et al., 2011; Broegaard, 2009; Field & Torero, 2006). In Lesotho, experience shows that the absence of registered title has not deterred households from making substantial improvements on their properties (Leduka, 2012), indicating that sources of finance for house improvement were unlikely to be collateralized credit. Under these circumstances, the impact of formal title on home improvement is unlikely to be significant.

4.3 Access to Collateralised Credit
Global evidence relating to increased access to credit as a result of formal or regular title is fairly mixed and largely inconclusive, with titling showing no direct impact on access to credit, whether formal or informal. There is also widespread acknowledgement that the poor are averse to risk and do not wish to expose their property to possible foreclosure by banks, and that those who tend to borrow are households that are accustomed to borrowing anyway; these being the middle and high-income households or those that are already exposed to credit markets. It is further claimed that lenders also worry over the success of foreclosure in poor neighborhoods, as the costs associated with foreclosure in the event of default would far exceed the value of the title/land offered as collateral. International experiences also seem to show that in cases where credit was secured by the poor, property was not used as collateral, and the credit was used for immediate consumption purposes, not investment in housing or micro-enterprises (see or example, Galiani & Schargrodsky, 2009; Hutchison, 2008; Gilbert, 2002; Ward et al., 2011; Broegaard, 2009; Field & Torero, 2006; Kanji et al., 2005).
However, to say that titling does not guarantee access to credit by the poor is not the same as saying that formal titles are not necessary to the poor – quite the opposite. All we are saying is that casual association of title with access to credit warrants some rethinking, especially if poverty reduction is the ultimate goal. In any case, the possession of title is a necessary but not sufficient condition for formal credit, as qualification for bank credit is routinely tied to formal wage employment and minimum tenure in such employment (Field & Torero, 2006; Galiani & Schargrodsky, 2009; Kanji et al., 2005).

4.4 Poverty Reduction

As indicated above, the MCC’s operational motto is ‘poverty through sustainable economic growth’. However, in practice, the programs and projects of the MCC emphasis growth rather than poverty. Virtually all land reform projects funded by the MCC do not primarily target poor people, but rather target growth opportunities, with perhaps a believe that the poor will somehow be carried along in the process. The formalization of title also invariably targets existing property owners – including poor, middle-income and wealthy individuals/households. Such focus, however, seemingly ignores the landless urban poor and poorest households, majority of whom are often tenants (Jones, no date). This is significant in Maseru where in some peri-urban neighbourhoods tenant populations comprise upwards of 80% of total residents (Hall, 2004).

Evidence would also seem to suggest that in response to poverty, urban and peri-urban poor households tend to engage in multiple livelihoods strategies, some being significantly home-based enterprises. However, formal titling would seem to assume that plots are under single and not multiple uses, which clearly negates the realities under which the urban poor live.

4.5 Program Sustainability

Jones (no date) expresses justifiable concerns regarding the post-compact sustainability of the land administration systems and processes that the MCC puts in place. He argues that experience with development projects so far shows that there are real risks that the systems and processes may decay as soon as MCC’s support ends, and that land markets may also increasingly revert to informality as beneficiaries withdraw or fail to register future land transactions. This begs the question of commitment by beneficiary governments to supporting the projects in the post-compact period. In Lesotho indications are that post-compact government support might not be forthcoming. Few examples will suffice to demonstrate this lack of commitment.
First, even as the Land Act 2010 is being keenly implemented, the key professional staff involved in the LARP expresses serious reservations on the true commitment of government to the reform process. Some of the key reservations are:

- That the Minister of Local Government is not keen on the implementation of the 2010 Land Act and is quoted as having openly dismissed the proposed Land Administration Authority as a ‘white elephant’. Key officers in the Ministry are also said to be overtly opposed to the on-going land reform project;
- That the Land Act 2010 and the LAA Act 2010 did ‘not talk to each other’. This could be disastrous to the land reform process if it is not addressed urgently.
- Reversals by way of amendments to the Land Act 2010 and the LAA 2010, where the position of Director General of the LAA is replaced by that of Commissioner of Lands, which is the former statutory head of the privatized lands and survey office.\(^5\)

Yet another source of disquiet is the land acquisition and expropriation for public purposes provision of the 2010 Act as provided for under Part IX. Key stakeholders consulted during the preparation of the scoping report from which this paper draws, argued strongly that provisions under this part are a continuity of the Selected Development Area (SDA) clause of the repealed Land Act 1979 and were being similarly misused to grant land plots to individuals favoured by ministers responsible for lands, particularly Section 51(1). Section 51(1) arguably gives unlimited leeway to the Minister responsible for lands to make land grants to virtually anybody s/he fancies, as long as a ‘public interest’ declaration has been made. Land set aside for purposes of ‘public interest’ grants are also not advertised and its availability for development is, therefore, not widely known, unless the media somehow comes to know about it.\(^6\) Current media reports seem to suggest that the misuse of Section 51(1) continues unabated, notwithstanding recommendations by the various land commissions to restrict the powers of Ministers of Lands in terms of how this clause might be used. As indicated earlier in this paper, the MCA’s land reform focuses almost exclusively on titling at the exclusion of the supply of new land into the market. Therefore, the flawed systems of land supply that existed under the repealed Land Act of 1979 have been left unreformed and the pull back into informality remains as strong as ever.

5.0 SUMMARY

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\(^5\) It is possible that this amendment was made to address the concern that the two Acts ‘did not talk to each other’ by removing the Director General and replacing this with the familiar Commissioner of Lands.
\(^6\) See Lesotho Times of September 1-7 and 8-14, 2011, especially the Editorial Comment of the latter issue, which calls on the Minister of Local Government is called upon to explain the land (stands/plots) that she had recently granted to nine government ministers, judges and senior civil servants (but to no ordinary Basotho) in prime areas in Maseru city.
This paper focused on current reforms funded by the Millennium Challenge Corporation specifically the potential impact of the reforms on poverty and access to credit by the urban poor. In the main it shows that the MCA’s land reform focuses exclusively on titling at the exclusion of the supply of new land into the market. The MCA’s regularisation project is in effect a mass titling project and international evidence would seem to suggest that the poor, especially the landless, rarely benefit from such programmes, and access to credit where titles are used as collateral are rare. In addition, while reforms that are clearly visible are significant with respect to land administration, matters relating to land access remain significantly similar to those under the repealed Land Act of 1979. Therefore, the flawed systems of land supply that existed under the repealed Land Act of 1979 have been left unreformed. This means that the urban poor will continue to rely on informal systems of access to urban land.

Poverty reduction through participation by the poor in formal urban land markets is likely to be minimal, with perhaps benefits likely to accrue to future generations from improvements in housing deriving from increased security of tenure. However, experience also shows that the sources of finance for house improvements were not formal credit, but household savings, including informal credit.

There appears to be three significant areas where Urban LandMark could play a potentially useful role, given its mandate of ensuring that land markets work better for the poor. These are:

- Detailed review of land supply to the urban poor;
- Assessment of impact of MCA’s mass titling program on poverty reduction; and
- Access to formal credit by the poor.

Additional areas that have been suggested by some of the stakeholders consulted during the preparation of the scoping report include:

- The need for a community-based Non-governmental Organisation (NGO) that could educate people on the virtues of formal titles and the need to stay within the system.
- An NGO that would mobilise communities around infrastructure and service provision, which is the missing link in on-going MCA’s funded regularisation program.

REFERENCES


**Government Acts and Regulations Cited:**

**Newspapers Cited:**
Lesotho Times, September 1-7, 2011.
Lesotho Times September 8-14, 2011.