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**Economic Implications of a
New Land Act for 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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1 Introduction

The purpose of this report is to reflect on the economic implications of a new Land Act for Lesotho. The economic implications are taken to relate to a number of key features that are anticipated to be included in the Land Act that is ultimately adopted:

- A graduated menu of tenure options providing increasing degrees of certainty of rights specifications;
- Greater security to all those currently having customary tenure by means of the introduction of the primary lease;
- A decentralised land administration system, including a specialised system of dispute resolution for land-related disputes;
- An accommodation of virtually all those now residing extra-legally on self-allocated sites in urban and peri-urban areas;
- A possibility of increased land-related revenues, including property rates, to support the decentralisation process and development generally;
- A reduction of impediments to property transactions and the active promotion of a property market.

In addition to the new Land Act, there will be three other, complementary laws that together with the Land Act will form the Land Code:

1. The Land Acquisition and Compensation Bill – this will set out how land shall be acquired by the state and how compensation shall be determined and paid. This Bill will be very important in light of the urgent need for appropriate land to be released for residential sites as part of the strategy to address the encroachment onto arable land and to provide for the needs of the people.
2. Town and Country Amendment Bill – the Act is already in place but requires amendment to clarify a number of planning issues. This resourcing plan already includes the decentralisation of planning officials located within the LSPP to local authorities, but once the amendments have been re-drafted the specific functions they will fulfil, as part of local government should be clear.
3. Land Transactions Bill – will bring together the common law on land transactions

Although often speaking specifically of the new Land Act, in fact that report embraces these other, complementary pieces of legislation, to the extent that they will assist in fulfilling the general vision of land reform that the new Land Act will spearhead.

The report is structured as follows. Following these introductory remarks, the report attempts to situate the new land policy in the context of Lesotho's demographic processes on the one hand, and agricultural development prospects on the other hand. Section 3 then specially examines the relationship between a new Land Act and rural/agricultural development. Section 4 examines the importance of a new Land Act for urban areas, with a particular focus on the residential needs of a growing urban population. Following this, Section 5 seeks to tease out the implications of a

new Land Act for the commercial and industrial sectors. The prospects for increasing land-related revenues is discussed in Section 6, and Section 7 concludes.

2 Context

2.1 The influence of demographic change on Lesotho's future development

A key theme underlying the analysis that follows is that Lesotho is on the verge of undergoing dramatic demographic changes which are likely to have far-reaching implications for the nature of the economy and, therefore, the significance of a new Land Act.

The table below reports population figures from the decennial censuses from 1966 through 1996, and estimates for 2002 based in part on projections by the UN Population Division and those of GTZ. It must however be recalled that according to censuses, what is "urban" and what is "rural" depends on legal designations rather than on functional distinctions. Nevertheless, one observes two patterns: first, urban population growth is far greater than rural and total population growth; and second, there is a considerable slowing in population growth, which is affecting both urban and rural areas alike, but especially urban areas.

Table 1 – Population growth and growth rates, 1966 to 2002

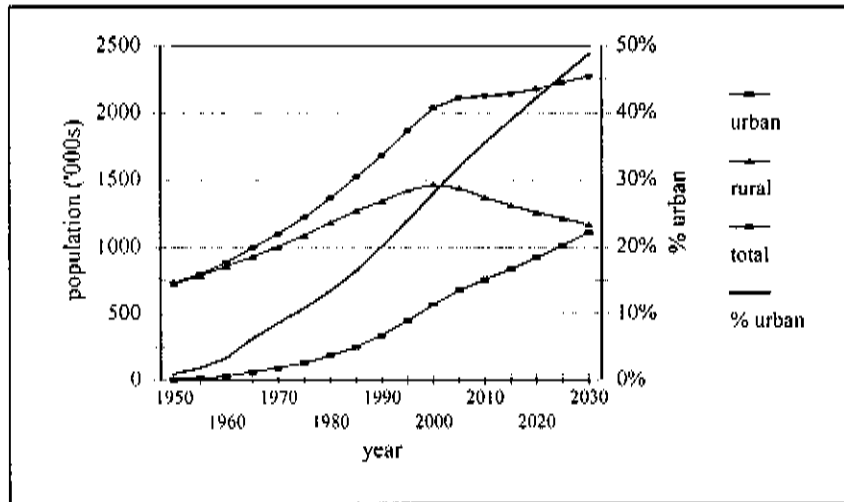
Year / Period	Urban population	Rural population	Total population	Implied annual growth of total population
1966			970 000	-
1976			1 217 000	2.3%
1986	224 051	1 369 617	1 593 668	2.7%
1996	383 774	1 474 443	1 858 217	1.5%
2002	542 281	1 558 082	2 100 363	1.17%
% change '86-'96	71.3%	7.6%	16.6%	
% change '96-'02	41.3%	5.7%	13.0%	

Sources: BOS, 1996, *Population Census Analytical Report*; UN Population Division, 2002, *World Population Prospects*; GTZ, personal communication.

The slowing of population growth may in part owe to the 'demographic transition' that characterises much of sub-Saharan Africa, especially in terms of the perceived increased cost of rearing children. However, another factor may be the HIV/AIDS epidemic. The current prevalence rate is estimated to be around 30% of those 15-49 years old, and the epidemic has already been linked to a rising mortality rate and a falling fertility rate (UN, 2003).

There remains much uncertainty as to the demographic trends over the next few decades. According to the UN Population Division's *World Urbanization Prospects: The 2001 Revision*, published in 2002, the urban, rural, and total populations are expected to change as shown in the following graph:

Figure 1 – Example of forecasts of urban and rural populations



The forecast represented by the graph encompasses three dramatic predictions: the growth rate of the total population will decline dramatically from about now; the rural population will start to decline in absolute terms, also from about now; and the urban population will increase steadily (meaning a steadily declining growth rate), such that urban dwellers will represent a rapidly increasing share of the total population between now and 2030.

The fact that these forecasts are highly uncertain is underlined by the fact that, the following year, the *World Population Prospects: The 2002 Revision*, also released by the UN Population Division, offered substantially different, and even more sobering, forecasts for Lesotho. According to this report, Lesotho's HIV/AIDS epidemic is such that the country's total population growth rate will fall to zero at some point between 2005 and 2010, and thereafter become and remain marginally negative for 20 or more years.¹ Whether this would entail negative population growth for urban areas is unclear.

Although there is clearly much doubt as to what will be the progression of Lesotho's rural and urban populations over the next 10, 20, and 30 years, in general one can expect the following:

- quite contrary to the rapid growth of the second half of the 20th century, population growth will decline or even become negative;
- Lesotho is likely to continue to become proportionally more urban, and possibly dramatically so within one or two generations;
- there is a particularly strong possibility that the rural population will decline in absolute terms, while the urban population will continue to increase but at a decreasing rate.

¹ Both reports are based on the "medium variant" scenario, which assumes modest progress in combating the epidemic. It is important to note that much of the change in total population over the next 10 years is based on the fact that Lesotho's HIV prevalence rate peaked already in 1999, meaning that the AIDS-related deaths likely to happen in the near future could only be averted by means of a massive application of anti-retrovirals. The reason for the difference between the two reports vis-à-vis the forecasts for Lesotho is unclear.

The implications of an absolute decline in the rural population for land use, tenure, and rural livelihoods, is a matter of speculation; it is simplistic to suppose that it will merely put Lesotho's rural areas back where they were 20 years ago, i.e. when there might have been a comparably sized rural population. What one can say is that the recent past cannot be assumed to be a good guide as to the near future. It is difficult to anticipate what will happen in rural areas over the next 20 to 30 years, simply because there are few examples from elsewhere in the world that are pertinent. Uganda at the height of its epidemic still experienced robust rural population growth, owing to the fact that its HIV positive prevalence rate never reached Southern African proportions. Other Southern African countries provide some sort of mirror, e.g. Swaziland, but the process there is contemporaneous and is also not well understood.

2.2 Prospects for Lesotho's agricultural sector and its role in the economy

Lesotho's agricultural sector occupies an ambiguous position. On the one hand, the agricultural sector retains its historical predominance as a source of livelihoods. On the other hand, the likelihood of agriculture becoming a growth sector is remote, and this is only recently being generally acknowledged. The joint donor-government Poverty Assessment of the mid-1990s, resulted in a strategy that "overplayed the opportunities for poverty reduction through crop diversification, increased growth of high value-crops, and labor-intensive production of these crops" (Hassan, 2002, p.11). By contrast, the draft PRSP reveals a realistic but cautious assessment of agriculture's role in promoting food security and rural development.

Over the past decade, the agricultural sector has been stagnant in absolute terms, but has declined gradually as a share of GDP (from 19% in 1996/96 to 16% today; IMF, 2002), owing to the fact that the secondary and tertiary sectors have grown. Although the recent commodity market liberalisations, and the privatisation of input supply, are moves in the right direction, the prospects for the agricultural sector remain subdued. Among the reasons for this assessment are:

- limited and declining arable resources;
- susceptibility to highly covariant weather shocks;
- lack of household resources with which to invest in agriculture, compounded by the decline in remittances of South Africa-based Basotho mineworkers, poor access to institutional credit, and (in the short-term) withdrawal of services and inputs furnished by government; and not least,
- the immanently expected shock to the rural sector due to the HIV/AIDS epidemic.

It may be that rural depopulation will ultimately promote land consolidation and make space for the emergence of a prosperous commercial farming class. (Presently, the distribution of land is relatively equitable, with about 92% of the land owning households controlling 72% of the land.) However, in the short-term this is neither likely nor desirable. It is not desirable because there is no short-term substitute for the vast number land-based livelihoods – marginal though they may be – least of all commercial agriculture. Although the transition to an increasingly non-agricultural society is inevitable, it is not desirable that that transition takes place too rapidly. It is in this context that the implications of a new Land Act must be assessed.

3 The Land Act and agricultural development

3.1 Landlessness and rural livelihoods

The interpretation of the likely effect of a new Land Act depends in large measure on the existing situation, about which there is some uncertainty due to conflicting information. Of particular concern is the disparity in views as to the degree of landlessness among rural Basotho households. According to a document by the World Food Programme spelling out the dimensions of Lesotho's food security crisis, some 30% of rural Basotho households are landless (WFP, 2001, p.4). On the basis of their own surveys, Sechaba Consultants state that the share of rural households without fields was 30% in 1990, 23% in 1993, and 41% in 1999 (2000). The picture that is conveyed is that over time there has been a rapid process of land consolidation leading to the creation of a large rural landless class.

Table 2 presents statistics from the three most recent agricultural 'censuses'², together with calculations based on these statistics. The picture that emerges is fuzzy, and it is not clear whether this is owing to poor data quality or to the fact that there is less of a pattern than one might have expected. In particular, the percentage of households who do not own land (without questioning the meaning of "own" in the present context) appears to have increased greatly between 1970 and 1989/90, and then declined again by 1999/2000, albeit not to the 1970 level. And moreover, actual land use/access is more widespread than ownership, owing to sharecropping and renting.

Table 2 – Land ownership and access according to the agricultural censuses

Agricultural 'census' year	Total number of rural hh's	Ownership			Use		
		number with land	number without land	% without land	number using land	number not using land	% not using land
1970	212 228	185 309	26 919	12.7%	187 421	24 807	11.7%
1989/90	277 586	206 993	70 593	25.4%	221 300	56 286	20.3%
1999/00	326 411	268 401	58 010	17.8%	289 472	36 939	11.3%

It is worrying that the discrepancy between the various figures as to landlessness is so large and so unexplained. The basis for the WFP statistic is not cited, while Sechaba's figures are, as mentioned, based on their own fieldwork. Both Sechaba's figures and those from the censuses show an implausible degree of volatility. On the whole, our intuition is that the census figures are closer to the truth,³ meaning that we reject the perception that landlessness is an immense and rapidly growing problem, although it is clear that the accommodation of large numbers of additional rural households – an increase between 1970 and 2000 of 45% in households 'owning'

² Bearing in mind that these are not censuses but rather sample surveys. Some concerns about data quality have been expressed about the most recent 'census' (personal communication, B. Roberts, 2003), and certain anomalies are evident in the documentation, e.g. there appears to have been a mis-labelling of some data columns, as with Table A23, wherein sharecropping accounts for the operation of 71% of all fields.

³ The agricultural censuses and the Sechaba surveys have roughly the same sample sizes and sampling methodologies. The main reason for preferring the censuses is that 40% rural landlessness is almost a contradiction in terms, in that most such households would have absolutely no means of sustaining themselves in rural Lesotho, and thus would move to town, in which case they would no longer be rural and landless.

land, and 54% in households accessing land for productive purposes – can only be putting strain on the country's limited arable resources.⁴

It is well known that in Lesotho sharecropping and renting perform an equilibrating effect, whereby those sharecropping and renting out are disproportionately poorer households who lack the means to make effective use of their own land (Turner, 2001; Green, 2000). This pattern obviously has pros and cons. It has the clear advantage of providing an income stream to poor households in the absence of which they would be even worse off. The possible disadvantage is that it inhibits productive efficiency, in that sharecropping-in and hiring-in households have less incentive to invest in productive improvements on land that they may use for only one or a few seasons. Table 3 reports statistics on the extent of sharecropping and renting from the last three agricultural censuses. Whether the sharp increase between 1989/90 and 1999/2000 is plausible, and what it signifies if it is, are open to question. Equally astonishing is the large increase in the number of fields, which mirrors the large increase in the number of households accommodated as shown above.

Table 3 – Modes of operation of arable fields

Operation of fields	1970		1989/90		1999/00	
	no.	%	no.	%	no.	%
Owned and owner operated	382 328	92.4%	492 600	87.2%	486 362	71.1%
Owned and sharecropped	31 542	7.6%	41 800	7.4%	148 717	21.8%
Owned and operated by project	0	0	3 100	0.5%	10 633	1.6%
Not owned but operated	na	na	10 400	1.8%	21 117	3.1%
Owned but rented out	na	na	16,900	3.0%	16 884	2.5%
Total	413 870	100.0%	564 800	100.0%	683 713	100.0%

Into this picture must be figured the future impact of the HIV/AIDS pandemic which, according to the demographic projections discussed above, are likely to lead (or contribute) to rural depopulation over the next two or three decades. The exact impact of this on tenure arrangements is difficult to anticipate, but preliminary indications are that it will cause havoc. Mphale *et al.* (2002) conducted field research in 2001 in two rural communities, and found that AIDS widows and orphans were vulnerable to loss of land rights.⁵ In addition, they found that AIDS-affected households were forced to sharecrop out their land, either because they lacked the labour with which to make use of it, or because they had sold their draught animals to raise cash for medical treatment. Selling land was not contemplated because land represents households' final asset. However, returning to the same communities in early 2003 to conduct feedback workshops, Mphale *et al.* (2003) learned that the situation had worsened, in the sense that there were more and increasingly desperate AIDS-affected households, with some affected individuals resorting to selling land (often without the knowledge of family members) as a final means of raising cash. How common these distress sales were was not established, but the mere fact that community members referred to such instances where before they did not, was a worrying sign.

⁴ Unfortunately, the agricultural censuses provide no descriptive information about landless households. One possible clue that landlessness is concentrated among younger households is that, among households that do have land, average ages of household heads are very high (53 years according to the 1999/2000 census), with a strong positive correlation evident between average age of household head and amount of land in hectares.

⁵ The vulnerability of widows is attested to by FIDA's legal aid clinic, for which contestation over deceased's estates makes up 35% of the caseload.

3.2 The impact of a new Land Act

Tenure reform is generally expected to contribute to agricultural development in four main ways: i) by encouraging more investment in the long-term productive potential of the land, including in the prevention of land degradation; ii) by increasing the access to and use of credit; iii) by facilitating the emergence of a land market, thus encouraging the movement of land to more efficient users; and iv) by reducing the occurrence of land disputes (see e.g. Roth and Haase, 1998). That tenure reform favours these effects is not disputed; however, the extent to which a tenure reform does in fact have these effects depends largely on the presence of complementary reforms, such as those included in the APCBP, most notably the liberalisation of input and commodity markets. On the other hand, the impact of tenure reform on agricultural productivity also depends in part on the degree to which tenure insecurity has hitherto impeded investment. Another consideration is whether tenure reform may have certain negative consequences, not least the possibility that the increased marketability of land may result in the consolidation of land away from poorer households, whose decisions to sell their land rights may later prove short-sighted and to their own – and society's – detriment.

For the specific circumstances of Lesotho, a new Land Act, presuming it will take a form similar to that of the present draft, can be expected to have the following implications for Lesotho's agricultural sector:

- The introduction of the primary lease will modestly enhance the tenure security of a large number of landholders, while the hierarchy of other types of leases for which landholders can apply will benefit a relatively small number of commercially-oriented landholders to a larger degree.
- Investment in the productive capacity of land may eventually be stimulated for a small but significant number of commercially-oriented farmers by facilitating access to credit. However, presently there is almost no institutional credit available to Basotho farmers, and it will likely take some years before the environment is sufficiently altered for this to change.⁶
- The new legislation and associated administrative reforms will slowly facilitate the emergence of a sales market in agricultural land. The attractiveness of the new qualified lease is impossible to anticipate, but very likely its appeal, and that of the registrable lease, will be limited to a relatively small number of commercially oriented farmers, or land holders on the peri-urban fringe who wish to secure their land rights in anticipation of selling them for non-agricultural purposes.
- Potentially more significant will be the stimulus given to sharecropping and rental arrangements, which although not uncommon presently, are nonetheless impeded by the lack of clarity regarding tenure rights (Turner, 2001) and the absence of a robust and accessible dispute resolution system.

⁶ To the extent a new Land Act stimulates more credit availability through improved tenure security, it will likely be directed mainly to urban areas and non-agricultural enterprises. The leading exception will be agricultural entrepreneurs who happen also to have non-agricultural enterprises and assets.

- The most significant short-term impact in rural areas is likely not to be in terms of productivity, but rather in terms of the welfare gains experienced by widows and other individuals who otherwise would have been more vulnerable to the loss of land rights.

However, we note the following caveats. First, these potential impacts are contingent upon two conditions, first, that the land administration system (including the dispute resolution system) envisaged in the draft bill is put into place and functions; and second, that the provisions of the new Land Act are widely publicised so that people are aware of them.

Moreover, even assuming the Act is implemented as envisaged and has the salutary effects suggested, these positive effects may be difficult to discern among other influences that will likely inhibit agricultural development in the short and medium term. Foremost among these are:

- The continued liquidity crunch caused by the decline of remittances from Basotho mineworkers working in South Africa;
- The HIV/AIDS epidemic, the effect of which is to deplete resources that might otherwise be available for productive investment;
- Continued high levels of stock theft, which are endemic to the cycle of poverty presently being experienced and which further contributes to it; and
- In the longer term, the increased loss of agricultural land due to erosion and encroachment.

The point of these last observations is not to suggest that from the point of view of rural development the implementation of a new Land Act is futile, but to suggest that, rather than expecting it to contribute to a visibly prosperous agricultural sector – which may or may not come to pass in the medium term, but which may not be widely shared – one should compare it to a counter-factual, which in all likelihood would be considerably worse.

4 Urban residential development

4.1 The impact of a new Land Act

The Land Act, and associated changes in land administration, will have far-reaching beneficial impacts on urban residential development. The most significant aspects of the anticipated Act in this respect is the facilitation of an efficient land market (discussed more in the following section), the effective regularisation of large numbers of people residing extra-legally in urban and peri-urban areas, and the commitment to administrative justice. However, realising these benefits (and by way of giving content to the commitment to administrative justice) will only be possible to the extent there is a change in mindset in government away from settlement control and towards settlement facilitation.

4.2 A perspective on urban development in Lesotho

The Government of Lesotho is caught in a vicious cycle that is not atypical of developing countries experiencing rapid urbanisation. In a desire to ensure orderly processes and acceptable standards of residential development, government undertakes to be the developer of first resort. This means that it secures land that it considers suitable for development (generally by negotiating with field owners), plans its development and invests in necessary infrastructure, and ultimately disposes of it to needful households, hopefully according to a fair, transparent process (Rakodi, 1997). However, over the past 20 years there has emerged a growing body of evidence that governments can seldom cope when they try to assume responsibility for ensuring quality accommodation. Baróss *et al.* (1990) refer to this as the 'too little - too expensive' trap. The more government tries to do, the less it can accomplish, leading to a pattern whereby "...long periods of negligent tolerance [of squatters] and inactivity [is] interrupted by either violent campaigns against squatters or by populist distribution of benefits among some of them" (Berner, 2000).

This phenomenon is certainly true of Lesotho. The MCC reports that for every plot it secures, develops, and advertises, there are 10 applications (personal communication, April 2003). Leduka (2001) reports that the problem dates back to at least the early 1980s, and LSPP's appeals for more resources with which to meet the demand were generally ignored. The problem was later aggravated as land allocations for which government took responsibility were sometimes subjected to political interference (especially while under military rule), undermining the work of LSPP and the urban land committee.

The irony is that, for all of its efforts to provide the right kind of accommodation to the right people, most additional housing stock is created by people out of their own resources, whether in the form of own-accommodation, or the much more significant rental accommodation that site owners build in order to earn extra income.

Table 4 – Trends in urban housing

	1986	1996	2002*
Total urban households	57 449	98 404	139 046
Prop. of hh's that are urban	18.3%	26.5%	42.9%
Number of renting hh's	16 676	43 199	57 069
% of all hh's	5.3%	11.6%	13.0%
% of urban hh's**	29.0%	43.9%	41.0%

increase in urban hh's		40 955	40 643
increase in renting hh's		26 523	13 870
as % of increase in urban hh's		64.8%	34.1%
approx. number residing on gov't-provided sites		6 000	9 000

It is well known that most people settling in Maseru, in the other main towns, and sometimes in the peri-urban areas immediately surrounding them, do so extra-legally (Sechaba and Payne, 2002). Government officials are well aware of the strategies by which people acquire land and try to legitimise their tenure, but has been unable to prevent this from happening, and has sometimes even acquiesced (Leduca, 2001). The reality is that a democratic government cannot take the extreme measures that would be required to halt the flow of people needing to find an urban residence, nor is it clear why it would wish to do so. Nonetheless, it has proven difficult for government to relinquish its model for controlling settlement, and this has arguably aggravated the situation by distracting it from measures that would encourage more appropriate forms of urban settlement. The most obvious example of this is the sparseness of uncontrolled settlement that in large measure takes place because the procedures for formally subdividing a plot are so onerous, especially when in doing so people expose themselves to the possibility that the validity of their 'backdated Form Cs' might be called into question.

Much of the value of the anticipated Land Act is that, by bringing people into the legal framework, it opens a space to influence settlement patterns beyond its own site-development schemes. For this to succeed, it is critical that government understands its role as facilitator rather than provider and controller. This is not to suggest that government must entirely relinquish its aim of controlling development, but that it must at least recognise that much of the problem is of its own making.

4.3 The encroachment problem

Much of government's concern about uncontrolled develop relates to the fact that scarce agricultural land is being converted to residential sites. This concern is understandable and valid, but it is difficult to know if the dimensions of the encroachment problem are known sufficiently well to justify the present policy response. The perception of the extent of urban encroachment depends in large measure on how urban areas are measured. The total amount of gazetted urban land in 1995 was 671 km², of which over half was for Maseru. To put this in perspective, this represents 2.2% of Lesotho's total land area, versus around 9%-13% of the country's area that is arable. It also represents an increase of 160% over the extent of land gazetted as urban in 1980.⁷

A land cover study based on satellite imagery determined that in 1994 the total surface area taken up by urban built-up land was 185 km², or 0.61% of Lesotho's land surface, but that this represented an increase of 166% over the extent of urban built-up land from only 5 years earlier. If the implied annual increase in urban built-up area (95% of which is residential, as opposed to industrial or transport-related) of 22% were to have been sustained since 1994 to 2003, the total footprint of urban development in Lesotho today would have been equivalent to almost two thirds

⁷ This excludes five settlements that in 1980 had been gazetted as urban, but by 1992-95 had been re-declared as rural.

the size of Butha-Buthe district.⁸ What one can say with certainty is that urbanisation and encroachment are a reality, but that at present we do not have a reliable measure of how quickly they are happening.⁹

If the urbanisation trend is to occur in anything like the fashion shown in the forecasts in Figure 1, then the long-term issue is one of influencing encroachment so as to make it more benign, rather than stopping it. While this is difficult to accept given that Lesotho's endowment of agricultural land is already less than one would wish, the prospects for maintaining or encouraging productive commercial agriculture on the periphery of larger towns is simply not very good anyway. Moreover, it is unclear which is worse: encroachment in the vicinity of larger towns, or encroachment in the vicinity of smaller towns. To the extent settlement is discouraged in and around the larger population centres, the need for additional land for residential purposes will be met elsewhere, and possibly at greater cost to the total fund of agricultural land.

In terms of government's immediate response to encroachment, it is clear that much can be done to improve settlement patterns, not least through the combination of new land legislation and land administration envisaged. Beyond this, there is a need for more and better information, and a recognition that, unless demographic forecasts are very wrong, much of the peri-urban zone that government is presently desperate to protect will likely be engulfed by urban development before long anyway. The recommendation is that government must start planning for this sooner rather than later.

The final point is that part of the very concern about encroachment is based on a somewhat inappropriate assumption that land resources must be conserved to ensure 'food security'. Food security in the sense of national food self-sufficiency has not been possible in Lesotho for some decades; Lesotho depends enormously on food imports, and will continue to do so. In terms of household-level food security, and the fear that lost agricultural land implies more food insecure households, the concern is more understandable, however the impetus between urbanisation and the encroachment that attends it, and that increasing numbers of households choose – or are forced – to seek to establish non-agricultural livelihoods, which for the most part is only possible in or near towns and cities.

4.4 Conclusion

Notwithstanding the overall importance to Lesotho of the agricultural sector, the population is becoming increasingly urbanised, and will continue to do so, perhaps at an accelerated pace, over the next few decades. Improving the way in which the land administration system is able to absorb newcomers is critical, on the one hand to minimise the negative effects of rural-to-urban migration (e.g. encroachment, squalor, etc.), and on the other hand to achieve the largest possible economic gain from this transition, not least in keeping down the real wage by minimising transport costs and the costs of accessing services. Land policy must increasingly be guided by

⁸ The results of this study are regarded with some scepticism by members of the LSPP, who note that, for lack of budget, the satellite images were not subjected to the necessary 'ground-truthing'. Indeed, the 22% annual growth rate is either a once-off blip, or is incorrect. In either case, it cannot be taken as a meaningful indication of present or future trends.

⁹ According to the 1999/2000 agricultural census, almost 2% of all fields had been abandoned (presumably since the previously year) due to erosion or lack of productivity, versus 0.07% due to "other reasons", which presumably includes encroachment. The ratios are much the same for the 1989/90 agricultural census.

non-agricultural considerations, of which promotion of settlement patterns conducive to economic growth is one of the most important.

5 The Land Act and commercial and industrial development

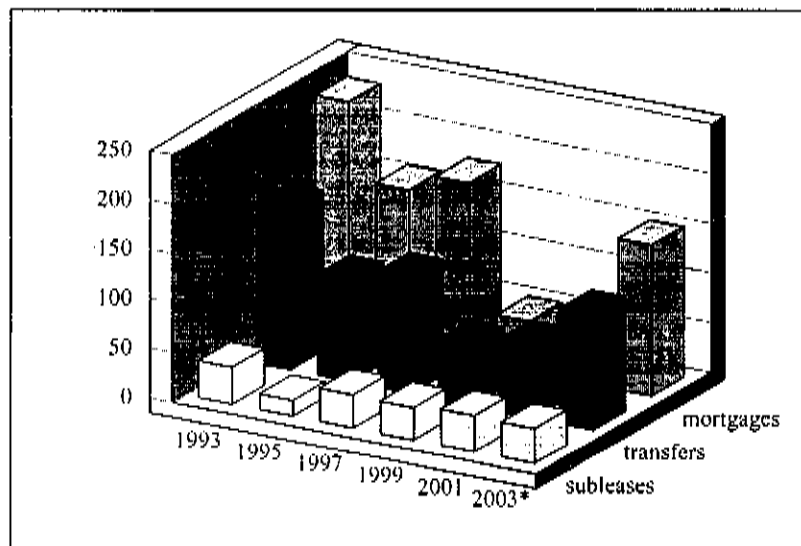
5.1 The impact of a new Land Act

The envisaged Land Act would impact commercial and industrial development in two main ways: first, by facilitating the development of an efficient land/property market; and second, by giving greater scope to foreign investors to acquire leases. It is estimated that the impact of the Land Act on the commercial and industrial sectors would be little short of revolutionary. Presently, the land/property market barely exists, not for lack of potential, but because it is stymied by the present legislation and land administration system. Removing these constraints would have enormous ramifications for investment opportunities, for property values, and by extension for the banking sector. Secondary impacts of freeing up the urban/peri-urban property market would also be significant, not least being the realisation of greater revenue from property rates and transfer duties, and employment creation.

5.2 The land/property market

The non-existence of the property market is illustrated with the following graph, which shows the level of activity over time in the number of mortgages, transfers, and subleases that were registered with the Registrar of Deeds.¹⁰

Figure 2 – Registered transactions, 1993-2003, odd years



* Figures for 2003 are extrapolated based on activity in the first three months.

¹⁰ The underlying figures were tallied manually from volumes of the General Deeds Register maintained by the Registrar of Deeds. The Register records almost no descriptive information about the properties in question, such as location, type of property, or value. For this information, one would have to refer to the files, which would have been too time-consuming for the present exercise. For transfers, however, values could in most cases be reconstructed by working backwards from the transfer and stamp duties paid, which are recorded in the Register. Presumably a Land Market Board will benefit greatly from a revised register format which includes basic descriptive information about properties being transferred and mortgaged.

The graph refers to all transactions nationally, and does not specifically concern commercial and industrial properties. Very likely, the majority of transactions (by number) are residential, but the very small number of transactions overall makes the point: the property market is fundamentally inactive. To illustrate, in contrast to the fewer than 170 transfers approved each year since 1993, in Botswana, a country with a similar population and only slightly larger urban population, in 2001 there were over 3 300 property transactions registered with the Registrar of Deeds, which does not even include scores of other transactions effected in rural areas through the land boards. The drop in market activity in 1999 likely relates to the civil disturbances taking place in Lesotho in 1998-99. The only partial recovery over the following four years probably reflects the depressing effect of the requirement for consents.

Inferring the value of transfers from the values of the transfer and stamp duties recorded in the Register, the distribution of transfers for 2001 and the first three months of 2003 is as shown below:

Table 5 – Distribution of property transfers by value

Value of transfers (Maloti)	2001			2003 (Jan. – March)		
	number	%, by number	%, by value	number	%, by number	%, by value
0 – 50 000	41	57.7%	16.7%	12	44.4%	8.5%
50 001 – 100 000	10	14.1%	12.2%	7	25.9%	14.9%
100 001 – 200 000	12	16.9%	29.4%	2	7.4%	8.5%
200 001 – 300 000	5	7.0%	20.4%	2	7.4%	14.2%
300 001 – 400 000	2	2.8%	11.4%	2	7.4%	19.9%
400 001 – 500 000	0	0.0%	0.0%	0	0.0%	0.0%
500 001 +	1	1.4%	9.8%	2	7.4%	34.0%
Total	71	100.0%	100.0%	27	100.0%	100.0%

For 2001, the estimated total value of the transferred properties was in the order of M6.1 million. To put this in perspective, the total value of property transfers in Botswana for that year was about 80 times as great; the disparity is far greater than that between the two economies¹¹.

Another reflection of the fact that the formal land/property market barely functions, is the absence of estate agents in Maseru. Where normally one would expect a variety of professional estate agents ranging from small-scale, one-person businesses operating in the low-end residential market, to larger indigenous companies dealing in all types of property, to local branches of international property companies such as Pam Golding, Knight Frank, etc., these are almost entirely absent. What one does find are small companies that provide a diversity of property-related services, and for which estate agency is typically a small component.¹²

One further reflection of the fact that property development is hindered is the small number of new leases that are authorised every year, as shown by the approximate figures in the table below:

¹¹ Botswana's GDP is roughly six times that of Lesotho.

¹² One property professional who was interviewed related how, unable to find a residential property to purchase for his own use, he ended up buying a house in Ladybrand and thereafter commuting to his office in Maseru.

Table 6 – Number of new leases authorised per year

Year	Number
1998	377
1999	274
2000	443
2001	692
2002	770
2003*	720

* The figure for 2003 is extrapolated based on activity in the first three months.

In comparison to the number of transfers, these figures are large. But bearing in mind that there are approximately 100 000 properties in urban Maseru alone, the vast majority of which remain held extra-legally, it is trivial.

5.3 Perceptions in the private sector

There is little to differentiate the views on land regulations and administration offered by bankers, estate agents, and industrialists. The common sentiment is that the present land administration system suppresses the land market and hinders productive investment. Moreover, the uncertainty associated with getting consents for mortgages and transfers means that banks are stuck with excess capital, which has the effect of impairing the efficiency of the banking system and reducing the rewards to savers. The inactivity in the property market also means that fewer taxes are paid, in particular transfer duties. (For 2001, the total transfer duties paid on the 71 recorded transfers was about M365 000.) A common view among members of the private sector is that property transactions should be made much more routine, but that where government wishes to maintain oversight it should be quicker to make decisions, as well as clarify the criteria according to which approval is or is not given.

This affects both domestic and foreign investment, but arguably the larger impact is on the latter, since land-related transactions of foreigners are scrutinised particularly closely, even though they have been limited to sub-leases. The FIAS 'Red Tape Analysis' of 1997 (FIAS, 1997) identified land-related bureaucratic delays as among the most important hindrances to foreign investment, and furthermore found that the reports of investors as to the length of delays generally exceeded the processing times reported by government officials. The problem is two-fold. First, the difficulty in obtaining a head lease means that Basotho entrepreneurs, or the LNDC, who acquire land with the idea of sub-leasing it, are less able to cater to the demand for sites of foreign investors than they would be otherwise. Second, the authorisation and registration of sub-leases is unnecessarily time-consuming as well, not least because of the Ministerial consent requirement. The FIAS team accordingly recommended that the requirement of the Ministerial consent be abolished, that the LSPP be given the necessary resources to operate more efficiently, and that the stamp duty applicable to sub-leases be reduced to a level equivalent with that on leases.

Although the Lesotho National Development Corporation (LNDC) has done a great deal to accommodate foreign investors who might otherwise find it difficult to locate industrial or commercial sites, there is also a feeling among some observers that foreign investors should be

expected to make a longer-term investment to Lesotho. Thus rather than assuming responsibility for building shells (which in any event has allegedly slowed down the LNDC when it ran short of capital), it should more commonly limit its function to provision of serviced land which the investors are expected to develop. A longer-term interest in Lesotho also implies a commitment to transfer of skills and empowerment, which at present is often lacking. Thus, although short-term sub-leases are not presently a constraint to foreign investors wishing only to take advantage of short-term preferential trade access and who are happy to lease shells from LNDC, greater emphasis might be placed on making longer-term arrangements available to foreign investors. The FIAS team, similarly, recommended that "the rules should be liberalized to allow land leases to be awarded directly to foreign investors so that LNDC can focus on its marketing and facilitative role in the investment process, not on real estate" (FIAS, 1997, p.ii).

A somewhat different theme emerging from discussions with members of the private sector is that some government functions in respect of land represent 'unfair competition' to the private sector, and sometimes with perverse effects. A case commonly referred to is the government land release measures in which sites are sold at well below market prices. The effect is to encourage speculation (resulting in the non-development of land) and to spoil the market for others attempting to sell private residential properties on market terms.

5.4 Conclusion on the implications of the draft Land Act on commercial and industrial development

The Land Act will have enormous implications for commercial and industrial development. Importantly, the aspects of the Land Act of most direct importance to commercial and industrial investors are those that relate to the removal of excessive controls and requirements; arguably, much less important are the more expensive aspects of implementing the new Land Act. The most significant negative implication of this liberalisation is the further penetration of foreign ownership, in particular where the investment visibly involves the acquisition of assets held by Basotho, or the transfer of assets from one non-indigenous group to another, without any benefits seeming to accrue to Basotho. This is indeed a difficult political choice, the consequences of which should not be minimised. Having taken the decision to facilitate foreign investment, one might argue that part of the proceeds should be funnelled into more aggressive efforts to support Basotho enterprise; presently, the Basotho Enterprise and Development Corporation and the indigenous business development arm of the LNDC are minor activities relative to the efforts to accommodate foreign investors.

6 Land-related revenues

Land administration gives rise to a number of different kinds of revenue, including those collected directly by the LSPP in Maseru, those collected by the district administration in each district, and those collected by city councils. The table below draws together the different types of land-related revenues from different sources, according to the main revenue categories recognised by the Ministry of Finance.

Table 7 – Land-related revenues from Districts, LSPP, and MCC

	Budget 2002/03	Revised 2001/02	Budget 2001/02	Actual 2000/01
<i>Taxes</i>	34 305 735	20 919 577	27 234 972	20 848 319
property rates*	17 209 535	9 329 637	15 645 032	9 260 379
gov't grant in lieu of rates	17 080 000	11 577 940	11 577 940	11 577 940
stamp duty	16 200	12 000	12 000	10 000
<i>Admin. Fees, Charges</i>	291 040	266 790	238 950	235 050
pound & grazing fees	7 610	6 150	4 570	4 570
building plans	156 400	154 980	111 810	107 910
lands docs	13 310	0	0	0
survey fees	10 000	10 000	58 740	58 740
statutory fees	35 000	35 000	32 780	32 780
valuation fees	27 050	27 050	20 040	20 040
lease preparation	11 760	11 760	8 710	8 710
other title documents	5 000	5 000	1 000	1 000
registration fees	1 750	1 750	1 300	1 300
planning fees	500	500	0	0
other land-related	22 660	14 600	0	0
<i>Property</i>	2 617 770	1 003 330	2 954 050	341 660
ground rent	517 770	384 810	374 190	185 160
occupation fees	0	0	0	0
map sales	100 000	100 000	53 420	53 420
sale of plots	2 000 000	518 520	2 526 440	103 080
<i>Total</i>	37 214 545	22 189 697	30 427 972	21 425 029

* For Maseru only; Mafeteng and Teyateyaneng have largely abandoned efforts to collect rates.
 For the 'Revised 2001/02', figure for rates is 'estimated actual' for Maseru.

On the basis of this table, we make the following observations:

- Total revenue is large relative to land administration costs. Compared to the narrow measure of the LSPP's own recurrent budget, 'Revised 2001/02' revenues are five times as great; relative to the broader measure inclusive of land administration provided outside of the LSPP, these revenues are more than twice as great.
- Property rates comprise a huge share of land-related revenues, but there remains a large gap between actual and potential collections (about 40% according to the MCC's own figures).

- ◆ Fees and charges comprise a very small proportion of total revenues.
- ◆ Ground rent also comprises a very small proportion of total land-related revenues, albeit generally greater than those from fees and charges.

Revitalising land administration through a new Land Act could have enormous implications for boosting land-related revenues, but certain considerations must be taken into account. First, although the inclusion of land-based taxes makes it appear that there is more than perfect cost-recovery, the principle of property rates is that they are used to cover the costs of certain public goods, usually those provided by local government. While the maintenance of a sound land administration system is indeed a public good and a very important one, the public is not unreasonable in expecting that rates will in large measure be used to effect direct, visible improvements to the quality of life through better services and better infrastructure. The second point is that, once the costs of the land administration system go up, the magnitude of land-related revenues will be smaller by comparison, unless they are also increased. While there is certainly much scope for increasing land-related revenues, in fact the revenues 'budgeted for' in government budgets are rarely achieved because of weaknesses in administration. Arguably the weakest part of the administration of land-related revenues is that part which is already decentralised; thus it is imperative that the decentralisation of land-related functions does not cause a further deterioration in the collection of land-related revenues, rather than the improvement that is theoretically possible.

In order to improve the collection of property rates, there are two over-arching tasks that must be accomplished:

- Perform the technical tasks necessary to support a functioning property rates system. Foremost here, valuation rolls must be established that cover all liable properties. Presently, only a small minority of properties in Maseru are on the roll. This reflects, *inter alia*, the fact that the legislation presently governing property rates does not provide for more cost-effective methods of valuing, i.e. that would be appropriate for large numbers of residential properties. Other technical requirements include the devising of an appropriate means for providing for indexing, and the creation of a reliable billing and recording system.
- As importantly and much more difficult, local government must gather the political will to collect rates, and be prepared to communicate what it is providing in return. Mafeteng and Teyateyaneng have allegedly abandoned efforts to collect rates on account of the high rate of non-compliance. The MCC has shown little enthusiasm for broadened the rates net beyond its traditional soft targets (c.g. LNDC allegedly accounts for more than a fifth of all rates collected), and has even mooted the possibility of elevating the rates schedule on its existing payers as the best avenue of increasing property rates revenues (MCC, 2002).

In order to extend the property rates net, urban councils would be wise to embark on a campaign to improve their services, and to launch a publicity campaign to make the public (i.e. property owners) aware of their mutual responsibilities. The usual problem with this common sense advice is that until collection of rates improves significantly, local government lacks the resources to significantly improve its services; and until it can demonstrate an improvement in services, it will struggle to encourage voluntary payment of rates. (Chasing involuntary payers is costly, both in terms of money and goodwill.) Particularly in terms of the period of transition that the decentralisation of land functions will signify, it would therefore be appropriate for central

government to give local government the start-up capital it will need to 'jump start' the rates collection / infrastructure investment process.

Estimating the potential improvement in rates collection is hazardous, not least due to the absence of a suitable valuation roll. Assuming that in the first instance rates will be collected only by municipal and urban council, and assuming that large numbers of urban dwellers would be excluded by virtue of poverty, a rough, order-of-magnitude estimate is that annual collections could increase by M14 to M18 million, of which approximately half would be residential, and half commercial.

The government grant in lieu of rates is properly thought of as a form of property rates, but notwithstanding the correctness of central government paying it over to urban councils, it still represents a transfer from one part of government to another. Thus although central government is probably under-paying (it would likely have to pay much more if, like other property owners, it paid according to property values), increasing these payments would not have an aggregate impact on government's ability to perform its functions. On the other hand, bringing rates paid by government more in line with the standards applied to private property owners would give the MCC and, in the future, various urban councils, much more leeway in offering the sort of services that the general populace want and expect to see.

Apart from property rates, ground rents are another area with some scope for increase, but the actual potential is difficult to gauge. The LSPP must be commended on its initiative to start billing those liable for ground rent, but the fact that LSPP cannot put a figure on the accumulated arrears of ground rents, nor the theoretical annual bill for ground rents, is some cause for concern. The arrears is probably something like M6 to M12 million¹³, which is certainly large relative to the present level of annual collections. Potential annual collections would probably exceed M1 million.

Much more difficult is anticipating the additional ground rent that would be generated by the issuing of additional leases. There is little basis for guessing at the rate at which additional lease applications would be processed due to the passage of a new Land Act. By the same token, it is more or less impossible to gauge the revenues collected via the lease premia that provided for under the draft bill. A premium on a lease is an up-front lump sum payment payable on the issuing of registrable or demarcated leases. The problem is two-fold: as with the possible ground rents on future leases, one does not know how many such leases there will be; in addition, there is little basis for guessing the magnitude of a lease premium.

Finally, transfer duties on property transactions could certainly increase from their present level of about M365 000, but by how much is difficult to estimate. Using Botswana again as a yardstick, assuming that Lesotho's transfer duties could increase in proportion to the relative sizes of the two countries' economies, then revenues of around M4.9 million per year might be achievable.

The issue of fees and charges was not examined in any detail. Reform of fee structures would likely require its own dedicated exercise, not least to study their role in rationing the demand for services and in covering the cost of those services, versus the cost and nuisance of government officials having to collect large numbers of small payments. The main rationale for consideration

¹³ This is based on an extremely unscientific scan of a pile of ground rent bills as they were being prepared at LSPP, in conjunction with a discussion with the LSPP officer who was preparing them.

of fees is that rural councils have fewer alternative revenue sources than the urban councils, and fees might potentially be important for them. On the other hand, the clients of rural councils are likely to be the least able to pay. Very likely there is little scope for increasing revenues from fees and charges, and the marginal effort should rather be dedicated to improving collection of property rates and ground rents.

Ignoring the sizeable once-off revenues that would flow from settling arrears on ground rent and property rates, land-related revenues could theoretically increase by a factor of between two and three. However, this will require considerable effort. The effort will be justified on the grounds that these revenues will be necessary to provide an acceptable quality of life to increasing numbers of urbanised Basotho.

7 Conclusion

The purpose of this report was to qualify the economic advantages of a new land administration framework based on a new Land Act. For the most part, the analysis shied away from attempting to quantify the economic advantages, or the economic disadvantages, or the economic disadvantages of *not* introducing a new land administration system. However, some rough order-of-magnitude ranking of the economic importance of these measures does emerge:

- First and foremost, the anticipated changes in the land law will be a boon for commercial and industrial development. This is true for two reasons, first because the commercial and industrial sectors are probably most poised to benefit from a change in favour of more efficient market transactions, and second because the changes to land administration that are necessary to make this so are in a sense the most easily effected, i.e. through the elimination of certain controls.
- Second, the anticipated changes will be critical to enabling Lesotho to accommodate the urbanisation process that is already well underway. To the extent urbanisation is certain to continue to happen anyway, it is critical that the government has the means to 'catch up' before urban conditions become intolerable and intractable. The prospect of large increases in land-related revenues will largely derive from urban areas, and can be largely dedicated to solving urban development problems.
- Third, the agricultural sector will benefit from the proposed changes, but due to a number of reasons these benefits will not largely be manifested in the short and medium-terms as a dramatically more productive agriculture. The majority of the benefits that will be realised in the near future will be the more understated, but nonetheless critical, welfare benefits associated with the improved tenure security of otherwise vulnerable rural dwellers. Notwithstanding the present importance of the agricultural sector, Lesotho is destined to become a non-agricultural country within two or three generations. The process by which this happens is critical, but given the reality of HIV/AIDS and the rural depopulation that now appears likely, it is also characterised by a high degree of uncertainty, underlining the importance of the additional tenure security which the new land legislation would afford.

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