

**LAND TENURE REFORMS AS SUBTLE LAND GRABBING:**

***Lesotho's Land Act of 2010 and the Poor Rural Communities***

**Master of Social Science in Development Studies**

**By**

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## **Dedication**

To my son Motheo, whom I left at a very tender age to pursue this degree.

## **Abstract**

This study explores Lesotho's land tenure reforms, in particular the 2010 Land Act, in relation to its implications on land access and livelihoods of the poor, who currently hold rights to land that is subject to reform. Using key literature, key informants and a case study, it offers a distinctive perception on Lesotho's land governance challenges. It also provides an exceptional insight into the country's over-dependency on aid that ultimately influences policy agenda.

The strategic power and influence by the donor community and foreign investors correlated with their access to and predominance of land, and relied on a reciprocally advantageous alliance with the government. It is through this alliance that the country experienced subtle land grabs, which the study elaborates thoroughly in subsequent chapters. The rationale behind reforms was that customary landholding lacked security of tenure and was an economic detriment. The modern tenure that donors and foreign investors are advocating for have a potential to leave the indigenous landless. These realities came to light when the study discovered that people do not only need land for agriculture, but for social, political and spiritual aspects of their lives.

While land is central to people's lives, the government accepted the terms of aid that consequently lead to the enactment of a policy that has elements of dispossession. This study does not question the significance of economic development through maximum utilization of land and other natural resources. Nonetheless, there is a need to rethink land tenure reforms that are not country lead as there is a misalignment between policy and the needs of the poor rural communities. The implementation of the reforms may have negative implications for the marginalised. The policy is more likely to benefit foreign investors over local people.

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## Table of Contents

<b>DECLARATION OF ORIGINALITY: UNIVERSITY OF PRETORIA</b> .....	i
<b>Dedication</b> .....	iii
<b>Abstract</b> .....	iv
<b>Acknowledgements</b> .....	v
<b>Acronyms</b> .....	ix
<b>1.1 Introduction</b> .....	1
<b>1.1.1 Reasons for the study</b> .....	1
<b>1.1.2 Study objectives</b> .....	4
<b>1.1.3 Research questions</b> .....	5
<b>1.2 Lesotho as a case of donor initiated land reform</b> .....	6
<b>1.3 Operationalization of concepts</b> .....	7
<b>1.3.1 Land Act 2010</b> .....	7
<b>1.3.2 Land tenure</b> .....	7
<b>1.3.3 Land grabbing</b> .....	7
<b>1.3.4 Land governance</b> .....	8
<b>1.3.5 Millennium Challenge Account</b> .....	9
<b>1.4 Structure of the research</b> .....	9
<b>2.1 Introduction</b> .....	11
<b>2.2. Land Grabbing in the Contemporary Era</b> .....	12
<b>2.2.1 The meaning of land grabbing</b> .....	12
<b>2.2.2. Land grabbing in literature</b> .....	17
<b>2.2.3 Land grabbing in Africa</b> .....	21
<b>2.3 Foreign investment and land dealings</b> .....	25
<b>2.4 Land governance, why it matters</b> .....	26
<b>2.5 Chapter Summary</b> .....	29
<b>3.1 Introduction</b> .....	32
<b>3.2 Research approach</b> .....	32

<b>3.3 Data collection methods</b> .....	34
<b>3.3.1 Review of key literature and document analysis</b> .....	35
<b>3.3.2 Primary research</b> .....	37
<b>3.3.2.1 Key informant interviews</b> .....	37
<b>3.3.2.2 Case study</b> .....	41
<b>3.4 Data analysis, ethical considerations and fieldwork challenges</b> .....	44
<b>3.4.1. Data analysis</b> .....	44
<b>3.4.2 Ethical considerations</b> .....	45
<b>3.4.3 Fieldwork challenges</b> .....	47
<b>3.5 Chapter Summary</b> .....	48
<b>4.1 Introduction</b> .....	50
<b>4.2 Challenges of land governance</b> .....	51
<b>4.2.1 Legal plurality</b> .....	51
<b>4.2.2 The Laws of Lerotholi and chiefs</b> .....	53
<b>4.2.3 Proliferation of chiefs</b> .....	56
<b>4.2.4 Chiefs resistance to change and policy implementation</b> .....	57
<b>4.2.5 Various amendments to the Act</b> .....	62
<b>4.3 External challenges</b> .....	63
<b>4.3.1 Aid and Conditionality (the Land Bill)</b> .....	64
<b>4.4 MCC and the implementation of the 2010 Land Act</b> .....	70
<b>4.5 Chapter Summary</b> .....	75
<b>5.1 Introduction</b> .....	77
<b>5.2 Profile of the Masitise community</b> .....	78
<b>5.3 Land and Landholding in Masitise</b> .....	81
<b>5.3.1 Land acquisition channels</b> .....	83
<b>5.3.1.1 Chiefly allocations</b> .....	84
<b>5.3.1.2 Inheritance</b> .....	87
<b>5.3.1.3 Sharecropping</b> .....	90

5.3.1.4 Sales and transfers .....	91
5.3.2 Vernacular land markets .....	92
5.4 Land in People’s Lives .....	95
5.4.1. Land not only for agriculture .....	98
5.4.2. Households would protect land .....	101
5.4.3 Perceptions on the privatisation of land .....	102
5.4.4 What people knew about the 2010 Land Act.....	105
5.5 Chapter Summary .....	107
6.1 Introduction .....	109
6.2 Discussion .....	110
6.2.1 Lesotho’s troubled land governance .....	110
6.2.2 Aid and conditionality .....	112
6.2.3 Land holding patterns .....	114
6.3 Conclusion: Land grab or ‘Development by dispossession.....	116
6.4 Policy implications.....	119
Appendix (i) .....	132
Appendix (ii) .....	134
Appendix (iii) .....	135

## **Acronyms**

LCD- Lesotho Congress for Democracy

ABC- All Basotho Convention

MCC- Millennium Challenge Corporation

MCA- Millennium Challenge Account

LDCs- Less Developed Countries

SACU- Southern African Customs Union

LCN- Lesotho Council of Non-governmental organisations

FDIs- Foreign Direct Investments

LAA- Land Administration Authority

USA- United States of America

IMF- International Monetary Fund

WTO- World Trade Organisation

FAO- Food and Agriculture Organization

LMDA- Lesotho Millennium Development Agenda

SDA- Selected Development Areas



# CHAPTER ONE

## INTRODUCTION

---

### 1.1 Introduction

The subject of land grabbing has received renewed attention in the years following the rapid and sharp increase in large-scale land acquisitions by foreign governments and companies in developing countries in 2006. What is of great concern has been the 'sharp change in the curve of land acquisitions', which according to Sassen (2013: 26), 'points to a break in a long-term trend that might indicate a larger structural transformation in an old practice'. Poor countries and local communities have become vulnerable to land grabs; more so, in the current neo-liberal environment where the reform of land and openness are pre-conditions for donor assistance. This study is about donor-initiated land reforms in Lesotho under the Land Act of 2010 and the implications for poor local communities whose access to land is governed through traditional tenure regimes.

Using a mixed method approach, including the review of secondary material, key informant interviews and a case study, it provides an analysis of the influence of donors on the land reform agenda and assesses how the poor communities might be affected by changes in the land tenure system. It will help explain Lesotho's land governance crisis and the challenges associated with the neo-liberal solutions implemented. The study carries significant lessons for the Lesotho government as it embarks on a process of reforming land, and other countries in the region like Malawi that are heavily dependent on donor funding for budgetary support.

#### 1.1.1 Reasons for the study

Land dispossessions of poor rural communities and households (which have for long depended on communal land access for livelihood and survival) are looming in the Kingdom of Lesotho in the southern African region. That is, if the donor community and the government succeed in implementing new neo-liberal land governance reforms, contained in the 2010 Land Act under the influence of the Government of the

United States of America, through the Millennium Challenge Corporation (MCC) and other donors (GoL, 2010).

The Act and reforms have generated intense debates amongst different political parties in the country, the media and particular individuals within the society on: land and its governance; the rural poor and land; agriculture and its productivity; rural poverty and its reduction; aid, donors and their influence; the general public, social commentators, politicians and scholarship alike. These have shunned away from any radical portrayal of the reforms as 'land grabbing', despite the potential dispossession of the poor of any approach that supersedes any customary land allocation systems in poor societies (Cotula & Chauveau, 2007). Issues of social justice and negative impacts of the resultant commoditization of land (evidenced elsewhere including Brazil) have been neglected and understudied (Sauer, 2003).

The government and its donor supporters, since the process started in 2001, managed to sell the reforms (consistent with donors' rhetoric supporting tenure reforms (Deininger, 1999; Deininger & Binswanger, 1999; Deininger & Jin, 2003) as necessary to solve Lesotho's land governance crisis (Lawry, 1993; Mphale et al., 2003; Quinlan & Wallis, 2003). It has also been seen as key to the country's development through market-based exchanges in land transactions, which would ultimately lead to a modern agricultural sector to propel development, exports and food security through increased investment and reduced transaction costs. From another perspective, the Act was portrayed as a move towards an effective and responsive land tenure system, and a solution to challenges within Lesotho's land governance and agriculture systems, and would ultimately contribute to sustainable agriculture and poverty reduction.

Many, even those who opposed the reforms, found it difficult to associate these with the global land grab. This is because Lesotho's case is not a classic case of land grabbing by land barons as is the case of colonial Zimbabwe, South Africa and Namibia or its contemporary prototype by the international capital as has happened elsewhere in the developing world and globally. Lesotho is a typical case of donor

orchestration and state sanctioned land dispossessions in the guise of modernisation and development. This conforms to Kachika's (2009:17) definition of land grabbing as "the large-scale land acquisitions, buying or leasing of land in developing countries not only by domestic and transnational companies, but also by governments and individuals".

The lack of focus on land grabbing consequences of the new reforms is particularly surprising; in the context of evidence that despite legal categorisation of land as communal and insecure, there are realities of ownership in both perceptions and behaviour. These realities have been highlighted by scholarship on Lesotho, including Pule and Thabane (2004) who observed that as a departure from theory, land rights were inherited, and the land was treated as though it formed part of the household estate. This is particularly evident in vernacular land transactions (sales and leases) and diversification of land from agriculture into other livelihood activities. Thebe and Rakotje (2013: 2), in their study on land strategies and livelihood dynamics, refer to these realities of landholding and perceptions on land and caution that:

... [a]ny hopes that the Land Act of 2010 would provide better security of tenure, and ultimately lead to improved agricultural performance at the household level, require considerable optimism and may, at worst, be plain naivety' since 'evidence suggests that households in Lesotho require neither law nor formal titles to enjoy exclusivity in landholding.

The processes of de-agrarianisation and de-peasantisation, currently underway in most of rural Lesotho, may have contributed to the general acceptance of the modernisation of landholdings through privatisation and titling of land. However, as we have seen, land matters to households, and even in the context of growing evidence of widespread disengagement from agriculture, the centrality of land in household livelihoods and survival cannot be ignored. Nonetheless, in Lesotho, little in terms of research has been done on the implications to the poor rural people, their position and views on the new reforms and how they would frame their responses, particularly as a response to the Land Act of 2010.

The body of evidence on land and land use, households' land strategies and rural poverty, calls for a scholarly rethink on the Land Act of 2010, and it is time to think about the reforms as looming 'land grabs' of a neo-liberal nature that in the absence of any scholarly attention require research on their own right. The main purpose of this study is to understand the circumstances and factors that contributed to the Land Act; the potential implications on the landholding; land security and livelihoods of the poor households on communal land. This study is concerned with the Lesotho's Land Act of 2010 and potential dispossession.

### **1.1.2 Study objectives**

The central aim of this study is to trace and analyse Lesotho's land governance reforms in relation to their implications on land access and livelihoods of the poor Basotho households that currently hold rights to the land that is subject to reform. In the absence of research that has focused specifically on the Land Act 2010 and implications for social justice, this dissertation will be the first detailed account of the Act, aid, donors and conditionalities, and implications for poor people's land access and poverty reduction. It aims to improve our understanding of actors to the land reform process that have been side lined, but who are going to be the people most affected by the Land Act of 2010 and had uncontested access and control of land since the Laws of Lerotholi were instituted in the country.

By grappling with social justice issues, particularly consequences (whether intended or unintended) and by situating these within the broader debates on dispossession or land grabbing, I hope to contribute to the existing literature on the effects of neo-liberal reforms on indigenous populations in poor countries that are coerced into reforms as condition for aid. It is of utmost importance to highlight what neoliberalism is for a better understanding of why the reforms in Lesotho are termed as such in this report. According to Harvey (2005: 25):

Neoliberalism is in the first instance a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and

skills within an institutional framework characterized by strong private property rights, free markets and free trade. The role of the state is to create and preserve an institutional framework appropriate for such practices.

This will be done through the presentation of evidence from a combination of methods, which is going to be a major strength of this dissertation. Lesotho's dependence on donor aid for budgetary support has left the country vulnerable to donor conditionality, including the reform agenda, which as history would prove, had serious implications for the poor people.

In the area of land tenure reform, they have drawn on a familiar modernization and development narrative, premised on 'trickle down' ideals (where the commodification of land leads to tenure security), which in turn leads to increased investment on land, increased productivity, GDP and poverty reduction. By so doing, it succeeded in portraying tenure reforms as a necessary precondition for economic growth and poverty reduction (mca.org.ls; Sekatle 2010; Thahane, cf. IRIN News 2011). In a different fashion, scholarship has tended to portray Lesotho as poor and agrarian, and emphasised the process of de-agrarianisation (Boehm, 2003; Sechaba, 2000), and these have distorted the understanding of land in Lesotho by the donor community. The realities of land and household land use and livelihoods are complex in Lesotho, and my study will demonstrate these complex dynamics.

### **1.1.3 Research questions**

1. What were the factors (both internal and external) that influenced the enactment of the Lesotho Land Act of 2010?
2. Who exactly shaped Lesotho's land policy reform agenda? What were the interests of different actors to the land reform?
3. How were the Basotho landholding and use patterns before the enactment of the Land Act of 2010? How did land use and governance structures evolve over time in Lesotho?

4. How will the implementation of the Land Act of 2010 affect landholding, land security and livelihoods of local Basotho that hold current rights to communal land?

## **1.2 Lesotho as a case of donor initiated land reform**

Lesotho's Land Act of 2010 – the subject of this study – has emerged against a backdrop of perpetual dependence on external aid and budgetary support from western donors and of donor conditionality that tends to accompany such dependence (Crawford, 2007; Knack, 2001; Stokke, 2013). Lesotho's long history of donor dependence and the accompanying imperative to conform to donor conditions to reform its land tenure regimes culminated in the enactment of the Land Act, which through its provisions, constitutes a process of dispossession of the poor who were guaranteed access under colonial tenure regimes.

Lesotho's hybrid land tenure system emerging from the reforms, which allows for market-based exchanges in land transactions, is in line with neoliberal market-driven principles and the emphasis on the linkages between land titling, land security and investment (Deininger & Binswanger, 1999) and increased land value (Dickerman, 1989) championed by the World Bank and other donors. Being funded by the U.S. government, it is least surprising that it was also consistent with the ethos of the Millennium Challenge Corporation, that is orchestrating the early phases of reform: "Reducing poverty through economic growth" (MCC 2007).

The reforms should be understood in the context of a wider modernisation narrative, which has continued to dominate development and poverty reduction thinking captured better by then Minister of Finance Timothy Thahane's speech that "investors can come, start a business and receive mortgage financing and insurance.... kind of process that is necessary in a modern economy" (IRIN, 2011). The framework adopted by this study view Lesotho as a typical case of donor initiated land grabbing where conditions to reform land governance were tied to the Millennium Challenge Account and spelt in the Millennium Challenge Compact signed between the Government of Lesotho and the Millennium Challenge Corporation (MCC Compact, 2007).

## **1.3 Operationalization of concepts**

### **1.3.1 Land Act 2010**

An Act to repeal and replace the law relating to land, provide for the grant of titles to land, the conversion of titles to land, the better securing of titles to land, the administration of land, the expropriation of land for public purposes, the grant of servitudes, the creation of land courts and the settlement of disputes relating to land, systematic regularization and adjudication, and for connected purposes (GoL, 2010)

### **1.3.2 Land tenure**

Land tenure is an association of rules created by a nation to govern land. These rules usually spell out terms of land allocation, including how access is granted to deserving members. Terms of use, accountability and restrictions are also defined by land tenure. Societies adopt different types of tenure depending on what works for them. Center (2002) referred to land tenure as a bundle of rights and responsibilities under which land is held, used, transferred and succeeded. Land tenure defines the association people have with the land and connected means. Pre-colonialization and immediately after, most African countries used the customary land tenure system. It is a system where land is communally owned and a set of rules and norms that govern community allocation, use, access and transfer of land and other natural resources (Peters, 2013). This system was criticized by colonial governments for being an economic detriment and a source of insecurity of tenure. The general belief was that private property rights are a necessary pre-requisite of agricultural investment and development (Besteman, 1994). For this study, unless the context otherwise explains, land tenure will be taken to mean the relationship, whether legally or customarily defined, among people as individuals or groups, with respect to land (FAO, 2012).

### **1.3.3 Land grabbing**

Borras et al. (2013) define land grabbing as an acquisition of vast tracts of land and other natural resources through various mechanism that are carried out through extra-economic coercion that involves large-scale capital. There are different types of land

grabbing, classic and contemporary. Both types have features that distinguish one from another. Size and magnitude may be a common factor, but the rationale and nature are inevitably different. Classic land grabbing involved land barons taking land away from Africans, usually in armed conflict or force, while the contemporary land grabbing sometimes involves laws and policies to support it.

Land grabbing occurs both legally and illegally within current laws... in most cases, laws at least tolerate land grabbing if not help it (European Coordination, 2016). Within the contemporary grabs, there are subtle land grabbing that do not involve coercion whatsoever, but performed smoothly with policies and laws. The study will later discuss the meaning of land grabbing, its drivers, implications and scale in detail. However, in this instance, land grabbing is defined as the contentious issue of large-scale land acquisitions, the buying or leasing of large pieces of land in developing countries by domestic and transnational companies, governments and individuals (Kachika, 2007).

#### **1.3.4 Land governance**

Reforms of land and holding systems in contemporary times are closely linked to the concept of land governance. According to the World Bank (2012: 3):

Land governance is the process by which decisions regarding the access to and use of land, the manner in which those decisions are implemented and the way that conflicting interests in land are reconciled.

Scholars argue that strong or good land governance recognises solid structures that encourage pro-poor and gender sensitive policies among other things. Weak land governance, on the other hand, has been criticised for allowing opportunistic behaviour by external and internal institutions. Enemark (2017) is of the view that land governance is about policies, processes and institutions by which land, property and natural resources are managed. Decisions on access, rights, use and development are part of governance, and the study adopts this definition.

### **1.3.5 Millennium Challenge Account**

Closely tied to the issue of land governance in contemporary development and the reform of land is the issue of aid. The United States of America has particularly played a huge role in international assistance, through the Millennium Challenge Corporation. According to the GoUSA (2004), “MCC is an innovative and independent U.S. foreign aid agency helping to lead the fight against global poverty.” Low-income countries are identified for eligibility through three channels, ruling justly, investing in people and economic freedom. Once eligibility is granted, a compact is signed between the two countries. Following the compact is the establishment of the Millennium Challenge Account (MCA), which facilitates and oversees the operations of the compact. .

### **1.4 Structure of the research**

This dissertation consists of six chapters. Each chapter dwells on a specific area of focus. Chapter One provides an introduction to the study. It begins by providing a research problem before detailing the study objectives and questions that the study seeks to address. It then provides a brief overview of the thesis of the study, arguing that Lesotho’s land reforms, as guided by the Land Act of 2010, has the potential of dispossessing poor communities living in the country’s communal lands.

Chapter Two is a review of broad theoretical literature relevant to the subject. The chapter provides an attempt to provide a framework through which Lesotho’s land reforms, as guided by the Land Act of 2010. The discussion revolves around land grabbing. It begins by looking at land grabbing globally before narrowing it down to the African continent and then Lesotho. Through this, the chapter attempts to provide a demonstration of different types of land grabbing. Some have been so rife and aggressive leading to armed conflict, while others like Lesotho’s case and several other African countries have been very subtle oftentimes mistaken for economic development or foreign investment.

Chapter Three deals with the methodology adopted by the study. Data collection methods, the approach, data analysis, challenges encountered when conducting this

research and issues around ethical considerations are addressed in this chapter. Chapter Four is a national level analysis. It attempts to comprehend the contemporary from the historic land issues in Lesotho. It traces land governance issues in the country from the pre-colonial era to the present. It takes into account different legislations that were passed by various governments to guide land governance in the country and the challenges faced. Throughout the analysis, attention is placed on the integral conflict in the structure of land governance in Lesotho and the relative lack of success. The chapter then provides an analysis of Lesotho's donor dependence and her vulnerability to donor conditions, before tackling the subject of land reform and the Millennium Challenge Account, together with the compact that was developed.

Chapter Five moves the discussion from the national to the local level. It provides local level dynamics on land and provides a micro-level analysis of an otherwise macro-level phenomena by providing a household perspective on land and landholding. The discussion in the chapter is critical in demonstrating that land is valuable to households in rural community. It shows that the value of land extends beyond agriculture into other spheres that cannot be easily identifiable to outsiders. Chapter Six provides the conclusions. It pulls together both national and local level analysis in a form of discussion and their implication for policy.

## CHAPTER TWO

### LAND, LAND GRABS AND GOVERNANCE AND POOR RURAL COMMUNITIES

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#### 2.1 Introduction

Land grabbing has received much attention following the global food crisis in 2007/08. Given the degree at which these grabs are happening in the world, and in Africa particularly, it is important to establish and understand different drivers behind them. Several studies have shown that the current rush in land acquisition is due to global demand for biofuels and other non-food agricultural commodities, expectations of rising rates of return in agriculture and land values, and policy measures in home and host countries (Cotula et al., 2009:5). Consequently, a great deal of research has focused on multinational corporations and western economies in land acquisitions.

This chapter is a review of relevant literature on land grabbing in Africa and its implications on poor rural people. The first part of the chapter focuses on land grabbing in literature, and to build on this, the chapter looks at land grabbing in the context of Lesotho and the role of international organisations disguised under Foreign Direct Investment (FDIs). The second part of this chapter is a brief discussion of rural communities and how land has always been the core of identity, livelihoods and food security. This framework is based on the neo-liberal perspective to promote the development of efficient land markets and to facilitate systems for land transactions (World Bank, 2002). This analysis is guided by the hypothesis that the potential land grabbing inherent in the Land Act 2010 in Lesotho is influenced by donor conditionality on aid. This literature review, serves the purpose of identifying, selecting and appreciating previous studies dealing with the question of this research study (Booth et al., 2012).

## **2.2. Land Grabbing in the Contemporary Era**

### **2.2.1 The meaning of land grabbing**

Kachika (2007:17) defines land grabbing as “the contentious issue of large-scale land acquisitions, the buying or leasing of large pieces of land in developing countries, by domestic and transnational companies, governments and individuals”. Building on this definition, the Tirana Declaration (2011), views land grabbing as land deals that happen without the free, prior, and informed consent of communities that often result in farmers being forced from their homes and families left hungry. The Tirana Declaration is an agreement amongst different countries of the world intended to curb the rising exercise of land grabbing. It was signed in Tirana, Albania in May 2011. It was designed to deal with land governance and access for the poor in times of tight competition for natural resources.

While land grabbing has a long history in relation to the land question, the phenomena is rather fluid, and has changed and adapted to changes in the agrarian political economy, but was never completely destroyed or replaced. Contemporary land grabbing will be taken here to mean the large-scale land acquisition by foreign governments or enterprisers experienced in the recent past (Lee, 2015). In conceptualising the phenomenon of land grabbing, Lee shows that land grabbing poses a threat in the accessibility or returning of land rights by people in developing countries. The reasons are that land is commoditised and its demand is increased, hence the likelihood of indigenous people losing rights in land they already have or poor access to it by those seeking to get it.

From another perspective, Borras et al. (2013) define land grabbing as an acquisition of vast tracts of land and other natural resources through various mechanisms carried out through extra-economic coercion that involves large-scale capital. Sometimes these shift resource use orientations into extraction, whether for international or national purpose as a capital response to convergence of food, energy, financial and climatic change mitigation measures. This conceptualisation of land grabbing is broad and extends Lee’s definition to include extraction by other entities including the state. Borras et al. further categorise land grabbing into three different classifications: 1) land

grabbing for agricultural purposes; 2) land grabbing for environmental ends and; 3) land grabbing for the purpose of securing resources and minerals, respectively.

Even within these categories, there are different views regarding the phenomenon of land grabbing. From one perspective, it has been seen as an opportunity. From another, it is often seen as a threat. As a result, three competing political tendencies emanate from these mixed perceptions: regulation to facilitate land grabbing; regulation of land grabbing in order to mitigate the diverse effect and maximise the opportunity; and regulation to stop and roll back land deals.

The study by Borras et al. (2013) acknowledges that the state is a major role player in land grabbing. These authors state that land grabbing and dispossession occur hand in hand, hence, the state plays a very vital and facilitating role in contemporary land grabbing. The present discussion of contemporary land grabbing by Borras et al. (2013) makes it clear that the state is an active participant in land grabbing. They clearly state how states actively participate in land grabbing through invention of the need for large scale land investment; redefinition, quantification and reclassification of marginal and under-utilised land; identification of these particular types of land; assertion of the state's absolute authority over these lands; acquisition of these lands and re-allocation and dispossession of these lands.

As they note, the state may engage in redefining and reclassifying what constitutes under-utilised or empty land in order to suit its interests or that of foreign investors. This is consistent with the proposals of the 2010 Land Act of Lesotho (GoL, 2010). In terms of the 2010 Land Act, there are provisions for the state through the Government of Lesotho to dispossess those who they deemed to have "under- utilized or abandoned the land". Section 43 (1) of the Act reads:

Agricultural land shall be taken to have been abandoned where– (a) The lessee or allottee has failed to cultivate the land for at least 3 consecutive years; (b)The lessee or allottee has abused the land through overgrazing; and (c)The lessee or allottee has refused or is unable to combat soil erosion.

Edelman and Leon (2013) in their research study which sought to place land grabbing in historical perspective, dealt with above on the issue of empty lands. They too found in their research that the concept of empty lands or under-utilised land meant discursive construction, which refer to spaces that the capital has not yet been able or wanted to penetrate, not spaces without people.

In this way, the state is a major player in land grabbing. According to Borras et al (2013), there are three interlinked areas of state actions in as far as contemporary land grabbing is concerned. These involve the state simplification process; the assertion of sovereignty and authority over territory; and coercion to enforce compliance through police and para-military force. By simplification, the authors entail a process of simplifying to render complex issues understandable through carrying land census, creation of titles and that will make easy state administration of the land. The government of Lesotho bears a striking resemblance to the argument above. Through the Act, the government created the concept of titles upon acquisition of land. It assures that 'secured titles will encourage people to develop their properties and use their properties as economic assets' (GoL, 2010: 438 )

The authors go on to clarify that if there are no formal settlements or formally titled lands, then it is state owned and no farm productions, then these lands are unused. Secondly, they state that beyond land investment, land grabbing are seen as components of state building, where state sovereignty and authority is extended and ensured. Ultimately, they discuss that the purpose of coercion is a means to enforce the simplification process. This means that the state can grab the land from its citizens and then allocate it to investors.

There seems to be an agreement amongst scholars as to the general definition of land grabbing. Hall (2011) confirms and agrees with the definition of the above discussed scholastic views that, land grabbing is the commercialisation of land, through leasing, or sale of public land to foreign companies or governments - the purpose of which is food production; tourism development; production of bio fuels; and commercial

agreements. In the author's view, grabbing of African land and resources is not a new thing to Africa with the history of colonialism. As such, scholars like Leahy (2009) summarise land grabbing as a process by which rich countries are buying poor countries' fertile soil; water; and sun to ship food and fuel back home in a kind of new colonial dynamics. This definition of land grabbing by Leahy is based on its negative consequences.

Hall's findings in her research study are: (1) what is being grabbed is not only land but also the water, minerals and cheap labour; (2) that although the concept has constantly been linked to foreign investors, many other domestic investors, in partnership with parastatals and other investors are involved; and (3) ultimately, land grabbing is largely a legal business engagement through amending the legislation. Lesotho experienced a similar situation with the repeal of the 1979 Land Act. The components of the 1979 Land Act made it very hard for foreign investors to gain access to land in Lesotho. In circumstances, as provided by the Act, foreign investors could access the land, but that would hardly profit them. The Act required them 51 % shares to the people of Lesotho in any form of land investment as provided for by paragraph C of the section.

The 2010 Act came to change this rigidity on the acquisition of land by foreigners. The major innovation on section 6(1) (c) which, unlike in the previous Act, provides that foreign investors can hold titles to land provided that the Basotho people retain 20% in such an investment. This relaxation of the legislation is a major shift from the previous Act, which required Basotho to retain 51%. The purpose of this was to provide easy access to land by foreigners for investment purposes. (GoL 2010) This was held to be fulfillment of the conditions given by the MCC for it to fund the land reform program (Geospatial World, 2012). The Geospatial World research held that it is this kind of relaxation that people feared will result in Basotho land being grabbed by foreigners.

Schutter (2011) defines land grabbing as the commodification of land. In his research, Schutter employs effect-based approach to analyse land grabbing. Firstly, the benefits

of small scale farming: family-owned production units, are contrasted against large scale types of farming. In this point of comparison, the idea is to compare if the people in small scale farming are left better off after the creation of large commercial farms either through creation of food security at household level and creation of employment. It is found by Schutter that food produced from large scale farming as a result of land grabbing is exported, and some of it is not for food purposes but bio fuels. As such, food insecurity is increased through land grabbing in developing countries.

Secondly, Schutter questions the targeted countries' capacity to effectively manage such big investments that come with land grabbing, to be effectively for the benefit of the citizens of that state. The author holds that large scale farming appears very desirable in the present era of under-utilised land that cannot be developed without the import capital; it may be impossible in practice to ensure that they will benefit citizens of the state concerned. It is also found in what Schutter terms *opportunity cost analysis*, that if the state improved the land and irrigation system, it could have benefited the locals than giving it to foreign investment whose proceeds only benefit their mother countries.

Lastly, the author asks if every transformation intended to increase agriculture investment will bring about desirable results. The answer provided in the above question that land grabbing does not necessarily provide food security as intended answers this question. Schutter is in agreement with Adnan's view that land grabbing can happen through deprivation of land where there is entitlement to such land. In Schutter's view, there is tension between ceding land to investors for the creation of a large plantation and the objective of state to redistribute the land and ensure equitable access to land grabbing.

In contribution to the research study of land grabbing, Adnan (2013) states that land grabbing has two faces: deprivation of property rights yet to realise and actual dispossession. Adnan describes deprivation of property rights yet to realise in the prism of land grabbing by saying that failure to redistribute land deprives the landless from receiving the land to which they are or have been entitled to. Additionally, when

the land is already in possession, it can be grabbed by seizure. Land grabbing by seizure is in line with the general land grabbing definition discussed by various authorship above. This discussion contributes to the main focus of this review because it is necessary for this research to determine if the land reform program in Lesotho constitutes land grabbing.

### **2.2.2. Land grabbing in literature**

While the phenomenon of land grabbing has caught the attention of the world following the explosion in land transaction and land speculations by global commercial enterprises in the recent past, the notion of land grabbing has a long history (Borras & Franco, 2012:34). Historically, land grabbing has always involved companies and wealthy countries dispossessing the local poor of their land. Given the history and diverse nature of land grabbing, it is no surprise that scholarly focus has been broad – focusing on diverse issues – and seemingly agreeing to the divergence of perspectives. For Allan (2012), the main focus was on the human rights issues associated with land grabbing, and highlighting the controversy that land grabbing and Foreign Direct Investment (FDIs) in farmland has generated for decision makers, the media and global society. While he believed that the issue of land grabbing goes beyond economic implications, the aim of his study was to broaden readers' knowledge, especially their perspectives on inward investment in Africa.

In a similar study, Marguliset et al. (2013) build on the argument associating land grabbing today to FDIs, but instead of focusing on the violation of the human rights component, they focused on governance issues. While recognising the historical roots and placing land grabbing within this history of imperialism, they also noted that the character, scale, pace, orientation and key drivers of the recent wave of land grabs was a distinct historical phenomenon closely tied to major shifts in power and production in the global political economy. They situated land grabbing in an era of advanced capitalism, multiple global crises and the role of new configurations of power and resistance in global governance institutions. While Sassen (2013) built on governance as a driver of the land grabs thesis, she slightly differed on how governance manifests itself in this case. She argued:

This assemblage does not present itself explicitly as governance, but I argue that it is a type of governance embedded in larger structural processes shaping our global modernity; in fact, it may have had deeper effects on the current phase of land acquisitions than some of the explicit governance instruments for regulating land acquisitions (Sassen, 2013: 1).

The increase in FDI's interests in land is also recognised by Edelman, Oya and Borras in their 2013 study, where they noted a general focus by people on the financial implications of land grabbing at the expense of other aspects. It is common sense that land grabs have a diversity of implications, and thus, any focus on a single implication may be naïve. In their study, they represented a diversity of approaches and backgrounds, arguing the need to move beyond the basic questions of the “making sense” period of debate and sharing a common commitment to connecting analyses of contemporary land grabbing to its historical antecedents. As they put it:

A rigorous grounding of claims about impacts is required for scrutiny of failed projects and for (re) examination of *longue duree*, social differentiation, the agency of contending social classes and forms of grassroots resistance as key elements shaping agrarian outcomes (Edelman et al. 2013: 46).

On the impact of land grabs, Thaler (2013) has shown how the off-leasing of large tracts of arable land across the globe, in Africa, by foreign governments and corporations, has allegedly provided the grievance behind protests, riots, coups and other conflicts. Such acts of land do not lead to the dispossession of the poor of their land but of their livelihoods since in Africa land has always been a central component of people's livelihoods (Shackleton, 2010). Thus, the dynamic of land grabs tend to deprive the local market of food production and consequently generating conflict in the process (Thaler, 2013). As Hall et al. (2015: 468) have argued:

When land deals hit the ground, they interact with social groups within the state and in society that are differentiated along lines of class, gender, generation, ethnicity and nationality, and that have historically specific expectations, aspirations and traditions of struggle. These reshape, limit or make possible different kinds of land deals.

Others like Oya (2013) and Hall (2011) have attempted to provide a systematic analytical framework to understand the impact of land grabbing. For Hall, the aim is to distinguish between different types of land deals and consider specifically the implications for unfolding and future trajectories of agrarian change. Her study drew attention to land grabs' diverse manifestations to questions of size, duration and source of the investments. From another perspective, Kachingwe (2012) has focused on the gendered implications of the recent wave of large-scale land acquisitions and investments, particularly in Africa. He particularly focused on the policy recommendations that address the issue from a developmental and gender equality perspective since understanding the implications for rural women's land rights, rights to development and a livelihood are essential for the design of a meaningful policy that tackles negative impacts of land grabs.

Cotula (2013) particularly located his analysis in Africa where he examined the implications of land grabs both for its people and for world agriculture and food security. In his analysis, he noted: fears of land, particularly land that they failed to utilise effectively, but by African people and stipulated moral implications on such land that otherwise did not do much to ensure global food security. The study was positioned within a particular context, the increased demand for land following the 2007/2008 global food crisis, and Africa's image as an untapped territory for natural resources. African governments have not been innocent victims and have played active roles in perpetuating land grabbing in pursuit for development (Woodhouse, 2012). The problem lay in the land policies that African governments put in place, which made it possible for foreign companies to have huge stakes in African land. He argued:

The fact that each land deal may consist of multiple contracts and bodies of law has negative implications. Firstly, contractual provisions cannot be viewed in isolation, rather, they must be considered in light of the overall deal. The leaks that are inherent in them make it difficult for the indigenous to buy huge pieces of land and open up markets for FDI (Cotula 2013: 1).

While he criticized the contracts for not being watertight, he also acknowledged the role of the World Bank in shaping these land contracts through its policies in Africa.

Another growing but still recent body of literature associates the donor community with land grabs and dispossession of the poor in developing countries, despite positioning themselves as champions of the poor and their preoccupation with poverty reduction (Bramley, 2014). Donors play a vital role in perpetuating land grabs in Africa through conditions for reforms, which leave the poor vulnerable to dispossessions. To this end, G8 donor countries and the European Union have been accused of bankrolling the New Alliance, a strategy developed to support agriculture, but which has contributed to land grabs through policy commitments on land titling and land reform (Curtis, 2011). The basis of the argument is that the “G8 support for the New Alliance is part of a drive to secure larger agricultural markets and sources of supply in Africa for multinational corporations” (ibid: 2). In support, Bramley (2014: 2) sees donors as having a stake in the heightened vulnerability of African land. He argues:

Aid donors and international institutions including the World Bank and the World Economic Forum (WEF) have been accused of promoting an environment that fuels land grabs through policies and initiatives that pave the way for large-scale private investment (ibid: 1).

The general argument is that the conditions of aid make it possible for foreign companies to gain access to land. In an article by Erdkunde (2010), it was highlighted how the World Bank requires all its beneficiaries to privatize the land and move away from traditional land ownership. The World Bank’s aid also comes with various conditions that, in a way, forces African countries to open up the land to private ownership, failing which, such states do not become eligible for aid (ibid). The 2010 Land Act of Lesotho bears the same characteristics of land grabbing discussed above. The authorship above focused on broad aspects of land grabbing, from its history to recent drivers behind it. It has been discovered that states are not innocent victims to land grabbing.

African governments put policies in place that allow foreign investors and multinational companies to access land. Lesotho is no different from this. The 2010 Land Act 'introduces reforms in land administration and land tenure security with the view to promote efficiency in land services and enhance use of land as an economic asset.' (Land Act, 2010: 437). According to the Act, limitation of land holding by foreigners was to the economic detriment of the country. Another factor that Bramley (2014) identified was the contribution of the donor community in land grabs. Fogelman (2017:15) argued that in Lesotho, rather than being led by Basotho, the passage and execution of Land Act 2010 were spearheaded by the MCC. The MCC threatened to withdraw aid if land policy is not reformed, and the aspect of aid and conditionality prevailed through the enactment of the Act.

The work of Hall (2011) and Borras (2013) highlighted how aid has opened doors to exploitation and grabbing of land in Africa. For further clarification on why the donor community would be interested in African land, Polanyi (1940) demonstrated how mercantilism has helped redefine land. In his argument, land was not a commodity but part of nature that formed the basis of human existence. Nonetheless, mercantilists transformed land into a fictitious commodity, thereby increasing its demand and intended purpose. It is this transformation and redefinition that increased its demand, hence land barons curve up Africa disguised under foreign investors and donors.

### **2.2.3 Land grabbing in Africa**

Kachika (2007: 8) suggests that "research in Ethiopia, Ghana, Mali, Mozambique, Senegal and Tanzania indicate that land grabbing is currently a big challenge for African countries because of increased interest by foreign agricultural investors to acquire massive pieces of land in rural Africa." More than a hundred years ago, European colonists carved up Africa. This was guised under a philosophy that claimed Africans needed to be civilised and that the land which they owned was under-utilised. In actuality, Africa provided a very opportune supply of raw materials and cheap labour. Infrastructure such as ports and railways were built back to European markets to feed that industrial revolution and develop the colonial elites. Presently, these

colonial plans are being set out once more by affluent governments and big businesses that are strategically placed to take control of African land and resources.

The full appreciation of the meaning of contemporary land grabbing, its characteristics, drivers, implications for the indigenous and the extent to which governments are willing to go cannot be achieved unless contemporary land grabbing is placed in its historical context. Contemporary land grabbing was first witnessed in the early twenty first century, with around 37 to 49 million acres of land intended to be acquired in the developing countries (Lee, 2015). This move towards land grabbing was whetted by price hikes in food and fuel in 2008 (Lee, 2008). States were motivated to move towards investing land; in order to curb increases in food prices and provide bio-fuels as an alternative to natural gas fuels (Lee, 2008). Developed countries and multinational companies are the ones involved in land grabbing in developing countries (Borras et al. 2012). The justification for this is that developing countries have a lot of under-utilised or unused land (Borras et al. 2012). This historical background helps in this research study to show the nature of land grabbing, role players and likely, the victims.

The two authors, Edelman and Leon (2013), state that placing contemporary land grabbing in its historical context is important for three main reasons. Firstly, land grabbing tends to occur in waves depending on historically specific regional and global dynamics of capital accumulation. Hence, each wave has to be taken in its historical context and moulded by pre-existing social formation, local and regional particularities. These factors may include formal and customary land tenure, historical dynamics of class relations, family networks, gender and settlement patterns, environmental features, actual or potential infra-structure, state policies, and international treaties among other elements.

Secondly, the authors state that history of land grabbing is important for purpose of measuring its impact. Recent studies of land grabbing have been critical of land grabbing negative consequences - like poor rights of workers and poor access to water (Davies, 2015: 32). Some of these problems from the findings of these authors are

that states predate the land grabbing. Finally, contemporary land grabbing is placed in its historical context because it is in itself history – conceptually and methodologically speaking – of the present. The present moment should be viewed as a product of history. The authors, basing on that historical approach to land grabbing, define it as a cyclical phenomenon and a product of global accumulation process that create both space for capital and new social groupings like entrepreneurial sectors, labourers, displaced people and contract farmers.

Contemporary land grabbing was first witnessed in the early twenty first century, with around 37 to 49 million acres of land intended to be acquired in the developing countries (Lee, 2015). This move towards land grabbing was whetted by price hikes in food and fuel in 2008 (Lee, 2008). States were motivated to move towards investing land in order to curb increases in food prices and provide bio-fuels as an alternative to natural gas fuels (Lee, 2008). The same author found that these multinational companies and transnational business entities, various investment banks and funds are normally backed by investing countries and international monetary institutions like the World Bank. They are also supported and protected by the targeted governments, and this weakened the position of local people and worsened their land tenure problems.

In following the effect-oriented approach, Lee finds that the effect of land grabbing on indigenous people with lack of access to education is that they fail to find alternatives which result in unemployment and loss of self-sustaining income. As a result of such loss, Lee holds that these indigenous people revert to committing crimes which result in societal degradation. With respect to the gendered perspective of land grabbing, Lee holds that this worsened the conditions of women who had a hard time to access the land. Their income generating ability is worsened by loss of land.

Akram-Lodhi's (2012) research study on contextualising land grabbing made the same findings as Lee above. A case study of a South Korea land deal with Madagascar was used, with an attempt to find the pushing factors behind South Korea to engage in land grabbing deals with developing countries in Africa. The research found that the global

food, fuel and financial crisis of 2008 generated macroeconomic instability, the upward spiral in cost of food imports and could result in inflationary pressures, maybe possible problem of balance of payments arising from deteriorating trade balances and deepening government budgetary imbalances in land poor countries like South Korea. The author, in this research study, went further to investigate the causes of hike in food prices.

In the findings of such research, Akram-Lodhi, discovered that the hike in food prices was a result of the rise in income in developing capitalist states; the state mandated increased use of bio fuels and the demand for agriculture products. Land grabbing was then used by poor land countries in order to get out of the above stated crisis.

Ssekandi (2013), in explaining the causes of land grabbing in Africa, states that land grabbing in African developing countries is motivated by a fragile land tenure system. In explaining the theory of fragile land tenure system as a motivation for land grabbing in Africa, Ethiopia is used as an example. The Ethiopian Constitution states that the land is owned by the state for the benefit and easy access by all citizens. As a result, the sale, mortgage and exchange of the land by individuals is prohibited. The author, however, argues that this instead leaves the people at the whim of the state as the owner of the land can easily dispossess them of the land and give it whomever s/he pleases; which, more often than not, happens to be foreign investors. Ssekandi's research on motivational factors of land grabbing in Africa is very relevant to the main focus of this research that concerning land grabbing in Lesotho as promoted by the 2010 Act, it must be determined if the same factors as poor land tenure system in Lesotho also promoted land grabbing.

On the main drivers of land grabs in Africa, Milne (2013) revealed that in Cambodia, for instance, land grabbing was facilitated by capitalists (wealthy entrepreneurs and state officials) through purchasing or snatching it from the people. Cambodia's interaction with external forces exposed it to opportunistic behaviour of the wealthy. Land governors also played a huge role in redefining land from a source of livelihood and identity to being a commodity and a tool that they can use to get wealthier. The

study discovered that land alienation and commodification has occurred either through force, often associated with the abuse of state power, or through the endogenous processes of intimate exclusion and liquidation of land through voluntary sales (Li, 2010; Hall et al., 2011).

Ssekandi's (2013)'s lecture on land grabbing in Africa held that one of the motivating factors for developed countries to come for land grabbing in Africa is a fragile tenure system. It is stated in that lecture that, in the situation where the state owns the land on behalf of all citizens, it is found that it makes it easy for the state to dispossess them of such land and redistribute it anew. This is because the state is the owner of such land while citizens are mere tenants. This has created an environment that made African developing states prone to land grabbing. Hall and Scoones (2016) highlighted the active participation of states in land deals. Their argument was that in countries where land deals are predominant, states are not passive victims as they are not coerced to get into foreign capital by leasing the land to land barons. Instead, their participation is well calculated, weighing costs and benefits to maximize returns. Lesotho, like the majority of other African countries, shares the same sentiments as far as land is concerned. The only difference in all cases is the scale and extent. The study of land grabs in Africa helps locate Lesotho in the same context as its fellow member states, and to establish that land grabs are nothing new or unique to a particular state, but a common factor that almost every African state goes through. The challenges and drivers may differ from country to country, nonetheless, the concept is the same.

### **2.3 Foreign investment and land dealings**

The language of development and economic production is extensive in the justification of land grabs. Similarly to the nineteenth century colonialization, the present day flourish of land grabbing is purportedly well-intentioned by European and Western powers of the time. This scramble bears a striking resemblance to the nineteenth century colonial takeover of the African continent, which saw only Ethiopia and Liberia escape European control. Presently, the attraction to Africa is its prosperous natural resources (untapped land).

The language of foreign investment and economic growth in Africa, believed These schemes claim to support developments to agriculture and food security. However, the reality is that they are equipped towards helping multinational companies access resources and bring about policy changes to ease their own expansion into Africa.

The Millennium Challenge Account (MCA) is equally an international agency that aims to propel development in Africa. It emphasizes results and accountability, incentivises policy and institutional reforms that catalyse private sector investment (Leduka, 2011). The agency is said to play a prominent role in developing African economies through creating new economic opportunities alongside poverty reduction schemes. Similarly, Ghana, Burkina Faso, Cape Verde, Malawi, Mali, Lesotho etc. received a grant from the MCC as a form of aid to boost their economies through enhancing the use of land as an economic asset among other things.

#### **2.4 Land governance, why it matters**

Land governance relates to the rules and regulations of land, including, but not limited to aspects of land use and access. According to Wilford (2013 in Arezki et al., 2011) “the global political community suggested that the blame for large-scale deals lay with post-independence states themselves; it was argued that land grabs were happening in states where governance of the land sector and tenure security are weak” (cf. Arezki et al., 2011). While a sudden hike in food prices provoked the current land rush, the weak land governance structures made it even more prevalent. The World Bank (2012) defines land governance as the process by which decisions are made regarding access to and use of land and the manner in which those decisions are implemented. Governance of land has more to do with policies in place for land handling and access.

Governments with strong institutions and tenure to protect national territory and generate order are not prone to unscrupulous grabbing. Palmer et al (2009: 2) observes that weak governance is a cause of many tenure related problems, and attempts to address tenure problems are affected by the quality of land governance. On par with this argument is an example made by Wilford (2013) of Madagascar,

Sudan, Ethiopia and a few other countries that were portrayed as incapable of providing the type of tenure security, formal land markets or social safety nets that would protect their territory. The general argument is that weak land governance structures weigh heavily on the country's eligibility for opportunistic land dealings. FAO (2007) expands on this notion by adding that weak land governance, whether in statutory or customary tenure arrangements, impacts profoundly on the poor and may leave them marginalised by the law. They continue to reveal that poor land governance means that the land rights of the poor are not protected.

Set in contrast is good or strong governance. Li (2015) believes that governance structure depends on a country's development imagination. A country determined to propel development at any cost will sacrifice private interests in the name of public interest and economic growth. He continues to demonstrate that good governance structure will have clearly defined and separate laws guiding foreign investment. The laws must also entail public purpose and a fair compensation for the affected people. He made reference to countries like China, Netherlands and India, which have indisputable laws regarding foreign investment.

There are guidelines on how foreign investors acquire land, how they are expected to use it and how it is supposed to benefit the host countries. He affirms that strong governance involves several complicated elements that have to be present and managed properly. Issues around environmental and cultural implications are addressed by these legislations prior acquisition. Of these, he emphasised the importance of recognising and respecting tenure rights and safeguarding them, promotion and facilitation of the enjoyment of rights, providing access to justice and prevention of tenure disputes. He highlighted:

Generally, good land governance structures involve the legal recognition and enforcement of tenure rights, management of land use and transfers, management of public land as well as land administration that is responsible for safeguarding and facilitating land acquisition (Li, 2015: 4).

FAO (2007) also recognises the importance of solid structures on land governance. For them, the basis for good governance is the implementation of pro-poor and gender sensitive policies. However, they also acknowledge the importance of broad policy agendas that include: land administration systems that are effective, efficient and competent, policies that represent value judgements, policies that have clear preconditions for private investment and acquisition and land administration that can benefit the poor as well as promote economic development at the same and with the same effort.

Deininger et al. (2012) particularly emphasised the need for strong land governance framework in a rapidly changing world where land use and rights seem unguided. Issues like climate change, population growth, demand for food and industrial materials call for policy responses to toughen tenure security by creating conditions for economic developments and investments. For them, increased global demand for fertile land and unstable food prices necessitate countries to have in place functioning land management and clear policies concerning land acquisition in host countries. On the same view is Palmer et al. (2009)'s contribution on how increased competition for land calls for strong land governance framework. According to Palmer, competition for land starts in household settings when it becomes an issue on who is going to inherit the family property, then escalates to community level where neighbours quarrel about boundaries, each assuming entitlement to the land.

The competition further spirals to the national level when governments claim private lands for expansion of development projects. This then heightens when foreign investors and native governments compete over the same land for development. With poor land governance, this situation may lead to point where the powerful dominate the competition. The worst case scenario would result in a state capture, with a few individuals or companies directing public policy in their favour, hence they strongly believe that responsible land governance will have in it policies that limit corruption in land dealings and promote fairness. As he put it:

By contrast, when land governance is effective, equitable access to land and security of tenure can contribute to improvements in social, economic and environmental conditions. With good governance, benefits from land and natural resources are responsibly managed, and the benefits are equitably distributed. It ensures that rules and procedures of acquisition are clear, consistent, well understood and applied in a transparent manner to all parties involved (Palmer et al., 2009: 11).

Responsible governance involves establishing agencies that will monitor land use after acquisition by foreign investors. It also entails clear stipulations of how acquisition is going to benefit the natives. Aspects of job creation for local people and possible cultural and environmental implications are also addressed in responsible governance of land. The logic behind discussing land governance was, first, to try and establish the link between Lesotho's high dependence on aid and the donor conditionality. It was necessary to discuss why land governance matters in so far as the 2010 Land Act and the Millennium Challenge Compact are concerned. It contributes to the assessment of whether the Act was meant to benefit local interests and propel development or a state captured development by foreign investors to direct public policy for their own benefit.

Second, to illustrate why strong governance structures are essential for the protection of national territory against opportunistic land dealings and corruption, studies revealed that poor or weak land governance regimes in Africa encourage foreign investors to impose development projects in Africa.

## **2.5 Chapter Summary**

This chapter provided an analysis of land grabbing from a broad perspective to the context of Africa. It was established from literature that there are different forms of land grabbing. Land grabbing is evidently not a new phenomenon in the African continent. The current land rush in Africa bears a striking resemblance to the historic scramble that took place during early colonialism, although the degree, mode and drivers differ. The current rush is a result of a global hike in food prices and bio fuels. As put by wealthy states and foreign investors, lack of development in Africa is a result of under-

utilization of land. Consequently, investors take up African land in an effort to propel development through foreign investment.

Nonetheless, foreign investment requires of African states to either amend or reform their land policies in accordance with investors' interests. Foreign investment and land reform in Africa that is initiated by investors or donors, have yielded negative results for the indigenous people. For one, the produce from African land occupied by investors does not benefit or improve food security in Africa. After harvest, the products are exported back to investors' home countries. The raw materials then later get exported to Africa as finished goods at a high price. Two, through policies, reforms and investment, poor local people are left marginalized.

The land that was initially owned by Africans, said to be unused or underutilized by new land policies, is now leased to foreign investors and rich countries, leaving natives landless. Foreign investment appears to benefit investors and not host countries as intended. Further perpetuating this practice is the fragility of African economies. Most African countries, Lesotho included, depend highly on aid, and this gives donors an upper hand in policy agendas. The high dependence on aid saw Lesotho's land reform, the 2009 Land Bill couples with the 2010 Land Act being immensely influenced by the MCC.

The chapter established that strong land governance structures are vital to any land tenure regime. Land governance challenges in Africa make it more prone to opportunistic behavior. Africa is seen as an untapped arena for natural resources because it has policies in place that actually allow foreign investors to penetrate. Watertight policies curb investors' interests in a country, a tribute Africa lacks. It is important for African states to strengthen land governance and minimize the possibility of loopholes in their land policies to avoid the rife of grabs that has been experienced in the last decade.

In Lesotho, the 2010 Land Act (a product of the MCC) seems to put economic development ahead of addressing the poverty levels in the country. The Act also entails elements of dispossession where it makes it legal for the state to take land from the people if it so falls under categories of alienation. Despite foreign investment being very important, the state seems to uphold it above the protection of its citizens. The reason behind this view is that the state's instinct is to dispossess the citizens of the land that was not used for three years without looking at the cause or try to provide professional assistance. This form of dispossession does not take into account those with immediate interest in the land.

## **CHAPTER THREE**

### **RESEARCH METHODOLOGY**

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#### **3.1 Introduction**

This chapter is a detailed discussion of the research methodology adopted by this study of land tenure reforms and poor rural communities. The area of inquiry influenced the type of methods appropriate for this study and was intended to answer specific research questions. The chapter gives a clear and comprehensive framework of research methods used for data collection, data analysis and adherence to research ethics. Methods adopted in this study were useful for tracing and analysing Lesotho's land governance reforms in relation to their implications on land access and livelihoods of the poor Basotho households that currently hold rights to the land that was subject to reform. It particularly provided details on how I went about studying the phenomenon under investigation.

This chapter outlines the research design adopted by the study. It also describes the research approach and the rationale behind choosing the approach. Following this is the discussion of data collection methods and techniques adopted, together with data analysis method. The chapter also describes ethical considerations that the study adhered to and challenges encountered in carrying out the study.

#### **3.2 Research approach**

By tracing and analysing Lesotho's land governance, the study adopted an inductive approach, and although it was not historic in nature, it was essential to briefly tap on the history of the country's land governance matters to arrive at the current land legislation, which is the subject of this study. I employed this approach to gain an in-depth understanding of how land has been administered, owned and used in the country in an attempt to comprehend the implications of the adoption of the neo-liberal approach to land administration. This was guided by the inherent neo-liberal provisions in the country's Land Act of 2010. In Lesotho, post-independence governments have tried to implement several land policies and initiatives to improve land governance in the country, with little success. The current study asked questions around land

governance and challenges associated with the governance system that is in place. To answer questions about the position of the government, I proceeded by employing the above-mentioned approach. This was useful for sequential tracing of all the initiatives that governments had taken to harmonize land administration since the current Act and its implications could not be viewed independently of its predecessors.

This approach called for a particular research design that would tap into the information required. My dissertation, therefore, adopted a qualitative research design. Qualitative research could be described as an interpretive and naturalistic approach to the world (Denzin & Lincoln, 2000: 4). Interpretive research helps investigate the mode in which people make sense of the events in their lives. The evolution of the 2010 Land Act, as the key event, needed to be understood comprehensively to ensure the success of the study. My objective was to acquire a deep understanding of realities about land holding, use and perceptions through gaining insight into the situation. Qualitative research method therefore afforded an opportunity for deeper inquiry on the phenomenon. According to Creswell (2005:76), the goal of qualitative research is to explore and understand a central phenomenon, which is a concept or process.

The meaning of land grabbing, as a concept, defined in chapter one, is placed within the context of neo-liberal policy reforms (as a process) and their implications on poor rural communities. In as much as a quantitative method could have been useful for comparing and analysing different post-independence policies, either by identifying the characteristics of policies and their implementation or by exploring possible correlations amongst them, the reality that people's perceptions, emotions and behaviour towards land kept changing with every single policy introduced paved way for qualitative analysis. The qualitative method aided me to study my subjects in their natural settings, making it virtually impossible to manipulate variables.

To answer questions around households, land and landholdings, a quantitative inquiry would have been appropriate because of its objective nature. Research must be limited to what we can observe and measure objectively, that is, that which exists independently of the feelings and opinions of individuals (Welman et al., 2005).

Consequently, the results from a qualitative study can be logically and generally validated. However, its failure to provide specific explanations and answers deemed it inappropriate for this particular study because I wanted to get an in-depth understanding and analysis of the potential dispossession inherent in the new Land Act of 2010 that was apparently influenced by the donors.

Welman (2005) gives an outline of how anti-positivists believe that it is inappropriate to follow strict natural-scientific methods when collecting and interpreting data. Their argument is that quantitative method is applicable in the study of science not in the phenomena of human behavioural sciences. Its failure to interpret perceptions and beliefs rendered it inappropriate for this particular study because perceptions and beliefs about land and landholding were very critical for my study.

An economically disadvantaged country, with minimal resources to sustain its population, Lesotho has been seen to receive aid (financial, food, military, human resource etc.) from different parts of the world. The Republic of South Africa for example, would provide employment for the majority of uneducated Basotho men. Through their labour force and remittances, Lesotho would invest money to either propel development or the general day-to-day general administration of the country. Germany and other countries also provide food aid to Lesotho, and Britain has helped with budgetary support in the past. With all these factors at play, the qualitative research method, due to its ability to make an in-depth inquiry was the most logical method to be employed in this research.

### **3.3 Data collection methods**

The study explored a broad spectrum of issues related to land, its governance, ownership and use patterns and communities that occupy the land. Some of the information is readily available in the form of both published and unpublished literature, yet some information is not readily available and required extensive primary research. The study therefore relied on a range of both secondary and primary techniques. The use of several methods is referred to as triangulation because it is believed that use of several methods provides a better understanding of the phenomenon being

investigated (Christensen, 2015). The study adopted three methods of data collection, namely, the review of key literature and documents, key informant interviews and a case study of a rural community where land holding patterns are communal or traditional.

### **3.3.1 Review of key literature and document analysis**

In any research that seeks to understand historical issues, the most logical thing to do before focusing on primary sources is to review the data that has already been collected and documented for purposes different from the issue at hand. It was very important for me, therefore, to familiarize myself with related literature to my study. It was through the review of key literature and documents that I was able to identify and better define my fieldwork. It also assisted me to see the Land Act of 2010 differently from how I had seen it before, and helped to reposition my analysis. It allowed me to develop an approach to the problem, thereby making it suitable for me to answer certain questions at the macro level analysis. These documents included books, academic articles, policy documents, progress reports and Hansards. They were all in the public domain, and accessibility was not a problem.

There is abundant literature on land, governance over land and agriculture in Lesotho, ranging from landholding patterns to the legislative frameworks guiding land and land rights. There is also relatively limited literature on Lesotho's dependence on aid for budgetary support. However, there is a notable lack of research relating to the dispossessions of the poor through donor instituted by the donor community. I drew selectively on the secondary literature, which provided a base within which to position the research questions at the micro-level of research. I selected literature specific to land and agriculture from a wide range of related topics.

My approach to the literature targeted three broad areas: the Lesotho state and its relationship with donors, land and agricultural policy, and local level dynamics. The review of key literature and documents was the main method of data collection in this research, supplemented by key informant interviews and a case study. Bowen (2009) explains that document analysis is often used in combination with other qualitative

research methods as a means of triangulation. That is, the researcher is still to draw upon other means and use document analysis as a supplement to at least two other methods. Document analysis is unobtrusive and non-reactive and can yield a lot of data about values and beliefs of participants in their natural surrounding (Maree, 2007).

The review of key literature and document analysis provided clarification on certain issues, not only from a theoretical perspective but also from a broad understanding of the subject. Policy documents, in particular the 2009 Land Bill and Hansards from the parliament, provided valuable information on what transpired in the parliamentary debates regarding the formulation of the 2010 Land Act, the subject of my study. Policy documents also provided an insight on negotiations between the government of Lesotho and the MCA.

It is worth mentioning that the use of Land Acts 1973 and 1979 assisted in understanding how the government came to implement the 2010 Land Act. There are multiple land legislations that the country implemented post-independence, these include the 1967 Land Procedure Act, 1973 Land Act, and 1973 Administration of Lands Act. These legislations aided the study in two significant ways. First, in explaining how the current Act differs so sharply with its predecessors in terms of land ownership and access to foreign investors. Second, they provided a chronological trace of the country's land governance challenges. These legislations put to light how land administration has always been a problem in Lesotho and why the majority ended up being a wild-goose chase.

It would be great injustice to talk about land in Lesotho and modestly pass over the Laws of Lerotholi, the basis of all legislations, which most policies to present, draw inspiration from. These laws informed the study in areas around landholding and usage, legislative frameworks guiding land rights, the power of traditional authorities over land administration, which ultimately led to the implantation of the Chieftaincy Act of 1968. Pule and Thabane (2004) and Matlosa's (1999) work immensely contributed

to the study in demonstrating the history of land administration and reasons why efforts to harmonise it went up in smoke.

I utilized varying literature across chapters, depending on the demands of each. However, the review of key literature and document analysis was helpful in the macro-level analysis. I therefore conducted primary research to comprehend the local level dynamics and understand the issue at hand from a real life context. There were questions I could not answer from the review of literature, either because the literature was not specific to my problem or not recent enough for me to make generalised analysis at the time of my research. Secondary data is readily available, not time consuming, less costly and convenient to the researcher. However, Kumar (2011) highlights that the validity of information from secondary data may vary markedly from source to source, by this means, increasing the possibility of biasness.

### **3.3.2 Primary research**

To address my questions about realities of landholding, land-use, land reforms and the role of donors in the country's land reform process and the dispossession of the poor, I used two primary research methods: key informant interviews and discussions, and a case study of a selected rural community in Quthing District. I brought the key informant interviews as my second method to fill the gaps from the review of literature and documents. I brought the case study last to provide a micro-level analysis of an otherwise macro level phenomenon.

#### **3.3.2.1 Key informant interviews**

The focus of my study was to unearth and understand broad policy implications on the rural poor and their livelihoods. This, therefore, called for consultation with individuals within the Lesotho society who have knowledge on the history of land governance, current land affairs and the MCA. This technique was used as a second method to document analysis to supplement the findings from the literature. Unlike the subjects of my case study, who were randomly selected, I used purposive sampling to identify 10 experts whom I interviewed. Christensen (2015: 509) describes purposive sampling

as a technique where a researcher specifies the characteristics of the population of interest and then locates individuals who have those characteristics.

They were purposively selected on the basis of their knowledge and expertise on land issues in Lesotho. Age and gender were not really a factor in this category, except that people who had expert knowledge on the subject of my study happened to be above 18. Land ownership and citizenship were also not a factor. Unlike units of analysis for the case study, these were not expected to be from a specific cluster or community. They were members of the civil society from a wide range of organisations and areas of key interest. Their engagement in agriculture did not matter. The contribution of these units of analysis was used in the study as key informant interviews.

To ensure that my units of analysis covered all possible sides of land matters I interviewed experts from civil society and traditional leaders (institution of the chief – has played a critical role in Lesotho's land and agriculture and land administration, hence they formed part of the experts). I chose them not because they represented the reality of the entire population affected by the implementation of the 2010 Land Act, but because they were experts in land issues. According to Tremblay (1957:56), key informants allow a researcher to develop a definition of dimensions involved in the research to discover boundaries of communities, identify extremes and increase knowledge of the problem.

Key informants had first-hand knowledge on the subject matter of my study. It was very critical for me to extract as much information as possible, hence the use of face-to-face unstructured interviews. The choice of unstructured over structured interviews was influenced by the depth of information that I sought from these expert individuals. In structured interviews, I would be expected to adhere to a set of predetermined questions, an attribute that would have hindered me from explaining or clarifying some of the questions to the subjects. My study was designed to allow me to cover as much information as possible without being constrained through a question and answer kind of schedule. However, this does not mean that the process was uncontrolled; instead, control was achieved through the use of an interview guide (see appendix 1).

Interviews were guided by themes that emerged from the review of literature though, as aforementioned, key informant interviews were used to supplement data from the literature. According to Kumar (2011: 145), unstructured interviews allow the researcher to formulate questions and raise issues spontaneously, depending upon what occurs in the context of the discussion. Unstructured interviews allow for an in-depth treatment of issues by respondents and have an advantage that even those issues that were not covered by the questions may be addressed.

In instances where respondents could not understand questions, or provide brief responses, I was able to explain and encourage them to consider the question further. I conducted these interviews in the natural settings and surroundings of the respondents. This made them more relaxed and comfortable, enabling me to obtain information from observation of non-verbal reactions. The nature of questions was open-ended. Respondents engaged freely and spontaneously with the questions without me having to guide them or influence their responses. This nature of questions also allowed me and the respondents to discuss some topics in great detail, and probe them to elaborate more on the original response. Christensen (2015:68) explains that in unstructured interviews, research questions are allowed to evolve, or possibly change during the study because it is usually focused on exploring phenomena. Due to this flexibility, I was able to address issues that were not covered in the interview guide.

Key informant interviews generated important data at the national level analysis. Their opinions were not a reflection of a lived reality, but of people who have first-hand expertise on land issues and the Land Act 2010 process. Some were key actors that negotiated the compact. I gathered crucial information from the chiefs because in Lesotho, chieftaincy is the longest standing institution that citizens still hold dear to their hearts in land governance despite the implementation of the 2010 Land Act. Chiefs played a critical role in Lesotho's land and agriculture and land administration. It was, therefore, essential to obtain information from this institution. The chiefs and

headsmen addressed questions around land and land tenure problems, the history of landholding and the challenge of modernizing landholding efficiently.

My study addressed with the implications of the 2010 Land Act on the poor rural communities. My hypothesis was that the Act was largely influenced by the donors, particularly the USA, through the MCA. This ultimately called for insight from experts in this area. Accordingly, government officials from related departments and officials from Lesotho Millennium Development Agenda (LMDA) and Land Administration Authority formed part of the key informant team. They provided important information on the role of the United States of America in the formulation of the Millennium Challenge Account (the 2007 Compact) in Lesotho, and the conditions that accompanied the signing of the compact. These key informants were also helpful in demonstrating the role and power of the Government of Lesotho in the compact negotiations.

Politicians, in government and opposition, also provided information on the area of their proficiency. The contribution from the media and policy makers enlightened the study in areas concerning Lesotho's dependence on aid for budgetary support, land reform and the position of donors, aid, conditionality and policy choices. I discovered through these interviews that some government officials who were against the implementation of the 2010 Land Act were given death threats, which ultimately left the government no choice but to implement the policy.

Through key informant interviews, I was able to explore varying viewpoints around the issue of land. I discovered adversities the government endured over the years with land administration, due to unforeseen and well-calculated jeopardies. I also uncovered how different people within the same society perceive the issue of land reform and its implications. It was through these interviews that I realised how people can have different ways of assessing reality, this enabled me to take account of the complexity and incorporate it to the real world context. Some of these informants were part of the negotiations of the policy reform, they provided an insight on what actually transpired during the negotiations and who had what power in the process. Interviews

were recorded with key informants' consent, and in situations where recording was not achievable, I took notes during the interview and immediately thereafter.

### **3.3.2.2 Case study**

Quantitative research methods (through survey technique) are based on universal validity, meaning that results collected through this method can reveal generalizable findings for a large group of people. However, it has been criticised for its inability to give precise focus on individual cases, hence in this study, I employed a case study approach. Shuttleworth (2011) defines a case study as an in-depth study of a particular situation rather than a sweeping statistical survey. It is a method used to narrow down a very broad field of research into one easily researchable topic. Case studies are specific explorations and inquiries of individuals, which can be on groups, cultures, communities or even programmes (Lunenburg & Irby, 2008).

According to Yin (2009), a case study enables an investigation into a phenomenon in its context for better understanding. It allows in-depth analysis tailored to the unique conditions and locations. Case studies provide a unique example of real people in real situations, enabling readers to understand how ideas and abstract principles can fit together (Nisbert & Watt, 2006; Cohen et al, 2000: 187). One of the assumptions of case study research is that multiple realities are socially constructed through individual and collective definitions of a situation (McMillan & Schumacher, 1993).

I used the case study as a third source of information, through non-participant observation and non-scheduled interviews. It formed the core of my study together with the review of key literature and key informant interviews. Even so, the case study and key informant interviews were of secondary significance to the review of key literature. I brought the case study last to afford a grounded analysis of the landholding realities of the people. I therefore employed it as a source of comparison between documents and reality. It provided answers to specific research questions that focus on local level dynamics. I chose this specific community because it met the criteria of a rural community where land is held under the communal tenure system. The focus was on a rural community where land is held in common, and the community depends

on natural resources for its sustenance. Such a community stands to lose land if the provisions of the Land Act are implemented. In total, there were 50 participants, one person per household, used for the case study technique. The 50 participants were a reflection of the entire community in terms of demographics. In this way, the case study enabled me to elicit the experiences of households in the Masitise community (as a fraction) instead of rural communities in the country.

For my study, a case study was important for developing different views of reality, including the awareness that human behaviour cannot be understood merely as an act that is driven by a rule or a theory (Flyvbjerg, 2006: 222 in Starman, 2009: 38). Case study research is effective in approaching phenomena that are less understood, ambiguous, fuzzy and even chaotic sometimes (Thorpe & Holt, 2008: 38). Thus, the case study became appropriate in answering questions around land, landholding and perceptions on land and the reforms.

At the case study level, participants comprised of both men and women over the age of 18 years. The specification on age was important because citizens below 18 are not allowed to hold title to land in Lesotho. Including both men and women was a means to move beyond conventional beliefs that land rights could only be given to male citizens in Lesotho. These were purposely selected to understand different perceptions and values that households have over land that they occupy, regardless of whether they use it or not.

Prior to conducting my case study, I sought permission from Chief Salemane, who then introduced me to the community in December 2016 through a public gathering. Although the day of the introduction was not meant for data collection, a few households approached me to discuss briefly what my interests and intentions were, which the chief had already mentioned anyway, and to also invite me to the fields to see how they carry out their day-to-day activities. This brief interaction with households helped me to monitor their livelihood activities. observation; it added substance to the research and its contribution should not be overlooked. Through this, I was able to see households' interaction and use of the land they owned. On that same day, I got to

interact with people who did not end up forming part of my subjects because of random sampling. However, their perceptions about land eventually helped me understand better the themes that emerged as I continued conducting the research.

At the case study level, a range of techniques were used. To familiarise myself with the community and understand the physical geography, I conducted community tours. I used three different techniques at the case study level: community tours, non-participatory observations and both guided and unguided discussions. This was to ensure that I get a thorough understanding of the environment and conditions surrounding community members. This comprised farming and non-farming households. The modes of land acquisition by these households were also different. The discussions provided lived realities of people and information that could only be known through residency in the community.

I conducted three visits per household, and the focus was only on adult members. The discussions were generally open-ended. I would ask households about their perceptions about the land they hold title to, and they would go on to narrate how their ancestors entrusted them to take care of the land in their absence and how it should be transferred through generations. This is where I gathered that land was not just a livelihood asset for them but a link between them and their ancestors. I took notes during the discussions that I would later transcribe when the interviews were over. I also used a tape recorder in consultation with the households. Due to the detail and length of the discussions, I would seek permission from households to use a recorder for accurate transcription.

With community tours and non-participatory observations, I took note of different types and sizes of both agricultural and non-agricultural land. Of the things I noticed were somewhat fertile and non-fertile land, valleys, farrows, fields (abandoned and active) and houses. These features were significant as they provided insight on the type of land and land use in this community. I took notes and photographs of my observations that would later be used for data analysis. Non-participant observation added substance to the research, and its contribution should not be overlooked. Through this,

I was able to see households' interaction and use of the land they owned. I got to interact with people on a personal basis, and their perceptions about land eventually helped me understand better the themes that emerged as I continued conducting the research. The case study began in December 2016 and ended in February 2017.

### **3.4 Data analysis, ethical considerations and fieldwork challenges**

#### **3.4.1. Data analysis**

The analysis of data in this study was largely influenced by the research design I adopted. Kawulich (2015: 27) defines data analysis as the process a researcher uses to reduce data to a story and its interpretation. The qualitative nature of my research questions inevitably called for qualitative data and collection methods. Consequently, the study adopted a thematic data analysis approach. Ibrahim (2012: 4010) explains that thematic analysis used to analyse classifications and present themes (patterns) that relate. Data needs to be arranged, ordered, and presented in some reasonable format that permits decision-makers to quickly detect patterns in the data (Patton, 1990: 64). In terms of classification, data was then organised and reduced by breaking it into analytic units, categories and themes. I later described it through developing comprehensive descriptions of settings and participants. Data was therefore presented in clusters to form themes that were used to structure the information.

Essentially, I transcribed and wrote memos about the data I obtained from the field. Combined with the review of key literature and document analysis, I simplified them into points. My thematic data analysis involved three stages. The first stage entailed developing preliminary themes through a coding process. This is a way to organise and sort data through the use of codes. Codes serve as a way to label, compile and organize data; they also allow the researcher to summarize and synthesize what is happening in the data (Theron, 2015). The second stage dealt with establishing relationships within preliminary themes. I also used codes to label related themes. It is through this linkage that I developed the basis for analysis.

The third and last stage was where I developed two broad themes that were: land governance and the search for an appropriate model and dynamics of land among households in a rural community. These themes formed the basis of this study. These two broad themes were a result of four major themes: Land tenure regime, Lesotho's land governance challenges, Lesotho's over-dependency on aid and the MCA and its influence on policy agendas in Lesotho, respectively. I used these themes to generate the two broad themes mentioned above that form the core of the data analysis section. There was, nonetheless, data that was used in its pure form for the purposes of emphasis and support of arguments.

### **3.4.2 Ethical considerations**

Mafunisa (2003) and Mathebula (2003) define ethics in research as the branch of philosophy that deals with values that prescribe human conduct in terms of what is wrong and right for specific actions and to the good or bad of the motives and results of such actions. Ethical standards promote values that are essential to collaborative work such as trust, accountability, mutual respect and fairness (Resnik, 2015).

Conducting research of any sort that involves human subjects has inherent ethical issues in it. Most often than not, people get a bit uncomfortable indulging a stranger with their personal information. This might emerge in the early stages of data collection where the researcher has to gain access to the population of interest. To address this issue, at the case study level, I chose a community that I was familiar with, and to formalise my entry, I requested a letter of introduction from the university, which I produced to the chief to seek permission to conduct my study. At the national level (key informant interviews), the same letter from the University was produced to relevant bodies to also seek permission to carry out the study. After being granted permission at the community level, the chief introduced me to the community. I then had to ask for permission from households to participate in the study. Alongside the introduction letter was the information sheet (see appendix ii) that explained my research, its intents and purposes which the participants kept afterwards.

Subsequently, participants were informed about their rights, their role in the study and that they are free to opt not to participate at any point during the study without negative consequences. There were incidences where transcribing notes was not practical, like when I was conducting community tours and when I had detailed discussions with key informants. In this case, I had to obtain consent from participants to record our discussions. I explained to them that the records will be destroyed upon completion of the study and that the findings of the research will be stored safely at the University of Pretoria for a period of 15 years before they are made open to the public. In an event where results happen to be published, I explained to them that their identities will be hidden. After explaining all these measures to them, I then asked them to sign consent forms (see appendix iii) that I took with me after the study. I also made it clear that signing consent forms was not mandatory for participation.

In any study that involves extracting information about people and from people, there are issues around privacy, and some people may not wish their privacy to be made public. Others may wish to participate and want to remain anonymous. In terms of anonymity, I assured participants that their privacy will be maintained through the use of pseudonyms instead of their identities and those of their households. In this way, even I would not be able to link responses to people. There is also an issue of honesty. Conducting this study, I did not deceive, trick or coerce people into participating through false promises, and nowhere in the process did I make them believe that they were going to be remunerated for their participation.

The other factor in conducting research among people is maleficence. I did not, in any way, harm anyone in the process. Respondents were not manipulated and cajoled during the interviews. All human beings deserve to be treated with dignity and respect, therefore, it was my obligation to respect that dignity and treat respondents as ends rather than means to ends. I was also cognisant of the risk of harm to self and to respondents. In terms of respondents, harm may be both physical and non-physical, including damage to their reputation.

I took care of this by keeping information safe and through use of pseudonyms. I am well aware of how much data can be manipulated to destroy people's lives, especially in this age of advanced technology, hence I made it my ultimate goal to protect people's identities. The information I gathered from people will be protected and kept at the University for a period of fifteen years before it is made available to the public for further research or reference. My study did not involve life histories of participants. With regard to self, I enlisted the assistance of a local person who was accompanying during household visits, community tours and attendance of community gatherings.

### **3.4.3 Fieldwork challenges**

When dealing with human subjects, one should always be cognisant of challenges of some sort, even more so when such subjects are strangers. I encountered numerous hiccups during my fieldwork. I would not be doing justice to this research if I do not mention some of these since they partly defined this study. Some of these made me to almost lose hope in the completion of the study. The most predominant challenge I faced carrying out this research was lack of funds. I had to incur travelling and accommodation costs to and from the community of Masitise. This also applied when I had to travel to Maseru to conduct key informant interviews. It became a bit of a stretch for me to make ends meet and successfully complete this study.

When gathering information from government Hansards, I was not allowed to leave with the documents. I could either write down the information that I needed or make photocopies. Due to the amount of time allocated for the review of Hansards and other policy documents from the parliament, writing down was not feasible. I, therefore, had to make photocopies from my pocket, which adversely affected my already tight budget. To reschedule appointments with the subjects, I would either make phone calls or send emails through the internet shops, which further required funds from my pocket.

Accessibility, at both local and national level, was also a problem. At the case study level, poor infrastructure (poorly constructed roads) hindered me from acquiring data at a time I was hoping to. I had to walk long distances to get to households where

research had to be conducted in an effort to avoid bias by focusing on those households that I could easily access. With key informants, accessibility went from bad to worse. I spent three weeks trying to secure an appointment with one government official who also happened to work at the parliament and was part of the negotiations between the government of Lesotho and the USA during MCA discussions.

I had made prior arrangements to meet up. Upon arrival, I was informed that such an official was out of office on personal commitments. The other incidence involved a key informant who was ostensibly out of reach because their child had misplaced office keys. Accessing some of these key informants was a daunting experience that almost discouraged me from pursuing them, but I managed to keep my eye on the ball because I chose them for a reason, and their contribution to the study was valuable.

Due to accessibility challenges, the study eventually took longer than expected. I initially planned to take two months in total to conduct both the case study and key informant interviews. It ended up stretching to almost four months. In an event where securing an appointment was not a hurdle, time would be a factor. I would have to wait for several days or weeks before conducting an interview. Intimidation from other key informants was also an issue. Some government officials who requested to remain anonymous warned me about the sensitivity of the subject and advised me to drop the subject and focus on something else that would benefit me as an individual instead of focusing on policy issues that I could not change.

### **3.5 Chapter Summary**

This study adopted a qualitative methodology; therefore, the approach and data collection methods also took a qualitative nature. A range of methods were used to collect data. Review of key literature was used as the main method of data collection, followed by primary research that comprised key informant interviews and a case study. The last two methods held the same value in so far as their contribution was concerned to the study. The rationale behind choosing every method was discussed in the chapter alongside their strengths. While the review of key literature was useful

on the macro-level analysis, primary research proved to be significant in portraying realities of people concerned, especially with the case study method.

The techniques adopted in the case study, which were, community tours, non-participatory observations and discussions (guided and unguided) provided an in-depth understanding of the issue at hand and provided information that would otherwise have been difficult to obtain had the research relied on documents and key informants alone.

The study adopted a thematic data analysis approach. After arranging and sorting out raw data, preliminary themes were developed through a coding process. The next step was to establish the relationship between themes which eventually lead to the development of two broad themes that informed the analysis of this study. These themes became the building blocks of this dissertation. This was followed by a discussion of ethical issues and how they were handled in this particular study. Lastly, the chapter highlighted the challenges that the researcher encountered in the process of collecting data. While these led to delays and frustrated the research process, they did not compromise the quality of the data that was collected since the researcher found ways to overcome them.

## CHAPTER FOUR

### LAND GOVERNANCE AND THE SEARCH FOR AN APPROPRIATE MODEL IN LESOTHO

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#### 4.1 Introduction

The land policies promoted in Africa during “the land reform decades” from the late 1960s to the early 1980s .....were all based on the premise that customary systems did not provide the necessary security to ensure agricultural investment and productive use of land. Because the lack of security was thought to lie in the absence of clearly defined and enforceable property rights, the appropriate policy direction was taken to be the state creation of such rights (Peters and Basset, 2007: 6).

As highlighted in the above excerpt, land and its reform have dominated the development policy agenda, particularly in Africa, where the land question remains unsolved. As Moyo (2003) argued:

Africa’s land and agrarian question have specific historical tendencies in comparison to its global incidence and a contemporary expression which has not been adequately elucidated by the plethora of ‘new wave’ land studies in Africa...

When focusing on the land question in Africa, key issues arise: legal duality in land governance (statutory and customary law) and related to this, the modern and traditional tenure systems. These are further complicated by the leaning of donors, particularly the World Bank, on what has come to be known as the ‘new wave’ land reforms. The donor community has over the years prescribed these reforms as a condition for poor countries to access aid. As a condition from the donor community, the majority of African states have enacted new land policies and land reforms.

At the heart of these reforms are concerns about access, control, investment, equity and regulation (Amanor, 2012). Lesotho is a good example of a country that found itself instituting land reforms in line with these guidelines approved by the donor community. The objective of this chapter is two-fold: first, it seeks to trace Lesotho land governance challenges and various attempts at land governance since March 1868 when Lesotho became a British protectorate. Second, it seeks to understand

external pressures for Lesotho to commit to a reform agenda that resulted in the enactment of the 2010 Land Act. The chapter builds from data from a broad review of literature and opinions from experts. It begins by discussing at length the challenges (both internal and external) that the government of Lesotho faced in land governance from the era of colonial rule to date. The second section deals with key players who shaped Lesotho's land policy reform agenda, and the third section discusses the interests of different actors to the land reform.

## **4.2 Challenges of land governance**

Lesotho's land and land governance challenges, like its agriculture, are well documented (Pule & Thabane, 2004; Quinlan, 1983). While the land question is not new, and has never been, a subject of large-scale conflict, like in other parts of the world, or of armed conflict between different races. For example, in Zimbabwe, it has remained a highly contested arena between traditional institutions and institutions of modern governance. Lesotho's land governance challenges are complicated by legal plurality that emerged after the country became a British Protectorate and imported the Roman Dutch Law from the Cape into Lesotho.

Until the enactment of the Land Act of 2010, various administrations, implemented various policy instruments in an attempt to move land governance from the traditional, which has long been seen as generating inefficiencies, to a much more modern system, but with limited success. These attempts were frustrated by internal contradictions in the land governance instruments. This section provides an analysis of these internal factors and begins by looking at the challenges emanating from legal plurality.

### **4.2.1 Legal plurality**

As has been the case elsewhere in Anglophone Africa, the Roman-Dutch became the main law of the land, and the court would fall back on the customary law in dealing with African cases (Ruppel & Ambunda 2011; Amoo, 2008). Thus, customary law was hugely utilized in the administration of rural areas, while common law was applied in towns and cities (Mahao, 2002). As Mamdani (1996) observed about the African situation in general, in societies where the chieftainship institution was retained, there

emerged a rather new and distorted customary legal system. Mohamed-Katere talks about the emergence of two forms of customary law: one used by the courts and another used by local communities (Mohamed-Katere, 2003).

The Basotho nation has adopted and utilised the customary land tenure system from the time immemorial. The customary tenure system was based entirely on customary practices and traditions. This system operated in a way that guaranteed every deserving citizen a right to land.

Customary tenure was based on the notion that land in Lesotho belongs to the nation and held in trust by the King. The King would then delegate to senior chiefs to help with land governance on his behalf. Chiefs had absolute power to allocate and revoke land if deemed necessary. The power over land governance carried with it the obligation to allocate to every married male citizen a piece of land. In an event where women were widows or unmarried, it would be up to the resident chief's discretion if such an individual deserves allocation or not. Allocation of land was meant for both agricultural and residential purposes.

Under such a customary tenure system, land was communally owned. Every member of the community was guaranteed a piece of land and enjoyment of *usufruct* rights. Ideally, customary laws are often not written or documented, which makes them difficult to interpret. However, in Lesotho, they were arranged and first recorded as part of the Laws of Lerotholi (Mphale et al., 2002). The Laws of Lerotholi are generally regarded as an authoritative source of the customs and traditions of Basotho, which are, explicitly, an integral part of the Basotho customary law of land tenure, as well as the rules of allocation and revocation (Leduka, 2004). Customary tenure regime, the power and duties of traditional leaders, were diluted when Lesotho became a British Protectorate in 1868.

The first actions taken by the British colonial administration from 1871 to 1884 was to break down the existing indigenous structures of government (Mofuoa, 2005). Notably, the British administration introduced the system of indirect rule, which was later reinforced by the use of dual legal system. This system comprised of customary law

and statutory law that was imported from the Cape as the Roman Dutch Law. The changes began in 1871 when the British administration implemented Rolland's recommendations to reduce the powers of chiefs in areas such as land allocation and to control the burgeoning commercial trade (Mahao, 2002). The dual legal system also introduced proclamations to assist in governance. With the proclamations, the legitimacy of the chieftaincy changed from the traditional political structure to the statutory institution, requiring the selection of those who were to be gazetted (Makoa, 2004). All the chiefs from the level of Principal Chief down to Village headman were to be appointed by the High Commissioner in consultation with *Morena e Moholo* (Machobane, 1990).

Under the Laws of Lerotholi, there was no difference between urban and rural land in Lesotho. The concurrent existence of common and statutory laws brought about a distinction between rural and urban lands. Customary laws were left effective for rural land administration and applied to the indigenous population, while statutory laws applied in urban lands. The concurrent existence of these two structures of law that inevitably used different rules and legal models to decide land cases yielded tension amongst commoners and authorities. Legal plurality had implications for land and its governance since in areas where common law applied, land tenure worked differently, and where customary law applied, the tenure was customary. Chiefs' land governance power in urban areas was diluted. They received statutory powers and duties relating to law and had to share functions.

#### **4.2.2 The Laws of Lerotholi and chiefs**

As we have seen in the previous section, the importation of the Roman Dutch Law from the Cape by the British administration did not lead to changes in how rural areas were governed. Rather, it led to legal duality where modern law and customary law operated in parallel. In Lesotho, customary law has a long pedigree, and is codified under the Laws of Lerotholi.

The Laws of Lerotholi are seen as an authoritative source of Basotho customs and traditions, which are explicitly an integral part of Sesotho customary law of land tenure,

as well as the rules of allocation and revocation (Leduka, 2004). The laws define how land is allocated, held and utilised. Under the Laws of Lerotholi, land cannot be private property, and rights to land are only *usufructuary* and as such, non-transferable.

Common people, who in this case were the ordinary citizens, had the right to access and use of land on condition that they maintain their political relationship with the chiefs and use land under conditions and reasons for allocation. The laws stipulated that land allottees did not have rights of ownership over land. Instead, their rights were limited over land for as long as they occupied and worked it; most importantly, the laws demonstrated the significance of owing allegiance to the chiefs to ensure access and use of land. However, the produce from and developments on the land entirely belonged to the person using the land, and if for some reason they were to relocate, then they would take with them all they invested in the land.

According to these laws, there were two main distinct groupings as far as land was concerned. There were chiefs on the one hand and common people on the other. The role of the chiefs was administrative, as they were expected by law to allocate land for agriculture and residency. Allottees had the responsibility to recognise the overlordship of the resident chief. In other words, allocation was every citizen's right, but came with it the responsibility to recognise and acknowledge the authority of the chief in question. Thus, while land belonged to the whole Basotho nation, the king was the trustee, the responsibility to allocate and revoke rights to land was delegated to senior chiefs and sub-chiefs. This administrative function gave chiefs too much power over land and their people, and could exercise arbitrary land allocations.

These laws supposed a political relationship between the chiefs and their people. The people had to pay constant adherence to the chiefs, otherwise land could be taken away from them. These laws allowed the chiefs to govern land according to how they saw fit or based on their discretion. It emerged from the study that:

Some chiefs would abuse their power and allocated more land to their associates or family. Other chiefs would go as far as revoking the land to reallocate it to their allies (int., Maseru, December 2016).

In as much as this was unfair to people who had been allocated land, chiefs were well within their rights to use their discretion to determine whether an individual is deserving or not.

These laws allowed chiefs to allocate land in their respective areas of jurisdiction. The most important issue was the availability of land. Consequently, the size and location of agricultural land was determined by three things. First, the needs of an allottee, second, the availability of land and lastly, the legal requirement that the chief had to be impartial in the process. Supported by the law, chiefs continuously abused their position:

There were incidences where chiefs would revise land allocation to individuals by blatantly specifying that chiefs had the power to revoke an allocation, in incidences where, in their opinion, an individual had more than enough land for their family's sustenance (int., Roma, January 2017).

The laws of Lerotholi were regarded as an authoritative source of land governance, and succeeding administrations in Lesotho drew their inspiration from them. The arbitrary rule of chiefs reached a point where citizens and the government got extremely uncomfortable. As a result, the government introduced a system of land issuers. Contrary to citizens' expectations, the government further exacerbated chiefs' power that they already inherited from the Laws of Lerotholi by making them sole appointers of land issuers.

Land issuers were elders appointed by the chiefs to help in the process of land allocation because of their knowledge of the land. They were more like the representatives of the people to ensure that chiefs do not give preference to their allies over the rest of the community members. The reason behind this was to curtail chiefs' power of allocation and maintain a certain degree of control. The Laws of Lerotholi gave chiefs much more power that was now deeply embedded in chieftaincy to an extent that they still abused their power even after the government attempted to curtail it through the introduction of land issues.

It emerged that chiefs continued to abuse their power of appointing land issuers. Predominantly, they would appoint land issuers who would obey their wishes, while on the other hand, the land issuers would favour their relatives, friends and those who would return favours. This system, which drew inspiration from the Laws of Lerotholi in regard to the power given to chiefs, proved to be a potential brooding ground for land disputes and was, therefore, abolished soon after independence. The legacy of absolute power given to the chiefs persisted even after government intervention to curb it.

There were events where commoners would launch a series of grievances about chiefs' land administration. An example was of one community that complained about the resident chief's arbitrary refusal to allocate land or the withdrawal of lands given to the elderly and widows. A host of literature works revealed that this power afforded to the chiefs resulted in a contest of who actually owns the land in Lesotho. Chiefs claimed to and acted as if they owned it. This was evident in their arbitrary rule. They did not challenge subjects' right to land, but they also treated it as though it belonged to them. Due to this misconception, disputes over land spiked in the country between chiefs and commoners, and amongst chiefs themselves.

#### **4.2.3 Proliferation of chiefs**

As mentioned earlier on, common people would complain about chiefs' arbitrary refusal to allocate land, or the allocation of the most arable land to their favourites (friends and family) and allowing certain people to utilise pastures and grazing land. Motlasi Thabane, a distinguished Lesotho historian, gave a clear demonstration of disputes amongst chiefs. He revealed that disputes would revolve around the question of what chief owned what lands and to which chief people residing in disputed areas owed their allegiance.

With the proliferation of chiefs, disputes escalated, things got extremely ugly and land became more scarce and treasured. Chiefs ended up not seeing eye to eye and sons of one chief would go as far as physically attacking one another in an attempt to win a dispute over land ownership. Thabane (1998:15) adds that "not only brothers clashed over land but even fathers and sons bared teeth at one another when it came to ownership of land.

These clashes were often so passionate that they led to threats of war or the actual taking up of arms by a brother against a brother. With these escalating disputes came an increase in chiefs regarding the land as their private property. Even the claims for land were not meant to benefit the members of the community, but the chiefs themselves. In earlier times, when the paramount chief introduced the idea of delegation in land administration and allocation, the basic idea was that chiefs would allocate the land to the people on behalf of the king.

Moreover, chiefs would treat their subjects with respect in order to attain more, as this increased their political power. However, with the increase of disputes, chiefs treated their subjects with so much disrespect in an attempt to chase them out of their area of jurisdiction so that they can acquire more land. Thabane (1998:16) agrees that “as this perception of chiefs as the owners of land crystallised in the minds of both the commoners and the chiefs, in general the chiefs became more and more oppressive and treated their subjects in manners in which were extremely excessive.” This, coupled with the proliferation of chiefs, brewed a great deal of dissatisfaction in the country.

At this point in time, most Basotho people were becoming more and more literate and aware of the injustices done by chiefs, and one way to voice their complaints was through the press. It was through this method that chiefs were criticized for not distributing the land fairly. Among other things, these disputes caused political instability, lawlessness and village displacements. In an already poor society, these disputes resulted in some hectares of land lying idle because either commoners or chiefs themselves are fighting over such land. The government, therefore, had to come up with a legal framework to deal with land matters effectively.

#### **4.2.4 Chiefs resistance to change and policy implementation**

In 1966, Lesotho gained independence from the British. The post-independence period witnessed a great deal in government intervention in land administration. The inefficiencies of chiefs' administration called for a change in how the land was to be administered in the country. Among other things that the new government abolished was the system of land issuers that proved to be a cause for many disputes.

To redress the damages done by both chiefs and land issuers, the government enacted the Land Procedure Act in 1967. This, according to Chaka (2016: 4):

...was enacted with the aim of curtailing abuses in the allocation of arable land. It provided for the appointment of land committees consisting of five members in every ward, and these were elected by the ward's residents at a gathering convened by the Ward Chief. He then had to allocate land in consultation with the land committee.

However, these land committees lost their effectiveness with time. Firstly, some chiefs got uncomfortable with these committees in that, to them, they posed as threats to their authority and power. They, therefore, ignored them and proceeded to allocate land the way they saw fit. Secondly, these committees were appointed based on political party affiliations. The legitimacy and effectiveness of these committees were therefore questioned. As a result, disputes on land issues increased, and this called for government intervention once again. The Land Complaints commission was, therefore, enacted to try and solve the ever-intensifying land quarrels.

Like other attempts that came soon after independence, the Land Complaints Commission also could not address land disputes as was anticipated. Attempts have been made to reform customary land tenure, and chances are, those attempts could have been successful were it not because of chiefs' iron grip on power. A very significant attempt was made in 1973 with the enactment of both the 1973 Land Act and Administration of Lands Act thereafter. Chaka (2016: 4) adds:

the Act revised the procedures for allocation of arable land. It further introduced the Development Committees consisting of three members who were appointed by the Ministry of Interior, and four members who were elected by the community at a gathering convened by the Ward Chief within his area of jurisdiction.

The government had hoped that this level of intervention will, to a greater extent, help solve the ever-present land disputes in the country. However, the chiefs, viewed this as a threat to their authority as well. Since they were so determined to hold on to power, they decided to ignore the terms of land allocation stipulated in the Act, therefore, the committees never materialised. This meant that disputes kept escalating

and the government had to intervene again to seek further control over land. It was after these many attempts to solve land issues in Lesotho that the government once again enacted the 1979 Land Act. According to Chaka (2016: 5):

the Act introduced distinctions between urban and rural areas whereby each area had its own hierarchy of arable land allocation committees. In the rural areas were Local Development Committees in each ward and above them were Senior Land Committees for each district. This structure provided for greater government inclusion in the administration of the country's land resources. Apparently, the breakdown of local management systems which resulted from integration of local communities into larger economic and political systems necessitated greater state intervention and control of the management of resources.

There were several changes made in the Act, and the level of government inclusion in the whole process of land administration was the most significant. As Thomas (2011: 185) noted:

...although the 1979 Land Act still upheld the provisions of the Procedure Act of 1967, it provided that consultation with advisory boards was a statutory requirement that was legally binding on chiefs.

The previous attempts to reform customary land administration failed to deliver because, among other things, chiefs actively refused to regard those attempts as binding, and they would always view these attempts as threats to their power. Therefore, anything that the government tried to implement to solve disputes was in vain because of the unwillingness of the chiefs to cooperate. However, things changed with the enactment of the 1979 Land Act, which clearly stipulated that it was not a choice but a pre-requisite for chiefs to consult with advisory boards before any land allocation could be made.

The 1979 Land Act had in it many terms that made it very difficult for the chiefs to ignore, and the state was largely involved in land administration. During the customary land tenure regime, land was vested in the Basotho nation and held in trust by the king. This ideology had been very effective in Lesotho until the enactment of the 1979 Land Act. Much did not change; the Act was just a consolidation of the two 1973 Acts.

The land still belonged to the Basotho; the difference was that the Act put an emphasis on the state being the trustee instead of the king. Hendry (2014: 13) noted:

Similar to many other parts of post-colonial Africa, the state became the trustee where it previously was the king and his chiefs, and all titles to land in urban areas (except land used principally for agricultural purposes) were converted to leaseholds.

In this case, chiefs had to comply with the provisions of the Act, and this presented a shift in power structure that drastically limited the control of traditional leaders over land.

However, despite the reforms brought by the 1979 Land Act, there remained challenges over its effectiveness. Eighteen years later, after the Lesotho Congress for Democracy (LCD) came to power, the government believed that the Act could be amended or repealed to ensure greater efficiency and economic growth. Among other things, the Act was criticized for limitation of land holding to foreigners - section 6(c). This section is to the economic detriment of the country (Land Act 2010). The government, the elites and some of the Non-governmental Organisations in the country were criticising the 1979 Act for its rigidity to open up land markets for investment.

They believed that land had to be treated as an economic asset rather than a mere source of livelihood. The argument was that if land could be used as an asset, then people could be encouraged to use it efficiently and productively. Mosase (2009) argues that the social advantages provided by the Land Act 1979 (if any) are maintained at an even higher cost of limiting economic opportunity. He goes on to say that in Lesotho, land was viewed as a free good. Since this fundamental factor of production was received free of charge, there was no cost factor to encourage greater productivity. Bearing in mind that most Basotho do not have the financial capacity to use the land productively or for commercial purposes, opening land markets for foreign investors was one possible way of ensuring productive use of land in the country.

The Act was also criticised for inefficient control of growth of urban and peri-urban areas and the absence of planning that creates problems for the creation of

infrastructure. Since there was planning in land allocation, the government later realised that development of infrastructure in urban and peri-urban areas was becoming a challenge because people were haphazardly allocated. If for example roads needed to be built, the government had to now incur the costs of expropriation to the people. The 1979 Land Act was further criticised for lack of land tenure security.

This, according to the LCD government hindered economic growth in many ways, and this called for its repeal, in order to promote efficiency in land services and improve land use as an economic asset. The argument presented was that investors, foreign and internal, desist from investing and developing the land because of lack of security. What should be noted here is that this is a general argument presented for land reform by donors. This view was captured by the then Finance Minister, Honourable Timothy Thahane in 2011. In his argument, people who have no land but have money are willing to invest in agriculture but are loath to do so as there is no security of tenure. He explained his point: 'The owner of land might want to evict you after you sink in lots of money in the land, and you have no recourse because land cannot be sold' (Leduka, 2010).

According to one of my informants:

The LCD government felt that the 1979 Land Act was inefficient in solving land disputes quickly as Land Tribunal was centralized in Maseru and its jurisdiction limited to certain cases. They felt the need to enact another Act to ensure speedy disposal of land matters through creation of specialised Land Courts so that economic activities on land are not hampered. Disputes could go on for months and years at times, and during such time, the land that could be used productively is lying idle (int., Maseru, January 2017).

Pule and Thabane (2004) stated that one consequence of these disputes is the loss of agricultural land or a house, all in the name of observing boundaries, which are drawn for the convenience of chiefly claims to land. In other cases, individuals do not actually lose land, but disputes can make it difficult for them to harvest their crops. They made an example of a dispute between two villages in Mafeteng district where the land in question remained untouched for more than twelve years because chiefs in charge were taking forever to settle the matter. Another challenge brought by disputes was that of people ignoring the ruling of chiefs. It emerged:

Some people would continue to use the land in question even after they were ordered to stop using it, because they felt that the land belonged to them, or because they have been using such land for a very long time and they feel entitled to it (int., Roma, December 2016).

This particularly suited the post-independence government's designs to dilute the powers of the chiefs in land administration. However, these attempts were less effective, particularly in rural areas where chiefs continued to enjoy legitimacy in their communities (Mannaka, 2013).

#### **4.2.5 Various amendments to the Act**

There were numerous amendments to the 1979 Act to correct certain aspects of concern. The 1980 Land Regulations Cover Omissions and Land Amendment Act of 1986 are the two examples of amendments that ended up making the 1979 Land Act seem rather clumsy and user unfriendly. Another problem that the government identified was the inequality between a boy and a girl child in land ownership. In the 1979 Act, women were not allowed to hold title to land because they were considered minors. This was so because Basotho are a patriarchal society and back then, before democracy and its neo-liberal policies, it was completely acceptable for men as heads of families to engage in economic activities while women bear kids at home.

Generally, these are some of the factors that the Government of Lesotho, through the influence of the donors, managed to identify as being detrimental to economic growth and development. The land tenure system was believed to be behind lack of meaningful agricultural productivity, which in turn affects the entire economy in the country. Pule and Thabane (2004) argues, however, that these assumptions that land tenure regimes do not provide security of tenure to those who have access to land and that the absence of economic development in general can be blamed on land tenure regime are at best dubious. They argue that there is very little to support the donor's view that failure of agriculture in Lesotho is due to insecurity of tenure, but believe that it is caused by the fact that people are poor and cannot afford the technology necessary for improving agricultural output, not by shortcomings in traditional land tenure, as donors have argued.

When it comes to the issue of the discrimination against women in land ownership, Pule and Thabane do not associate the problem with the land tenure system, but the customary law that discriminates against women. As such, amendments should be made to the customary law, not the tenure regime. The fact that the tenure regime did not allow foreign investors to hold title to land should not be blamed for low agricultural productivity in Lesotho. One of my informants reasoned:

The fact of the matter is that most Basotho people are poor and can only afford to produce for consumption. If indeed the donors wanted to improve Lesotho's agricultural productivity, then they would have provided direct grant for agricultural enhancement and advice on things to be done, without pressurising the government to reform its land policy that allows them to own land in the country (int., Maseru, January 2017).

While the Act had its challenges and had its critics, the proposal to reform the tenure system did not receive universal acceptance. Nevertheless, the 1979 Land Act remained in force until 2009 when the government passed the Land Bill in parliament despite citizens' dissatisfaction. The passing of the Bill, like the reforms, has generated a lot of debates, and accusation abound. What this did is that it created suspicion of coercion, of donor power and imposition. The next section looks at these issues.

### **4.3 External challenges**

Lesotho's land policy making has always been influenced by both internal and external factors, and these appear to have influenced the policy agenda. According to Pule et al (2004: 283):

In the period leading to independence and immediately thereafter, foreign donors and commercial farmers put successive governments of Lesotho under pressure to reform the country's land tenure reform.

Lesotho's land tenure system was seen as a problem. It hindered economic development in that agricultural, and industrial land-users could not make long-term investment for fear that their rights to the land could be revoked at any time.

#### **4.3.1 Aid and Conditionality (the Land Bill)**

Parliamentary Bills are a significant way that governments use to come up with statutory laws. The 2009 Land Bill was no exception. This Bill was passed due to the inefficiencies and discrepancies inherent in the 1979 Land Act, and it is safe to say it was the government's move to replace the Act. The tenure and administration of land quantified in the 1979 Land Act was believed to hamper the country's economic development because it did not regard and utilize land as an economic asset. It further did not make it easy for foreign investment. The Bill, on the other hand, proposed to address these issues to ensure economic prosperity in the country through optimum utilization of land.

While the 1979 Land Act in subsection (1) clearly stipulated that no person, other than the state, shall hold title to land except as provided for under customary law or under this Act, the Bill on the contrary, in section 6, lists people who can hold title to land in Lesotho. Among these are non-citizens subject to conditions specified in the Regulations (section 6 (c)). The proponents of the Bill were of the belief that the 1979 Land Act was to the detriment of economic development in the country. On the same issue of landholding, the Bill aimed to deal with the issue of dual tenure system contained in the 1979 Act and limitation of landholding to foreigners. It put more emphasis on the restrictions for foreigners to hold title to land.

As we have already seen, the Bill was part of the many attempts by the government to correct land governance challenges in Lesotho. However, as expected, it did not enjoy much support. The opposition party, for example, was totally against the passing of the Bill. As the leader put it at the time:

The Land Bill aims to alienate Basotho's land by creating room for foreign occupation through economic coercion (Lesotho Times 2009).

The general feeling amongst the citizens was that the Bill was the government's move to sell the land to the highest bidder. The civil society and members of the opposition parties felt that the terms of the Bill made it easy for foreign investors to access land in the country while further making it difficult for the natives to secure rights. Complaints like these have become popular:

It would appear that foreign land grabbers rely on subterfuge that they want to boost poor African economies when in reality they want to plunder resources and drive the locals into deeper poverty (Li, 2015).

However, advocates of the Bill were of the notion that privatisation of land rights provides landholders with security of tenure. Security of tenure would then result in increased private investment, further leading to economic development in the country. On the contrary, Mashinini (2009: 5) is of the view that:

While the privatization, marketization, commodification and liberalisation of access to land championed by the Land Bill 2009 might promote private investment and capital accumulation, it would entrench the proliferation of social differentiation and deconstruction due to the land alienation, exclusion, marginalisation and proletarianization of the poor from access to land, and thus accentuate deprivation, poverty and unsustainable livelihoods of the majority of the Basotho.

For the government, the Bill was a breath of hope to the troubled land governance in the country and a move towards improving land titles, ensuring economic development and realization of the full potential of the land. Nevertheless, the citizens strongly felt that the Bill was a product of the 2007 Compact that came with, among other things, the requirement for Lesotho to reform its land policy. Some of these blamed the global economic constitution where Less Developed Countries (LDCs) are subjected to perpetual dependency. An official revealed:

A combination of both internal and external factors make aid not be geared towards people's welfare but a long term gain for donors and a country's inability to self-sustain herein resulting in dependency.

What emerged from the study was that it does not do a country any good if its main concern is the status quo that is boosted by aid while the natives' welfare is being compromised. A similar situation was witnessed in Ethiopia where locals experienced extreme hunger with thousands of hectares of their land in the hands of foreign investors. Thus, 6.2 million people were forced back into foreign aid because the economy was not strong enough to change their situation.

Studies revealed that aid has not been able to change the economic status of Lesotho; instead, it made the situation worse. Hassan and Ojo (2002: 6) attested that, “external assistance to Lesotho has been delivered in a setting of political uncertainty, which continues to weaken the effectiveness of assistance programs.” The people no longer felt the need to develop and enhance themselves. This resulted in a society that highly depends on foreign aid for hand-outs instead of trying to improve their financial capabilities. In a study conducted by one of the interviewees about aid, findings showed that Lesotho has a long history of aid dependency and instead of aid boosting the economy, it drove it into further poverty and spiralled rampant corruption by the leaders. It emerged that instead of assisting the poor and building sustainable development, aid was used to support and create bloated bureaucracies and used for projects it was not intended for.

Another compelling issue was of conditions that aid come with. While the majority of people agreed that aid perpetuates dependency, they also noted that donor countries give out aid to maintain strategic allies, economic and political interests, instead of improving the recipient countries' interests, thereby forcing them to reform their policies. While Lesotho's government has been trying to reform land policy for a long time, the enactment of the 2010 Land Act was a condition that the country had to adhere to in order to receive a grant from the MCC.

Contrary to popular belief, aid worsened Lesotho's economic status and growth. Some key informants who were against the MCA project, believed that the government's desperation for financial assistance blinded it to get into an agreement that would cost the natives their rights. They revealed how distasteful the subject of the Land Bill was to the majority of the people before it got passed into a law. The manner in which the citizens did not approve of the Bill shocked the majority when it finally translated into the Act. Ntate Thabo argued:

The government went as far as stage-managing public hearings to their favour to ensure that the Bill ends up being a law. The grassroots people stand to lose more because the elements of this Bill focus more on unused land which happens to be owned by our poor communities. However, the government does not seem to care about this issue, they would rather have money in their coffers than let people keep their land (int., Maseru, December 2016).

On the same note, opposition parties did not welcome the repeal of the 1979 Land Act (Tlali, 2010). They accused the ruling party of railroading the Land Bill through parliament at the behest of Millennium Challenge Corporation (MCC), a United States aid agency. They argued that the MCC had set the enactment of the Land Bill as a prerequisite for US\$365.6 million grant to fund water, health and land reform projects. The deputy leader of the Marematlou Freedom Party, Mphosi Matete, said as much as Basotho appreciated the help from the Americans to fight poverty in the country, it was wrong for the MCC to attempt to speed up the process of passing the Land Bill.

Another argument was that the Bill was imposed by the MCC, that it was not in the best interest of the Basotho to reform their land. People felt that MCC took advantage of Lesotho's economic status and offered to help provided they ease their terms of land ownership, which was going to make it easy for private investment.

However, the then MCC deputy resident country director, Brain Baltimore (2009) said the compact was not imposed on the country:

As far as I know when the compact was signed in January 2008, it was not meant to be imposed as was, but was domesticated into the country's law as should be done with other international conventions and compacts.....land reform is therefore, not a necessary requirement for the compact to be implemented.

Contrary to this, resident country director Gene McDonald told a meeting of stakeholders on the same issue that if the Bill is not passed, the corporation will have to withdraw funds that had been budgeted for the land reform under the grant. Aid is always given under conditionality whose acclaimed aim is to ensure effectiveness in resolving problems for which they were to resolve, and this aid can be withheld, removed or cancelled in times of trespasses or failure to adhere to conditionality which are seen as sine qua none factors making aid yield results (Stokke 2013). The MCC was more than willing to withdraw aid if Lesotho refused to pass the Bill, the same Bill that was influenced by them, even though the MCC resident director denied allegations that they influenced the Bill.

When one of the officers at the MCC Lesotho was asked about the Americans' influence on the Bill, she said the government of Lesotho asked for assistance from the American government and what the Americans did was to tell the Lesotho its conditions for aid, and that laws regarding the aid must be formulated by Americans. Lesotho was already identified as illegible for MCC aid, and policy makers knew terms and conditions for such, hence its proposal included all the attributes that the MCC requires before providing aid. The fact that Lesotho even had to consult with the MCC while drafting the compact is also an indication that the MCC had a major influence in the drafting of the compact, which led to the Bill.

Among other people who were against the Land Bill was the principal chief of Likhoele, Chief Lerotholi Seeiso, who criticised the Bill as a weapon for "greedy" politicians and foreigners disguised as investors to snatch land from the poor (Lesotho Times, 2009). As mentioned earlier, chiefs wanted to maintain an iron grip on power, but the point that Chief Lerotholi was driving home cannot be categorised under such, because he made it clear that change is necessary for economic growth, but his problem was the opening of land ownership to foreigners.

Under customary system, legal documentation given to the allottee after land acquisition or allocation known as Form Cs were not as legally binding as leases and title deeds. As a result, this posed a major threat to the security of tenure, hence the Bill is advocating for certificates or leases to recipients of land so as to correct the issue of security. These are the certificates and leases that foreign investors will also be able to possess, that is why it was so important for the MCC to make sure that the Bill is passed.

Another issue that the Bill was intended to redress was that of unproductive use of land. People would be allocated huge tracts of land without really doing anything significant with it. There were cases where land would go unutilised for ages and according to the Bill, that practise is detrimental to economic growth. Lee (2014) agrees that hundreds of hectares of land lay idle either because they were owned by old or disabled people who had no economic means of utilising it - or worse still, people who had no interest in using their land for agriculture. The Bill, therefore, suggested that allottees need to utilise the land to its full potential, failing which, it must be

transferred to people who have the ability and interest to unleash its full potential. The Bill even made it clear that if land goes unutilised for three consecutive years, the government will be entitled to take it back.

Among other things was the abolishment of gender discrimination in land allocation inherent in the 1979 Land Act. The Bill suggested a fair practise of land allocation among citizens without gender being an issue. The 1979 Land Act only allowed men as heads of families to be entitled to land while women on the other hand were not even allowed to apply for land. These are practises that the Bill was trying to address; however, the problem arose when the government of the United States of America seemed to be on the forefront of the enactment of the Bill, their conditions for aid and how they would want the land to be administered. MCC has three key pillars that support its model, and these are: policy matters, results matters and country ownership matters. It is the first pillar that seems to have influenced the enactment of the Bill.

According to the Economic Review (2007), MCC partners only with countries that demonstrate commitment to good governance on the premise that aid should build on those practises and reward countries already pursuing policies conducive to private investment and poverty reducing growth. In Lesotho's case, this led to suspicions that the reforms were part of the conditions by the donor (America), and a way to take away the land from the natives. Lee (2014) adds that many felt that the Bill was designed to steal land from indigenous Basotho people and sell it to foreign investors. Critics of conditionality argue that these market-oriented policies tied to aid might promote development but only at the expense of the poor majority in aid recipient countries (Fine et al., 2001).

Despite these misgivings, the Bill was passed and transmuted into the 2010 Land Act. The next section looks at the MCC and the Land Act of 2010. It seeks to establish whether the MCC had any role in the reforms contained in the Act as critics have argued. This is particularly important since the reforms have a potential of dispossessing the poor of their land.

#### **4.4 MCC and the implementation of the 2010 Land Act**

Rose and Wiebe (2015) defined MCC as an independent US foreign assistance agency that was established with broad bipartisan support in January 2004. The agency was designed to deliver aid differently, with a mission and a model reflecting key principles of aid effectiveness. MCC's sole objective is to reduce poverty through economic growth around the world. Countries have to meet a certain criterion to be eligible for aid, and Lesotho happened to be one of those countries in 2004.

According to the Economic Review (2007), eligibility of the MCC funds is based on a number of indicators covering three areas namely; ruling justly, investing in people and encouraging economic freedom. Once the eligibility element is established, the country then prepares a compact proposal in consultation with the MCC outlining initiatives that can help reduce poverty through economic enhancement. Therefore, following the nomination in 2004, Lesotho then prepared its compact proposal in consultation with the MCC and a five-year compact was signed in July 2007, then put in action in 2008. A year later, the government passed the Bill which eventually resulted in the enactment of the 2010 Land Act

This Act was the fourth major attempt by the government to address issues around land governance in Lesotho. It is an Act to repeal and replace the law relating to land, provide for the grant of titles to land, the conversion of titles to land, the better securing of titles to land, the administration of land, the expropriation of land for public purposes, the grant of servitudes, the creation of land courts and the settlement of disputes relating to land; systematic regularisation and adjudication; and for connected purposes (GoL, 2010).

Prior to the enactment of this Act, the country was faced with a severe drop in its Southern African Customs Union (SACU) pot. One of my informants linked this to the issue of land and aid:

The government had to rethink the best way to use Lesotho's resources, but since the country's economy was not doing very well, the government had to utilise the country's natural resources to

push economic activity and safeguard food security, which happened to be the most sensitive and controversial of them all- land (Int., Roma, December 2016).

The issue of land use and ownership in Lesotho has always brought intense controversies amongst the citizens. This was the case from as far back as the 1960s when ordinary citizens and chiefs used to fight over land matters.

In terms of who is eligible to hold title to land in Lesotho, the 1979 and 2010 Land Acts differ sharply. Section 6 (1) (c) of the 1979 Land Act says that a company incorporated or registered under the Companies Act 1967 and carrying on business in Lesotho and of which a majority share-holding of at least 51% is, at all times in the hands of citizens of Lesotho is eligible to hold title to land. On the same note, Section 6 (1) (c) of the 2010 Land Act says that a foreign enterprise for investment purposes, provided Basotho, whose land may be valued so that it may form part of the shareholding in such a partnership, form at least 20% of the membership or shareholding of the enterprise is eligible to hold title to land in Lesotho.

This certainly created discomfort among citizens. Kleinbooi (2011) argues that there are concerns that the new law allows any company doing business in Lesotho to own land- as opposed to the old law, which stipulated that a company must be registered in Lesotho and must have Basotho as majority shareholders. There were fears that the law favoured foreign investors at the expense of Basotho people, many of whom are subsistence farmers and totally dependent on the land for their survival.

While there are suspicions that reforms that are biased against the very citizens of Lesotho were imposed on the government in exchange for aid, not everyone agrees. According to the Deputy Resident Country Director of MCC Lesotho, the compact was not imposed on the country, but was domesticated into the country's laws as should be done with other international conventions and compacts. In a discussion with an official from the MCA Lesotho, about the role played by the MCC in the formulation of both MCA-Lesotho and the 2010 Land Act, she revealed that America, through the agency, had no stake whatsoever in the formulation of the policy. She instead argued that Basotho identified their own land governance issues and approached the American government for assistance. She then went on to say that Americans did not

impose, and their role was to simply advise on how best land could be governed to enhance economic development.

An official from the Land Administration Authority (LAA) was of the same view that the MCC did not impose on the policy reform in the country. He further applauded the American Government for having Lesotho's interests at heart, and that were it for the MCC, Lesotho's land governance issues would have worsened. On the contrary, another government official who asked to remain anonymous was also asked about the role of the American government in the formulation of the 2010 Land Act. She said it undeniably played a huge part and that the Act was formulated in a way that suits private investment. She also warned that the issue of land reform was a very sensitive one for both governments.

For the government of Lesotho, the fear was a potential political turmoil because the nation was not satisfied with the elements of the Act. For the American government, the issue was that if Lesotho fails to pass the Bill or enact the Act, funding will be withdrawn. It appeared that not only was the nation dissatisfied with the Act but some Cabinet ministers as well. However, an official revealed that those ministers who were against the enactment of the 2010 Land Act got a direct message from America to reconsider their position in the matter or else lose their jobs.

The majority of officials, at the time of data collection, could not wrap their heads around MCC's threats to withdraw aid if land markets are not opened up. The other issue that they battled with was the government's unwavering determination to pass the Bill, regardless of how unhappy the nation was about it. They felt that the Act was going to benefit wealthy investors over the locals. Their argument was that the new law allows everyone in the name of investment to hold title to land. As a matter of fact, the majority of Basotho people do not have the financial capacity to purchase huge tracts of land, or at least keep the ones they already own.

Essentially, what this law is saying is that the poor Basotho who cannot afford to buy land cannot hold title to land. Consequently, this puts foreign investors at an advantage to hold more tracts of land because they can afford it. In a similar vein, Karin (2011) argues that:

At the centre of the rising tide of indignation against the new law are Lesotho's high rates of poverty and inequality and the fear that, if land becomes a priced commodity, only the Basotho elite or foreigners will be able to own land.

Others argued that taking away powers of the traditional leaders, who hold land on behalf of the king and allocate it for free to citizens, is equal to surrendering national sovereignty to foreigners for the love of money. This new law puts economic development before everything else. If foreigners are going to improve the country's economy, whether at the expense of social justice, dispossession of the poor and marginalisation, then be it.

Kleinbooi (2011) observes that, the new law gives the minister powers to regulate ground rent, dictate what the land can be used for and exempt certain companies from being disqualified from holding title to land in Lesotho. Crucially, it also allows for the termination of a lease holding or the right to occupy land that has been declared abandoned, effectively amounting to legal dispossession. The law states that agricultural land shall be regarded as abandoned when it has not been cultivated for at least three consecutive years.

The reality in Lesotho is that most people are more likely not to use land effectively, if by effective, it means productive use. These are mostly disadvantaged people because of lack of funds. The law also made it legal to take the land away from the people who underutilised it. While there is nothing legally wrong in doing so, the fears of land grabbing by foreign investors and local elites are real. Wily (2011) agrees that the current rush in which local elite and international interests are so aligned is only possible on the back of retained land law, that it takes advantage of this law, and in the process, entrenches its unfair terms in potentially dangerous ways. This most affects the majority of rural poor, both because of their greater dependence upon unfarmed communal assets like forests and rangelands, and because local elites are better able to benefit from, and in fact may facilitate state land takings at scale for non-local enterprise.

These issues have not been considered in Lesotho. There are possible reasons for this. First, agricultural land in Lesotho is not one of the most fertile, and second, there is a general understanding among those who were involved that the Government of America and potential investors would be doing Lesotho a huge favour by investing in Lesotho's land since the country is less attractive because of its dry conditions. This was raised in an interview with an official who was involved in the process:

People should not be so sentimental about the land that is not contributing anything to the economy, and the land that they cannot use productively anyway (int., Roma, November 2016).

Insecurity of tenure and limitation of land holding to foreigners were the reasons the 1979 Land act was considered an economic detriment. Hence the enactment of the 2010 Land Act, which stipulates that secured titles will encourage people to develop their properties and use their properties as economic assets. This, as a result, will increase economic activity in the country.

Yet, these were going to come at great cost to the ordinary poor Mosotho, who might be pushed out of his land or forced to sell or lease to avoid termination of their leases. However, the official focus was less on these people than the economic benefits that could result from the reforms. The reality was that the new law would encourage improved land markets and more players at the expense of poor people's livelihoods. The fear was that the land markets would improve and be an arena for the wealthy while the natives are being forced out of the market because of their financial incapacities. Molnar et al (2011: 17) observed that:

Dispossessory strategies also have tremendous bearing upon the kind of transformation and economic growth strategies pursued. The advent of the current land rush further engineers dispossession of the poor as the route to growth.

A significant minority of officials referred to the enactment of the 2010 Land Act and its proposals as a neoliberal approach to development. Any government that values money over social justice in policy formulation is in line with neoliberal perspectives. Wolford (2007: 28) highlights that:

Neoliberalism assumes that the market is the optimal mechanism for allocating property to productive individuals because property rights are a reasonable reflection of labour applied, people who own property do so because they worked for it and this relationship has to be encouraged and rewarded by the state.

It would appear that the 2010 Land Act encourages economic development through commodification of land among other things. The opening of land markets to the affluent was done so as to engage as many players as possible, which will ultimately lead to economic prosperity. Nonetheless, the injustices of this policy appeared to be the least of reformers' concerns. The MCC advised that policy reform was needed in the country to propel development. In line with the popular neo-liberal doctrine, the argument was that if there is a need for land reform, it is because the market has been insufficiently developed and has not yet incorporated some portion of the rural and urban poor, and that it needs to be expanded to accommodate everyone (Borras, 2003).

#### **4.5 Chapter Summary**

This chapter was an analysis of land governance challenges in Lesotho. The country has since adopted communal or traditional tenure regime. Land was held in trust by the king, who ultimately delegated governance powers to the chiefs. This system had its fair share of challenges. The authorities, therefore, deemed it necessary to improve land governance in the country. The takeover by the British administration brought with it the Roman Dutch Law to operate alongside Common Law. Land governance was therefore divided into two, common law governing rural lands and statutory in urban areas (Maseru). Accordingly, land took a different form by categorization, something very alien to the Basotho nation. The legal duality proved to be a challenge in more ways than one.

On the one hand, traditional leaders were not ready to share governing powers, on the other, the British administration also saw the need to administer urban lands differently from the rural. The Laws of Lerotholi, which were used as a source of reference, gave traditional leaders unchallenged land governance powers. Most of the clashes

between the chiefs and the government were inspired by the authority that chiefs were granted by the Laws of Lerotholi. This condition led to a situation where chiefs would totally disregard the ruling of the government and resist policy changes as far as land was concerned.

Towards the end of the British administration, attempts have been made to improve land governance that was still troubling the country. However, these challenges continued to haunt the country on its route to and post-independence. The chapter discussed all these initiatives that the government took to address the issue of land governance in an attempt to demonstrate how far the country has come in trying to identify a suitable model. After independence, several legislations were passed to improve land governance; nevertheless, the majority of them were not successful until the enactment of 1979 Land Act. Several years after its enactment, challenges were still spiralling out of control. What the government did then to address this issue was to amend the Act every now and then, until it was deemed user unfriendly and unpractical. The various amendments also proved to be a problem, and the government attempted several times to repeal the Act with no luck, until the passing of the 2009 Land Bill.

The chapter also dwelled on the external challenges that Lesotho faced in her land governance struggles. Issues around aid and conditionality were discussed. The country's high dependency on aid seemed to have influenced most of its policy choices. The highly controversial 2009 Land Bill gave birth to the enactment of the subject of this study, the 2010 Land Act. To get a thorough understanding of how the Act came about, who shaped it and who had what interest in its formulation, the history of foreign aid to the country was slightly discussed. The MCC was also discussed for the grant it offered the country.

## CHAPTER FIVE

### DYNAMICS OF LAND AMONG HOUSEHOLDS IN A RURAL COMMUNITY IN LESOTHO

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#### 5.1 Introduction

Chapter Four provided a national level analysis of the land question in Lesotho. The general argument in the chapter was that Lesotho has a long history of land governance challenges and since independence, various administrations had struggled to move land governance from the traditional to what can be considered as modern system. From this perspective, therefore, the land reforms as guided by the Land Act of 2010, was long overdue. However, if land reform was justifiable on the basis of Lesotho's troubled land governance past, the signing of the compact by the government in 2007 certainly provided the impetus and after years of near misses, land reform certainly gained momentum.

This chapter provides a local level analysis of the land reform question. It provides an empirically grounded analysis of Lesotho's land question, focusing in particular on realities of land, its holding and use in Lesotho. These realities are often masked by certain modernist assumptions on communal land, its use patterns and its governance. These assumptions revolve around access, ownership exclusion and security. These systems have often been seen as inefficient. Thus, if efficiency of land was to be improved there was a need to transform how land was to be held, utilized and governed in Lesotho.

The question the chapter focuses on is not whether this narrative was true in the case of Lesotho's tenure system. Instead, it is, who would be impacted negatively by this transformation, and whether the government understood the implications of such a policy. In this chapter, I use data from the rural community of Masitise in Quthing District in southern Lesotho to demonstrate that local poor households that hold land under communal tenure were likely to be disposed of their land. The chapter seeks to

highlight how rural communities hold land rights, how land is used for livelihoods, and how rural households see the land they hold.

## **5.2 Profile of the Masitise community**

This community of Masitise is one of the rural communities in modern day Quthing District in southern Lesotho. In Lesotho's geographical classification, Quthing District is classified as lying in the foothill region. In reality, however, large parts of the district are mountainous and rocky, although agriculture is still practiced with some degree of success. It is about 122km south of the capital city Maseru along the S1 Highway, and borders the Mohale's Hoek District. To the south, the community borders the Eastern Cape Province of South Africa, while the Senqu River or Seaka River (as the river is called locally) or the Orange River (the South African name) cuts through Mohale's Hoek District and the Eastern Cape Province at different points.

The community is geographically located in a valley dominated by gullies. Rocks and hills also occupy a significant share of the land. Of the total 9.61% of land in Quthing District, both fertile and unfertile, Masitise community only occupies 0.23% of the land. Climatic conditions are uncertain, but moderate rains fall during the rainy seasons of April and October. Average rainfall ranges from 9-17 cm in areas closer to the lowlands, rising to a high of 19 cm in areas bordering Qacha's Neck. Apart from these spatial variabilities that are occasioned by geographical differences, rainfall can also vary from year to year and droughts have been experienced. In the recent past, climatic conditions appear to have changed for the worst. Rain falls between April and October, sometimes it falls throughout the year, or it barely rains. Most often than not, the community suffers harsh drought spells, and this also affects the quality of their land and production.

There are different types of soil in this community, namely: clay, silt and predominantly loam. Dominated by rocks and caves, the community has relatively small arable land. Carried out on a small-scale basis, mainly for subsistence, agriculture is still the main source of livelihoods in Masitise. The quality of land maybe very low, but people still value it anyway. The types of soil in this community maybe suitable for other crops,

but the most grown are: maize, sorghum, wheat, potatoes, pumpkin and beans. As much as land was used for both crop production and livestock rearing, crop production took precedence.

The community comprises six villages of differing rurality: Majakaneng, Ts'oeneng, Hamototana, Paballong, Motse-Mocha and Hamakoloane. As highlighted in Fig. 4.2, villages are close together and there are no physical boundaries separating one village to another, except the villages of Motse-Mocha and Hamakoloane, which are on the other side of the Main South 1 road. These two separate villages, Motse-Mocha and Hamakoloane, are established on agricultural land previously owned by the residents of the other four villages, which means that the area, like other parts of Lesotho, has experienced encroachment of settlement on arable land.

According to the 2016 census, this community had a total population of approximately 1,300 and was the most southern region in the country. This community is entirely rural and at residential areas, boundaries are sometimes not clear and not fenced. The Community of Masitise is a proud host of the Masitise Cave House which served as a refuge house during the Basotho-Boer War, which now serves as a museum for tourism purposes. This community has historical ties with the Paris Evangelical Missionary Society. The Ellenbergers were the first missionaries to settle in this community and founded a mission house and two schools, Masitise Mission, Masitise High School and Masitise Primary School.

**Fig. 5.1: Landscape of the Masitise community**



The community of Masitise is under the leadership of Chief Salemone Nkuebe of the Bakoena lineage. His forefathers, the descendants of the principal Chief (Qefata Nkuebe) of the district, were the first settlers in this community. As demonstrated in chapter 4, principal chiefs or the paramount king would delegate and assign duties to their sons in an attempt to carry out what the king was supposed to do. Thus, the first settlers in this community, Qefata's sons, were assigned to help their father with land administration. The three of them were then spread throughout communities, and that is how chief Salemone's forefathers became chiefs in this community. Paballong village, affectionately known as Hasalemone, was the first village that was occupied by Qefata's sons.

As the family grew, another son was assigned to carry out chiefly duties elsewhere, and this is how the community had Majakaneng village. Hamototana was also a result of another chief's son being delegated. Most of the villages in the community, except for Motse-mocha, were all a result of delegation of power by chiefs and assigning them to their sons.

### 5.3 Land and Landholding in Masitise

Ownership of land in this community (especially agricultural land) has been traditional and communal from the time this community was established. Influenced largely by both the Laws of Lerotholi and colonial politics on the governing of rural communities, chiefs remained the sole trustees and administrators of land despite numerous initiatives to neutralize the power of chiefs (*morena*) since independence. Following the introduction of Local Government in 2005, a community councillor was elected to work hand in hand with Chief Salemane Nkuebe in overseeing land allocations and any related matters. However, these attempts were constrained by deeply rooted traditional behaviours among community members, who continuously consulted the chief and completely ignored the elected Community Councillor in issues they considered to be within the chief's responsibilities.

Community members continued to consult with the chief for land dealings and completely ignored any other authority, whose role, as they said, they did not understand. These behaviours are not unique to this area. Mannaka also reported similar behaviour and sentiments by community members in her study in Mafeteng District. The majority of landowners in the Masitise community are mostly unemployed men, some of them of advanced age. These fall under the old generation, they understand who is in charge in rural areas, and were less likely to obey any authority they considered foreign and were not familiar with. This was revealed in conversation with an 85-year-old resident:

Who? Matsimela? I cannot talk to Matsimela about land. Who is he here? When did he become *morena*? *Morena* Matsimela? He was born yesterday when I already was a man. He grew up here. He is an ordinary boy, and I have no loyalty to him. How can he rule over the land that I was given by *morena*? He also received land from the same *morena*, so how can he suddenly control our land. He also was given land. He has no right. Women go to him for *fato-fato* (Food for Work), and that is what he does.....He also calls meetings for his party (political party), but the political party does not own the land. The land belongs to *morena* (Int. Masitise, December 2017).

As the excerpt reveals, the older generation does not understand the new land administration laws. They acquired land from the chief, they have been ruled by the

chief, and the majority have a relationship to the chief through kin, marriages, and some owe him allegiance through chiefly allocation of land. This generation tends to be more resistant to change and adheres to old practices.

In principle, land in Lesotho could not be treated as private property, thus, people who held rights to land could not sell or transfer it. Households had an obligation to use the land for a particular reason that land was applied for until such time their tenure expires. Nonetheless, households in the Masitise community treated land as though they had exclusive rights to it. They would engage in every activity that the law was against, like giving land away as a form of inheritance to their family members or at times sell it to prospective buyers. In theory, those who acquired land could only enjoy limited rights to utilisation and the produce of the land, but in practise, households would literally do whatever they wish to do with the land, be it exchanges or whatever the case maybe.

Upon acquisition of land, households were informed that it was done solely for their families' subsistence, pasture or residency. They were also notified that they have a right to develop, control, manage and enjoy the produce from such land. Conversely, households did not adhere to these stipulations and continued to use the land however they saw fit.

Households that acquired land in this community, as per the universal practice, were entitled to ninety-nine years of occupation, and in principle, no other person could hold title to the same land once it has been allocated. Residential and agricultural land could only be allocated to one individual or household at a time. However, there were cases where there was more than one household in one yard. For example, Ntate Letlotlo, an elderly man who acquired both his agricultural and residential land from chiefly allocations in 1974 transferred a portion of his residential land to his son who got married in 2001 to start up his own household. The land he transferred to his son had never been put to productive use except being used as a football ground by his sons and later, by his grandchildren. Both his household and his sons were in the same yard and were each entitled to a portion that they occupied without any clashes.

Additionally, they both worked the same fields that belonged to *Ntate* Letlotlo and shared the produce at the end of each harvest period.

The great sense of entitlement to land for these households had a major influence on their relationship with the land, to a point of totally discounting terms of use provided by the legislation. According to land governance regulations in the country, on residential land, an allottee had exclusive rights of ownership on the developments he made on the land, and on agricultural land, the landholder had the right to the produce and land during the agricultural season, which in principle was supposed to revert to common use after harvest. However, this was not the case in the Masitise community. Households would still claim fields long after harvest. There were events where landholders had not cultivated their fields for over 3 years but to them, and every member of the community, those fields undoubtedly belonged to them, and unsurprisingly no member of the community would challenge owners of idle land as it would have been an acceptable practice in principle. Households in this community behaved as if they had unchallenged rights to land and it was a universal practice throughout the villages in this community.

Apart from residential and agricultural lands, there were also common lands in this community that households utilized collectively. These lands included grazing areas, pastures, forests etc. These were located in uncontrolled areas and shared by multiple users. There were no leases required to common lands and the produce from them belonged to every member of the community. An example of these include wood, reeds and grass.

### **5.3.1 Land acquisition channels**

Households gained land rights mainly through three different channels as highlighted in Table 5.1. All three were equally legitimate and recognised by the authorities.

**Table 5.1 Land Rights and methods of attainment**

No. of households	Method of acquisition	Period of occupation
22	Chiefly allocations	7-38 years
12	Inheritance	2-40 years
4	Sharecropping	2-5 years
8	Sales	2-17
4	Transfers	1-7

### 5.3.1.1 Chiefly allocations

The majority of households received land rights through chiefly allocations. Most of these households could be considered indigenous in the sense that the initial householders were born in the community. Of the 22 households that gained rights through chiefly allocations, 14 were residents born in the Masitise community. The amount of land each household acquired differed according to their initial needs, but there was no sharp contrast in the number of fields each household acquired. The range was from 4-14 fields per household. However, households under the category of chiefly allocations owned more fields and slightly bigger pieces of residential land compared to households who gained rights through other means of allocation.

### **Box 5.1: Case of household 9**

Ntate Lebohang, is a 64-year-old man, unemployed, with a wife and seven children. He was born in Paballong village, Masitise. He got married at age 27 and allocated 5 fields. Two of his siblings died, and he was expected to take care of their households. As his family and responsibilities grew, he went back to the then chief Qefata to ask for more land. It became nearly impossible for 5 fields to cater for almost 3 households. He was then allocated 9 more fields. By 2017, Ntate Lebohang had a total of 14 fields.

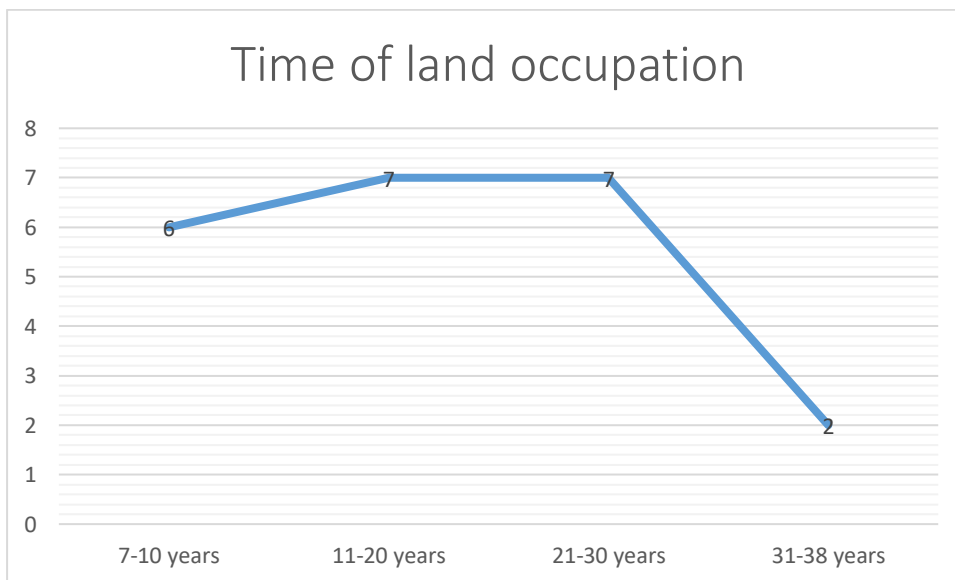
Some of these households were initial landholders and as citizens of the area, they had unchallenged rights to land. Other got their allocations late as community citizens, but also members of households who initially had no need for land since they were part of an extended household setting that had land for their use. These then sought their own allocations when they became independent household. For example, ntate Motlalekhotso stayed with his parents years after he got married. His father's fields catered for the welfare of both families. They were, however, forced to move out of the house when his younger siblings got married. Since ntate Motlalekhotso did not have fields of his own, he had to ask Chief Salemone for allocation. He was then given 3 fields and a piece of residential land to establish himself.

There were also households that gained rights through chiefly allocations but were not indigenous in that they originated from elsewhere. There were 8 households in this category. Many of these were people from high density villages who lacked land in their native villages. Relocating to Masitise community was an opportunity to acquire land and improve their livelihoods, a tribute they could not find at their native villages. It is common to find villages with more people on less land, and this puts other residents at a disadvantage, especially young members of the community who are yet to build new households. For these households, moving to this community and seeking allocation from the chief was a rational decision. They were given letters of transfer by their chiefs (mangolo a phallo) that would allow them to seek allocation in this community.

Ntate Nzenyane, for example, a 39-year-old, unemployed father, was originally from Tsatsane community. He was born and raised there. Tsatsane is a very remote area dominated by mountains and hills. This situation led to scarcity of land, even more so, agricultural land. The community also has high population density. Due to these circumstances, Ntate Nzenyane could not be able to acquire land after getting married in 2007, but the need to provide for his family pushed him to seek allocation elsewhere. Being a member of the Evangelical church, and having visited the district's mission (hosted by the Masitise community) several times for conferences and rallies, he took interest in relocating to this area. He then asked for *lengolo la phallo* from chief Mathealira Nkuebe that allowed him to seek allocation in the Masitise community. He is one of the households that are not considered indigenous in this community but had acquired land through chiefly allocations.

Households' time of occupation of land differs but ranges from 7-38 years. Fig. 5.3 below illustrates how long households have been occupying the land.

**Fig 5.3 Period of land occupation**



Chiefly allocations are more common in this community and considered a primary method of land acquisition. Households explained that acquisition of land is a right that

every member of the community is entitled to. This was revealed in conversation with a community member who argued:

We were born here, there is no other home that we know except for this one, it is therefore, our right to be given land in this community as deserving citizens. No one, not even Salemane (the chief) can deny us that right. Even our children that are not yet born have a right to be allocated land here in Matsatseng, no question about it. This is the land that our ancestors left for us and we cannot be denied access to it. (Int. Masitise, December 2017).

In as much as the chief had absolute powers in this matter, he also had an obligation to allocate land to every deserving member. As a rule, and according to the laws of Lerotholi, each male inhabitant presumes to acquire at least a piece of land for crop production to enhance their livelihoods. The chief and indigenous households were mostly related through kin, while outsiders coming into the area depended on the chief for land allocation and once allocated land, they, like indigenous households, would recognize his authority.

### **5.3.1.2 Inheritance**

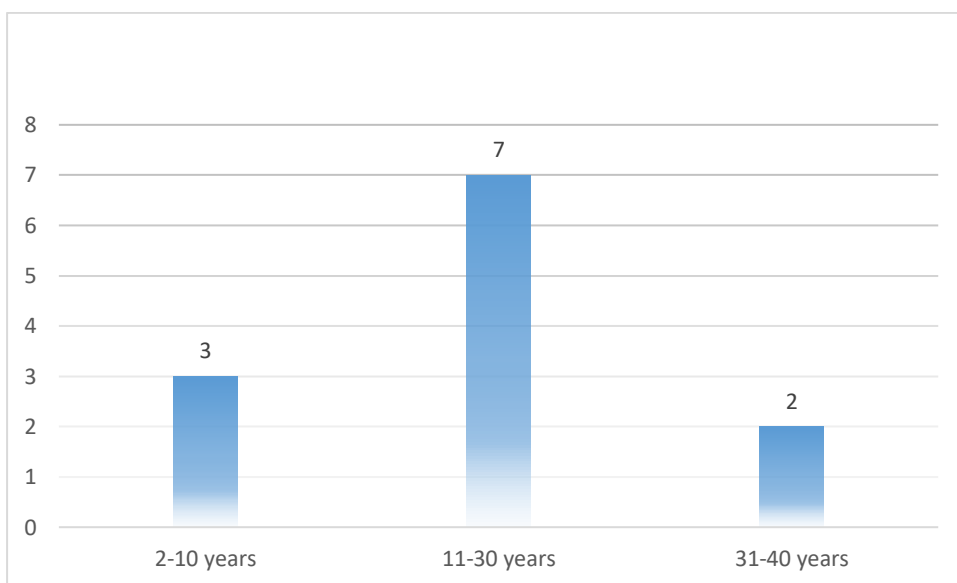
There were other methods of acquisition that other members used which were equally legitimate. Some households gained land through inheritance. The majority of such households were headed by members born in the Masitise community, most of which were members of their immediate and extended families. There was no age category for these households. However, one thing in common was that their fathers were the first owners or occupants of the land that they inherited.

Ntate Resetselemang (not his real name) is an example of such a person. His father died 20 years ago leaving the wife, him and four other siblings. He was the eldest and the only male in his father's household. Before his father died, he was already appointed an heir. Upon his father's death, he inherited the family land. His family had always believed that land was a collective possession that had to be kept in the family from generation to generation. Ntate Resetselemang already had his own fields and residential land acquired through chiefly allocations before his father died. At the time

of data collection, he owned a total of 15 fields, both his own allocation and those inherited from his father.

Fig.5.4 below shows the number of years that households who acquired land rights through inheritance have been occupying the land.

**Fig. 5.4 Households time of land occupation**



This category of households that acquired land through inheritance was the second largest after chiefly allocations with 12 households. These were the people who have been occupying the land longer than any other category in the sample.

Generally, households that acquired land rights through inheritance were the second category after chiefly allocations that possessed huge tracts of land. However, there were situations where households in this category owned more land than households in chiefly allocations because they would have rightfully been allocated by the chief before taking over the land that their parents left. In an event where the head of a household dies, the family would collectively decide on the person who is going to take

over the fields of the deceased. They would then present the heir to Chief Salemone for confirmation, also as a witness to the family's decision.

Households in the Masitise community that acquired land rights through inheritance were headed by men only. Women were not allowed to hold land titles. In an event where the deceased did not have male children, the rest of the family members would choose a qualifying male member to inherit the land. Females could only be trustees of land in a situation where an eldest son of the deceased or an heir was too young to inherit the land until such time they are ready to take up on their inheritance. Mme 'Mateboho conveyed:

My husband died when our eldest son (Teboho) was only 15. He was too young then to do anything with the land, or to understand what needed to be done. The family decided that the land should remain in my late husband's household instead of transferring it to the extended family as it had been the case with other members of our family. I was then appointed as a trustee by the family to continue cultivating the land until Teboho was old enough to take over. My husband's two brothers and I therefore went to Chief Salemone to inform and legitimize the decision we have taken (Int., Masitise, January 2017).

Households that acquired land rights through this method did not only inherit the rights but the responsibilities as well. The welfare of all family members depended on the heir with the crops produced from the inherited land. Unlike chiefly allocations where there were statutory laws to govern land rights, inheritance is based on the basis of custom or 'Black law', and it is equally legitimate. A resident explained:

When my father died in 1997, my two younger brothers and I were grown men running our own households. Throughout the years, when a father dies, the eldest son would inherit the land, that has been the tradition in our family. However, after being appointed an heir, I instead shared the land amongst the three of us equally. I did this because I felt we all deserved a share on our father's land. Not the family nor Chief Salemone rejected this decision because it was entirely up to me what to do with the land. (Int. Masitise, January 2017).

The period of land occupation by heirs in this community ranges from 2-40. This category of land owners comprised natural inhabitants of this community only. Though inheritance was not considered a primary source of land acquisition, some households in this category had never received land through chiefly allocations. The majority of them already had land waiting for them way before reaching adulthood, therefore it was never necessary for them to ask Chief Salemane for allocation. Other households from this category however, owned land through both channels. Their argument was that the land they inherited was not enough for their needs.

### **5.3.1.3 Sharecropping**

At the time of data collection, households that acquired land rights through sharecropping were 4 in the sample, amounting to 8% of the studied population. This method of acquisition depends on several factors like rainfalls, crops in demand and produce from previous farming season. Usually, households that acquired land rights through this channel were people who did not have enough land for their family's subsistence and sought to sharecropping. The majority of these households were not naturally from this community, but there were, nonetheless, a few that were born in the Masitise community. These households opted for this form of land acquisition for three reasons:

- Lack of agricultural land;
- Shortage of inputs and labour force; and
- Source of income.

Some households engaged in sharecropping because they did not have agricultural land. These were the people who were not indigenous members of this community who relocated and received residential land in the community. Participating in sharecropping appeared to be the only viable means to ensure crop production for their livelihoods. Indigenous holds also engaged in sharecropping due to shortage of inputs and labour force. These were the people who had agricultural land but could not put it into productive use. They would, therefore, enter into sharecropping agreement with households that did not have land and share the cost of inputs and work the fields together. At the end of the harvest season, both parties would share

the crops equally. In some instances, the tenant or the sharecropper would incur all the production costs or cultivation and give the land owner a fraction of the crops after harvest.

Some households engaged in sharecropping as a source of income. This was done by households who did not have land, nor the intention to own land. They would, at times, contribute towards the cost of inputs and provide labour for land owners. However, what they would require from land owners would be money instead of crops.

In some cases, both parties would contribute towards cultivation. The sharecropper would either incur all the costs of inputs or they would go 50/50. In other cases, land owners would let sharecroppers cultivate the land and take all the harvest to avoid land degradation. In this case, the sharecropper would incur all the costs as though they were the owners of the land. In an event where the tenant and the land owner were both involved in cultivation, both parties would have equal rights on the land. The arrangement between the land owner and the sharecropper did not involve authorities, it was rather regulated privately by the households involved and based entirely on the premise of the living law. This mode of land acquisition was also considered legitimate. This was indicated by the case of Ntate Tumelo, who shared his experience during the study:

I have been sharecropping with two different households for the past three years. I have never informed Salemane about it, and as a grown man, I do not see any need for me to involve him, because it would then appear as if I am asking for his permission to involve other people on the activities I carry out on my land.... I however recognise his authority, he is the son of my chief, the one who gave me the land, but what I do with my fields does not concern him. (Int. Masitise, January 2017)

#### **5.3.1.4 Sales and transfers**

The legitimacy throughout different modes of land acquisition in Masitise was the same. No method was considered more superior than the other. Households that acquired land through sales and transfers also had unchallenged rights of ownership.

Both the seller and the buyer would usually involve the authorities in issuing leases to new owners whom they have just sold or transferred the land to. In total, these households were 12, 8 from sales and 4 from transfers. The majority of households that bought land from the natives were not originally from the Masitise community. These were the people who came from elsewhere and bought mostly residential land from the locals. The majority of households that bought land were found in the Motsemocha village. There were, however, incidences where native households bought land as well. This was mostly because the area that was previously reserved for agriculture was rapidly becoming a residential area, and native households saw an opportunity to build rental apartments for profit.

### **5.3.2 Vernacular land markets**

As we have seen from the way households inherited land and entered into sharecropping arrangements, land was conceived of as part of the family estate. Households utilised land however they saw fit, regardless of what the principle says. The majority of households also engaged in land sales and transfers despite stipulated laws in the 1979 Land Act. For example, about 12 households had engaged in land transfers of some sort. Some had sold land, others had allocated land to members, while others had leased some land to some people including sharecroppers. It has not been easy for government officials to enforce adherence to the land legislation provisions in this community, and land continued to change hands. People also continued to create settlements in agricultural land and the community witnessed a progressive decline in food production.

Households in this community enjoyed exclusive land rights. They would treat land as though it was private possession and totally disregarded stipulations that land belongs to the entire nation and is communally owned, which makes it not possible to sell, exchange or transfer. Households in this community would dispose of land as they wished, and some even engaged in land sales. For example, Ntate Tefo sold twelve of his fields to Ntate Khotso (not their real names) in 2009. The latter later built apartments (malaene) for rental. The former did not consult with any authority before selling the land and this was after the introduction of Local Government in the country.

Negotiations were between him and the buyer and later informed the chief that his fields now belonged to Ntate Khotso. He explained his reasons:

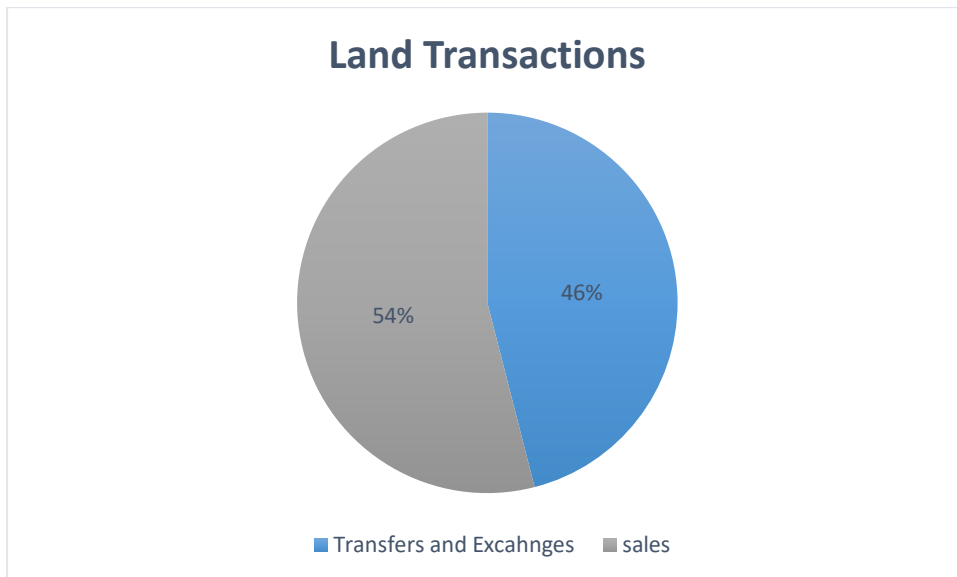
Crop production has been poor in the last decade due to climate conditions. I was still cultivating my land, but the yield was not as satisfying as the amount of money people were receiving from selling their land. I therefore sold four of my fields in Motse-mocha in return for money, which value far outweighed the value of crops I could have produced in five years. The transaction was between me and him, but I notified Salemane about the change of ownership of the land. (Int. Masitise, February 2017)

Despite legislation, households in this community continued to transfer and exchange land for other services. Another key issue in land legislation was that land should be used for a particular reason that an allottee has applied for. For instance, the legislation was against the use of agricultural land for other purposes and vice versa. However, households in this community totally disregarded this law. Many hectares of agricultural land had been used to build apartments. For example, one of the villages in this community, Motse-Mocha was previously agricultural land. Most households who held rights to that land either transferred it to their relatives or sold it to potential buyers.

Ntate Tekesi, for example, owned 5 fields in the Motse-Mocha region. He also had other fields in other areas. Ntate Tekesi was a peasant farmer, he had not been employed anywhere else before. He supported his family of 7 members through the produce from his fields. He also sent his 5 children to school through selling yields. One of his sons got employed in the South African mines where he got retrenched in 2005. Upon his return, Ntate Tekesi transferred 9 of his fields in the Motse-Mocha area to him. He did this in an attempt to bring idle land to productive use because he had not cultivated it in 5 years due to lack of resources. The son then built apartments for rental on the land because he had no interest whatsoever in using the land for agriculture due to, one, diminishing market base for crops, two, poor quality of land that was going to need tremendous investment in inputs and three, the possibility of poor harvest due to unfavourable climatic conditions. This, according to them, was far better than leaving the land fallow.

Fig. 5.5 highlights the number of households that sold and transferred land despite stipulations of the law.

### 5.5 Land dealings



*Source: Adapted from data (2016/2017)*

More than half of the households who owned land or land rights in this community had participated in land transfers and exchanges for different reasons per household. The minority of households had transferred their land to their children and relatives because they could no longer utilise it due to several years of bad harvest caused by drought and other climatic conditions. Instead of leaving the land idle for several more years, they transferred it to be used for other purposes. Others engaged in land sales. Reasons for selling land also differed but the main one was that there were talks about the government taking fallow land from the owners, so instead of being dispossessed they would rather obtain something even if it was not going to last them a long time.

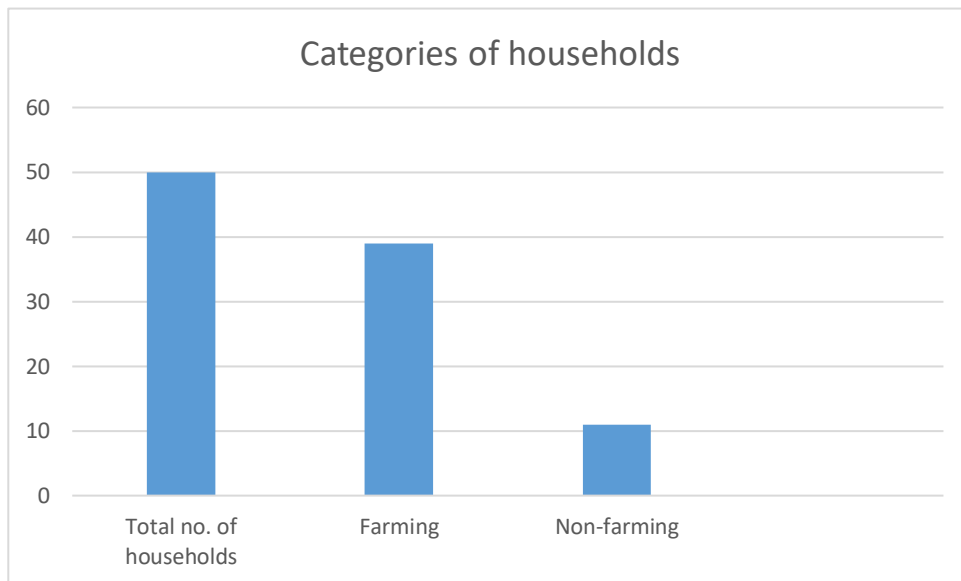
#### **5.4 Land in People's Lives**

Land in Lesotho is vested in the Basotho Nation, as per section 107 of the 1993 Constitution and held in trust by the king (paramount chief) and by implication, could not be privately owned. Due to the size, responsibilities and other factors, land governance could not have been carried out by the paramount chief alone. Delegation of power was the next rational decision to make. Chiefs from all over the country were, therefore, entrusted with land governance and their power was unqualified, such that it depended entirely on them on how much land one needed for subsistence and other needs. Masitise community was not exception to this rule. The discussion below will therefore, focus on how households in this community each gained land rights and how they exercise them.

Masitise community is not connected to major employment centres. It is in the extreme rural south of the country where people depend on land for survival, and previously from labour migration which is no longer the case after South African mines retrenched thousands of Basotho labourers in the late 1980s and early 1990s. The neighbouring Eastern Cape Province does not provide employment opportunities for members of this community because of a number of factors: the first is that the majority of households do not possess necessary skills and education to be employable, the second is that they do not have necessary documentation to be employed in the Republic of South Africa, which in their own words is a tedious activity that ends up frustrating them. The third is because Eastern Cape, especially neighbouring cities (Sterkspruit, Alywan North and Lady Grey) to this community cannot really absorb a significant number of workers because they are still very rural and their economy is not advanced. Therefore, the majority of households engage in farming as a primary source of livelihood.

There was, however, a significant minority of households who do not engage in agriculture. Many of these were widows and elderly unmarried women who lacked agricultural land because for one, when a husband dies, the land is inherited by the eldest son and again in an event where an elderly unmarried woman could not be

allocated land by the chief. The chart below reveals categories of households engaged and disengaged from agriculture.



*Source: Adapted from field data (2017)*

The majority of households, 39, were found to be engaged in agriculture. A fraction of these people also admitted to not farming yearly due to uncertain climate conditions and other factors like lack of inputs for example. Households that had completely disengaged from agriculture were 11 and divided into two categories. Households that are headed by elderly women and widows, and households who own land but have decided to totally disengage from agriculture because they believe it is a waste of already limited resources.

These households withdrew from agriculture because they could not afford to plough their fields anymore. The majority of them, as mentioned earlier on, are not employed and do not have any source of income. Buying inputs and hiring labour are some of the things they could not afford. For example, Ntate Teboho (not his real name), owned 13 fields in this community. He had been farming for the past 32 years to provide for his immediate family of 7 members and his late brother's family of 9 members.

The majority of these members were minors; he therefore had to hire labour to help at the fields. Since Ntate Teboho was not employed anywhere else, he would always pay the labourers with the products from the fields. Due to bad climate conditions in 2012, the produce from his fields barely lasted them a year. This meant that he could not cultivate in 2013 because in all other years, he would have surplus from feeding his two families to use as inputs the following year and as a means of payment to labourers. Consequently, in 2013, he did not have inputs and could not afford to pay workers. Therefore, he could not cultivate from that time to date.

The last time I cultivated my fields was in 2012. The harvest was very poor, I could not secure inputs for the following agricultural year. My fields have been lying fallow since then. I decided to withdraw because it was going to be more expensive for me to cultivate as I would have to buy seeds and fertilizers, which I was not going to afford. (Int. Masitise, December 2017)

Households headed by elderly women and widows were in a way forced out of farming. Females could not own land in this community, and this meant that unmarried elderly women did not have land, hence their exclusion from the activity. As for widows, when a husband dies, the eldest son or any male relative the family entrusts with the deceased's land will take over, leaving the widow without land. The case in box 5.2 is an example of households in this category.

### **Box 5.2: Case of household 8**

In 2006, 'M'e 'Manthabiseng (not her real name), lost her husband through a terrible thunder storm. Her husband was a long-term peasant farmer who owned 22 fields. They were both hands on in farming and 'M'e 'Manthabiseng was usually the one responsible for hoeing and overseeing labourers progress. 'M'e 'Manthabiseng and her husband had three girls who are all married. Upon the death of the husband, the family appointed two nephews of the deceased to look after the fields and his wife, because a woman could not be entrusted with the ownership of land and this forced her out of farming. It was not by choice that she fell under non-farming households but it was determined by the laws of the land.

#### **5.4.1. Land not only for agriculture**

With regard to land, the Laws of Lerotholi, which are still very much effective in the country, and which the chieftaincy institution still draws much of its authority from, it was stipulated that every member of society deserves to be allocated land fairly by the chief depending on their personal needs. In practice, however, chiefs would abuse their authority and exercise arbitrary allocation. This was certainly at play in this community and households that were related to the chieftaincy owned large hectares than distant households. One of the elders explained:

Batho bohle ba leloko la moreneng kahara motse ka mona ke bona ba sehetsoeng limetletsa tsa masimohali, haele rona bafo re fuoe hoa hore fela re fepe bana ba rona. Lekhulo leno kaofela le thota eno hau li bona, ke masimo a ba lelapa la moreneng. (the people who got vast pieces of land in this village are from chiefly lineage, as for us commoners, we were only given enough to feed our families. That pasture over there and fields, all belong to chiefly lineage) (Int. Masitise, February 2017).

According to the legislation, land was not supposed to be treated as a private property or be allocated arbitrarily, but there were households in this community who enjoyed more rights than others. This was evident in the manner which relatives and allies of the chief would be allowed to utilise certain grazing pastures that were not open for every member of the community. For instance, *lekhulong* (the name given to pastures

reserved for the chief's kraal) has been identified as an exclusive grazing area by Chief Salemone's great grandfathers. The rest of the members of the community were not allowed to use it. They were, instead, allocated their own pastures, open for public use. However, households that were related to chief Salemone, his parents' allies and his would also take their animals to *lekhulong* for grazing without being stopped. Nevertheless, if any member of the community did the same, they would always face consequences. They would either be expected to pay a fine or work the chief's fields for some time.

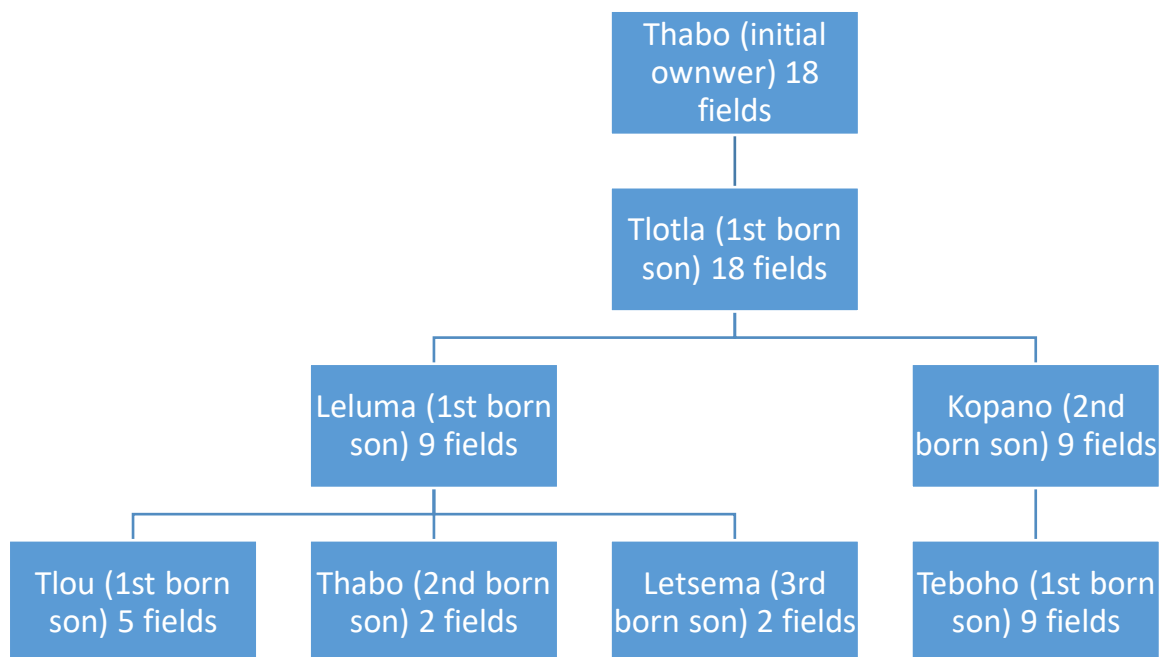
The majority of households in this community not only utilise land for farming and residence, they also regarded the land as a focal point for all human interaction and activity. There were certain areas in this community where people would gather together to either discuss the most pressing issues or matters that the chief regarded important and urgent. These areas included playgrounds and parks. There were also areas (forests and fields after harvest) where households gathered reeds for cooking and producing heat or warmth in winter.

Households in this community perceived land as a medium uniting past, present and future generations. Thirty-two percent of households in this community who acquired land rights through inheritance are a perfect example of this argument. Households headed by men in this community felt a chronological and inter-generational obligation towards land that they occupied, not only in terms of present and future, but also between present and past. As a result, households felt it was up to them to guarantee the protection of lineage land. For example, Ntate Teboho, inherited 22 of his fields from his late father. He was born and raised in this community. He held unshakable sentiments towards the land he owned. His occupation of the land signified a spiritual connection between him and his late father.

The spiritual perception of the land for him was associated with ancestors who left the land for him for livelihoods and several other things that include graveyards, where they are expected from time to time to perform rituals. This spiritual perception, therefore, enriches his attachment and relationship to the land. He made it blatantly

clear that no one outside his family will inherit that land as it may potentially arouse wrath from the ancestors. Ntate Teboho's land would, therefore, be inherited by one of his sons to continue the generational and lineage ownership of the land despite what the law says about non-transferable land rights. In 2005, soon after the introduction of the Local Government, the government attempted to curtail unlawful land handling in this community by introducing new land governance strategies, but households in this community continued to utilise land as though it's a private property. The diagram below shows the order in which land in household 12 was passed from generation to generation.

**Fig. 5.7 Land transmission**



In this family, households adopted different styles of land transmission. Others preferred to give it all to first born sons while some chose to distribute it amongst their male children. The great grandchildren of ntate Thabo, the initial owner, not only regarded their inheritance as a source of livelihoods, but as a means through which they could still connect with their great grandfather.

#### **5.4.2. Households would protect land**

The enactment of the 2010 Land Act attempted to temper with households' perceptions of the land they held. Households in this community held land dearly to their hearts. As we have already seen, for most of them, land did not only signify a place to farm and reside, it also had a sentimental significance. The possibility of dispossession brought about arguments along fighting for the land if they had to. A vivid illustration of this was in the response one of the households gave.

Ntate Lereko, a peasant farmer who has occupied the land for two and half decades revealed that he is willing to do anything possible to keep and protect the land that his ancestors entrusted him with. He was one of the people who owned few hectares of land to support his family of 5 members. Tiny as his land was, he demonstrated an unwavering determination to fight the government or any authority that tries to take away his piece of land. He made reference to the Basotho-Boer War in the 1880's, pointing out how King Moshoeshoe fought the Boers to protect the land. This was the same kind of determination he had to protect his land.

The majority of households illustrated that they have been occupying the land for a long time and giving it up would not be an option since their livelihoods depended entirely on it. Data revealed that households did not have alternative land or alternative means of livelihoods apart from the land they occupied. Essentially, their relationship with land covered all aspects of their lives, from economic, spiritual to social. Many households were determined to keep the land they occupied at whatever cost. For these households, land formed the basis of their existence and a source of prestige.

The desire to fight to keep the land is understandable in the context of its role in the livelihoods of many community residents. As mentioned earlier, households in this community did not have other means of survival apart from utilising the land. They literally maintained their families' welfare through the produce from the land. Households would sell or exchange crops to pay for their children's education and clothing. Apart from farming, land was also used for pastoral purposes. Animals would graze in the fields after harvest and in pastures reserved for grazing. Land was also

used for forestry where households gather reeds and wood. Land was also used for recreational purposes. Consequently, for households in this community, land served as a focal point for all human relationships and activities ranging from agriculture to personal. Their livelihoods depended entirely on land and without it they would have zero means of livelihoods.

The perception households had towards land and the possibility of dispossession is distinguished in the way land is handled and the rage that comes out when dispossession is mentioned. The majority of households revealed a great sense of entitlement to the land that they held rights to. They showed that not the government or any other authority had the right to take away what rightfully belonged to them. As mentioned earlier, they regarded land as vital for food production and income generation, and not only that, also as an important possession for a man to have as it forms part of his identity, in becoming and remaining a man. Taking this important possession away from them would be emasculating them.

For households in this community, land was placed at the heart of economic, political and social aspects of their lives. Taking this very basic element of survival would be taking away their livelihoods. For instance, non-farming households in this community derive their livelihoods from selling their labour to farming households. Taking the land away from farming households would then affect both categories simultaneously.

#### **5.4.3 Perceptions on the privatisation of land**

In 2005, the government introduced local Government in an attempt to reduce poverty and promote community development. The initiative was based on community priorities and allocation of resources would be based on community-initiated enhancement plans. The Local Government was wary of traditional leadership with regard to land governance in rural communities and implemented strategies that tempered with these structures. For households in this community, traditional ruling was deeply rooted and none came close to questioning it. Households had complete trust in how the chief has been carrying out land governance issues. Privatisation of land was, therefore, a taboo. Their argument was that privatisation of land would

undermine the role of the chief. Privatisation of land was perceived as a threat to traditional political structures. There was a fear amongst households that allegiance and loyalty to the chief would diminish, and consequently breed tensions and chaos in the community.

Another key factor was that privatisation would favour the rich over the poor. According to the majority of households, customary tenure was believed to guarantee every member of the community access to land, a tribute that could not be guaranteed if the land was to be privatised. Privatisation of land was also seen as a threat to access to common lands like pastures, reeds, and forests. The possibility of exclusion in economic activities was a consequence that most households dreaded because it would mean that common lands will belong to a few households that can afford, leaving the rest of the community out. The general feeling was that there is no tenure as secure as the communal, because every household was definitely included in economic activities whether through ownership of land or through selling labour. Households believed that customary tenure was equally secure because security of tenure could exist with or without the existence of documentary evidence.

On the same issue, households felt that privatisation of land had rigid segregation elements inherent in it. They considered it a very complex and expensive procedure which was going to exclude most of the households from acquiring rights to land for farming or residence. They also believed that privatisation would lead to loss of property and drive the locals into deeper poverty. On the other hand, privatisation of land was seen as a tool to enrich the wealthy.

They also revealed that they got accustomed to traditional or communal tenure, and now having to adapt to new imposed methods of land administration would cause confusion and take a while to adapt. Another argument was that privatisation would erode their ancestral land management practices. To these households, communal tenure was not only a way of land holding that they got accustomed to, it also had spiritual significance. Some of these households revealed that their ancestors trusted them to uphold their beliefs and practices, and landholding is one of them.

Privatisation would, therefore, erode spiritual connection to the ancestors, resulting in punishment that none would want to go through. Data revealed that ancestors are believed to play a role in land administration. Privatisation of land was going to allow strangers and outsiders to hold title to their ancestral land and that would deprive the living and future generations to enjoy the benefits of the land. According to the majority of households, privatisation was potentially going to cut the connection between the dead, living and the future. Households supposed that they were under social bond to reserve the land for future generations instead of privatisation.

Another key element of privatisation was its ability to promote land markets. This, would give households access to credit because they could use land as collateral to get credit. Households displayed complete aversion towards this idea. They believed that debt was one of the channels through which the government uses to repossess people's land. Households were not interested in accessing credit, arguing that, commercial banks require documentation from formal employment markets before giving out loans.

They also attested that having access to credit simply because they held title to land did not guarantee actual acquisition of credit. Households could not comprehend the extent to which privatisation was going to lead to the growth of markets that currently belong to them. Another issue that households had was the impact that privatisation of land was going to have on them and their livelihoods in general. The benefactors of privatisation were also a problem for these households as it came to their realisation that due to their economic constraints they would not be able to secure titles.

According to households in this community, privatisation was not seen as practical. They were against privatisation's attempt to eradicate customary tenure on the basis that the latter is backward and insecure. They instead perceived privatisation as foreign and hostile to their community. For them, there was no guarantee that privatisation will indeed yield all the benefits attached to it. The general feeling was that security of tenure does not come from holding a title to land, a person could still

hold title but there is no guarantee that title will definitely and constantly lead to security. Households were comfortable with how land has been governed in their community and would prefer things to remain the same instead of implementing concepts that were going to cost them their livelihoods and sanity.

#### **5.4.4 What people knew about the 2010 Land Act**

As discussed in Chapter 4, the 2010 Land Act was a move towards improving land governance in Lesotho and to ensure economic prosperity. The Act was a product of the 2009 Land Bill. The debates about these two pieces of legislative instruments went on from 2009 to 2010. However, there was always a fear that people that were going to be affected by the policy changes, the rural population, remained ignorant of the possible implications. The study also sought to understand the knowledge people had of the new Act. The study found that a large majority of people in the Masitise community were not aware of the contents of the Act, and as such, the implications of the Act on their landholding.

Lack of media coverage could have been one of the reasons behind this because there is no electricity in this community, but the government may have failed to inform communities through outreach programmes. Only a few number of people said they had heard about the Land Act, although they also did not know about the contents since these were not made available through the radio, which is the only media platform available to the few in rural areas. An overwhelming 38 people in a sample of 50 had not heard about the Act, and only 12 professed some limited knowledge. This implied that what they knew about the Act was not comprehensive enough for them to make informed opinions. However, they maintained that from what they have heard the Act was part of the government's strategy to deprive them of the land. Ntate Moloji complained:

Rona re utloile mabare-bare are molaoona o mocha oa mobu ke maholi a patile maeba. Mmuso o etsa khomo patisa ka molao, empa o ntso tseba hore morero ke ho re hlotha mobu. Puso ea marena ene ele betere ha lekholo papisong le ena ea lona ea democracy e hlohang batho tokelo tsa bona. / there have been rumours going around that the government is hiding behind the new

Land Act in an attempt to take away our land. We were better off with chieftaincy than this democracy that deprives us of our rights. (int. Masitise, February 2017).

They expressed fears that the Act may worsen their already deteriorating livelihoods strategies by taking the land away if it remains idle for a period of three years. Ntate Moloji asked:

How do you plough land if there are no rains? Will this Act bring rains, or, will it provide inputs? This government behaves like a foreign government that does not understand our situations. There are no rains here, but land remains our land. It has value outside agriculture (Int., Masitise, February 2017).

No government official had been to the area to give them the necessary information. This was left to rumours and the radio:

I have heard on radio that the government introduced the new Land Act (Molao oa mobu o mocha), but I am not familiar with its contents; therefore, I cannot know how it is going to impact on us. (Int. Masitise, February 2017).

Some Lesotho rural areas are relatively remote and generally cut-off the centres of power. It is not surprising that only 12 people had some knowledge, which was also distorted. They knew that land would be taken away for private investment, and thus, their land would be given to politicians in Maseru and the Chinese. To the people, the government had donated the land to the Chinese and other people from South Africa. Ntate Sebetsa said authoritatively:

Our land has been used as a bet by the government. I hear that these Chinese will give the government money and they will take the land. The Chinese are better people than us in the eyes of those in government, we do not deserve to hold land....we are not Chinese (int. Masitise, February 2017).

People feared a repeat of what happened in history in South Africa where they are told that whites took land and forced people to work for them. Ntate Peter retorted:

We will be working for them. How are we going to survive? I have heard how they treat Basotho...in their shops. Our government has let everyone down. I fear for our children, at least we are old and will leave soon. (int. Masitise, February 2017).

Whether people were telling the truth or not is not the issue here, what is important is that people had their fears about their land, and these fears demonstrate the position of land in their lives.

## **5.5 Chapter Summary**

This chapter has provided an analysis of the rural community of Masitise in southern Quthing District in the foothill regions of Lesotho. The analysis took the reader on a journey through this community of traditional Basotho in an attempt to understand the dynamics of land and the people's perception and understanding of Lesotho's Land Act of 2010. The analysis revealed four aspects that have relevance for our understanding of the Land Act and its likely implications. First, it highlighted the complexity of land rights and holdings in rural communities of Lesotho. While all community members have rights to land, which is held under communal tenure, households treat the land as if it is private property, with households able to inherit land, practice land fission and engage in vernacular land markets. Households freely engaged in land transactions, which allowed them to create alternative livelihoods from land outside agriculture.

Second, it illustrates the importance of land in households' livelihoods. Households used land for agriculture, producing crops and rearing livestock for a living, although there are some households that had disengaged from agriculture. Households that practiced agriculture could gain access to more land through sharecropping arrangements, and the households that were not in agricultural production could still derive livelihoods from their land through offering it for sharecropping.

Third, it further showed that land had a value outside agriculture. It was established that land formed the basis of existence, as all aspects of human life, crop production, housing and human nutrition revolved around land. Land had a spiritual meaning to households, and all households had a connection to the land, and people associated it with their ancestral who left the land for them, and they expected to leave it for the next generations. They felt that no authority had a right to take land away from them, and people were prepared to fight dispossessions. Thus, land was a medium linking past, present and future generations, and any changes that would affect how households held land was similar to breaking this linkage.

Finally, the analysis showed that households had little knowledge about the Land Act 2010. The few that had some knowledge about the Act had a distorted understanding of the Act and its implications. It would appear that the government never saw the people as central actors and no information was shared, at least in this community people had never seen an official who came to share information on the Act. Given the lack of information, people relied on what they heard, and formed their opinions. The analysis highlighted that people feared dispossession, and were certain that their land will be donated to the Chinese and South African investors.

## CHAPTER SIX

### CONCLUSIONS, FINDINGS AND IMPLICATIONS

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#### 6.1 Introduction

However, the MCC's logic is entirely new; rural land in peri-urban areas is no longer solely a place of agrarian production, but a place of economic growth. The growth created by secure land tenure does not need to be agricultural. Policy reforms focused on growth could include increasing agricultural production, but they could just as easily privilege development of housing, commercial or industrial space on land once used for housing and smallholder agriculture. (Fogelman 2017, 9)

This study explores the essentialist understanding of land in Lesotho. It has traced and analysed the country's land governance reforms in relation to their implications on land access and livelihoods of the poor Basotho households that currently hold rights to the land that is subject to reform. This study was influenced by wider debates around donor conditionality and land reform in the neo-liberal era. The study set out to trace land governance challenges in Lesotho that ultimately lead to the enactment of the 2010 Land Act. Evidence revealed that pre and post-independence Lesotho engaged in a series of attempts to reform land policy. It appeared that both internal and external factors contributed to what ended up being the country's biggest challenge. However, the chapter touches on the analysis of those challenges and demonstrates how they constituted troubled land governance in Lesotho.

It is worth mentioning that Lesotho has a high dependency on aid. This attribute inevitably influenced the country's policy agenda. The chapter highlights how conditions of aid shaped and created Lesotho land policy. The Land Act 2010 emerged to be a condition put forward by the MCC for aid. Politics around this matter are later discussed in the chapter. Another important aspect in this chapter is the issue of landholding. Evidence showed that landholding and use are not as though they appear in principle. Households in rural communities totally disregard stipulations of the law

and use, transfer and handle land the best way they know how. This chapter is a discussion of the findings. Using literature and evidence, it demonstrates how poor land governance leads to poor policy implementation, that oftentimes does more harm to the locals than good. The chapter concluded by providing policy implications of the Land Act of 2010.

## **6.2 Discussion**

The themes discussed below emerged from the evidence provided in previous chapters. The analysis of data and broad theoretical framework adopted by the study assisted in developing the main arguments of this study. Lesotho's troubled land governance is an analysis of both the theoretical framework and chapter 4. It emerged from those two that indeed the country has always experienced unpleasant land governance challenges. Aid and conditionality emerged from, but not exclusively the analysis of Land Bill 2009 and 2010 Land Act. It was after further engagement with the two legislations that the study concluded that indeed aid goes hand in hand with conditionality. Chapter 5 and literature paved way for the last theme. It was through their analysis that the study concluded that landholding patterns in rural communities is really a matter of customs and traditions more anything else.

### **6.2.1 Lesotho's troubled land governance**

From the evidence provided in Chapter 4, several attempts have been made to improve land administration in the country. Various legislations were passed by the government in an effort to harmonise what proved to be a problematic issue. Elites and missionaries believed that customary tenure was responsible for lack of significant development in the agriculture sector, hence the need for reform. The first attempt pre-independence was the 1965 Land Advisory Board Procedures Regulation. It was intended to formalise landholding in the country through issuance of certificates that were known as Form Cs. It came to the government's realisation that chiefs were abusing their power in land allocation and revocation. To redress this, the government enacted the 1967 Land Procedure Act. The aim was still to strengthen customary tenure and turn it into a hospitable system. This Act introduced the system of Land

Allocation Board. Chiefs were now expected to work hand in hand with the boards and take their advice. However, they perceived them as threats to what has been their exclusive entitlement and decided to ignore their advice because it was not binding. Land administration continued to be a problem. The same problem that the 1967 Act attempted to address proceeded to haunt the country. Chiefs' arbitrary rule endured and tension ascended between traditional and civil authorities.

Evidence shows that as grievances escalated, the government took further attempts to redress land administration. The enactment of the 1973 Land Act and Administration of Lands were a comprehensive attempt that gave specific attention to both rural and urban land governance. From the analysis of evidence provided in Chapter 4, section 4.2.4, we saw how chiefs resisted policy change and implementation. They further exhibited resistance to the propositions of the law that led to the failure of its implementation. The 1973 Land Act failed to address the issue of land governance. This ultimately resulted in the enactment of the 1979 Land Act. The objective was to curb chiefs' power through constitutionalising advisory boards. A year later, the government identified loopholes in the Act and enacted the 1980 Land Regulations Cover Omissions, followed by the 1986 Land amendment Act. As shown in Chapter 4, various amendments to the Act made it user unfriendly and confusing. Land administration continued to be an issue for both citizens and authorities.

Against this backdrop the Land Bill of 2009 was passed. It was hoped to correct the majority of challenges the country has been facing since the first attempt to improve land governance. Among other things, the Bill proposed to ensure economic prosperity in the country through optimum utilization of land. Contrary to the 1979 Land Act, the Bill advocated for open land markets to foreign investment. The majority of the Basotho nation were not satisfied with the contents of the 2009 Land Bill, nevertheless, a year later, the Bill translated into the 2010 Land Act with the funding of an American organisation, Millennium Challenge Corporations (Kleinbooi, 2010). The 2010 Act was passed to correct on the failures of 1979 Act, specifically restricted access to land by foreign investors. In circumstances as provided by the 1979 Act, foreign investors

could access the land but that would hardly profit them. The Act required them 51 % shares to the people of Lesotho in any form of land investment.

The government realised that there was a need to move land governance from traditional to modern system. The majority of laws discussed above drew inspiration from the Laws of Lerotholi. These very same laws gave chieftainship unchallenged power over land administration, further enhanced by the Chieftainship Act that the government failed to repeal. None of the legislations before the 2009 Land Bill has ever challenged the power given to the chiefs by the Laws of Lerotholi, instead, they all upheld and strengthened their power, which later proved to be a problem when attempts were made to reform land law.

Further exacerbating land governance in Lesotho was legal plurality that came with British administration. Statutory laws were imported to govern urban lands alongside customary tenure, which remained unchanged until 1966 when the country got independence. The concurrent existence of statutory and customary laws further worsened land governance in Lesotho. The current land law is a continuous process of reforming land, but because of several other challenges and the colonial legacy which brought the dual system in administration, Lesotho still faces challenges in as far as land reform is concerned. However, despite all the challenges and failure of initiatives to materialise, the government managed to implement the 2010 Land Act. Now, what made the government act so fast and resolute to reform land governance?

### **6.2.2 Aid and conditionality**

The land regime in Lesotho was regulated by 1979 Act before the advent of the 2010 Act which was funded by the MCC. Lesotho has a long history of aid dependence. It dates back to the era of remittances that the country would receive from labour migration in the mines of South Africa. The country then relied on remittances for daily administration costs, income generation and investment purposes. Evidence shows that the country even receives aid for budgetary support. Similarly, Zambia for example, also relies on Chinese aid to support almost every project in the country. For instance, the construction of the government complex and Mulungushi textile plant were both funded by the Chinese government. Literature shows that Zambia's

dependence on aid dates back to the 1970's and the country has never been able to fund significant domestic projects. From the substantiation provided, it is clear that aid creates and perpetuates dependency. Every other country that has shown heavy reliance on aid has not been able to self-sustain and develop. Contrary to popular belief, aid has worsened Lesotho's economic status and growth. In his study, Thamae (2016) discovered a strong negative long-run association between Lesotho's economic status and aid.

From the analysis of data, aid has been shown to hinder economic growth. It results in short-term interventions, which somehow lack lasting sustainable social, and economic impact (Masewu, 2017). In both Zambia and Lesotho, people appeared to lack ambition and creativity because they know that when things go really bad, China, America or another wealthy country will stretch a helping hand. Governments come up with projects or policies whose funding is already hoped to come from donors. Masewu referred to this situation as the curse of aid. Somalia, for example, is one of the world's highest recipients of aid. It has had several famine occasions and not once had the country attempted to significantly improve its economy. It is evident that aid does not really help the recipient country; rather, it further exacerbates challenges because it teaches countries to rely on aid instead of assisting them self-sustain.

It has been demonstrated that aid comes with conditions. Recipients of aid have to adhere to certain conditions that donors put in place prior the offer. As it has happened in Tunisia, Burkina Faso and Sri Lanka, Lesotho received aid from the MCC on condition that it engages in significant land reform. The enactment of the 2010 Land Act was a prerequisite for aid that was clearly spelled out in the negotiations between the government of Lesotho and the USA. The then country resident director openly told stakeholders that the government of the USA will have to withdraw aid if the Bill (which would later translate into the Act) was not going to be passed due to controversies around it.

As shown in Chapter 2, oftentimes aid is accompanied by conditions. This makes it more beneficial to the giver than the receiver because they set the tone and inevitably

create a suitable environment for growth. For example, the propositions of the 2010 Land Act favour foreign investors over the locals. The opening up of land markets and private ownership make it easy for foreign investors to own huge tracts of land that the natives cannot afford. This study argues that, Lesotho's long history of aid dependence makes it susceptible to opportunistic behaviour and compromises its policy agenda. The country will do anything to secure aid because despite many initiatives to propel development, the economy is still fragile. If aid indeed helped recipients, Lesotho would not have to depend on donors and investors for anything considering its lengthy relationship with the donor community.

### **6.2.3 Land holding patterns**

Emerging data from the study showed that landholding in principle is different from practice. Largely influenced by the colonial legacy and the Laws of Leretholi, chiefs remain sole trustees of land in rural areas. The government took several initiatives to neutralise the power of chiefs in land governance. These proved to be in vain when communities continued to consult with the chiefs for allocation and any land related matters. It is demonstrated in Chapter 5 how communities actively ignored any structure put in place to assist with land administration. For example, Local Government was implemented in 2005, with the introduction of community counsellors. These were the people known to communities, elected by the government to assist the chiefs in administration. Community members completely disregarded these counsellors and continued to consult with chiefs.

By and large, land could not be treated as an exclusive possession. That is, people were not expected by law to treat land however they wished to, they were also expected to use the land for a particular reason land was allocated for. Even so, communities perceived land as their own. How things were done in practice was different from how they ought to be done in principle. Rural communities would engage in land transfers and sales as though there was no law prohibiting such practices. In principle, upon allocation, an allottee would be given a 99-year lease. In an event where an allottee dies, the land was to revert back to the chief for reallocation. This was never the case in practice. The deceased's family would appoint an heir to inherit

the land and continue household's subsistence. Once a portion of land was allocated to a particular household, it never reverted back to the chief for whatever reason.

Rural communities perceived land as though it formed part of their families' estate. Households would engage in land transfers, sales and inheritance without consultation with authorities. There were incidences where the chief would be notified about transfers, but this was only done for legal recognition, not as a way of asking for permission from the chief. Land would practically revolve in one family for generations. Households that acquired land through inheritance formed part of this category. There were several modes of land acquisition that households engaged in, modes that were not legitimately approved by the civil law, but officially recognised by common law.

The relationship people had with the land illustrated how central land is to their livelihoods. Households related to land in almost every aspect of their lives. Land emerged to have an economic value to the people, as is the case in all societies. Households used the land for subsistence or their families' welfare. They would cultivate crops and rear livestock on land. Being unemployed and unskilled in the corporate sector, households solely depended on land for livelihoods and nothing else. People did not have alternative means of livelihoods, land was all they had to feed their families, take their children to school through selling surplus crops and build shelter. There were several other uses of land apart from agriculture, which were equally important to the people.

Land further formed part of social and political basis of people's lives. There were various designated areas where community members would gather every now and then to discuss pressing issues, be it about governance or their social interactions. There were parks and playgrounds for entertainment, which were also used to host public gatherings (pitso) whenever the chief deemed it necessary to deliberate on particular issues with the people. Other areas included forests for reeds and wells for water. Land was central to people's survival regardless of whether they engaged or disengaged from agriculture. It emerged that not everyone was involved in agriculture, and this did not mean that land was of minimal essence to them.

There also was a spiritual connotation to land. People felt strongly about the land they occupied, demonstrating how it is connecting the past, present and future. The mere fact that past generations occupied the land, compelled people to want keep the land in their families as a way of keeping the link between them and their ancestors. There was fear amongst households that if they alienate the land, they will be arousing their ancestors' wrath and their families will be cursed for generations to come. People also performed rituals on the land of their ancestors in an attempt to appease or plead something from the ancestors. Land also signified a sense of identity. This was more evident in male citizens. Men's worth was determined by the amount of land they owned. Whether people practised subsistence or not, land was still very essential to their existence. Chapter 5 demonstrated how crucial land was to rural communities beyond agriculture. People's perceptions about the possibility of dispossession aroused their determination to engage in armed conflict with whoever might attempt to take away their only source of livelihoods.

### **6.3 Conclusion: Land grab or 'Development by dispossession'**

Lesotho has undeniably faced numerous land governance challenges prior to the enactment of the 2010 Land Act. As the proponents of the Act would want us to believe, the Act was part of the process of reforming land governance prior and post-independence.

Of course, they have evidence to support their position. Factors such as Lesotho's legal plurality, which was inherited from the colonial administration, contestation between the traditional institutions and institutions of modern governance and the resulting problems in land governance, are well-documented factors and are well known. However, the present tenure system worked for the common people who had learnt to negotiate and draw the best out of the system. The system conferred them with livelihood and security. However, if the Act is to be implemented, it is likely to lead to dispossession of the poor. In his study of the post-2000 development agenda and land rights in Lesotho, Fogelman (2017) alerts us to a situation of development by dispossession.

To this end, he argues that states such as Lesotho have embarked on numerous economic reforms which have not only focused on economic growth, but with little emphasis on poverty reduction thereby resulting in massive poverty and economic hardships among the people. He said it best when he stated that:

the long-time users of the land, who saw it as a place of subsistence agriculture, are no longer those who can benefit from the land. The relatively easy land seizures in Ha Mohapi were performed by real estate developers with the assistance of state bureaucrats and enabled by changing policy environment (Fogelman (2017: 2).

Lesotho's customary tenure has been criticized for, among other things, insecurity of tenure. Opponents of this system argue that it hinders economic growth because one, it does not allow for the maximum utilisation of land; two, it discourages foreign investment. By developing the tenure system through moving it from traditional to modern, the assumption is that people can use security of tenure to improve their land. In customary tenure, investors were reluctant to enhance and develop the land due to uncertain ownership realities. It is worth noting that Lesotho is predominantly rural and poor. Moving land tenure from traditional to modern is a development aimed at enhancing the country's economy.

This development however, may lead to people losing their land. Firstly, in customary tenure, people were allocated land for free. Secondly, every deserving member of the society was guaranteed allocation, third and last, land was commonly owned. Now, with the modern tenure, people are expected to buy land and enjoy exclusive rights of ownership. This development has a potential to leave the poor landless. The poor who cannot utilise their land effectively and efficiently may be forced to sell it to commercialists and remain landless. There was an incident in Mokhotlong district where the local poor sold their land at a ridiculously low price in fear of losing it without compensation because the area had been identified as a Selected Development Area.

The Land Act 2010 puts emphasis on maximum utilisation of land. This, according to the Act could be achieved through enhancing foreign investment and utilising land beyond agriculture. Practically so, land has always had several other significances for the rural poor even though they were non-economic. This does not make their use and need for land less significant only because they do not contribute to the national economic growth. The modernisation of tenure is consumed with development ahead of poverty reduction.

The study revealed that the Act may lead to the dispossession of the poor by facilitating land grabbing opportunities. For instance, the 1979 Land Act had strict rules for landholding by foreigners. This is the rigidity the 2010 Land Act came to relax. Instead of the 51 % shareholding of the locals, the 2010 Act proposed 20%. Data revealed that the 2010 Land Act opened opportunities for investors to invest in land, leading to people losing their land through cheap sales. The realities of the Act make it even worse for the emerging poor who might not have the opportunity to own land at all, denying them to engage in cheap land sales for compensation like their counterparts. Thus, the Act makes it easy for foreign investors to acquire land, while further placing the poor rural people at a disadvantage.

The study revealed that people need land not only for agriculture. Land proved to be a focal point of their social and political interactions. Subsistence farming was of course one of the major uses of land. However, land also signified a sense of identity to households. Land also had a spiritual implication. People felt that it connects past, present and future generations. Vacating the land was believed to have negative spiritual repercussions as the relationship between the ancestors, the living and the future will have been tempered with. People need land for livelihoods as well. This does not have to involve major economic activities.

Households use common lands to gather wood for cooking and warmth, to gather water for household usage and pastures for animals. If the Act is implemented, and land converted into industrial use, the poor communities will be left with no land to secure their livelihoods. The poor depend solely on land, without it, they cannot satisfy

any of their basic needs. The Act's redefinition of land as a place for economic growth leaves poor people landless. As shown in chapter 2 and 4, development of policy that is often orchestrated by the donors exaggerates the value of land and put little emphasis on improving the lives of the rural poor, instead, they are further driven into extreme poverty through dispossession.

Lesotho may not be an outright land grab situation by land barons like Zimbabwe and South Africa, it is additionally not in isolation from the entire globe. Madagascar and Ethiopia saw countries like Europe, China and India embarking on massive land purchase in their territories. This situation was ripened by development of policies that the countries put in place to enhance economic growth. Lesotho's Land Act of 2010, which was largely influenced by the MCC, resembles the type of dispossession presented by Fogelman. His idea of development by dispossession slightly differs with the dispossession that is likely to happen under the Act, but nonetheless aligns with the general argument that the government dispossesses the people through policies that are seen as suitable for development. This study, therefore, aligns itself with what he termed 'development by dispossession'.

#### **6.4 Policy implications**

**Land rights** - the Land Act of 2010 aims to propel development through maximum utilisation of land. This would include aspects of opening land markets to foreign investment (commodification and privatisation of land) and redefining the meaning of land from just an agricultural asset to commercial. Through analysing the dynamics of land among households in Masitise community, the study discovered that landholding and usage were more complex than meets the eye. While households owned land and engaged in agriculture, they also had various other uses of land that were equally significant. People needed land for non-agricultural purposes. If the Act is to be implemented, the poor people, who do not have alternative means of livelihoods will be ripped of their only means of survival.

The propositions of the Act did not take it into consideration that poor people not only need land for agriculture but for survival as a whole. The Act took it for granted that

land is only used for agriculture, hence advocating for expansion and industrial utilization, totally ignoring the fact that people do not need land for agriculture only. The general assumption that people were not utilising land to its full potential will lead to poor households being ripped off their livelihoods. The Act need not focus on economic development at the expense of poverty reduction. While the focus is to ensure security of tenure through land titles, which will ultimately attract foreign investment, the poor people must not be driven into further poverty by taking away land that they held simply because they are not cultivating it, because cultivation is not the only activity performed on land. Poor people's customary rights need to be protected.

**Participation** - while policies are hoped to improve people's lives, policy makers need to ensure participation of the people who are most likely to be affected by the policy. Local communities have to part of the decision making. The 2010 Land Act, which was largely influenced by the MCC, was enacted on the premises that Lesotho needs to reform its land policy to propel development. The development projects that MCC engages in are believed to be country-led. Thus, countries identify their own development goals and MCC only comes in to assist such countries achieve those goals and strengthen accountability to citizens.

However, the study revealed that the 2010 Land Act reflects the interests of foreign investors over those of the local people. The study also revealed that the policy agenda of the 2010 Land Act was influenced by the interests of funders (MCC), hence the reflection of their interests. Local people had minimal participation in the policy agenda, otherwise their interests would have reflected in the Act if they were part of the decision making. The element of dispossession of the poor would not be an issue, had they been involved in the decision making of the 2010 Land Act. For future reference, policy makers need to involve local people in policies that affect their lives if economic prosperity and poverty reduction are to be achieved, alongside social justice.

**Economic inclusion** - land reform, as a vehicle to economic prosperity, ought to have included the poor people in economic activities. Commodification of land, advocated by the 2010 Land Act actively excludes poor people from partaking in economic undertakings. The moment the reforms attempted to address the issue of security of tenure through land transactions, poor people were completely excluded. These include those households that had disengaged from agriculture due to lack of funds. However, through practices like sharecropping, they were able to provide labour to agriculturally active households to earn crops for their families' welfare. Small as this contribution might be in national standards, their activeness in satisfying their basic needs counts for something. If holding title to land involves transactions, and if land is taken away because people are not using it to its full potential, then these tiny economic activities that households engage in will no longer exist.

A consequence of this will be economic exclusion of the poor in the system. Policy makers have to take into consideration that it is not everyone in the country who has the potential (skills, willingness and ability) to participate in large-scale economic activities. They must also appreciate even the smallest efforts people take to maintain their livelihoods. Policies need to reflect realities of poor people, and implement tailor-made strategies to improve their status. Country-led development projects that MCC advocates for, need not exclude people in economic activities, and further push them into extreme poverty.

**Policy defects** - based on the results of this study, poor households need land beyond agricultural engagements. Their livelihoods depend entirely on the land. The executed propositions based on the assumption that economic development can be propelled through introducing modern means of wealth generation like private investment and mortgages placed poor people at a position ripe for dispossession. Thus far, policies that are aimed at improving poor rural people's livelihoods are based on the general assumption that challenges are identical everywhere and can, therefore, be treated with one-size fits all remedy. Data collected from this study revealed that land related challenges differ from one society to another regardless of the system of tenure. It is worth serious consideration for policy makers to take into account different and

complex dynamics of landholding, usage and perception before implementing policies that are to improve people's livelihoods. It is also important to acknowledge that challenges are unique and require unique attention.

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## Appendix (i)



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### LAND TENURE REFORMS AS SUBTLE LAND GRABBING: LESOTHO'S LAND ACT OF 2010 AND THE POOR RURAL COMMUNITIES

#### INTERVIEW SCHEDULE

##### Key Informants

Discussions with key informants will be guided by themes that emerge from the review of literature rather than any predetermined questions. The study is designed to allow informant to cover as much information as possible without being constrained through a question and answer kind of schedule. From the discussions, emerging themes and follow-up questions will be noted and followed-up through follow-up questions. The discussion will hinge along these themes:

1. Lesotho's dependence on aid for budgetary support
2. Aid, conditionality and policy choices for a country like Lesotho
3. The role of the United States of America in the formulation of the Millennium Challenge Account (the 2007 Compact) in Lesotho, and the conditions that accompanied the signing of the compact.
4. The role and power of the Government of Lesotho in the compact negotiations.
5. The government and the problem of land governance in Lesotho – where it all went wrong
6. Land reform and the position of donors – major assumptions on land in Lesotho.
7. Land and the tenure problem.
8. The history of landholding and the challenge of modernising landholding patterns.

## **Community members**

At the community level, the interviews will also take the form of extended discussions, where the researcher will be guided by one particular research question. This question will guide the observations and interviews conducted at the household level. Questions will mainly emerge from the discussions and observations. This is a research where the teacher goes to the field to learn from the people and allows them to teach them their way of life. The researcher will then develop questions from emerging discussions.

Key themes are expected to be covered at this level:

1. Ownership of the land they occupy, particularly perceptions on their rights to the land and possibilities of dispossession
2. Land-use and livelihoods – various uses of land and performance of agriculture in the area.
3. How they got the land and the period they have been on the land that they currently occupy.
4. Possibility of giving-up the land and what they would do without the land they currently occupy.
5. Perceptions on the privatisation of land – will it give them security?
6. Knowledge of the 2010 Land Act and its implications

## Appendix (ii)



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### LAND TENURE REFORMS AS SUBTLE LAND GRABBING: LESOTHO'S LAND ACT OF 2010 AND THE POOR RURAL COMMUNITIES

#### INFORMATION SHEET

I would like to invite you to participate in the study. You are advised to read the following information carefully, then decide whether you want to participate or not. If you need more information or clarification on the contents of the form, you are free to ask.

My name is Limpho Kokome. I am a student at the University of Pretoria. This study is conducted entirely for academic purposes. It is about the Land Act of 2010 and its implications on the indigenous . The central aim of this study is to trace and analyse Lesotho's land governance reforms in relation to their implications on land access and livelihoods of the poor Basotho households that currently hold rights to the land that is subject to reform.

Your participation in this study is voluntary and involves no remuneration. You are free to withdraw during the interview without any negative implications. You have the right to refuse participation as well. I will require your views and opinions on land related issues that I am going to discuss with you. I plan to record and take notes of our discussions, but recordings can only be made with your consent. I selected you to participate because your contribution will add value to my study.

I will ensure anonymity and confidentiality through the use of pseudonyms. This way, not even the researcher will be able to link responses to participants. The information that I am going to gather from you will be protected and stored at the university for a period of fifteen years. Your participation in the study will not, in any way, harm you or members of your households. The results of this study are going to be used for academic purposes or further research.

**Appendix (iii)**



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**Please tick to indicate your consent to the following** *(Add or delete as appropriate)*

I have read, or have had read to me in my first language, and I understand the Participant Information Sheet.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
I have been given sufficient time to consider whether or not to participate in this study.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
I have had the opportunity to use a legal representative, family support or a friend to help me ask questions and understand the study.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
I am satisfied with the answers I have been given regarding the study and I have a copy of this consent form and information sheet.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
I understand that taking part in this study is voluntary (my choice) and that I may withdraw from the study at any time without this affecting me.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
I consent to the research staff collecting and processing my information, including information about my ownership of the land.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If I decide to withdraw from the study, I agree that the information collected about me up to the point when I withdraw may continue to be processed.	Yes <input type="checkbox"/>	No <input type="checkbox"/>

---

My participation in this project is voluntary. I understand that I will not be paid for my participation and may withdraw and discontinue participation at any time without penalty.

Yes  
 No

---

Yes  
 No

---

I opt to participate in this study because I understand that it is designed to gather information about academic work of faculty on campus.

Yes  
 No

---

I understand that the researcher is in no way trying to harm respondents and that there are no compensation provisions in case of injury during the study.

Yes  
 No

---

I know who to contact if I have any questions about the study in general.

Yes  
 No

---

I understand my responsibilities as a study participant.

Yes  
 No

---

I wish to receive a summary of the results from the study.

Yes  
 No

**Declaration by participant:**

I hereby consent to take part in this study.

Participant's name:

---

Signature:

Date:

---

**Declaration by member of research team:**

I have given a verbal explanation of the research project to the participant, and have answered the participant's questions about it.

I believe that the participant understands the study and has given informed consent to participate.

Researcher's name:

---

Signature:

Date:

---