Strengthening Property Rights in Pursuit of Poverty Reduction: Commentary on the 2010 Lesotho Land Reform Project

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Presentation Outline

- General Introduction
- The 2010 Land Reforms

  i) The Compact

  ii) Land Administration & Reform Project
- Systematic Land Regularisation
- Land Regularisation and Poverty Reduction: Global Experiences/Lessons for Lesotho
- Areas for possible Urban LandMark Intervention

LOCATION

Geographical Position: A very Unique Position

Completely surrounded by another country

South Africa

Lesotho

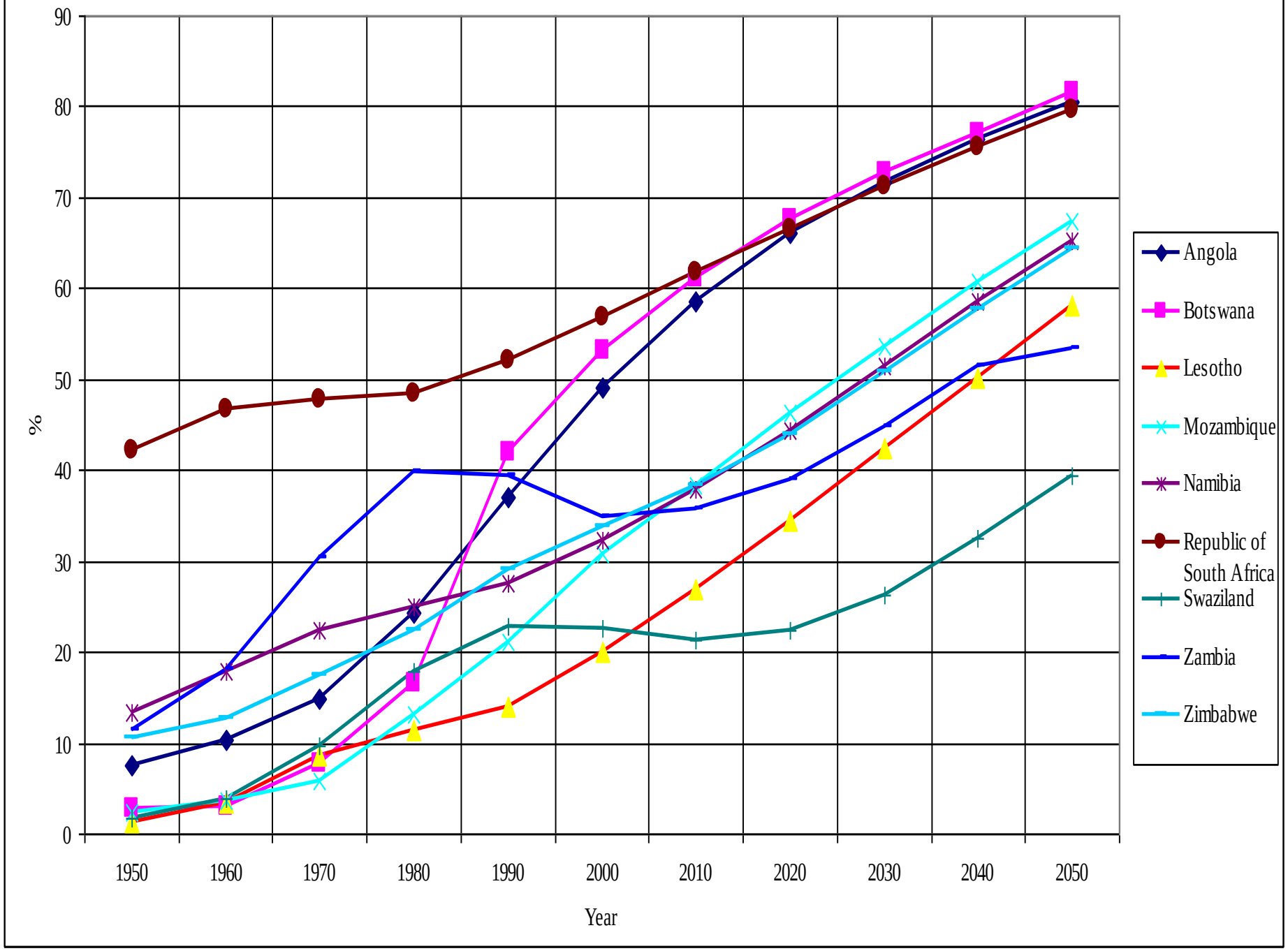
Continue

Location

The Size of Lesotho

Lesotho is about 30,355 km²

Continue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The Land Reform 2010

Compact MCC-Lesotho Compact

- Health
- Water
- Private Sector Development [PSD]

[*Land Administration Reform Project [LARP]*

OBJECTIVES OF LARP

- Improving land laws and policies.
- Improving people's awareness of their land rights, especially women.
- Enhancing the efficiency of issuing lease titles to people in urban areas of Lesotho, beginning with Maseru.
- Supporting the establishment of a Land Administration Authority (LAA) for the purpose of providing improved land administration services.

LARP

Progress to Date:

- Land Administration Authority 2010
- Land Act 2010
- Land Regulations 2011
- Land Court Regulations 2011
- Sectional Titles Bill 2011 (Draft)

LAND ADMINISTRATION AUTHORITY [LAA]

- The Land Administration Authority Act 2010 has merged government departments that deal with cadastre, national mapping and deeds registration into a new parastatal agency called the Lesotho Land Administration Authority (LAA). Headed by a Director General (DG) who reports to a Board of Directors, that in turn reports to the Minister of Local Government and Chieftainship. The responsibilities of the LAA are to:

  - Administer the land registration system;
  - Administer surveying and mapping functions;
  - Perform functions created under the Deeds Registry Act 1967 in so far as they relate to land administration;

(…cont) LAND ADMINISTRATION AUTHORITY [LAA]

- Solve registration and cadastre complaints and disputes;
- Collect ground rent, fees and issue notices from time to time prescribing the fees be paid for the Authority's services;
- Advise the Minister and the Government of Lesotho on suitable changes and additions to land administration laws and policies;
- Cooperate with the Ministry and other governmental and private bodies with regard to all matters relating to land administration (Section 5(2), Land Act 2010).

It is anticipated that once fully operational, the authority would deliver improved land administration and information services and recover all associated costs from the services that it provides. It is anticipated that full and effective cost recovery should at some future date enable the LAA to become self-financing.

LAND ACT 2010

Objective:

The main the objective of the 2010 Land Act is to modernize land administration, to regularise peri-urban land and settlements, facilitate investment, including foreign investment and create land markets and to abolish customary land tenure in rural areas.

Provisions Relating to Strengthening of Land Rights:

- Minister's Consent on land transactions
- Land Holding by Foreign Entities
- Land Holding Ceilings
- Sectional Titles
- Systematic Regularisation

Systematic Title Regularisation

This is provided for in Part XI of the 2010 Land Act and detailed further in the Systematic Regularisation Regulations 2010. It is generally considered as a significant innovation because it facilitates retrospective legalisation of historic, as well as contemporary informal land allocations.

Regularisation is defined in the Act to mean one or both of the following:

i) the process of surveying, planning, adjudicating and registering the boundaries and rights associated with a parcel of land informally occupied or;

ii) readjustment of boundaries for the purpose of town planning (Land Act 2010: Part I).

[A narrower definition (possibly the true definition) of regularisation by the Sean – the DG & Matela (LAA) is: 'a process that adjudicates existing land rights and landholdings and converts informal or irregular landholdings into leases'

(…) Systematic Title Regularisation

A regularisation (in effect **mass titling**) scheme **of 50 000 land parcels** in the capital Maseru is about to commence, with possible extension to urban areas that are yet to be selected. The mass titling scheme follows a pilot regularisation scheme of **5 000 informally allocated peri-urban land parcels that has been underway in Maseru for over a year now. The pilot scheme is generally considered a success, with nearly 4 500 leases out of 5 000 targeted households being distributed.** Fraudulent Forms Cs, old Title Deeds and uncontested physical occupation were all accepted as evidence of legitimate claims to land. During the pilot and roll-out phases, regularisation (titling) was and will continue to be free, except for a minimal stamp duty fees. Disputes in the pilot phase are noted to have been relatively few and were significantly between family members rather than unrelated individuals (intra-household disputes rather than inter-households disputes). Most disputes were also successfully dealt with through mediation.

(..cont) Systematic Regularisation

Experiences from Pilot Regularisation:

- **close to 10% of plots in the pilot regularisation areas are reported to be without claimants, with some of these plots held under formal leasehold titles, with some fully developed with rental units.**

Possible Reasons:

- **Leased plots for which the original lessees had either transferred their leases informally without following procedures laid down by law;**
- **Disputes over plot ownership;**
- **Individuals who seemingly did not wish to pay ground rent, especially plots on which rental units stood alone, hoping that if the project did not identify them now then they would be left alone and not be required to pay any ground rent.**

Risk:

Informal transactions that involve the transfer and exchange of formal property titles and rights without following the legal processes represent risk - Reversion to informal market transactions of formal titles could be a real risk to the sustainability of the land reform project, especially in the post-Compact period.

Regularisation & Poverty: Global Experiences & Lessons for Lesotho

MCC's Motto: 'Reduce Global Poverty through the promotion of sustainable growth'.

Reality:

MCC's funded land projects do not specifically target the poor, but those who have land/property, poor or not so poor, thereby excluding the landless poor and poorest and the not-so-poor landless people.

Global (South)Experiences & Lessons for Lesotho

Similar to the World Bank, AusAID, etc and merit to Hernando, the MCC's notion of property rights is underscored by neo-liberal views of property, thus read:

(…) promoting the titling of property rights (…) increase[s] **tenure security** for the land owner, as well as for potential credit institutions. This is expected to increase the value of the land itself, as well as **improving access to credit**. Furthermore, it is anticipated that increased tenure security and improved access to credit **will raise the level of investment in land,** as well as **further increasing land value**. In response to the improved level of information on property rights (through titles and cadastral and registry systems), **land market transaction costs are said to be reduced**. Finally, legal reforms associated with land administration projects often **remove any restrictions related to the alienability of land**, in order to make the land market more dynamic and fluid (…). [For **the poor**], the mainstream discourse on land titling assumes that once the[y] are given the ticket (title) to the market they **will take part in the game, and that it is better to be in than outside the game**. (Broegaard, 2009: 150-153)

Regularisation & Poverty: Global (South) Experiences & Lessons for Lesotho

- Home improvement
- Access to Credit
- Poverty Reduction
- Program Sustainability

Regularisation & Poverty: Global (South) Experiences & Lessons for Lesotho

Home Improvement:

- regularization interventions show positive impact on house improvement, but finances for improvement are from regular household savings and not credit. In terms of poverty, improved housing now could act as potential investment for the future and could contribute to poverty reduction at some future date if the markets are right. (Galiani & Schargrodsky, 2009; Hutchison, 2008; Gilbert, 2002; Ward et al., 2011; Broegaard, 2009; Field & Torero, 2006). Lesotho = absence of registered title has not deterred households from making substantial improvements on their properties (Leduka, 2012), indicating that sources of finance for house improvement were unlikely to be collateralized credit. Under these circumstances, the impact of formal title on home improvement is unlikely to be significant.

Access to Credit

- Evidence relating to increased access to credit as a result of formal or regular title is fairly mixed and largely inconclusive, with titling showing no direct impact on access to credit, whether formal or informal. (…). . International experiences also seem to show that in cases where **credit was secured by the poor**, property was not used as collateral, and the credit was used for immediate consumption purposes, not investment in housing or micro-enterprises (see or example, Galiani & Schargrodsky, 2009; Hutchison, 2008; Gilbert, 2002; Ward et al., 2011; Broegaard, 2009; Field & Torero, 2006; Kanji et al., 2005).
- Possession of title is a necessary but not sufficient condition for formal credit, as qualification for bank credit is routinely tied to formal wage employment and minimum tenure in such employment (Field & Torero, 2006; Galiani & Schargrodsky, 2009; Kanji et al., 2005).

Regularisation & Poverty: Global (South) Experiences & Lessons for Lesotho

Poverty Reduction:

- The formalization of title also invariably targets existing property owners – including poor, middle-income and wealthy individuals/households. Such focus, however, ignores the landless urban poor and poorest households, majority of whom are often tenants (Jones, no date). This is significant in Maseru where in some peri-urban neighbourhoods tenant populations comprise upwards of 80% of total residents (Hall, 2004).

- Evidence would also seem to suggest that in response to poverty, urban and peri-urban poor households tend to engage in multiple livelihoods strategies, some being significantly home-based enterprises (Leduka 2009). However, formal titling does not recognise this – a plot is either commercial or residential, but cannot be both.

Regularisation & Poverty: Global (South) Experiences & Lessons for Lesotho

Program Sustainability:

Risk: as soon as MCC's support ends, and that land markets may also increasingly revert to informality as beneficiaries withdraw or fail to register future land transactions.

Lesotho:

- the Minister of Local Government is not keen on the implementation of the 2010 Land Act and is quoted as having openly dismissed the Land Administration Authority as a '**WHITE ELEPHANT**'.
- the Land Act 2010 and the LAA Act 2010 did 'not talk to each other'.
- Reversals by way of amendments to the Land Act 2010 and the LAA 2010, where the position of Director General of the LAA is replaced by that of Commissioner of Lands, which is the former statutory head of the privatized lands and survey office

WHERE? URBAN LANDMARK

- **Detailed review of land supply to the urban poor [NB. LARP silent on land delivery , in fact leaves existing land delivery virtually intact].**
- **Assessment of impact of MCA's mass titling program on poverty reduction; and**
- **Access to formal credit by the poor.**

PLUS

- **The need for a community-based Non-governmental Organisation (NGO) that could educate people on the virtues of formal titles and the need to stay within the system.**
- **An NGO that would mobilise communities around infrastructure and service provision, which is the missing link in on-going MCA's funded regularisation program**

END THANKS