



# Land Governance in an Interconnected World

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
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## GOOD LAND GOVERNANCE IS ESSENTIAL TO EFFECTIVE ADMINISTRATION OF LAND

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## List of Acronyms and Abbreviations

IFAD	International Fund for Agricultural Development
LAA	Land Administration Authority
LSPP	Land Survey and Physical Planning
SDG's	Sustainable Development Goals
UNDP	United Nations Development Program
UN	United Nations
UNECE	United Nations Economic Commission for Europe



## **ABSTRACT**

It is widely acknowledged that land is a source of all wealth and for countries to develop they should create a conducive environment for the provision of secure land rights. There is growing international acknowledgment of the importance of tenure security and good land governance. Good land governance is central to the economic growth, tenure security and social development. In most African countries, weak governance has undermined effective protection of land rights. Adherence to the principles of good governance such as efficiency, effectiveness, equity fairness and impartiality is vital to the successful administration of land.

Lesotho is recognized as one of the countries that has achieved major success in the efficient administration of Land. The enactment of the Legal Capacity of Married Persons Act, Land Act 2010, Land Administration Authority Act of 2011, has provided the legal security which is imperative to effective administration of land. Statistics on land registration reveal a significant increase in the number of women with registered titles. This paper, therefore, seeks to demonstrate the importance of good land governance in effective administration of land. It will further discuss, it will discuss how by incorporating good land governance in land administration, Lesotho has managed, amid some challenges, to continually provide effective land administration services.

### **Key Words:**

Administration, efficient, governance, land, services

# 1.Introduction

Studies show that majority of people in developing countries do not have legally recognized and well documented land rights. For economic growth, tenure security and social development to be achieved, effective protection of the people rights to property is key. An overwhelming majority of the people who leave below the poverty line come from South Asia and Sub Saharan Africa. The root causes of poverty include lack or poor management of resources, land degradation, poor land governance, gender inequality, lack of effective conflict resolution, unequal access to land and tenure insecurity.

Without good land governance the goal to promote economic growth and sustainable poverty may never be realized. The manner in which rights to use and control of land is governed is central to effective administration of land. Literature from both failed and partial reforms reveal that owing to the complexity of the problems concerning administration and ownership of land in most countries, there cannot be one solution. However, a well formulated reform policy with a governance approach is essential to addressing problems which include but are not limited to insecurity of tenure poor administration of land and conflict resolution.

## 2. What is Governance

Literature on governance indicates that it is defined in several ways. However, there seems to be a consensus on the principles it embraces. Governance can be defined as the structures and processes that are designed to ensure accountability, transparency, responsiveness, rule of law, stability, equity and inclusiveness, empowerment, and broad-based participation. (UNEC, 1996) Governance has also been defined as the exercise of power or authority by political leaders for the well-being of their country's citizens or subjects. Three distinct aspects of governance identified by the World Bank, are;

(i) the form of the political regime;

(ii) the process by which authority is exercised in the management of a country's economic and social resources for development; and

(iii) the capacity of governments to design, formulate and implement policies and discharge functions. (IFAD, 1999)

### **3. What is Land Governance**

Land governance is the process by which decisions are made regarding the access to and use of land, the manner in which those decisions are implemented and the way that conflicting interests are reconciled. (Global Tool Network). It is about the policies, processes and institutions by which land, property and natural resources are managed. This includes decisions on access to land, land rights, land use, and land development. Land governance is basically about determining and implementing sustainable land policies. (FIG NO.45)

According to Palmer, Friccka & Wehrmann, land governance includes state structures such as land agencies, courts and ministries responsible for land, as well as non-statutory actors such as traditional bodies and informal agents.

### **4. The Impact of Land Governance on Administration of Land**

In many countries land administration systems have failed due to poor management and lack of good governance. Land governance has been identified as integral to poverty reduction and provision of tenure security. According to Zakout, Wehrmann and Törhöne, 2009 good land governance in land administration aims to protect the property rights of individuals and enterprise as well as state, by introducing such principles such as transparency, accountability, rule of law equity and participation into land related public sector.

#### **4.1 Land Administration**

Land Administration is defined as the process of determining, recording and disseminating information about ownership, value and use of land and its associated resources. These processes include the determination (sometimes called 'adjudication') of land rights and other attributes, surveying and describing these, their detailed documentation, and the provision of relevant information for supporting land markets. (UNECE. 1996). Land administration includes the systems for land registration, land use planning land management and property taxation

The needs of society are perpetually evolving, therefore there is need for land administration institutions that are transparent accountable and can effectively register land rights, provide land information, resolve

disputes as well as provide security of tenure. Furthermore, countries need to develop comprehensive infrastructures that will enable efficient administration of land. According to Grant, Williamson & Ting, moving away from a sole focus on the cadastre as the only source of information and having other information to be part of the land administration infrastructure will allow the following;

- regularization of informal settlements and the management of these areas over time.
- an increase in the amount of information available. There is a critical shortage of land information for decision makers in developing countries.
- improved conflict management over land. Land administration infrastructure is stretching beyond cadastre and should provide land information to those involved in land disputes.
- diversification of tenure types. A range of new tenure types that are not parcel based could be facilitated by an expanded land administration infrastructure, such as informal settlement occupancy claims, indigenous and customary rights, water rights, and overlapping rights.

## **5. Principles of Good Land Governance in Land Administration**

Good land governance helps institutions comply with the legal and regulatory requirements and most importantly provides an ethical basis for governance. Many principles of governance have been identified by different authors, some of these principles are discussed below. Törhönen et al, identify the following principles;

**Efficiency** procedures to register property transactions should be short and simple. The fewer steps there are the less opportunity for informal payments.

**Transparency, consistency and predictability.**

Transparent recruitment of staff and transparent services standards and costs of service will contribute to higher efficiency, accountability, fairness and confidence in agency integrity.

**Equality fairness and impartiality**

All people should have the same access to services and receive the same service standards independent of their political or economic status.

According to Whittal, 2011 (as cited by, Mabesa and Whittal , 2014), the following characterize good land governance;

### **Legal security and rule of law**

Good governance in land administration requires a consistent and coherent legal framework, a fair and transparent judiciary and general prevalence of the rule of law to protect property rights;

**Timeliness:** good practice in good governance means availability of timely and up-to-date land information to the citizens.

**Accessibility:** land administration services should be provided closer to the people

**Cost:** the cost principle relates to the amount of money incurred in paying for the land administration system

**Adherence to international standards:** International standards in land administration promote the use of regulation and audits in order to gauge performance and to provide essential feedback in order to improve systems.

Although the list is in exhaustive, the principles identified describe characteristics of effective governance that have been agreed upon by most authors.

## **6. Land Administration in Lesotho**

Lesotho is a democratic constitutional monarch. It is situated in the Southern part of Africa and covers 30,335 square kilometers. Lesotho's unique geographical situation is that it is completely surrounded by the Republic of South Africa (RSA). It is largely a rural agricultural economy and like in most African countries, many households depend on agriculture for their livelihood. It has limited natural endowments and these are diamonds and water. Although the World Bank categorized Lesotho as a lower middle income country, reports indicate that over 57.1 % of Lesotho's population live below the poverty line. ('The Lesotho Country Analysis Final Draft, 2017) Further, the country faces severe food insufficiency and hunger. Causes for poverty and food insufficiency as identified, in the Final Draft, include;

### 1.Land degradation/ poor land governance

- Lack and poor management of resources

- Lack of technical capacities of farmers
- Lack of coordination between ministries

## 2. Low Private Sector development/ investment

- Low stimulating/ enabling environment for the private sector
- Lack of infrastructure

## 3. Gender inequality and equity

- Early child marriage and cultural practices that prevent woman from inheriting properties
- Unequal access to resources & unequal control/ access to economic activities

## 6.1 The Regulatory Regime

It can be argued that Lesotho has a dual land tenure system as both customary and statutory land tenure systems exist side by side. The basic principle of the customary land tenure system is communal land ownership. All Land in Lesotho is vested in the Basotho Nation and is held in trust by the King. The primary legal sources concerning land are the following;

- The Lesotho Constitution 1993
- The Land Act 2010 as amended and regulations made thereunder
- The Deeds Registry Act 1967 as amended
- The Building Control Act 1995
- The Local Government Act 1997
- The Forestry Act 1998
- The Environment Act 2001
- The Legal Capacity of Married Persons Act 2006
- The Laws of Lerotoli
- The Roman Dutch law as applied in Lesotho
- The Land Survey Act

## 7. The Former Land Administration System

The enactment of the 1979 Land Act was an important development in the administration of land in Lesotho. Through the Land Act 1979, government sought to remove serious constraints imposed by the traditional land tenure system on agricultural development and rural reconstruction. To provide for security of tenure and negotiability of title to land under a lease system for urban land use. Further, to provide for land revenue in the form of assessed ground rent, licence fees, and development charges. The Act further made provision for administration of land to be carried out by the Department of Lands, Surveys and Physical Planning, as opposed to the traditional authorities.

Though the reform was an important mile stone, it failed to adequately address the land tenure problems in the country. The Land Act 1979 provided protection of people rights to land, however there were no procedures which ensured security of interests in land once obtained. There was lack of mechanisms and procedures to settle disputes in a timeous manner which provided for impartiality, authoritativeness and finality. In addition, there was shortage of accurate information about land to reduce uncertainties and dysfunctional land markets which promoted informal transactions. Furthermore, the system failed to bring sufficient revenue collection.

According to the Lesotho Government,2000, Swedesurvey, 2006 ((as cited by Whittal el at, 2014), failures of the LSPP could be attributed to

- lack or shortage of resources and equipment,
- institutional deficiencies (including poor management),
- complicated processes,
- state bureaucracy,
- de-motivated land officials,
- corruption,
- shortage in human (“brain-drain”) and capital resource capacity,
- decentralization, transparency issues,
- restrictive policies,
- poor land record-keeping,
- slow, expensive and inefficient services.

## **8. The Current Land Administration System**

To address failures of the previous administration, Lesotho embarked on a reform program, which included the proposal for enactment of a new law. The objectives of the proposed law included, setting aside the customary land tenure that allowed men only to hold titles to land, regularize informal allocations mainly in the peri urban areas, register all land allocated in the urban areas registered, protect orphans upon the death of their parents, attract foreign investment by allowing foreign companies to hold up to 80% of the share in land ownership. In 2010 Land Act was enacted. The Act was fundamental to the current change in the administration of Lesotho. Important clauses in the Act include, resolution of disputes, establishment of the Land Administration Authority and public provision of land information.

### **8.1 Dispute Resolution**

The establishment of the land courts is a landmark in the administration of justice in Lesotho. The Land Tribunals established by the Land Act 1979 was a step in the right direction, however they failed to live up to the expectations. The Tribunals were intended to resolve disputes speedily, by removing land disputes from the normal court system. The system had a number of challenges which include, the length of time cases took through the system, lack of awareness of the public about the courts and the overlapping jurisdiction with other dispute resolution structures. To address this challenges, the Land Act 2010 established District land courts as the subordinate Courts to hear and determine disputes, actions and proceedings concerning land. It further establishes the Land Court which is a division of the land court.

### **8.2 Establishment of the Land Administration Authority**

Another important transformation brought about by the reform, was the enactment of the Land Administration Authority Act of 2011 (LAA Act). The LAA Act established the Land Administration Authority (LAA) with the help of the government of the United States of America, through the Millennium Corporation. The Land Administration Authority is an agency of the Government of Lesotho, responsible for land administration functions which include;

(a) to administer the land registration system and shall include the following tasks:

- establishment and maintenance of accurate and complete database containing information on land holding in Lesotho;
- granting consents for land transactions whenever necessary;
- registering all land transactions requiring registration;
- maintaining a record of all rights and interests in land;
- providing information regarding land holdings and other interests in land upon request;
- initiating research for improvement of the efficient functioning of the land administration system;

(b) to administer cadastral survey;

(c) to resolve registration and cadastre complaints and disputes.

(d) to create guidelines that provide for measures to ensure the efficient and effective performance of the land registration, cadastral registration, resolution of registration and cadastre complaints and dispute.

### 8.3 Service Delivery

The transition from the LSPP administration was not without its fair share of challenges. For instance, all documents and records kept by the previous administration had to be transmitted to the newly established LAA. However due to lack of a comprehensive and well-structured hand over process, the handing over was a bit challenging. Despite this, within only its first year of establishment, LAA achieved considerable success. It managed to reduce the turnaround time to register a new lease from 100 days to 60 days. The time to issue a lease from date of application to date of receipt is a key indicator and one that most customers and stakeholders use as a yard stick to measure the Authority's performance. Over the years this number has continued to reduce and currently it takes 10 days to issue a lease and four days to register a transfer.

LAA endeavors to put customers at the center of its operations. By providing low cost, transparent efficient and timely land services, LAA has received a lot of commendation from the public. This has been revealed by the annual customer satisfaction survey results over the years. The recent customer satisfaction survey results, reveal general satisfaction with the changes brought by the LAA compared to the former Administration. The questions in the survey include, number of visits, length of time it took for customers to be served, waiting time, adherence of staff to professional practice and helpfulness of staff. The 2016/2017 survey revealed an overwhelming 91% of the people who participate in the survey expressed satisfaction with the way they were served by the LAA staff.

LAA recognizes employee contribution to the success of the organization and effectively conveys this. In addition, LAA has consistently improved upon being transparent with what is expected in order to achieve personal as well the organization's wide success. LAA's culture of team work has contributed greatly to the quality of customer service. It has further motivated staff to perform the best of their capabilities.

## 8.4 Outreach Campaigns

LAA understands the importance of information dissemination and has thus continuously embarked on outreach campaigns which aim at educating the public about the Land Act, the benefits of registering land rights and transacting formally. LAA also appears on a weekly radio program with the aim to educating the public about various services offered by the Authority.

Through workshops around the country, LAA initially provided training of trainers to local councils, who would in turn educate their constituents, but the campaigns have since widened to include other stakeholders such as members of the legal fraternity. In his address during the launch of the Land Courts, the President of the Law Society lamented the challenges that legal practitioners faced concerning the transfer of land under the 1979 Act. He indicated that the bureaucracy brought about by the 1979 Act, concerning the transfer of land was an impediment to efficient service delivery. The Land Act 1979 invalidated every agreement for sublease, mortgage or transfer of rights in immovable property made without prior Ministerial consent.

## 8.5 Provision of Information

Information is necessary for land markets to function efficiently. LAA's mandate is to support the markets in Lesotho by providing updated and accurate land information expeditiously. Information request come in various ways including written or telephonic. To deliver on this mandate efficiently, LAA has transitioned from manual land administration systems to automated systems. Though not fully automated, there has been a tremendous increase over the years in the number of automated records, which has in turn allowed quicker service delivery. The amalgamation of the deeds registration to LAA has been a major contributor to the improved service delivery, as information can now be obtained in one place.

Like Rwanda, one the strategies Lesotho employed was to ensure inclusiveness and this was achieved through the land regularization project. In 2010 a project to regularize around 55 000 parcels was launched. It is with this project that most of the land allocations done in the past were converted into legal land titles, by adjudication and regularization. The process allowed for any proof of allocation, including affidavits

from the chief, witness from villagers who resided in the place for more than 30 years, and proof of residence to be submitted in support of application for registered title. This, encompassed all customary allocations of individuals in both urban and rural areas. At the conclusion of the adjudication and regularization leases were registered. What made this process more effective was that unlike in Rwanda the service without any charge.

## **9. Progress with achieving Sustainable Development Goals**

Sustainable Development Goals (SDG's) are a call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity. (UNDP Africa), Sustainable Development Goals seeks to realize the human rights of all and to achieve gender equality and the empowerment of all women and girls. It has been argued throughout literature that women empowerment is integral to the achievement of progress with the SDG's. For the purpose of this paper focus will be placed on reviewing Lesotho's progress on achieving Goal 5, which is to Achieve gender equality and empower all women and girls.

### **Goals 5. Achieve gender equality and empower all women and girls.**

Recent reforms in the land sector have elevated the position of women and placed them on an equal footing with the men. Recognizing that Lesotho has a dual system, which comprises of customary law and general law operating side by side, the Land Act 2010 clearly stipulates that where customary law is inconsistent with it, the Act shall prevail. Under customary law a woman is a perpetual minor, and cannot validly contract without assistance from her guardian, i.e. father, husband or her husband's male relatives. Section 10 (1) of the Act also, specifies that "where persons are married in community of property..... any title to immovable property allocated to or acquired by both partners, and any title to such property shall be held jointly..."

The enactment of the Legal Capacity of Married Persons Act of 2006 was another major development which eliminated gender discrimination. The Act abolished marital power and makes provision for the removal of minority status of women and for matters incidental thereto. The Act gives spouses married in community of property equal capacity to administer joint estate, dispose assets of the joint estate and contract debts for which the joint estate is liable. The Act further amended the Companies of 1967. Under this Act, women could not become directors in a company unless consent was obtained from their husbands.

In terms of this law, a woman married in community of property could be a director in a company only with written consent from her husband.

The Constitution of Lesotho is also considerable importance as it advocates for equal treatment irrespective of among other attributes gender. Section 30 (a) (i), provides for equal remuneration for work of equal value for both men and women, whereas subsection (b) provides for the creation of equal opportunities of employment for men and women.

Lesotho is also party to numerous international treaties including the United Nations Convention on the Elimination of All forms of Discrimination against Women (CEDAW), the African Union Protocol on the Rights of Women (2003), and the SADC Protocol on Gender and Development (2008). Although there has been some improvement on women's participation in the political sphere more still needs to be achieved. Women literacy stands at 98.6% compared to 90.6 % for men. ( "The Lesotho Country Analysis Working Document, 2017"). Despite this, women representation in political and leadership roles is still very low. In the 2017, National Assembly Elections women's representation in Lesotho's parliament dropped by two-percentage points from 25% to 23%. Out of the 120 seats, only 27 are held by women as compared to 2015 when women held 30 seats.

The cabinet representation of women has remained the same for both 2015 and 2017 at 22%. The 36 Members of cabinet comprise five (5) women ministers and three (3) women deputy ministers. Women still face other challenges which include high levels of gender based violence, high rates of maternal mortality and increasing levels of HIV infections, with women being the most affected. This there signifies that more still need to be done if gender equality and women empowerment is to be achieved.

Since its establishment, LAA has ensured strict compliance with the Legal Capacity of Married Persons Act and other laws regulating protection of the rights of women. It is worth noting that although the Act was promulgated in 2006, implementation of the law was evidenced only in 2009 and increased significantly in 2011, when LAA took over operations. Statics of women with registered titles on land will reveal a growing trend of the number of registered leases. This include both women registered alone and women registered jointly with their spouses.

From 1981 when the fist lease was register to 2010 only 5, 054 women had registered their land rights. From 2010, to 2017, 58, 801 women were registered their land rights, either individually or jointly with their spouses. The graph on page 17 illustrates statistics of registered leases from 2005 to 2017.

Lesotho has achieved notable progress with the promotion of gender equality and securing land, however women still suffer traditional and cultural prejudices concerning management of their rights to property.

## **10. Conclusion**

Land is one of the key factors in different fields of development. To reap optimum benefit from this very important resource, it has to be properly administered. It has also been accepted that there is no single solution to resolving the complex problems associated with land administration. Finding a working solution becomes even more complicated where governance is weak. Good land governance is central to the economic growth, tenure security and social development. The paper highlighted how through monitoring and ensuring compliance with the principles of good governance, such as efficiency, effectiveness, equity fairness and impartiality, Lesotho has successfully achieved efficient administration of land and thus contributed greatly to economic progress. The new system has provided mechanisms for provision of security of tenure, which has enabled people to have access, use, develop and transfer land. Further it has provided for an efficient management and resolution of disputes. A reform policy that embraces principles of good land governance is key to efficient administration of land.

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