

Strengthening land rights in pursuit of poverty reduction: a commentary on the Lesotho 2010 land tenure reform project – Resetselemang Clement Leduka, National University of Lesotho

a. Introduction and background to land rights in Lesotho

In this presentation, Clement Leduka discussed the land reform process in Lesotho. He noted that the title of his paper and presentation has changed slightly from that used in the conference programme and was now called “Strengthening land rights in pursuit of poverty reduction...” rather than “Privatising land rights in pursuit of poverty reduction...”. Urban LandMark funded the scoping study on which Leduka’s presentation was based.

Lesotho is a landlocked country located in South Africa, with an area of 3 000km² and a population of 1.2 million people. It currently has the lowest level of urbanisation compared to other southern African countries.

In 2008 Lesotho signed what was called ‘the Compact’ with the US’ Millennium Challenge Corporation (MCC). The Compact was effectively a funding agreement between the two countries and was to be managed by the Millennium Challenge Account-Lesotho (MCA-L). The compact focuses on three key areas: health, water and private sector development (PSD).

The Land Administration Reform Project (LARP) forms part of the PSD and had four objectives:

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

b. Progress of LARP

Leduka noted that progress to date included the LARP being put in place, coupled with the promulgation of the Land Act (2010), the establishment of the Land Court, to assist mediation and draft sectional title scheme, and the Land Administration Authority Act of 2010. Currently the Authority is in place and is considered a parastatal that is responsible for everything from the administration of the land registration systems to surveying and mapping functions, the resolution of registration and cadastre complaints and disputes; the collection of ground rent and fees, and the issuing of notices from time to time, prescribing the fees be paid for the Authority’s services. Most importantly it is hoped that land administration will be able to recover its own costs from services and be self-sufficient. Aside from the LAA there is also the Land Act, 2010 which replaced the 1979 Land Act and was intended to modernise land administration, to regularise peri-urban land and settlements, facilitate investment, including foreign investment and create land market and dissolve customary land schemes. The Land Act has also added a few key provisions to strengthen land rights, and is intended to have direct bearing on the delivery of regular titles and urban land markets in Lesotho.

c. Key provisions intended to strengthen land rights in Lesotho

Minister's consent: Up until 2010, leases and land as a gift had to be consented to by the Minister. These provisions were intended to protect poorer people, but in effect held up the land market as there were no time limits on consent, resulting in applications remaining unprocessed for ages. In 2010, this was done away with or delegated to the DG of land.

Foreign ownership: (corporates not individuals) is strictly circumscribed so that a corporate may only own land in Lesotho if 20% of the company is owned by a Lesotho citizen. Sectional title, which is a modern invention, has been introduced in Lesotho and legislation similar to South African legislation has been drawn up to try and open up this housing market in Lesotho.

Systematic title regulation: This new provision facilitates retrospective legalisation of historic, as well as contemporary informal land allocations. As a result, Lesotho is currently in the process of mass titling; the idea is to get 50 000 land parcels regularised in Maseru and if successful, to extend the programme to peri-urban areas. A pilot project of 5 000 properties has been completed. Evidence that is used to claim title includes old title deeds and uncontested physical occupation. During the pilot and roll-out phases, regularisation (titling) was free, with minimal stamp duty fees. Experiences from the pilot project include the fact that 10% of plots are without claimants - it is thought that this was so because the property was transferred extra-legally, or due to disputes over plot ownership, or because some individuals were attempting to dodge ground rents. The regularisation process also surfaced issues of land hoarding and informal and extra-legal sales.

d. The potential impact of LARP on poverty reduction

The question that is raised is: What effect has regularisation had on poverty? It should be noted upfront that the MCC did not target the poor; rather, their work was aimed at landowners, which means that landless people and the poor are excluded and those who are not poor but landless are also excluded. The MCC is underscored by a neo-liberal view of property. The project has not been in place long enough to get a clear sense of its impacts. However, drawing on experiences from the international context, the possible impact of regularisation on poverty can be considered:

- Home improvement: the literature claims that regularisation should have a direct and positive impact on house improvements due to secure tenure. In Lesotho, the absence of formal title has not deterred households from making substantial improvements to their homes, thus the impact of formal title on this aspect is expected to be quite minimal
- Access to credit: it is expected that there will be no direct impact owing to a number of reasons, i.e. the poor are averse to credit, and banks are averse to lending to low-income households. Also, in many cases, poor households access credit without using their homes as collateral. Thus, here too, the impact is expected to be minimal.
- Poverty reduction is not really the focus of the MCC and it is rather the case that the poor benefit by accident. The majority of people in Lesotho will be excluded, as 80% of some areas are renters rather than owners.
- Programme sustainability: the Minister of Local Government and the land authority is a white elephant, and the Land Act 2010 and Land Authority Act do not talk to each other.

With amendments to the Land Act, the DG has been re-designated to the Commissioner of Oaths.

e. Conclusions and way forward

Leduka concluded by saying that he believes that Urban LandMark does have a potential role to play in that it can be involved in, or support, a detailed review of land supply to the urban poor, an assessment of the impact of the MCA's mass titling programme on poverty reduction and the access to formal credit by the poor. There is also the need for a community-based non-governmental organisation that could educate people on the virtues of formal titles and the need to stay within the system, which could mobilise communities around infrastructure and service provision (which is seen as the missing link in the ongoing MCA-funded regularisation programme.)