

Report document

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Resources and Finances Required for the Implementation of a New Land Act in Lesotho

APCBP Lesotho Land Policy Law Harmonisation and
Strategic Plan Project – Organisational Management and
Human Resource Development,
and Financial and Economic components

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List of acronyms

Ass LUP – Assistant Land Use Planner
Ass PP – Assistant Physical Planner
CC – Community Council
CEO – Chief Executive Officer
CTO – Chief Technical Officer
DLC – District Land Court
DLT – District Land Team
DO – District Office
HR – Human Resources
HQ – Headquarters
ICC – Interim Community Councils
LEO – Land Estate Officer
LLC – Local Land Court
LMB – Land Market Board
LO – Land Officer
LSPP – Land, Surveys and Physical Planning
LUP – Land Use Planner
MC – Municipal Council
PLO – Principal Lands Officer
PP – Physical Planner
PTO – Principal Technical Officer
RC – Rural Council
SLAC – Standing Land Allocation Committee
STO – Senior Technical Officer
TA – Technical Assistant
TO – Technical Officer
UC – Urban Council

Executive Summary

Introduction

This report is the second required by the Organisation/Management and Human Resource Development (OM & HRD) and Finance/Economics specialists who are part of a team providing technical assistance for the Lesotho Land Policy, Land Law Harmonisation and the Land Sector Strategic Plan. This report details the resources and finances likely to be required for the implementation of a new Land Act and is based on the first report entitled, "The Existing System of Land Administration and Institutional Options for Implementation of a New Land Act in Lesotho".

Institutional options for the implementation of the Land Act were presented to the Ministry of Local Government and the Minister indicated the preferred option. This report is based on that option. Part A of this report indicates what resources are likely to be required for the chosen institutional option based on the draft Land Bill (version dated 6 June 2003) while section B contains the financial implications. The report is provided to the Government of Lesotho for their consideration. It is emphasised that this is an input that should be used by the Ministry of Local Government as its managers develop their implementation plans for the Land Bill. As the draft Bill proceeds through the Attorney General's chambers to parliament, changes are likely to occur. This resourcing and financial plan should be altered as dictated by these changes.

Assumptions underpinning the HR plan

An HR plan is not just about how many staff at what level are required where to undertake the identified functions. It is also about the correct utilisation of human resources. The correct numbers of staff can be allocated to the correct level, but if certain staffing and organisational development issues are not addressed simultaneously, the chances of success are limited. First and foremost, it is critical that the LSPP make more effective use of the posts it already has, for example through the re-location of LSPP posts that are filled with staff busy with non-LSPP duties back to the LSPP, through the filling of vacant posts, and by means of reviewing the application of the bursary policy. However, these and other measures that will be required to make good on the HR plan described below, can only be realised through close collaboration with the Public Service Commission. Basic resources should be made available to land staff as a matter of priority. Accommodation and transport needs at the district level must be addressed. Retaining staff in relatively distant or remote locations is especially difficult, thus attention must be given to building morale and providing a decent working environment. A detailed plan for the secondment of staff and budget to local government should be developed.

The following general assumptions underpin the human resource plan developed in the report:

1. Resourcing will follow function, i.e. where the Land Bill defines functions to be performed by an institution, staffing and financial resources to enable this institution to fulfil these functions, will be made available by government. The following institutions are allocated functions in the Land Bill and need to be resourced:
 - Local authorities (MC, UCs, RCs & CCs) – Standing Land Affairs Committees (SLACs) and District Land Teams (DLTs) will be established
 - LSPP – Commissioner and staff

- Land Market Board (LMB)
 - Mediation – Office of the Mediator and Mediation Panels
 - Land Courts – divisions of existing Courts
 - Local Adjudication Committees – for systematic adjudication
2. As government has scarce and limited resources, this plan reflects the minimum number of staff and resources required for the implementation of the Land Bill.
 3. The Land Bill requires that more resources be made available for land than is presently the case.
 4. A portion of the costs associated with this Bill can be recovered through revenues, but not the full amount. The details on this will be contained in the Economic Feasibility report, which is being drafted.
 5. Although a SLAC will be established under each Community Council, due to limited finances it is not deemed feasible for each CC to have a land team. Instead they will be supported by the DLT established under the Rural Council.
 6. The resourcing plan assumes that resources will be built up over time with the full staff complement being put in place by year 5. It is assumed that the Bill will be enacted during the second half of 2004, and brought into effect thereafter. In Year 1 (i.e. April 2004 – March 2005) as a transitional arrangement, LSPP District Offices will increase in size as staff at this level continue to process land applications, and as local authorities are established and decentralisation is put in place. From Year 2 onwards DLTs, at local authority level, will emerge.
 7. The number of administrative support staff for the DLTs (i.e. secretary, typists, drivers etc) is not reflected as it is assumed that the local authority will provide these staff. The only exception to this is the Land Market Board, where as it is a stand-alone new institution, administrative staff are reflected.
 8. The staff based at LSPP head office in Maseru is fairly small and it is assumed that as they need to take on new functions required by the Bill, there will need to be some restructuring and re-orientation of staff, but that the existing filled posts where staff are actively undertaking LSPP work (estimated at about 50 people) does not allow substantial amounts for redeployment or secondment. However, the 26 filled posts where staff are doing non-LSPP functions and the 36 vacancies (a total of 62 posts) should be available for redeployment and/or secondment to the District Land Teams.
 9. The resourcing plan includes use of existing staff, redeployment or secondment and the creation of additional posts. The number of new posts necessary is indicated, in relation to the numbers of existing posts. Details of exactly who should be redeployed or seconded where should be developed as part of the proposed Interim Implementation Support Programme.

Rudiments of the HR plan

The following summarises the HR plan as proposed in detail in the report:

1. All districts should have a basic District Land Team (DTL).
2. Districts with larger populations will be expected to have to handle more land applications and thus will have larger workloads; accordingly, they should receive more resources to enable them to complete their tasks.
3. The provision in the Bill that enables local authorities to share DLTs is used. As government favours a district rather than a regional approach to staffing, it is proposed that sharing occur between local authorities within the same district, rather than across districts.

4. Districts with similar levels of need and numbers of land allocations, often due to population numbers and size of urban settlements were clustered as follows:
 - Level A – Maseru
 - Level B – Leribe, Mafeteng, Berea, Mochale's Hoek and Butha-Buthe
 - Level C – Quthing, Qacha's Nek, Thaba-Tseka, and Mokhotlong
5. Sharing takes place between Urban, Rural and Community Councils within districts and a detailed explanation of how resources are divided equitably between districts is provided in the document.

Approaches to training

It is proposed that the approach should be that training is tailor made to Lesotho's needs, that the training service provider should know both about training techniques and land, and that the Core Land Code training should consist of a number of sessions spread out over a year period with implementation actions required by the trainees in between sessions. The intention is to ensure that trainees apply the training in their work, and that people don't go on training simply to get out of the office, but because they are learning something that enables them to implement better. The training should offer them an opportunity to share the difficulties they are experiencing in implementation and to improve their service delivery to the public at the same time providing feedback to learners.

The content of the training should be developed together with LSPP officials and LSPP should provide leadership ensuring that the content is accurate and relevant. A Training Committee should be established with Ministry of Local Government officials to oversee and direct the training programme. This Committee should ensure that land training is aligned with the Local Government Act training programme. The Chief Lands Officer should chair this committee and be the responsible manager to ensure that the training is achieving its objectives. Training should not be treated as something that can be left to minor officials and consultants to organise. The content of the training must be relevant to Lesotho. Local case studies and systems and procedures should be included. Some courses should be in English and others in Sesotho depending on the language skills of those attending.

There are two options for the appointment of training service providers. One option is that a service provider could be appointed to administer a specifically established training fund and then specific training service providers are appointed for each course (similar to APCBP training program). A second option is that a training service provider is appointed who will develop all the required courses and deal with training logistics as well. It is proposed that the latter is more appropriate for the customised land code training, but that different service providers could be appointed for the technical training. Trainees should receive certificates of attendance.

Part of the deliverables from the service provider should be a needs assessment, detailed design of the training and the production of a training manual. There must also be a training effectiveness assessment process built in to ensure that the training is having the intended impact. Due to the numbers of people requiring basic training on the Land Code, a training of trainers approach should be adopted for this course.

Public awareness and communications

It is generally accepted that if land policy and law reform are to be accepted by the public and successfully implemented, there has to be widespread public consultation in advance of the introduction of the proposed reforms. Progress is dependent on appropriate constitutional and legal frameworks and requires thorough public consultation and careful preparation. For example, over the last quarter of a century in Botswana, iterative policymaking in the land sector has followed a process extending up to two years:

- (i) A commission of inquiry - calls for written submissions, public meetings involving a wide range of stakeholders
- (ii) The preparation of a draft report, oral presentations and discussions at a national workshop covered by the media
- (iii) A draft paper which is debated in Parliament
- (iv) The publication of a government white paper setting out the policy change adopted, the recommendations of the commission which have been accepted, amended and deferred (or rejected) with a justification for government having done so
- (v) Where relevant, the drafting of laws or amending of existing laws.
- (vi) The publication of bills for public comment.

Lesotho has yet to move formally through steps (iii) to (vi). It is recommended that it should do so. It is not too late to move systematically through this process. If it does not do so, the new Land Act may suffer the same fate as the Land Act of 1979, which was seen as an imposed law and which was largely ignored.

It is understood that government intends introducing the draft Land Bill to parliament this year. If this is the case, and the above process of public consultation is not to be systematically followed, it is then proposed that a public awareness and communications programme be implemented from January 2004 onwards. The objectives of a public awareness and communications programme, to be implemented from January 2004 onwards, should be as follows:

- To provide information to the public about the new Land Act and to discuss implementation issues so that they know what the legal system is and what they need to do to access it
- To allow for discussion and ongoing interaction between the public and the government so as to gain the public's buy-in for the Act's implementation and to facilitate government's understanding of the public's needs
- To provide information to a key stakeholders who become partners with government in implementation of the Act
- To ensure that people know how land applications are dealt with and how to access the system thus improving the effectiveness of the Act

This programme should consists of

1. Face to face information meetings through pitsos at a village level: a series of two such engagements should occur during 2004; and thereafter once a year
2. Radio advertisements and chat shows should be the second most important communication medium used. They should begin after the passage of the Land Act, assumed to be by mid-2004 with the main thrust occurring in 2005. During the following three years the emphasis should be on chat shows and discussions on how implementation of the Act is occurring. In addition, another type of auditory communication is proposed – the production of a tape that can be played on the radio, in taxis and the like.

3. Written materials – an accessible pictorial leaflet and more detailed booklet on the Land Code, as well as posters and billboards
4. Other possibilities, such as a Land Bus, similar to the Gender Bus, could be investigated.

It is proposed that service providers be appointed to develop the details of each aspect of the programme and to implement it. A Communications Task Team that consists of the LSPP communications officer in Maseru, the Ministry of Local Government's communication officer and the communications officers in each LSPP district office should coordinate this. This team should ensure alignment of this programme with that of Local Government Act. It should also develop a monitoring and evaluation strategy to ensure that the communications plan attains its objectives.

The need for an Interim Implementation Support Programme

It is recommended that an Interim Implementation Support Programme be put in place to run from January to December 2004. This Programme should ensure that the momentum that has developed through the drafting of the Bill be maintained and preparations be made for implementation once the Act has been passed. Although it is not possible to predict how long it will take before the Bill becomes an Act, it is estimated that this might occur, by the earliest, by July 2004. There are a number of activities that should occur before the Act is passed and this can proceed from January 2004 even if it appears at that stage that the Bill will only be passed towards the end of 2004. The Support Programme should consist of the following elements:

1. Programme Coordination Unit
2. Public Awareness and Training
3. Legal and Procedural
4. Restructuring and change management
5. Development of a 3 - 5 year Implementation Support Programme

Financial implications of implementing a new Land Act

The consultants relied on a large number of different sources for the underlying data, including government-wide and MLG-specific budgets, internal government documents, discussions with LSPP and other MLG staff, and where necessary sources external to Lesotho. The manner in which the data are used combines zero-based budgeting and extrapolation from current trends, as dictated by convenience and a need to be reasonably accurate at reasonable cost. The most significant deviation from true zero-based budgeting was in the calculation of operating costs and travel-related costs. Except where indicated otherwise, these were typically calculated as a fixed proportion to personnel costs, where the proportions were derived from existing budgets, but take into account centre/district and urban/rural differences.

In composing budgets, the consultants sought to conform to the generic budget line items as they appear in official Basotho government documents. However, there is one significant exception to this. GoL practice is to treat "office equipment", "office/ residential furniture", and "vehicles and cycles", as budget categories within the heading of "Special Expenditure", which in turn is part of the *recurrent* budget. Although in normal circumstances there is no problem with this approach, for the purposes of considering the financial implications of a decentralised land administration system under a new Land Act, it is inconvenient. To complement the large increase in staff and the decentralisation process itself, it is anticipated that there will be a surge in purchases of equipment and other capital items, which would not rightly be considered recurrent expenditure.

Thus we depart from GoL practice by counting such purchases as capital expenditure. Other types of Special Expenditure do however remain, particularly spending on awareness campaigns and non-routine training.

Table 1 summarises the estimated recurrent and capital budget requirements for the implementation of the Land Act and HR plan, as well as selected ratios that help lend perspective on the magnitude of change implied by the budget figures. From the table, one can see that the total budget required for implementation rises from M19.5 million to M34.4 million, with the capital budget comprising around 17% in Year 1, but declining to around 3% by Year 5. The logic of concentrating capital expenditure towards the beginning of the 5-year period is to ensure that the equipment and accommodation are ready as additional staff are brought on board. Much of the capital expenditure relates in fact to construction of residential (as well as office) accommodation, the reason being that erecting decent housing will likely be essential in trying to draw skilled staff to relatively more remote towns and districts.

The increase in total expenditure between 2004/05 and 2008/09 is very large at 74%, however it is planned in such a way as to be accomplished in more or less steady increments. Between 2003/04 and 2004/05 the recurrent budget increases by 87%. On the face of it, this leap appears excessively ambitious, however it is important to point out that in the first instance much of the rise in budget will relate to the re-deployment of existing staff and the filling of vacancies on approved posts, which does not pose nearly as great a challenge as increasing the approved establishment.

Table 1 Summary of financial implications of implementing the Land Act and HR plan

	Year 1 - 2004/05	Year 2 - 2005/06	Year 3 - 2006/07	Year 4 - 2007/08	Year 5 - 2008/09
Personnel	6.6	11.4	12.6	15.0	16.8
Other recurrent	9.5	12.4	12.3	14.4	16.1
Capital	3.3	3.0	0.8	1.8	0.8
Total (recurrent + capital)	19.4	26.8	25.7	31.2	33.7
Increase over 2003/04 land baseline, %	87%	128%	134%	159%	177%
As % of 2003/04 MLG recurrent budget	17%	24%	26%	30%	34%
As % of 2003/04 GoL recurrent budget	0.6%	0.9%	0.9%	1.1%	1.2%

It is evident that notwithstanding this large increase in the amount of money budgeted for land functions, only by Year 5 do these functions rise to a third of the Ministry of Local Government's present level of recurrent expenditure. Moreover, the last row of figures in the table demonstrates that even with this vastly expanded budget on land functions, they constitute just a bit over 1% of the central government's recurrent budget. As a share of overall capital budget, the programme is even more modest, whether as a share of MLG's capital budget or that of the whole government. However, securing proportionally large increases such as those indicated is not always easy, nor is making effective use of a significantly enlarged budget. Above all, making

good on the plan will require close co-ordination with other parts of government, not least the Ministry of Finance and the Public Service Commission.

Table 2 reports the budget for Land Act implementation by main components. The table illustrates from a financial perspective the shift away from LSPP proper and towards local government. It also illustrates the fact that, relatively speaking, SLACs account for a very small share of the overall budget, notwithstanding their vital role in land administration. Some of the big budget items may also be surprising: in the first two years, information campaigns and training together account for around 13% of the total budget; while by Year 5 dispute resolution – encompassing mediation and land courts – account for around 14%. Of course, it must also be pointed out that the budget figures associated with mediation are among the most tentative of those presented, because they are based on what are essentially guesses as to the number of cases that will come before mediators.

Table 2 Summary of total recurrent budget by main components (in M millions)

	Year 1 - 2004/05	Year 2 - 2005/06	Year 3 - 2006/07	Year 4 - 2007/08	Year 5 - 2008/09	Budget shares, Yrs 1 - 5	Budget share Year 5
SLACs	0.4	0.4	0.4	0.4	0.4	1.6%	1.2%
LSPP, HQ	7.1	7.3	7.3	7.3	7.3	28.6%	22.3%
LSPP, District Offices	3.9	3.9	2.8	2.8	2.8	12.7%	8.6%
Municipal Council (Maseru)	0.4	1.0	1.0	1.0	1.1	3.6%	3.4%
Urban Council	0.3	2.7	4.4	5.9	7.4	16.3%	22.4%
Rural Council	0.0	1.6	2.9	5.6	6.8	13.3%	20.7%
Land Market Board	0.2	0.9	0.9	0.9	0.9	3.0%	2.8%
Mediation	0.1	1.1	1.3	1.5	2.2	5.0%	6.8%
Land Courts	0.6	2.5	2.5	2.5	2.5	8.3%	7.5%
Local Adjudication Committees	0.0	0.2	0.2	0.4	0.4	1.0%	1.3%
Public Awareness & Communic.	1.1	0.9	0.8	0.8	0.8	3.5%	2.5%
Training	2.0	1.2	0.3	0.2	0.2	3.0%	0.5%
Total	16.1	23.8	24.9	29.4	32.9	100.0%	100.0%