

Reforming Land Administration in Lesotho: A Results Report

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SUMMARY

In 2010 the Government of the Kingdom of Lesotho passed a law creating a new autonomous agency responsible for land administration to replace the separate departments then responsible for issuing leasehold titles to land, registration of deeds, and cadastral surveying and mapping: The Land Administration Authority Act, and the more controversial Land Act 2010, were enacted under the auspices of the Land Administration Reform Project and support of the Millennium Challenge Corporation. Following a period of planning and preparation, the Land Administration Authority (LAA) recruited the best candidates and began reforming and improving operations and building a culture of customer service. This has resulted in “substantial” improvements in service delivery and output performance: the time to transfer an existing lease has fallen from 105 days to 24 days; over twice as many new leases, transfers and mortgages are being registered than 3 years ago. These successes could sustain LAA but the organization is expected to also be financially independent. Meeting this challenge will require building on achievements and continuously improving LAA’s staff, services and income through improved revenue collection. Less successfully, reforms are still needed in land surveying law and practice and the main challenge that lies ahead, other than achieving financial self-sufficiency, is remaining performance-driven and continuously improving customer service.

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1. INTRODUCTION

Tenure, law and organizational arrangements for land in Lesotho are much the same as elsewhere in the Southern Africa region. This is not surprising given that Lesotho is entirely surrounded by South Africa. Land law was imported from South Africa, and the cadastral system initially operated in much the same way as South Africa. But reforms, as this paper will highlight, have over the past three decades created a cadastral or land administration system in Lesotho that is now different from its larger neighbor.

2. BACKGROUND

2.1 The Land Problem in Lesotho

As a relatively small country, only 30,350 square kilometers in size with a population of 1.8 million, Lesotho's land is a scarce resource: this is exacerbated by the fact that 75% of the land area is mountainous and largely uncultivable. And taking into account recent history, and in particular colonial history, means that land, and its control, ownership and use, is a significant and sensitive issue for the Basotho people. Land administration arrangements are, therefore, equally as sensitive and significant, and reforms more so.

The land problem with respect to tenure and governance is well-documented: soil erosion and rapid urbanization is consuming agricultural land; informal settlements and informal land markets devoid of government control characterize urban areas; there is increasing landlessness and homelessness; widespread land speculation and corruption; the legal framework contradictory; and the institutional setting complex and bureaucratic (Kassanga, 1999). Attempts were made to address these problems by developing an overarching and progressive land policy and a new Land Act, and although parts of a draft land policy were implemented, the Land Bill of 2003 proved contentious and never became law and as such land issues and governance remained a matter of serious concern (Adams and Palmer, 2007).

The cadastral system – the surveying and recording of boundaries – also has its problems. South African practice as applied in Lesotho was expensive and the necessary skills were in short supply (McCulloch 1996). Although the Land Act of 1979 introduced the concept of general boundaries alongside the more traditional 'fixed' or 'precise' boundaries, the application of general boundaries is not consistent with the concept and is based on misunderstanding (LEI 2013a). The result is that cadastral surveys remained expensive and a constraint on entry into the formal land administration system (Selebalo 2002, Swedesurvey 2006).

Land administration reforms have largely focused on technical and human resource capacity building, but the results have largely been unsustainable. For example, the cadaster and land tenure records were digitized in the late 1990s and but now nothing remains of the land information database and the digital cadastral database is incomplete and error-strewn.

Recognizing the intransigence of the land problem, a different solution was promulgated in preparation for a new reform effort.

2.2 Millennium Challenge Compact

The Compact is an agreement made in July 2007 between the Government of Lesotho and the Government of the United States of America through the Millennium Challenge Corporation (MCC). The agreement contains a grant for development programs that are conceived by the country and agreed with MCC. The Lesotho Compact includes, *inter alia*, a Land Administration Reform Project, with four components or activities (Millennium Challenge Corporation & Government of Lesotho 2007):

- (1) Policy and Legal Reform to revise land legislation currently in draft form and to develop a land policy, and to promote the use of land as an economic asset.
- (2) Systematic Regularization of Land in Urban Areas and Improvement of Rural Land Allocation Processes to upgrade land tenure of informal settlements in urban and peri-urban areas, beginning in Maseru, and issue leases to the legally recognized title holders, as well as to support ongoing efforts to train community councils and traditional authorities on their roles in land allocation and land management.
- (3) Modernization and Improvement of Land Administration Services to simplify land administration procedures and to create a new land administration authority that will be:
 - a. professionally managed and operated;
 - b. operated in a largely autonomous manner in accordance with its objectives;
 - c. capable of providing cost-effective and efficient services to the public and land information users (including the poor);
 - d. able to hire and retain qualified managerial and technical staff; and
 - e. self-sustaining
- (4) Public outreach and training in support of all of the land administration reform activities.

The Compact ends in October 2013 and the results achieved under the land project are reported in this paper.

3. LAND ADMINISTRATION REFORM PROJECT

3.1 Policy and Legal Reform

Three significant pieces of legislation were enacted as a result of the project: (1) the Legal

Capacity of Married Persons Act 2008 that compels married couples to hold joint titles to land where they are married in community of property and which has resulted in a significant increase in the number of land titles held by women either singly or jointly as shown in Table 1; (2) the Land Act 2010 that removed gender discrimination in landholding, compelled registration of all land allocations in urban areas as part of a policy of moving towards leasehold land tenure, provides for quicker and cheaper land transactions and dispute resolution, and attracts foreign investment (Sekatle, 2010); and (3) the Land Administration Authority Act 2010, which established an autonomous government agency to replace the government departments responsible for leases, cadastral survey and deeds registration.

Table 1: Leases issued by gender

<i>Year</i>	<i>Male</i>	<i>Female</i>	<i>Joint male/female</i>
2008	472	161	80
2009	626	287	132
2010	562	318	256
2011	327	697	1222
2012	611	813	1604

Source: Land Administration Authority 2013

The Land Administration Authority (LAA) Act was enacted on the 16th June 2010, a day after the Land Act 2010, and without controversy or public comment. The Land Act was contentious and attracted much public debate because of one issue: allowing majority foreign ownership of land, notwithstanding that ownership would be limited to a 60-year commercial lease and with the quantum of investments and job creation approved by the Government.

Inconsistencies between the new laws were apparent when they were Bills but now that the Land Act 2010 and LAA Act 2010 were law problems emerged that were finally rectified in February 2012 with the Land (Amendment) Act which took the statutory post of Commissioner of Lands out of the public service and brought it into the LAA. Similar amendments to the Deeds Registry Act 1967 and the Land Survey Act 1980 took the posts of Land (Deeds) Registrar and Chief Surveyor out of the public service to consolidate all land administration functions in the LAA.

3.2 Systematic Regularization of Land in Urban Areas

The activity for systematic regularization of land tenure provides registered leasehold titles to occupiers of land in urban and peri-urban areas. The process “adjudicates” existing rights acquired by prior allocation of land by traditional authorities, or by inheritance, informal transactions or long possession, and formalizes these *in situ*, that is, with minimal planning and re-settlement. A pilot project between 2009 and 2011 created 4,200 new titles and the main implementation phase between 2012 and 2013 is designed to add a further 51,000. The differences between the outputs of the two phases is attributable mainly to the different approaches adopted for the surveying of land parcels; in the pilot, the traditional “precise”

land surveys were used, whereas in implementation high-resolution ortho-photography depicting general boundaries is being used.

3.3 Modernization and Improvement of Land Administration Services

This activity has led to the creation of the Land Administration Authority, an autonomous government agency or “parastatal” that has merged and replaced the two government departments of Lands Surveys and Physical Planning (LSPP) and the Deeds Registry. Although often considered as land administration functions, land use and physical planning in Lesotho have remained the responsibility of central and local governments and are not part of LAA.

In establishing the LAA, the preparatory work drew on lessons learned in establishing the Lesotho Revenue Authority (LRA), and the laws establishing both authorities are essentially the same, with similar governance arrangements: There is a Board appointed by the Minister from stakeholder representatives in the public and private sectors and the head of the organization is an executive non-voting member of the Board. There is a similar provision in both Acts for the recruitment of staff, which shall be on merit by open competition. Public officers in LSPP and the Deeds Registry may apply but if they are not successful they may be redeployed in the Public Service. This was a stressful time for many people, but the transition was accomplished largely without problems in the second half of 2011 and with approximately half of the LAA’s staff recruited from LSPP and the Deeds Registry and half from elsewhere; public officers not employed by LAA remain employed in the Public Service.

The LAA now has a leasehold land title to its headquarters building and with project support has refurbished it to create a modern working environment with a new customer services center. New equipment, mainly computer hardware, has been acquired, human resources and financial management software has been installed, and a Lease Management System and land information system is in development. This information system, specific for Lesotho’s needs, is being developed from the United Nations Food and Agriculture Organization’s (UN FAO) Solutions for Open Land Administration (SOLA) software, after the cancellation of a contract due to non-performance of a commercial software vendor.

The organizational structure of the LAA reflects how different services are delivered to customers. There are five divisions of: Lease Services, responsible for issuing new leases to persons with “allotted” or “allocated” land use right granted by either traditional authorities, local councils, or other allocating authorities; Legal and Registration Services whose main task is to register deeds that provide notice and establish priority of land dealings; Surveying and Mapping Services responsible for administering the cadastral system (land surveys) and Lesotho’s national topographic maps. The LAA, unlike the former LSPP, do not undertake land or cadastral surveys on behalf of customers; the public must now engage a private licensed land surveyor. The remaining two divisions of LAA are: Customer and Personnel Services, which is the “face” of LAA dealing with external customers and with internal

human resources; and Finance and Administration who are responsible for income and expenditure, procurement, facilities management and information systems (ICT).

All these divisions of LAA are headed by Directors who are employed on three-year renewable contracts, and with the other fifty-four permanent employees, all are remunerated above comparable positions in the public service, but generally below that of most other government agencies. Remuneration comprises a package of benefits but also a significant proportion of performance-related pay, up to 30% of basic salary. Performance assessments comprise three components: (i) achievement of work plan targets that are related to the strategic plan; (ii) key result areas in each employee's job description; and (iii) behavioral traits, such a time-keeping.

LAA's current strategic plan is for the period 2012 to 2015. In addition to the usual vision, mission and values statements, the plan has seven strategic objectives each with activities and targets. Most are outwardly focused with an emphasis on customer service. These strategic objectives are listed in Table 2.

Table 2: Strategic plan targets and achievements

<i>Deliver high quality and customer-centric services, information, and advice.</i>	<i>Target for 2012-13</i>	<i>Achievement</i>
Repeat visits (average)	4	3
Waiting time per visit (minutes on average)	20	15
Quality of advice (clearly informed)	75%	90%
Customer satisfaction with lease delivery time (satisfied or highly satisfied)	60%	67%
Overall quality of service (good or excellent)	78%	77%
<i>Issue leases and lease transaction consents quickly and transparently</i>	<i>Target for 2012-13</i>	<i>Achievement</i>
Time to issue new lease (days on average)	40	Currently 57 days
Time to issue consent and process transaction	15	Currently 14 days on average
Consents issued / consents withheld	100%	All consents granted
<i>Register all land transactions securely</i>	<i>Target for 2012-13</i>	<i>Achievement</i>
Time to register a deed (days on average)	9	Currently 4 days (excluding consent time)
<i>Establish a robust lease management system to process lease transactions and to maintain information on all land holdings</i>	<i>Target for 2012-13</i>	<i>Achievement</i>
System installed	2012	Not achieved
System operational (work days on average)	240	No data

System coverage (% of urban leased & allocated land)	15%	Unlikely to be achieved
<i>Provide land information to all who request it</i>	<i>Target for 2012-13</i>	<i>Achievement</i>
Time to respond to written requests for information (work days on average)	5	No data
<i>To be financially self-sustaining and to calculate and collect ground rent efficiently, fairly and fully.</i>	<i>Target for 2012-13</i>	<i>Achievement</i>
Bills issued (% of all non-exempted leases)	80%	17% (estimated)
Rents collected (% of all bills issued)	40%	45%
Revenue collected (Maloti, million)	2	6.5 including debtors (as at 31-Jan-2013)
<i>Continually improve the land administration system and strive for excellence.</i>	<i>Target for 2012-13</i>	<i>Achievement</i>
World Bank Doing Business – Registering Property ranking out of 183 countries	130	157
Number of secondary property transactions	1,000	928 (as at 31-Jan-2013)

Source: Land Administration Authority, 2013

The strategic plan provides a focus for organizational performance and service delivery and it is a framework for reporting to the Minister and to the Government. The plan informs the budget, but the achievement of targets does not determine the budget, as may be the case with government or executive agencies in other countries; that is, the LAA grant or subvention from the Government is not dependent on achieving performance targets.

LAA's revenue comes from multiple sources: fees and charges, ground rents, grants and loans. The greatest potential for revenue generation, and financial self-sustainability, is from ground rents, which is a rent payable annually to LAA by lessees on the unimproved value of land. All leases except those for personal residential use are subject to ground rent. The rents are supposed to be market-related, but with only one increase between 1980 and 2010, many rents were small and not worth collecting. However, increases have been achieved in 2011 and 2013 and with regular increases in the future to gradually bring rents back into line with market values the LAA's income will improve. The strategic plan envisages a financial "break-even point" in 2020, and a consultant's report estimates a total revenue potential of up to US\$ 28 million but more realistically US\$ 6.5 million is achievable (LEI, 2010). On the expenditure side of the budget, LAA's costs are more than double that of the former departments; with ever reducing government grants, the LAA must improve its revenue from ground rent to remain viable and become a sustainable organization.

4. LAND PROJECT ACHIEVEMENTS

Since LAA became operational in September 2011 and fully-staffed in January 2012, it has achieved improvements in almost all areas of service delivery. Most significantly the number of leases issued has increased, and the time taken to issue and the time taken to transfer a registered property have reduced, as shown in Tables 3 and 4.

Table 3: Leases issued and transacted

<i>Transaction / number of</i>	<i>2002</i>	<i>2005</i>	<i>2009</i>	<i>2012</i>
New leases registered	690	570	1101	2427
Transfers	69	85	176	329
Mortgages	62	108	153	308

Source: Land Administration Authority, 2013

Table 4: Lease transaction times

<i>Transaction / average time in days</i>	<i>2002</i>	<i>2005</i>	<i>2009</i>	<i>2012</i>
Application for new lease	n/a	>360	n/a	57
Consent to transfer	454	714	296	14
Register a transfer	65	45	43	4
Consent to mortgage	176	71	11	0
Register a mortgage	8	21	11	4

Source: Swedesurvey 2006a; Land Administration Authority, 2013

A key performance indicator is the time and cost for the transfer of property according to the World Bank's Doing Business methodology. The latest report for Lesotho shows no change and the rank slipping from 150 to 157 (World Bank, 2012). However, the recent reforms and the results achieved by LAA are not reflected in this report. LAA anticipates that the following achievements will appear in the next report:

Table 5: Registering property indicators for Lesotho (February 2013)

<i>Procedure</i>	<i>Time to complete</i>	<i>Associated costs</i>
1 Title deeds search The purchaser's lawyer conducts a search of the title deeds at the Land Deeds Registry located in the Land Administration Authority. The search will ascertain the status of the title with respect to the ownership and encumbrances.	1 day	LSL 800

<i>Procedure</i>	<i>Time to complete</i>	<i>Associated costs</i>
2 Application for consent to transfer The seller or the lawyer representing the seller completes a form and submits it to the Land Administration Authority seeking the consent of the Commissioner of Land to transfer the property. <i>Agency: Land Administration Authority</i>	14 days	LSL 50
3 Deed of transfer prepared A lawyer prepares a deed of transfer in accordance with the Deeds Registry Act 1967 and it is signed by the parties together with necessary affidavits.	5 days	LSL 8,500
4 Deed of transfer submitted for registration The lawyer submits the deed of transfer to the Land Registrar at the Land Administration Authority together with the certificate of consent to transfer for registration. Transfer duty and stamp duty taxes are payable based on either the consideration paid or the assessed value. A registration fee must also be paid. The taxes are calculated as follows: a) stamp duty: LSL 70 + 3% x (LSL 575,000 – LSL 7,000) b) transfer duty: (3% x LSL 10,000) +(4% x (LSL 575,000 – LSL 10,000)) <i>Agency: Land Administration Authority</i>	4 days	LSL 50 (registration fee) LSL 14,301 (stamp duty) LSL 19,248 (transfer duty)
Totals	24 days	LSL 42,949 (or 8.9% of the sale price or value)
World Bank Doing Business Report 2013	105 days	8%

Source: Land Administration Authority, 2013

Increasing volume of transactions and reduced time to process transactions signify improving service delivery. This can also be measured by testing customer satisfaction with LAA services. A questionnaire survey was conducted in 2010 when LSPP was still operating and repeated in 2012 after LAA had been established. The results show a marked improvement in customer satisfaction, with conclusions reached that: “service difficulties – substantial improvement compared with previous survey. Half of customers reported no difficulties; helpfulness of staff in attending customers – substantial improvement compared with previous survey – only three per cent of customers found staff not helpful; overall satisfied with service representatives – substantial improvement compared with previous survey – more than three-quarters of customers were satisfied overall with service representatives.” (LEI, 2012)

An in recognition of the important role and the effort of staff who are not customer-facing or involved in transaction processing, the LAA received in its first year of operation an unqualified audit opinion from the Auditor General.

It must be noted that these results – a combination of legal reforms and the establishment of the LAA – were achieved without the efficiency, transparency and consistency benefits that

come with using information technology. The introduction of the lease management system later in 2013 should drive performance improvement yet further forward.

More disappointingly, there remains a backlog in land survey examinations and approvals as shown in Table 6. The figures speak for themselves; and also corroborate the findings of consultants that many land surveyors do not fully understand the cadastral system and that the system is overly complex (Selabalo 2002, LEI 2013a).

Table 6: Land Survey Approvals

	<i>Apr- June 2012</i>	<i>Jul- Sep 2012</i>	<i>Oct- Dec 2012</i>	<i>Jan- Mar 2012</i>
Applications for land survey approval	n/a	338	305	259
Land surveys examined and approved	n/a	313	291	162
Land surveys referred back to surveyor	209	335	303	158
Pending applications	n/a	637	355	198
Time to approve a land survey (days)	60	60	60	60

Source: Survey and Mapping Services Division, LAA.

The current land project has focused mainly on reforms and re-engineering process for lease issue and transfer, and as a result the lack of reforms in land survey law and practice are now being highlighted. A consultant’s report (LEI 2013a) has identified a number of areas for short- and longer-term improvements:

- Capacity building for LAA cadastral management and survey approval activities
- Re-engineering of survey approval process
- Raising knowledge and skills of all land surveyors
- Revision of the Land Survey Act 1980, Land Survey Regulations 1980 and the Chief Surveyor’s Directions

The report also highlights the difference between the concept of general boundaries as defined in the Chief Surveyor’s Directions and defined elsewhere, such as in England and Wales. This has probably contributed to the misunderstanding of general boundaries in Lesotho and misapplication of it in practice, and this should be clarified in the revised legislation and new guidance provided for the profession.

5. FUTURE REFORMS AND CHALLENGES

Establishing the LAA proved to be easier than predicted; planning and preparation paid off. The results in the first year of operation also proved easier than expected, mainly because the previous land administration departments were performing so poorly. With the initial challenge overcome, the main challenge going forward is to continue, sustain and build upon the improvements already achieved.

Continued improvements in service delivery, customer satisfaction, and revenue collection should materialize following the installation of the lease management and land information system. Quicker retrieval of information, more consistent advice and greater transparency in the processing of applications, are the areas with scope for further improvements in customer service. The system will also help improve revenue through the availability of a more complete and up-to-date database of leases and lessees liable for payment ground rent, and for accurate and regular billing.

Income is important to achieve the objectives of sustainability, continuous improvement and the ability to recruit and retain the best staff. It is also needed to cement the autonomy of LAA. But going forward the LAA should not be too focused on revenue, and especially from sources that may inhibit the participation of the poor in formal land administration. The current policy of focusing on ground rents for properties that generate income for the lessee should realize sufficient revenue for LAA; fees for basic services, especially where the transaction does not involve money, should be nominal and cross-subsidized. A report on the sustainability of LAA rightly says this and that for sustainability in the wider sense the LAA must be relevant to the Government's policy agenda (LEI, 2013b).

Emphasis on service delivery – a priority of the current Government – and continuous improvement in performance – financial and otherwise – require strategic direction, leadership, and good management. These skills are often expensive and in limited supply in a small country like Lesotho with a population of less than 2 million and an attractive labor market in neighboring South Africa. The LAA Board provides strategic direction, and members, who are appointed by the Minister, must remain representative of their stakeholder organizations, committed to the success of the LAA, and impartial: all qualities that the Board has so far demonstrated. The Board must also strive to ensure that the head of LAA – the DG – is a capable and motivated individual with good leadership, management and delegation skills. Qualifications and experience in land administration are preferable but business and organization skills are much more important requirements.

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BIOGRAPHICAL NOTES

Sean G. Johnson is currently the Director General and Chief Executive of the Land Administration Authority until June 2013 when he will be succeeded by a Mosotho or citizen of Lesotho, who, like all employees of the Authority, will be recruited on merit by open competition. He is also the Commissioner of Lands. Prior to joining the Authority in 2010, Mr. Johnson worked as a land administration specialist for various companies and organizations on land administration projects mainly in Africa and the Caribbean, and after completing his tenure at the Land Administration Authority, he expects to return to world of land administration consulting. He is a land surveyor, geographer and member of the Royal Institution of Chartered Surveyors, and a long-suffering supporter of Sunderland AFC.

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