

**KINGDOM OF LESOTHO**

**REPORT OF**

**LAND POLICY  
REVIEW COMMISSION**

**29<sup>th</sup> September 2000**

**CHAPTER 10**  
**SUMMARY OF RECOMMENDATIONS**

In order to ensure that the all-important recommendations made herein are not lost in the maze of paper comprising this Report we take the liberty to tabulate a summary of such recommendations hereunder as follows:

1. All land in Lesotho shall vest in the Basotho Nation and be held by the State through the National Land Council as the representative of the Nation and shall be owned in accordance with the following land tenure systems.
2. For the avoidance of doubt the present customary land tenure system must be abolished forthwith as it is not conducive to efficient land management and/or administration, security of tenure, high productivity and economic development. Accordingly all land (including agricultural land) that was held under customary tenure shall henceforth be held on leasehold tenure.
3. Similarly all sections of the Laws of Lerotholi dealing with land must be repealed and land must be held in accordance with the proposed new Land Act.
4. In the same vein Section 108 of the Constitution of Lesotho must be amended to give power to the proposed National Land Council in the allocation of land on behalf of the State.

**Systems of Land Tenure**

1. Land in Lesotho shall be held under leasehold and freehold tenure systems.
2. Leasehold tenure shall apply to agricultural land, residential land and commercial land.
3. Freehold tenure shall be land earmarked for industrial developments, high rise buildings for residential (e.g. flats) and commercial purposes.

**Qualification and capacity to hold title to land**

It is recommended that no person shall hold title to land in Lesotho except -

1. a citizen of Lesotho of the age of 21 years or who is married whichever shall come first;
2. a company registered in Lesotho irrespective of the shareholding arrangements. The present system of prescribing majority shareholding in favour of Basotho creates insecurity of tenure and has thus chased away foreign investors to the economic detriment of the country. Conditions attached to the lease issued in favour of any registered company should suffice to protect the interests of the country;
3. partnerships;
4. associations, cooperatives and friendly societies;
5. diplomatic Missions.
6. Only Lesotho citizens of the age of 21 years or who are married shall be entitled to hold land under leasehold tenure.

### **Foreign Investors And Freehold Tenure**

9. Lesotho citizens of the age of 21 or who are married, foreign investors, registered companies, partnerships, associations, cooperatives and friendly societies shall be entitled to hold land under freehold tenure but only in designated areas for industrial development and for approved industrial purposes, high rise buildings for residential and commercial purposes and for special projects.

### **Qualification and Capacity To Own Land.**

10. All laws discriminating against women in Lesotho must be repealed forthwith in so far as access to land is concerned. These include all the discriminatory sections in the Deeds Registry Act 1967 more especially Sections 14 and 35 (c) thereof. Women shall be entitled to own land on merit and to register it in their own names just like their male counterparts.

11. Section 18 (4) (c) of the Constitution of Lesotho must be amended and deleted forthwith to the extent that it justifies discrimination against women under the guise of customary law.

12. All laws, whether customary or legislative, preferring male heirs over women in so far as access to land or land property is concerned must be repealed or abolished forthwith. These include Sections 7 (5), 7 (6), 11, 12, 13 and 14 of the Laws of Lerotoli.

13. Access to land or land property and inheritance of same shall be based on merit regardless of sex having regard to the question whether the applicant shall make the best productive use of the land applied for.

14. Upon the death of the holder of title to arable land such land shall revert to the elected allocating authority namely the relevant Land Board proposed in this Report for reallocation provided that such allocating authority shall first consider purely on merit as set out in Recommendation 8 above the application of a person appointed by the family as succeeding the deceased holder of the land in question.

### **Fallow Lands**

15. Any land that lies fallow for two (2) successive years shall strictly and automatically revert to the land allocating authority namely the relevant Land Board proposed in this Report for reallocation.

16. Holders of fallow lands must be obliged to pay higher annual land fees to discourage fallow lands and to encourage share cropping for the poor.

### **Underutilised State land**

17. Under-utilised State land such as Mejametalana and Talitlana must be leased to commercial farmers.

18. Each landholder shall be entitled to appoint, by will or otherwise, a successor to the land held by him/her or to dispose of same to his/her children without any restrictions or discrimination as to sex.

19. Minutes, Registers and certificates of allocation showing identity numbers of applicants, areas where the lands are situated, as well as records of revocations of titles to land must be kept at village level (namely the District Land Board) and national level (namely the National Land Council).

## **Survey, Mapping and Registration**

20. All land in Lesotho must be surveyed, mapped (with special emphasis on aerial photos and mapping) and parcelled up according to different land use before any allocation is effected.
21. All land in Lesotho must be registered so that it can be known which land belongs to whom and hence to eliminate land disputes.
22. All land in Lesotho must be zoned and designated into separate categories namely arable, residential, rangelands, commercial and industrial. There must be no encroachment of one upon the other.
23. Prime agricultural areas must be identified and declared as Selected Agricultural Areas for intensive commercial farming of cash crops.
24. The Land Management System must be computerized.
25. The cumbersome and complex land administration in lease application must be simplified and shortened for example by abolishing the publication/advertisement in newspapers and gazettes presently required in lease applications.
26. Similarly the Minister's consent in the event of transfer of land must be abolished.
27. Processing of a lease application must not exceed six (6) months.
28. The current certificate of allocation called the Form C must be abolished forthwith and replaced with a certificate of Qualified Title hereinafter referred to as Form "QT" which shall be issued by the appropriate Land Board upon allocation or satisfactory proof of allocation that has been made prior to the coming into effect of the proposed new Land Act.
29. Only holders of the certificates of the Qualified Title (Form "QT") shall be entitled to register their lands on production of such certificates.
30. Final Title which shall be indefeasible shall only be obtained after proper survey of the land has been effected to eliminate any dispute as to the identity and/or ownership of the land in question.
31. The lands in areas declared as Selected Agricultural Areas shall automatically revert to the State through the National Land Council for reallocation at the rate not exceeding one (1) hectare of land per person and on condition that the applicant consents to submit his/her land for consolidation and block farming.

## **Block Farming**

32. There must be block farming in areas declared as Selected Agricultural Areas following consolidation of the lands thereat.
33. The poor and the landless must be specifically targeted to work on block farming areas, consolidated lands and special projects to uplift their economic standard of living.
34. Land owners in block farming shall be entitled to a percentage share of the block farming produce according to the percentage of their land to the entire block.

35. The management and control of block farming areas in Selected Agricultural Areas shall be in the hands of the Lesotho Land Development Authority which shall be established to manage special land-related projects aimed at uplifting the social and economic standard of living of the Basotho people and which shall accordingly target the poor and the landless as a means of redressing the current inequity of access to land due to the small size of the country.

36. For lands other than Selected Agricultural Areas and particularly for the poor land holders, there must be legalised share cropping which shall be embodied in the proposed new Land Act which in turn shall provide legal standard sub-lease forms for this purpose.

37. Land must be managed and controlled by agricultural professionals and people capable of making the best productive use of it.

38. All agricultural land shall be held on leasehold (with specified conditions) which shall be transferable.

39. Leaseholders of agricultural lands shall be entitled to bank credit facilities on the security of their lands.

### **Land Market**

40. There must be an open land market for leasehold and freehold tenure for ease of land management and control as well as collection of land taxes including sales tax which must accrue to the State.

41. No person shall hold arable land exceeding three (3) hectares in size.

### **Commercial Farming**

42. Intensive commercial farming must be introduced throughout Lesotho.

43. Land productive capability or potential must be assessed and potential production standards set for all farmers to meet failing which they shall forfeit the lands which shall then revert to the State through the National Land Council for reallocation.

44. All eroded areas including dongas and gullies shall be declared as Protected Areas by the Local Land Boards on the advice of the Ministry of Agriculture and it shall be the responsibility of the State through the Ministry to rehabilitate and/or reclaim them.

45. Farmers and land holders within areas declared as Protected Areas shall automatically forfeit their lands which shall then revert to the State through the National Land Council for rehabilitation/reclamation and reallocation.

46. Any farmer and/or land holder who fails for two successive years to stop a donga or gully from developing or expanding in his/her land whether agricultural, residential or commercial, shall automatically forfeit such land which shall then revert to the State through the National Land Council for reallocation.

47. In embarking upon rehabilitation/reclamation of eroded areas the State, through the National Land Council, shall have power to assign the task to individuals and/or institutions who shall submit rehabilitation/reclamation plans for approval by the appropriate Land Board on the advice of the Agricultural Officer.

## **Livestock**

48. There must be taxes on livestock escalating according to the number of livestock owned. Accordingly each livestock owner must be obliged to keep a register of the number of livestock he owns.

49. Similarly grazing fees must be reintroduced.

## **Range Management**

50. Range Management Areas and Grazing Associations must be established throughout the rangelands of Lesotho under the Land Boards as a matter of urgency to manage and control all the rangelands in Lesotho. However they must be given teeth to bite such as the power to declare reserved pastures, power to have their own pounds and to impound trespassing livestock as well as power to arrest offenders and to take them to court including the power to sue and to be sued in their own names.

51. Each Grazing Association must be given a lease for its own Range Management Area.

52. The Local Government Act 1997 (or 1996) must be amended accordingly so as to avoid a clash on grazing jurisdiction between the Grazing Associations and the Local Authorities envisaged in the Act.

53. Members of the Army namely the Lesotho Defence Force must be deployed to patrol and protect the rangelands against unauthorized burning of grass and stock theft which has now reached epidemic proportions and must accordingly be declared a National Disaster.

## **Protection of Wetlands**

54. Similarly members of the Army namely the Lesotho Defence Force must be deployed to patrol and protect the critical wetlands and/or headwaters of the main rivers of Lesotho such as the Orange River (Senqu) in as much as their existence is under sever threat. This is in keeping with Lesotho's commitment to protect and preserve the headwaters of the rivers which flow from her region by virtue of being upstream. We refer in particular to the Water Sources Protocol of SADC which Lesotho has signed.

55. Members of the Army patrolling and protecting the wetlands as well as the rangelands for stock theft must be empowered to arrest offenders.

56. Efforts must be made to stop wetlands erosion, to rebuild and to restore their structure.

57. Vegetation cover of the alpine areas of Lesotho particularly on wetlands must be restored.

58. Livestock grazing and cattle posts on wetlands must be strictly prohibited on strict zero grazing policy.

59. Wetlands or headwaters must be declared Special Protected Areas under State land and must be controlled by the Land Boards.

60. There must be intensive and public awareness campaign to teach members of the public about the importance of protecting the wetlands and the environment and there must be a participatory process including the local people in the structures set out so that they may feel that they are part of the whole process and hence to accept it as their own.

61. The tatoos which were so effective in the prevention of stock theft during the colonial days must be reintroduced for the same purpose.

### **Residential sites in Urban Areas**

62. Due to land shortage residential sites in urban areas shall only be allocated to the following at the rate of one standard site size of 30<sup>m</sup> x 30<sup>m</sup> (100 ft. x 100 ft.) each:

1. a Lesotho citizen aged 21 years or who is married;
2. a company registered in Lesotho;
3. a partnership;
4. an association, cooperative or friendly society;
5. a diplomatic mission.

63. Landholders with bigger sites than 30<sup>m</sup> x 30<sup>m</sup> (100 ft. x 100 ft.) shall either subdivide their sites accordingly or pay additional land tax.

64. Any number of the residential sites exceeding one (1) shall be deemed to be commercial sites and shall be taxed at higher rates based on their value and such rates shall escalate according to the number of the sites

### **Commercial Sites**

65. Any landholder with more than two (2) commercial sites shall be obliged to pay high rates for each of the additional sites escalating according to each additional site. This is designed to discourage amassing of land in the hands of a few people.

66. No person or corporate body shall be permitted to own or hold more than five (5) commercial sites in one district. Any person or corporate body currently in excess of this number shall be obliged to sell his surplus sites on the principle of willing seller, willing buyer.

67. In Central Business District (CBD) in urban areas, commercial buildings must strictly be high rise or multi storey buildings only to overcome the problem of land shortage and lack of space.

### **Rural Development**

68. The State must undertake rural development and infrastructure thereat including industries, shopping complexes and other facilities to prevent the influx of migration of people to urban areas.

69. Villages in rural areas must be grouped together and resettled to allow for equitable essential services and to open up more land for other uses such as grazing. Reasonable compensation must be paid for this process as well as for any expropriation of land in the public interest.

70. There must be no villages in the grazing areas.

71. There must strictly be no grazing of livestock on arable lands.

72. There must be no grazing of livestock in urban areas.

73. Improper farming methods such as ploughing on the slopes or ploughing up and down the slopes must strictly be prohibited.

### **Institutions involved in land matters**

74. Since land management/administration institutions in Lesotho have to date all failed the Nation there is need for a complete revolution of such land institutions for the economic betterment of the country and efficient land management/administration.

75. There must be established a powerful Ministry of Lands and Environment to take charge of and to coordinate land matters with the following Departments making up the Ministry:

#### **1. Environment**

(b) Lands, Survey and Physical Planning (LSPP) which must also be strengthened financially and technically and must also be decentralized into the districts.

1. Land Use Planning;
2. Deeds Registry;
3. Decentralized Local Authorities.
4. The Land Inspectorate

76. The Local Government Act 1997 (or 1996) must commence without any further delay.

77. All existing land management/administration institutions including the Land Tribunal must be abolished as they have failed the Nation and there must be established in their place the following institutions:

#### **(A) The National Land Council**

(1) This institution shall be an independent and permanent corporate body and shall control all the land in Lesotho on behalf of the State. As a matter of policy no allocation of land in Lesotho shall be made without the approval of the Council.

(2) Members of the National Land Council shall be appointed by the King acting on the advice of the Council of State and shall include the following:-

- (i) a representative of the farmers;
- (ii) a representative of chiefs;
  1. a representative of the commercial sector;
  2. a representative of property developers;
  3. a representative of the Ministry of Trade, Industry and Marketing appointed by the Minister;
  4. a representative of the Ministry of Agriculture appointed by the Minister;
  5. a representative of the proposed Ministry of Lands and Environment appointed by the Minister;



6. a representative of the National Planning Board;
7. a judge;
8. the Minister of the proposed Ministry of Lands and Environment;
9. the Minister of Natural Resources;
10. a representative of the Federation of Women Lawyers (FIDA);
11. a representative of Women in Business;
12. a representative of Lesotho Council of Women;
13. a representative of Home Makers Association;
14. a representative of Women and Law;
15. a representative of Lesotho Manufactures' Association.

(2) The functions and/or powers of the Council shall be as follows, *inter alia*

- (a) to formulate national land policy on the advice of the National Planning Board;
  1. to act as a watchdog over national land policy to ensure that it is followed and implemented by all the role players at all times;
  2. to act as trustee of land on behalf of the Basotho Nation through the State and accordingly to administer, manage and control all land in Lesotho including State land as well as Government-owned land.
  3. to grant land titles either qualified or final;
  4. to authorize change of land use and transfers;
  5. to process and keep all records relating to land.
  6. to be responsible for survey and mapping of all land in Lesotho;
  7. to delegate any of its powers to District Land Boards, Local Land Boards on any person or Government Department as it deems fit.
  8. to enforce its decisions or the provisions of the proposed new Land Act.

### **B. The District Land Boards**

(1) There shall be established elected Districts Land Boards namely one for each of the ten districts;

(2) Elections of members of the District Land Boards shall be by secret ballot.

The composition of the District Land Boards shall be:

1. farmers;
2. commercial and industrial sector;

3. legal officer;
4. district land use planner;
5. chieftainship;
6. property developers.

(4) The functions and/or powers of the District Land Boards shall be:

(i) to allocate and revoke or expropriate land in urban areas on behalf of the National Land Council and with the approval of the latter;

(ii) to pay compensation for expropriated land to deserving people;

(iii) to act as administrative appellate body to Local Land Boards in land management and administration;

(iv) to review decisions of Local Land Boards;

(v) to approve or disapprove allocations of land made by the Local Land Boards;

(vi) to approve development and buildings within the district;

(vii) to apply for qualified title from the National Land Council in respect of approved land allocations;

(viii) to process and keep records and registers relating to land;

(ix) to report to the National Land Council about land issues in the country;

(x) to do all that may be assigned to them by the National Land Council;

(xi) to collect revenue and transmit some agreed percentage of same to the National Land Council;

(xii) to enforce either their decisions or the provisions of the proposed new Land Act.

### **1. The Local Land Boards**

(1) There shall be established elected Local Land Boards at local or village level;

(2) Elections of members of Local Land Boards shall be by secret ballot;

(3) The composition of the Local Land Boards shall be as follows:

1. a representative of farmers;
2. a representative of commercial sector;
3. a representative of churches/schools;
4. a representative of chiefs/headmen;

5. a representative of local NGOs/associations;
6. two people from the local community;
7. a representative of the Local Government Authority *ex officio*.

**(4) The functions and/or powers of the Local Land Boards shall be the following:**

- (i) to allocate and expropriate land as the case may be, on behalf of the National Land Council and in consultation with the District Land Boards.
- (ii) to order compensation for expropriated land to deserving people;
- (iii) to approve development and buildings within the Local Land Board Areas;
- (iv) to apply for qualified title from the National Land Council through the District Land Boards in respect of approved land allocations;
- (v) to process and keep records and registers relating to land;
- (vi) to report to the National Land Council through the District Land Boards about land issues in the Local Area;
- (vii) to do all that may be assigned to them by the National Land Council through the District Land Boards;
- (viii) to collect revenue and transmit some agreed percentage of same to the National Land Council through the District Land Boards;
- (ix) to enforce either their decisions or the provisions of the proposed new Land Act.

**Sitting Allowances**

78. Members of the National Land Council and Land Boards must be paid sitting allowances as an incentive.

**D. Dispute Resolution Mechanisms**

We recommend the following bottom-up hierarchy of land dispute resolution mechanism:

1. Local Land Boards at village or local level;
2. District Land Courts at District Level;
3. The National Land Court which will act as an appellate land court at national level;
4. Review by the High Court whose decision shall be final and no appeal or review shall lie to the Court of Appeal.

**The District Land Offices**

79. There must be District Land Offices under the Ministry of Lands and Environment to act as Secretariat to the District Land Boards and they shall deal with land registration, Deeds Registry, Land Administration and Survey as well as Mapping.

## **E. The Land Inspectorate**

(1) There shall be a land inspectorate in the Ministry of Lands and Environment in each of the ten districts headed by a Director and answerable to the National Land Council through the District Land Boards.

(2) The function of the land Inspectorate shall mainly be to inspect all parcels of land to determine if they are within the specified dimensions and designated use in terms of the land use plan.

(3) The land inspectorate shall be empowered to enter premises to conduct inspection and to arrest offenders as well as to take them to court for any transgressions against the Land Act and all land related laws.

### **1. The Lesotho Land Development Authority**

There shall be established the Lesotho Land Development Authority whose object shall be to uplift the living standards of the rural people particularly targeting the poor and the landless as a means of redressing the inequity relating to access to land.

80. Section 5 of the Local Government Act 1997 (or 1996) must be amended by deleting land allocation from the functions of the Local Authorities so as to obviate potential conflict of power with the proposed Land Boards over land allocation.

### **Mining**

81. The power to grant mining rights shall be vested in the National Land Council due to the fact that both the Chiefs and Government Institutions have failed as fully set out above.

82. Section 3 (2) of the Mining Rights Bill 1999 must therefore be amended accordingly.

83. There must be proper prospecting of minerals to determine conclusively once and for all the types and quantities of minerals, if any, in the country and inform the Nation accordingly.

84. There must be an independent assessor to carry out environmental impact assessment envisaged in Section 18 of the Mines and Minerals Bill 1999.

85. Section 20 of the Mines and Minerals Bill 1999 must be deleted as it conflicts with the power of the proposed allocating authorities namely the Land Boards to grant land other than mining.

86. Whenever the word "Minister" appears in the Mines and Minerals Bill 1999, it shall be substituted with the words "National Land Council."

### **Forestry**

87. Indigenous forests must be removed from the management of the Chief Forestry Officer in the Ministry of Agriculture and be placed in the proposed Ministry of Lands and Environment for management under the proposed Land Boards.

88. Section 8 of the Forestry Act 1998 must therefore be amended accordingly.

89. Whenever the word "Minister" appears in the Forestry Act 1998, it must be deleted and substituted with the words "National Land Council."

90. There must be established a Register of Lands to be kept at the Local Land Boards, the District Land Boards and the National Land Council.

91. At least 30% of members in all the Land Boards as well as the National Land Council shall be women.

92. There must be strict enforcement of land laws and regulations.

93. Finally Government must declare a moratorium forthwith on settlements on prime agricultural lands and this must be strictly enforced if the country is to avoid a disaster of losing all the remaining arable land within no time. Indeed the Commission is aware that since it started this Inquiry there have been frantic efforts to construct buildings on prime lands overnight on a scale never seen before apparently in anticipation of the land reform proposed in this Report.