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**LESOTHO'S LAND TENURE:  
An Analysis and Annotated Bibliography**

**Jerry Eckert  
October 1980**

**Special Bibliography No. 2**

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An Analysis and Annotated Bibliography**

**Special Bibliography No. 2**

**Lesotho Agricultural Sector Analysis Project**

**by**

**Jerry Eckert  
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*"A succession of overseas economic missions --- have without exception stated categorically that the traditional system of land tenure is quite unsuited to modern economic development and that it was a man-made obstacle whose removal was a precondition to economic growth." (World Bank, 1975, p. 8).*

*"An anthropologist's services were obtained (See Sheddick, 1954) to investigate the land tenure system which everybody except the peasants thought, and still think, was a hindrance to agricultural development." (emphasis added) (Chakela, 1973, p. 8).*

*"A Sesotho acre is most exactly defined as a piece of land twelve paces by  $x$  - where the value of  $x$  is not relevant." (Hallman, 1966).*

*"It remains the case that accurate information concerning the land system tends to become a jealously guarded mystery." (Cowan, 1967, p. 58).*

## I. INTRODUCTION

### Overview

The land tenure system of Lesotho has received a great deal of attention since it was first examined in 1873. Over the intervening decades a substantial literature has accumulated representing several perspectives. Significant portions constitute descriptive or analytical material, generated by interest in this unique example of a southern African tribal land institution. Among these materials are works authored by economists, sociologists, anthropologists and others. A second important subset constitutes descriptive/analytical material drawn from the legal perspective. In this dimension as well Lesotho offers fertile ground for study because of the co-existence of both tribal and Roman-Dutch legal systems and the fact that both systems are involved in various facets of land law and land use litigation.

The bulk of the literature treats land tenure within the context of economic development. In the pre-independence period these works were invariably written by expatriates, generally addressed to the British colonial administration, and almost always found traditional tenure practices to be an impediment.

Two exceptions are noteworthy. Sheddick (1954) provides an essentially sympathetic anthropological examination of the system in operation at that time. His work has since been used by others to buttress arguments against the traditional system even though the alternative position could also be taken using Sheddick's material. More recently the University of Chicago Team (1963) provides a strong counterpoint that the traditional system could have been salvaged through improvements in its legal basis and administration. Significantly, their report was prepared for the Paramount Chief (now King).

Since independence there have been a very large number of foreign assistance agencies concerned with Lesotho's economic development, many of them with major project commitments. Most major agricultural policy or strategy statements produced by these agencies contain sections on land tenure. Several articles have appeared in professional journals and other outlets. Consequently the breadth of institutional and professional biases through which Lesotho's land tenure is seen has broadened considerably. Nevertheless the theme of the unsuitability of traditional tenurial institutions has persisted in the post-independence years.

In defense there have recently been one or two attempts to support traditional tenure. These few items constitute the smallest subset of the literature, but their importance is enhanced by the fact that only here do Basotho authors appear (see Phororo, 1979).

## Land Law: Past and Future

One of the distinctive characteristics of Lesotho's land tenure is its youth. Until the middle of the 19th Century, the Basotho were sparsely settled with very ample land resources relative to need and little requirement for formally specified procedures governing land rights and land use. During the period when Moshoeshe I was leading the creation of a Basotho nation (roughly 1830-1870), the loss of arable land resources to the Orange Free State plus the agglomeration of many kinship groups into the limited remaining area created a need for more explicit attention to land rights. Moshoeshe I, as first Paramount Chief and founder of the nation, established the principle that all land resources were the common property of the Basotho nation, held in trust for the people by the Paramount Chief. A system of allocation of land use rights emerged and was administered by various levels of the chieftainship. The guiding principles of land use, which have become embodied in Sesotho<sup>1</sup> maxims, stressed an overall theme of welfare. Land allocations theoretically ensured the subsistence requirements of each Mosotho. A number of ecologically sound conservation practices were built into the gathering rights for wild flora; eg. thatching grass and reeds, basket grass. Not surprisingly, given the external threats at the time, some of the first stipulations prohibited the allocation of land to non-Basotho. Sale of land rights, which ultimately could have alienated major portions of Lesotho, was also proscribed.

The various procedures adopted were founded in centuries old traditions of the southern Sotho and related ethnic groups. Pragmatism of Moshoeshe I and his successors resulted in an evolutionary development so that traditional forms were modified or augmented to reflect the particular circumstances of the Basotho nation. Land use rights being in a sense new were also flexible, permitting them to meet evolving needs of the time apparently rather well. It should be noted, however, that the practices most clearly defined were those accommodating a traditional tribal agriculture essentially not exposed to modernization. "Economic development," with its inherent pressures, had not yet been invented.

The various practices and procedures then in use were partially codified only in 1903 by the Basutoland Council and confirmed by Paramount Chief Lerotholi. These "Laws of Lerotholi" have been amended and expanded on several subsequent occasions, the most recent being in 1959. At times implementing regulations have been promulgated as well. Portions of the 1959 version concerning land are excerpted in Appendix I.

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<sup>1</sup>The language (Sesotho) is used by the people (pl. = Basotho, sing. = Mosotho) of Lesotho.

The Laws of Lerotholi do not, in fact, have legal status since at no time in this century did the Basutoland Council nor the Paramount Chief have the power to legislate. However, they have been widely accepted as binding by the people and by the traditional (chieftainship) lines of authority. Most decisions concerning land allocations have been taken under the Laws of Lerothoï and they have been commonly used in land related adjudications by the chieftainship court system.

As mentioned above, the Laws of Lerotholi have been subjected to serious criticism over the years, with a gradually increasing insistence on change. Much of the criticism, although not all of it, continued to emanate from expatriates. At one point in 1979 donor agencies were being quoted in the press as demanding land tenure reform as a precondition for further development assistance. As proponents and opponents joined the dialogue, the issue became quite controversial. The following section summarizes issues dominating the debate.

An additional development brought pressure on traditional land use customs. During the mid-1970s the mining industry in South Africa increased wage rates by 500 percent in the space of 30 months. One result, operating through migrant remittances, was an increase in household incomes to unprecedented levels in Lesotho. By 1976 a migrant miner could earn enough to cover the annual cereals requirements of his family by working only four days per member. The cash equivalent of one acre's profits, which would require 20-25 mandays of farm labor, could be earned in two days on the mines. Obviously incentives for serious farming were depressed.

The result was a sharp decline in planted area, a tendency to slight proper husbandry practices on remaining land, and a general stagnation in the agricultural sector.<sup>1</sup> Coinciding with the mine wage increase, planted acreage dropped 38 percent to the lowest levels ever recorded. The situation as seen by the farmers surfaced in the 1978 National Farmer's Conference in terms of a widespread perception that agricultural resources were being very poorly used or wasted. This was coupled by strong demands from farmer representatives for corrective action.

Subsequently after two years of effort in drafting and revision, Lesotho's Parliament passed the Land Act 1979 in September of that year. Royal assent was obtained on November 15, 1979 and the new law was gazetted in December as Act No. 17 of 1979.<sup>2</sup> The Act officially took effect June 16, 1980,

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<sup>1</sup>For a detailed analysis see: J. Eckert and R. Wykstra, 1980. "South African Mine Wages in the Seventies and their Effects on Lesotho's Economy", LASA Research Report No. 7, Ministry of Agriculture, Maseru.

<sup>2</sup>The Land Act 1979, Supplement No. 1 to Gazette No. 41 of 14th December, 1979. Lesotho Government Gazette, Maseru.

however, the Ministry of Interior is still engaged in preparatory work of training, organization and staffing for implementation.

Lesotho is thus in a period of transition. A land law finally exists; most previous codes and regulations have been repealed or amended and policy makers are seeking optimum means of utilizing the Land Act in Lesotho's development efforts. A significant step forward has been taken. If implemented fully, the Land Act 1979 will prove the most fundamental element structuring rural society and agricultural development throughout the balance of this century.

Part IV of this paper contains an analysis and bibliographic materials on the Land Act, 1979.

#### Sources Covered

This bibliography was compiled primarily from the holdings of the Ministry of Agricultural Headquarters library assembled by the Lesotho Agricultural Sector Analysis (LASA) Project. That collection was made by screening several major collections of Africana in the United States and most (18) such collections in the United Kingdom. Included in the latter were all known repositories of former Colonial Office materials. The collection was further buttressed by a three-year acquisition effort in Lesotho, concentrated on government and donor agency documents available in-country. Assistance was provided at this stage by the libraries of the Agricultural Information Division, the Central Planning and Development office and the U.K. High Commission.

Finally, I am indebted to David Ambrose of the National University of Lesotho for permission to screen the draft of the forthcoming (1980) Willet and Ambrose bibliography and to reproduce selected bibliographical material therein. New items added from this source contain the comment "(Abstract in Willet and Ambrose, 1980)."

It is relatively certain that over 95 percent of the world's literature containing original substance regarding Lesotho's land tenure is identified in the listings that follow.

## II. LAND TENURE ISSUES IN LESOTHO

### Security of Tenure

The most often voiced concern is that security of tenure is inadequate under the Laws of Lerotholi. Adequacy is variously defined, but most writers are concerned with a sufficient permanence to one's land use rights to provide incentives for investment in 1) modern agriculture, 2) soil conservation or 3) soil fertility improvement. This concern stems primarily from Sections 7(2) and 7(3) of the Laws of Lerotholi which provide for frequent inspection of lands by the Chief or Headman and for rescinding allocations on either of two grounds. One of the presumptions in this concern is that this authority exists without adequate checks and balances to ensure the "fairness and impartiality" prescribed in Section 7(1). What has not often been recognized by outsiders is that the land tenure system does not operate in a social vacuum, but rather is totally enmeshed in the overall fabric of village life. Many of the needed controls operate (at least traditionally) through the socio/cultural network of responsibility and obligation. That the chieftainship is responsive to their constituency is succinctly captured in Jingo's autobiography title, "A Chief is a Chief by the People."<sup>1</sup>

Two grounds are stated for revoking an allocation. The first, lands in excess of subsistence needs, is discussed subsequently. The second, from Section 7(3), provides for taking away land which has not been "properly cultivated" for two successive years. Critics have alleged the result to be superficial plowing and planting by persons not really interested in farming but interested in retaining their land allocation. Therefore, many fields are presumably not well tended, yields are low and food deficits and depressed incomes result. Low levels of crop husbandry visible in the countryside lend apparent support to the argument. Consequently Section 7(3) has been repeatedly attacked as one of the fundamental flaws in traditional Basotho land tenure.

The conclusion reached by critics often ignores the fact that a wide range of factors other than insecurity of tenure could (and probably do) account for low levels of cropping technology. Among them are a number of fundamental scarcities; eg. modern inputs, tillage power, male labor, and technical knowledge, as well as the incentive structure created by wage employment alternatives in South Africa. Furthermore there is no documented evidence that this provision is ever used to revoke allocations and reliable Basotho informants suggest that it is a rare occurrence. Nevertheless there is some sense of insecurity among farmers concerning their tenure in land use rights. Testimony received by the Basutoland National Council (1964), the University of Chicago Team (1963) and the Ministry of Agriculture at the 1979 Farmer's Conference attest to this fact.

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<sup>1</sup>Jingo's, Stimela J., 1975. A Chief is a Chief by the People. Oxford University Press, London.

It is possible that farmers perceive the problem as more severe than it really is. Decision theory suggests that the guiding factor in farm management decision making is the perceived environment rather than actual circumstances where these two diverge. Therefore, if farms in Lesotho are operated by farmers who feel their tenure is inadequate, then remedial action was definitely warranted. This conclusion does not, in Sesotho agriculture, automatically lead to the recommendation for freehold tenure which has been the standard antidote prescribed.

### Subsistence Orientation

Section 7(2) provides for the Chief to "take away land from people who in his opinion have more lands than are necessary for their own and their families' subsistence." Such lands are then to be reallocated to those with inadequate holdings. This section establishes the basic concept of equality in land allocation as well as its utilization to ensure subsistence welfare levels. As a philosophic principle it is to be commended. It is given operational form in the conventional norm whereby a man is allocated one field upon marriage, receives up to two more as his family grows, and then one land is reallocated away from the household upon each of 1) the death of the husband and/or 2) the majority or marriage of the children. A household's land base thus presumably swells and then shrinks as do its needs.

Pressures have been created on the norms of Section 7(2) by population density and by the perceived demands of development and modernization. Given present population pressures the traditional expectation of three lands (fields) is rapidly becoming unrealistic. It is thus increasingly possible that the traditional system cannot provide subsistence needs at the upper end of the spectrum.

Second, low national income levels, deficit food supplies and a growing urban and landless rural population dictate an urgent need for rapid growth in agricultural output and in marketable surpluses. Income, employment and distribution objectives of development all require that an increasing number of households produce considerably more than home consumption needs. Several analysts suggest that to do so requires production in excess of "subsistence" needs and thus risks the loss of part of one's holdings. Viewed in this light Section 7(2) would indeed constitute an impediment to development. Taken to its extreme, some have suggested that this Section ensures the "equal distribution of poverty." Others have suggested that innovations such as non-traditional crops or cash crops are prohibited since they are not part of existing diets (subsistence).

Data exists to show that some reallocations occur as household membership declines. However this is not as prevalent as is normally supposed. Recent research shows that households with the largest per capita land base are quite often headed by a female, 60 years of age or older.<sup>1</sup> These

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<sup>1</sup>Tribble, R., unpublished data from forthcoming Ph.D. dissertation on resource distributions and household life cycles in Lesotho.

households are presumably those of widows with grown children who have not lost their land.

Historical fact does not support the contention that Section 7(2) prevents new crops or marketable surpluses. Wheat was introduced as a cash crop early in this century and was adopted normally into farming systems. Furthermore Lesotho historically served as an exporter of cereals to South Africa and has only become foodgrain deficit in recent decades.<sup>1</sup> Many other examples could also be cited of innovations that carried farmers beyond the threshold of subsistence yet were not rewarded by loss of fields. One wonders if perhaps "subsistence" has received a new meaning in the language of economic development which differs from that intended by the Basuto Land Council in 1903.

### Equality of Land Distribution

If Section 7(2) had been implemented perfectly within a perfectly functioning social system one could expect almost uniform land holdings when measured on a per capita basis. Lesotho's Second Five Year Plan states "The distribution of income in Lesotho is remarkably egalitarian. -- (this) is the result of the relatively even distribution of productive assets and the effect of remittances from migrant labor ---." Others have followed this theme rather uncritically asserting the equality of land distribution and in some cases attributing the equality of rural incomes predominantly to this factor (World Bank, 1975).

Others have taken issue with this assertion. Sheddick (1954) offers data showing a concentration of both arable land and livestock holdings within a relatively limited stratum of the population. Recent research has constructed per capita data from the 1970 Agricultural Census to show that inequality in land distribution is much greater than conventionally believed and that figures given in the Second Five Year Plan do not provide an accurate picture (LASA, 1978). Finally JASPA has examined this issue in detail concluding that land distribution in fact shows a Gini ratio of 0.38 (larger than any previous estimate) and that "there is a considerable concentration of farmers and acreage - farmers at the lower end and acreage at the top end."<sup>2</sup>

Growing recognition of distributional problems has led to the identification of income distribution as one of the key development policy issues

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<sup>1</sup>See Murray, Colin, 1976. Keeping House in Lesotho: A Study of the Impact of Oscillating Migration, unpublished Ph.D. Dissertation, Fitzwilliams College, Cambridge, especially chapter one, "From Granary to Labour Reserve."

<sup>2</sup>International Labour Organization, 1979. Options for a Dependent Economy, Jobs and Skills Programme for Africa (JASPA). Addis Ababa.

for Lesotho.<sup>1</sup> Since the Land Act 1979 was drafted before this issue became recognized, it does not contain safeguards against further accumulation and concentration, but rather could facilitate such a development. This problem is receiving active discussion in Lesotho as regulations and plans are developed for implementing the Act.

### Limitation to Farm Size

In comparison to alternative African systems Lesotho's land tenure practice has achieved a widespread distribution of land. Landlessness characterizes only 15 percent of the rural population. One of the costs of this distribution has been a long-term decline in farm size. Lesotho's boundaries were fixed in the 1880s and of the land encompassed only 13 percent is arable. Population has averaged a 2 percent rate of growth since 1900. Arable land per rural land holding household has declined steadily standing at 1.7 hectares in 1980. It is becoming increasingly clear that without a totally different type of agriculture, farms of this scale cannot provide an adequate living without outside supplemental incomes. Under conditions in some localities of poorer soils and climatic risks there are even serious questions as to whether these small average holdings could provide household self-sufficiency.

The process of allocation whereby a farmer receives his two or three fields at different points in time contributes to fragmentation of holdings. The combination of small and fragmented holdings has been alleged to impede agricultural modernization in several different ways. When farm size becomes so small that farm incomes are inconsequential compared to total income, attention to management of the farm will tend to slip. Small farms often do not offer the size necessary to support investment in improved equipment and machinery. Fragmented holdings add to the costs of farm operation.

Whatever the extent to which any of these factors affect Lesotho, it is clear that the continued trend to smaller farm units had, by 1980, created a serious problem, requiring attention at the policy level.

### Communal Grazing

Land use rights under the Laws of Lerotholi provide for several types of grazing. The mountain areas are considered open communal grazing in the summer. It has been customary for large numbers of small and large stock to move up from the Lowlands for summer grazing in the care of herdboys. There are, however, no effective controls on herd numbers and the result has been severe overgrazing and a noticeable deterioration of the range. Watersheds are being damaged, mountain "sponges" (bogs)

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<sup>1</sup>Eckert, Jerry and Joseph Mohapi, 1980. "The Future Environment for Agricultural Planning: 1980-2000," LASA Discussion Paper No. 9, Ministry of Agriculture, Maseru.

are disappearing, stream flows are variable and silt laden, unpalatable plant species are encroaching and other changes can be noted.

During earlier years of lower human density and practically no population in the mountains, communal grazing may have worked relatively well. However, resident population in the mountains began to swell in the 1940s and 1950, along with their own animal herds. It has recently been suggested that range resources in the mountains might just be adequate to support resident animals and that the annual transhumance should be phased out.<sup>1</sup> To do so would require a major change in present treatment of rights to grazing.

In addition any programs involving range management or watershed improvement ultimately face the question of fencing, which is not permitted under the Laws of Lerotholi. Many analysts have recommended fencing in order to control grazing densities. This is one modification on which there seems to be agreement by Basotho. Phororo (1979) establishes an economic case that fencing with stone could contribute to grazing control and employment objectives simultaneously. The Ministry of Agriculture places top priority on fencing and grazing control for watershed protection in their recommendations for the use of the 1979 Land Act.<sup>2</sup>

Finally, traditional practice prescribes that crop residues will be left in the field and fields become open grazing areas during the winter. This pattern is the principal reason for the prohibition of fencing. It has been suggested that this requirement works to block the adoption of winter crops and year-long crops such as cultivated hay. Sheddick (1954) suggests for evidence that the southern districts become the dominant winter wheat producers because a Principal Chief in the north declined to permit the necessary alterations to land tenure practice. Whether this statement is accurate or not does not obscure the fact that there are definite influences on cropping patterns by land tenure traditions.

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<sup>1</sup>FAO, 1980. "International Scheme for the Coordination of Dairy Development and International Meat Development Scheme," Report No. W/N7675, Rome.

<sup>2</sup>"Recommendations to Government for an Employment Generation Strategy for Agriculture," prepared by Heads of Divisions and Sections (MOA), August 1980.

## III. ANNOTATED REFERENCES

A. Works on Land Tenure in Lesotho

1. ANON., 1966. "The Constitution and Land Tenure System in Basutoland," Basutoland Quarterly 1(3) (July), Basutoland Information Department.

On the eve of Lesotho's independence this article appeared. Its primary purpose was to explain in layman's terms the sections governing land tenure in the recently adopted Constitution. The paper is at great pains to stress that the Constitution does not make radical changes to traditional and accepted mores but rather establishes a codification to simplify and reduce ambiguity. The author presents a thorough description of procedures to be followed for the major land transactions. The presentation is clear and quite sympathetic to Basotho concepts of land rights. One is left with the distinct impression that the article was written to allay widespread fears or suspicions about what this foreign thing called a "Constitution" might do to an accepted and revered Basotho institution. Knowledgeable informants in Lesotho believe it was written by Denis Cowen who was instrumental in drafting the 1966 Constitution.

2. BARNES, LEONARD, 1932. The New Boer War, Hogarth Press, London. 238 pp. (Abstract in Willet and Ambrose, 1980).
3. BASUTOLAND NATIONAL COUNCIL, 1964. "Report of the Select Committee on Importation and Exportation of Livestock and Agricultural Produce." Basutoland.

The Basutoland National Council resolved, on 23rd September 1963, to appoint a Select Committee to examine production and marketing of crop and livestock produce, importation and exportation of produce, wholesale and retail prices, trader's profits and related matters. The committee then proceeded by calling a wide range of expert witnesses for both written reports and oral testimony taken under oath. This volume is their report and consists of 24 pages of the committee's report, 46 pages of minutes from the committee sittings and 321 pages of transcripts of the testimony received.

The Select Committee notes that land tenure issues arose frequently in the proceedings. In their report, the committee, which was composed entirely of Basotho, rejects the idea of "commercialization" of land meaning the establishment of a market in land leases. This point was made particularly strongly with respect to 99 year leases proposed for the industrial and trading sector. The committee does see land reform as "highly important", proposes giving land to those who till it. They also raise social justice as a norm of value equal to economic development and accordingly suggest a ceiling to the amount of land that can be owned. They suggest that land should be bought from the Nation at

a price equal to the value of one year's crop and that the whole effort should be implemented gradually "depending on political and economic considerations - the most important being the desire of the farmers themselves to have land reform." Finally, the committee recognized the deep social implications of land tenure, saying that land reform would "not only --- increase productivity in agriculture but also enable the necessary social transformation from the relics of the past."

Committee conclusions on land tenure and the 99 year lease idea for industries are contained in pages xvii-xx. Multiple references to land tenure are found in pages 1-321 among the testimony.

4. BROSSARD, GILES, 1953. "The Food Problem in Basutoland". Thesis presented for the degree of D.Sc. (Agric), University of Pretoria, 232 pp. (Abstract in Willet and Ambrose, 1989).
5. BUELL, RAYMOND LESLIE, 1928. The Native Problem in Africa, Two volumes, Macmillan, New York. (Abstract in Willet and Ambrose, 1980).
6. CAPE PARLIAMENT, 1873. "Report and Evidence of Commission on Native Laws of the Basutos." London. Reprinted 1966. (basically description material).
7. CHAKELA, QALABANE K., 1973. Review and Bibliography: Water and Soil Resources of Lesotho, 1935-1970. University of Uppsala, Sweden, 75 pp.

This reference does not deal directly with land tenure except for its short summary of Stevens, 1970. Its principle content falls into two categories, first references dealing with resource inventories and second, references concerning the major efforts at structured land use. Thirty reports are reviewed: in most cases the author has included a synopsis of the report followed by his own evaluation of the report's contribution or usefulness. The first 13 pages review conservation and agricultural development programs beginning with the Pilot Project (1951-57) and including briefly Taung Reclamation Scheme, Farmech Mechanization Scheme, Mejametalana Improvement Area, Thaba Phatsoa, and Leshole's Irrigation Project. For its information on land use, Chakela's work constitutes, in a sense, an extension of the present bibliography.

8. COWEN, DENIS V., 1967. "Land Tenure and Economic Development in Lesotho." The South African Journal of Economics, 35(1):57-74, Johannesburg.

One of Cowen's contributions is to provide the best description to date of the tussle between expatriate observers and Basotho over land tenure. He describes the succession of condemnations flowing from Westerner's pens, the "suppression" of Sheddick's report as well as that of the University of Chicago team and concludes with the quotation given at the front of this bibliography. Cowen then dwells on a description of the system and cites the terminological problem as one basis for Westerner's inability to comprehend.

Cowen admits that "Lesotho does in fact face a most formidable land tenure problem which will not be easy to solve." He provides solid justification for the finding that the system is fluid and evolving. He then gives a well written synopsis of the actual land problems and misuse occurring under traditional tenure, concluding that a successful land reform must remedy 1) legal system inadequacies, 2) administrative defects, 3) wasteful land use and 4) take account of an acute land shortage. Cowen then presents a detailed analysis of the six possible meanings of the common charge that Lesotho's land system offers no "security of tenure" He then closes with suggested means of remedying the issues identified as the problem and in the final section suggests that development efforts should de-emphasize agricultural fundamentalism in favor of a more balance, diversified approach. In this, he anticipated the thrust of development as seen in 1980 relatively accurately.

An excellent paper, dispassionately written and one of the best by a foreign analyst.

9. ECKERT, JERRY AND JOSEPH N. MOHAPI, 1980. "The Future Environment for Agricultural Planning, 1980-2000 AD." LASA Discussion Paper No. 9, Lesotho Agricultural Sector Analysis Project, Ministry of Agriculture, Maseru. 30 pp.

This paper provides the first tentative analysis of the possible implications of the 1979 Land Act. The intent of the paper is to describe and, where possible, quantify the major trends and developments that will affect the development effort over the next twenty years. In this context the 1979 Land Act is considered the fundamental institutional change. The paper presents an analysis of the likely results of the Act's implementation, an analysis that is largely repeated elsewhere in this bibliography. Subsequently, these impacts are combined with other foreseeable events (declining migration, rainfall oscillations, a domestic employment crisis, etc.) to develop the dimensions of four major development priorities. The impact of the Land Act is uncertain because details of its implementation have yet to be worked out. However, it will probably bear most directly on the issue of income distribution. Although the act will encourage higher productivity in agriculture it can lead toward a further concentration of cropping incomes in the hands of a small fraction of the rural population.

10. ELLENBERGER AND MACGREGOR, 1912. History of the Basuto, Ancient and Modern, London. (descriptive material)
11. GERMOND, ROBERT C., 1964/65. "Economic Development and Land Reform in Basutoland." The South African Outlook, various issues in 1964 and 1965. (Abstract follows next page)

Subtitled "An Address to the Basuto People," the 17 page treatise is written in conversational style. Germond acknowledges as a point of departure that the tenure system was "admirably adopted" to earlier conditions but that it has "failed to adopt itself to modern conditions." He then describes the main modern trends that have brought pressure on land tenure conventions. Part II discusses the defects and advantages of the communal tenure of Lesotho, as well as the breakdown of the system. There follows several pages of advice on how land use and land tenure could be improved.

This paper is interesting in that it represents the views of a man whose whole life as well as that of two previous generations of his family was spent in Lesotho. His view is sympathetic but passionate and advocative. Its chatty nature detracts.

12. GUILLARMOD, AMY JACOT, 1971. Flora of Lesotho, Doctor of Science thesis, St. Andrews University, Scotland, J. Cramer-publisher. 474 pp.

A three-page section on land tenure and land usage is included early in the descriptive material which sets the context for her excellent 230 page checklist of flora found in Lesotho. The tenure section contains a brief description of land tenure as it affects land use, in order to support the point that "every acre of land in Lesotho is subject to human use in some form or other." She briefly describes the effect of the tenure system in limiting the influx of non-Basotho. Her most notable point, however, is the assertion that Lesotho's land tenure custom is of recent origin, dating essentially from the mid-19th century when the Basotho went through a process of enforced settlement on a successively more confined land area. The question which arises, but is not answered, is that if the tenure system is of recent origin does it perhaps not also contain the flexibility of youth? A second question which could have been asked is whether such flexibility is a source of strength or vulnerability. Instead, Ms. Guillarmod focuses on the loose controls and ubiquitous human land use permitted by the tenure system which have combined to seriously alter the composition of indigenous plant communities. Many plants once common are said to be near extinction.

13. HAMNETT, IAN, 1973. "Some Problems in the Assessment of Land Shortage: A Case Study of Lesotho." African Affairs, Vol. 72, No. 286. 9 pp.

In this paper Hamnett takes up Sheddick's assertion that there was adequate arable land and that the apparent land shortage was actually the failure of available production units to achieve an adequate surplus. Hamnett draws on data from the 1960 Agricultural Census to test Sheddick's assertions which he ultimately suggests are wrong. He finds 1) that the distribution of land holdings is quite unequal, 2) that the average holding per agricultural family is smaller than the average per household and that the average per rural family is smaller still than the commonly accepted figure, 3) that those with few fields tend to have

smaller fields thus being doubly disadvantaged. On the other hand, he finds a "strong positive correlation between size of household and size of holding" which constitutes an element of equality. He finds the total acreage of gardens and cultivated acreage, in which Sheddick saw the beginnings of fundamental change, to be inconsequentially small. For these and several other reasons Hamnett concludes that a "land shortage" does exist as viewed from the rural Mosotho's perspective. He goes on to legitimize the complaints expressed to Sheddick, and with which Sheddick took issue, with the following: "What is of particular interest is that the intuitions and impressions of the Basotho --- should have proved to be so close to the tenurial situation suggested by a systematic statistical inquiry."

14. HAMNETT, IAN, 1975. Chieftainship and Legitimacy, Routledge and Kegan Paul, Boston.

The subtitle, "An anthropological study of executive law in Lesotho," suggests the tone and content of this useful book. Chapter 4, pp. 63-85 covers land tenure. The treatment is excellent, ranking with Sheddick as a foundation study. Hamnett shows how intricately land use is embodied in the Sesotho maxims, the culture and the expectations of the country. One of the strengths of this work is that it stresses the defacto situation at the village level in contrast to the de jure situation. Hamnett also shows that in some instances traditional law is used while in others modern law is employed, and that the boundary between the two is flexible. While shorter than Sheddick's work, this paper contains a wealth of information; too much to be covered in an abstract. The single overriding impression of Hamnett's research is that the traditional system contained considerable flexibility in application which contrasts with Germond, 1964/65, who felt the system had lost its resilience because it had become too perfectly adopted to an environment that no longer existed. Hamnett's work demonstrates that flexibility has occasionally led to ambiguity and abuse, as shown by litigation cited.

15. JENNESS, J., 1968. "Tenure and Nomadism." (Part C - Lesotho), mimeographed draft. (copy in hand gives FAO 141 (?) as reference). 13 pp.

Dr. Jenness is a scholar who has written good material on various aspects of Lesotho's agriculture. Unfortunately, this item is not in that category. The document represents the output of a two week stay in Lesotho "to study the problem of land tenure and nomadism and to recommend action programs ---." His review of land tenure practices is extremely superficial. His principal theme is that, "there exists no land tenure law in Lesotho". This leads to the assertion, which has some validity, that, "a land tenure law is the master key to the social and agro-economic development of Lesotho, and it constitutes the foundation to the solution of problems inherent in Lesotho's traditional agricultural system." He then falls into the traditional expatriate position of stating that little or no development is possible without tenurial changes leading toward greater security and incentives.

Subsequently, and apparently with no legal training whatsoever, the author volunteers a recommended law for land registration and allocation.

While it must be admitted that the copy in hand is perhaps a draft, if the final report mirrors the draft it is a cut below the standard expected of a visiting consultant.

16. LESOTHO AGRICULTURAL SECTOR ANALYSIS TEAM, 1978. "Lesotho's Agriculture: A Review of Existing Information," LASA Research Report No. 2, Maseru.

This document develops an overview of Lesotho's agriculture based on a thorough review of all literature available in 1978. Chapter V, 24 pages in length, deals with land tenure. The first eleven pages provide a descriptive summary of major land use rights existing in Lesotho, drawing primarily from Sheddick (1954) and Hammett (1975). This portion is one of the better descriptions of intermediate length available. Part 2 (pp. 11-22) examines several contemporary issues relating to land tenure. Subsections include: security of tenure, growing of cash crops, land tenure and income equality, urbanization and governmental needs, and population growth and land distribution.

While the chapter draws exclusively on already published material, it makes original contributions in the presentation of calculations not previously available. Table 1 clearly shows the inequality existing in present land holdings while tables 3-5 present data defining the impact of population growth on an essentially fixed arable land base. (17 references).

17. MAKHANYA, EDWARD M., 1979. The Use of Land Resources for Agriculture in Lesotho. Copyright by author, printed Maseru Institute, Lesotho. 207 pp.

This paperbound volume is an example of an extremely rare, if not unique item, a Ph.D. dissertation by a Mosotho which has been published in book form. The study is principally focussed on quantifying land use changes between 1950 and 1976 in the Thaba Bosiu project area of Lesotho. While the study's principal methodology is a comparative interpretation of areal photos taken in the two years, a large amount of agricultural and demographic data from other sources are utilized as well.

Any study of this nature must deal explicitly with land tenure. Pages 29-31 include a brief synopsis of the traditional system. In this section and elsewhere the flexibility inherent in the system is stressed. Pages 108-122 provide an analysis of the impact of tenure derived issues on crop production. Included are sections on 1) farm size, 2) fragmentation, 3) cropping pattern, 4) communal grazing, 5) share cropping and 6) security of tenure. In the case of items 2, 3 and 4 a depressant influence is shown. No effect is found for the other three. The author

reviews several of the works relating to insecurity of tenure plus his own field survey findings and concludes "--there was no cause for feelings of insecurity of land tenure in Lesotho as far as crop production was concerned."

The author attempts to take an unbiased view and to present attributes as well as detriments of the system. The analysis is best when drawn from his own photo interpretations and field survey. Sections dealing with broader development issues are occasionally inconclusive, supported at places by assertions rather than facts. Nevertheless, a useful reference.

Document contains two reference sections, one of works cited (91 items) and the second, a general bibliography related to the subject area (320 items with some overlap).

18. MORSE, CHANDLER, 1960. "Report of an Economic Survey Mission," known as the Morse Report, Her Majesty's Stationery Office, London.

Report was not available to the author but is widely known to be critical of the traditional system and to advocate an essentially Western version of freehold tenure. The report is quoted elsewhere (Cowen, 1967) as containing the following statements summarizing its tone:

"the traditional system of tenure is quite unsuited to the type of society Basuto leaders would like to create"

and;

"a modern technologically advanced economy can only exist in an environment of modern law" (pp. 244-245)

19. MOTSOENE, THOLOANA, 1974. "A Report on My Study of the Leribe Pilot Project and Tsikanna Irrigation Scheme." Education in Botswana, Lesotho and Swaziland, No. 8 (August 1974), UBLS, Roma, Lesotho. pp. 12-23.

Report of a field study project by a fourth year Geography Department student. The author sets his framework by a listing of factors contributing to low productivity in agriculture, among which he finds land tenure. One of his assertions is that "there is no security of tenure." His analysis uncovers several problems faced by the projects reviewed. It provides an interesting and sympathetic field perspective of the severe difficulties of introducing modern concepts and technologies to a very traditional rural setting.

Author concludes that "sophisticated farming methods are incompatible with traditional land use patterns, and there is little hope of the project's achievement of its objectives." He goes on to a final section recommending land reallocation and a change in the land allocation procedure. These recommendations are based on the author's view that there

are two classes of land holders, both earning salaries elsewhere, for whom land is only a source of "extra income" while there are many others forced to work in RSA due to land shortage.

A well written paper for a fourth year student, providing, at points, a fresh perspective.

20. NOBE, K.C. AND D.W. SECKLER, 1979. "An Economic and Policy Analysis of Soil-Water Problems and Conservation Programs in the Kingdom of Lesotho." LASA Research Report No. 3, Lesotho Agricultural Sector Analysis Project, Maseru. 214 pp.

This report is a comprehensive review of conservation programs in Lesotho since 1935. Emphasis is given to evaluations of five major conservation efforts that have occurred during the 1970s, the overall approaches taken, constraints encountered and accomplishments. The report is drawn from the work of the Lesotho Soil Conservation Evaluation team in 1977 (of which Nobe and Seckler were co-leaders) and will probably be the most comprehensive of its type for years to come.

Because of the inextricable linkages between conservation, land use planning and land tenure the report contains a 22 page appendix on the land tenure system. Their purpose was to examine the frequent claim that the land tenure system was an impediment to agricultural modernization. They find the tenure system providing adequate security and that the criticism of land tenure as a development constraint stems more from the lack of economic incentives that prevail. They stress that "the Western ideal of individual title to land is totally alien to the Basuto culture." The authors then suggest that rather than discard the system, several means might be considered to alter the incentive structure "within the existing land tenure system."

In a section on the impact of land reform on agriculture the authors' review salient analyses from the "Chicago Team" (Bentisi-Enchill, et. al.) and Williams to conclude that land reform is not presently feasible, but that a "modest rate of agricultural development" is possible within the existing system if inputs and Extension are concentrated on progressive farmers. Finally they "totally reject the premise that conservation programs cannot be successful in Lesotho under the existing land tenure system." However this conclusion is qualified by the probable necessity of a new system of economic incentives, "based on existing land tenure rules."

The authors then close with extensive excerpts from the Laws of Lerotholi and proposed grazing control and pasture management regulations to show that a sound framework for soil conservation programs exist, either in law or in proposals. Their ultimate conclusion is that by implementing these effective conservation programs are possible within the land tenure system and that while progress may be slow, "some progress, however, slow, is better than none at all.

21. PHORORO, D.R., 1979. "Land Tenure in Lesotho." Chapter 1 in Analysis and Suggested National Policy, Ministry of Agriculture, Cooperatives and Marketing, Maseru. (17 pp. in chapter).

This paper was prepared as part of a special six-month policy analysis effort undertaken at the directive of Cabinet by Lesotho's Permanent Secretary of Agriculture. Dr. Phororo based his analysis on his perspective as a Mosotho and his 15-year tenure in the Ministry of Agriculture, the last five of which were as Permanent Secretary. In the latter capacity the author was intimately aware of pressures and demands on issues of land tenure and land reform; those emanating from the farming communities as well as from donors assisting the agricultural sector. His analysis was written during the heat of the 1979 debate on land tenure in Lesotho.

Dr. Phororo's paper begins with a summary of current criticisms of Lesotho's land tenure and shows that to a large extent these result from an exceptionally narrow focus "on economic considerations (which) relegates other equally important characteristics, at least in the context of Basotho culture, to insignificance and irrationality." He shows, citing survey data, that the land problems perceived by farmers are only remotely related to those perceived by expatriate observers. [In this respect the Qalabane quote at the beginning of this bibliography is of interest. (Je.)].

Phororo's main theme is summarized as follows: "Land tenure in Lesotho means more to a Mosotho than most people appreciate and should not be superficially dismissed as an impediment to agricultural development." He then develops his case by describing 1) the flexibility of the traditional system to respond to rural community needs, 2) its role in ensuring welfare at the subsistence level, 3) its role as a catalyst for integration of the village social fabric and land tenure's role in spreading the considerable risk inherent in Lesotho's agriculture. He demonstrates clearly that there has historically been a dynamism to the traditional system. Examples are given of cases in which the tenure system evolved to accommodate developmental change. The point is made to show that the system contains sufficient flexibility to call into question the assertion that it is an "impediment to growth". The concomitant point that this flexibility can prove a source of weakness in the face of too rapid change is not made.

The analytical section makes the point that in the Basotho context, private ownership and, indeed, private use or management rights, flies so in the face of established Basotho village social norms as to threaten major disruptive changes in rural society.

The recommendations section is not as definitively developed as is the preceding analysis. Its main thrust is that whatever land tenure changes occur they must be so planned as to not create more problems than they solve. Included are a set of issues for consideration prior to designing new tenure forms or modifications of existing ones.

Dr. Phororo's paper is one of the best descriptions of the non-economic aspects of the traditional system. It is practically the only analysis written by a Mosotho on the subject. It is therefore essential reading for the scholar dealing with Lesotho's land tenure.

22. PORTER, R.S., 1965. The Development of the Basutoland Economy. Report of an Economic Survey Mission, O.D.M., London.

Report establishes in the introductory section, paragraphs 6-8, that the land tenure system is a man made obstacle whose removal is a precondition for economic growth. The principal problem is seen to be the absence of security of tenure.

23. QUIRION, J.M., 1958. The Economics of Agriculture in Basutoland, M.Sc. (Econ) Thesis, Faculty of Economics, University of London.

Quirion's thesis is a rather general, and now outdated, assembly of data concerning Lesotho's agriculture. Data are drawn from the 1949-50 Census of Agriculture which was the only systematic data source available at the time. Three substantive chapters cover: "The National Economy and Agriculture", "Land Tenure and the Structure of Agriculture" (Chapter 4), and "The Economics of Soil Conservation and Agricultural Improvements."

Drawing almost entirely on the work of Vernon Sheddick, Quirion presents a synopsis of Lesotho's land tenure including comments on its relationship to social cohesion (pp. 56-61). He then examines certain economic dimensions and finds "the communal tenure of grazing land as practiced in Lesotho has little to commend itself" (pp 62-64). There then follows a general summary of the extent and distribution of arable area, statistics on cropping, production and yields and certain livestock and marketing activities (pp. 64-86). This subsection has little bearing on land tenure and uses the 1949-50 Agricultural Survey data (Douglas and Tennant) exclusively. Pages 86-103 then discuss "defects of structure", focussing on excessive subdivision, dispersion and insecurity of tenure. His analysis is essentially a statement of the conventional wisdom concerning defects of the Laws of Leretholi. No data are contained to test how these are enforced or to assess from the field perspective what might in fact constitute defects in the system. Finally in a conclusions chapter Quirion calls for land tenure reform aimed at larger and more compact farms, and a gradual transition from communal to individual ownership of arable land.

24. SAYCE, R.O., 1924. "An ethno-geographical survey on Basutoland." Geographical Teacher, Vol. 12, Part 4, No. 68 (Spring 1924). (Abstract in Willet and Ambrose, 1980).

25. SEAPE, C.M.K., 1976. "Communication Problems in Measurement and Related Concepts in Lesotho." Agricultural Administration (3) 167-174.

After an introductory section giving a general physical, cultural and historical description of Lesotho the paper focuses on differences in measurement concepts which impede communications between extension worker and farmer. The only section related to land is the five paragraphs discussing area measures. In it the author points out that while the English word acre has become the Sesotho akere, a vast difference remains in concept. In Sesotho an akere defines a field of 12 paces width with no limit suggested for its length. One akere can thus be 12 x 50 or 12 x 3000 paces or any other such combination. The author then shows the difficulties that can arise in setting fertilizer recommendations, establishing hire rates for tractor plowing and other problems.

26. SEFALI, MICHAEL, 1976. "Some Aspects of the Development of Land Policy in Lesotho." Paper presented to the Seminar on the Development of Land Resources in East, Central and Southern Africa, Lusaka. 10 pp. (Abstract in Willet and Ambrose, 1980).

27. SHEDDICK, VERNON, 1954. Land Tenure in Basutoland, Commonwealth Relations Office, Colonial Research Studies No. 13, London. 192 pp.

This document was, and remains, the fundamental analysis of the traditional land tenure system in Lesotho. Dr. Sheddick, an anthropologist, was invited to (then) Basutoland to examine the historical and present (1954) position of aspects of land tenure. It is of considerable interest that Sheddick notes "the Paramount Chief (now King) agreed to this survey on the understanding that there should be no intention on the part of the (British) Administration of altering existing land tenure practices." Sheddick interprets this restriction as being a call for no interference in existing processes of development.

This work is too detailed and too exhaustive to be abstracted adequately. Chapter headings and inclusive pages are given below to provide an indication of the scope and balance of the report.

Sheddick's work provides the best description ever done with respect to most of the topics covered. Therefore, in addition to the subject of land tenure per se, it is an invaluable source for the history of settlement in Lesotho, traditional crop and livestock husbandry practices, relationships between climate and cropping, social practices in village life, the structure of the Chieftainship and its historical derivation and a 1950s perspective on the relationships between native and British administrations. Every scholar concerned with rural Lesotho (either socially, culturally, agriculturally, or developmentally) should read it at least once.

## Chapter headings include:

	Pages
1. Introduction and Synopsis	1-11
2. The Social System	
a) Social Structure	12- 23
b) Political Systems	24- 32
3. Geographic Opportunity	34- 39
Appendix: Brief Geographical Analysis	41- 50
4. Settlement and Residence	51- 72
5. Crop Production and Arable Tenure	73- 96
6. Animal Husbandry and Land Tenure	98-112
7. Hunting and Gathering	113-125
8. Access of Aliens to Land and Resources	127-136
9. Administrative Rights in Land	137-156
10. Usufructuary Rights in Land	157-171
11. The Supreme Title to Land and Land Law	172-178
Appendix: Land Tenure and Soldiers on Active Service	178-183
12. Land Shortage in Basutoland	184-193
28. STAPLES, R.R. and W.K. HUDSON, 1938. <u>An Ecological Survey of the Mountain Area of Basutoland.</u> London, Crown Agents.	

The objects of this survey, which was commissioned by the British administration, were to 1) take stock of the position in the mountain areas before settlement, 2) assess the position as of 1938, 3) estimate the future (post 1938) impact of continued settlement trends and 4) advise remedial measures. The report touches occasionally on land usage rights and is valuable for its descriptions of grazing practices in use at this early period. Historical details are presented concerning settlement and the consequent emerging needs for some type of use rights or tenure (pp. 19-20). The report starts with the premise "that the existing system of land tenure should be clearly understood". One section of particular interest is the very detailed description of *maboella*, or 'spareveld' drawn from the expertise of Germond who provides a month by month description of activities controlling veld use as well as a clear elaboration of various types of *maboella*. (pp. 24-26). Finally, several implications for land tenure are inherent in the report's recommendations for grazing systems and other management practices to prevent deterioration of the mountain areas. The authors point out that their recommendations are "merely a development of the age-old Basuto custom of *maboella*" rather than a replacement of it (pp. 39-46).

29. TURNER, STEPHEN D., 1978. "Sesotho farming: the conditions and prospects of agriculture in the lowlands and foothills of Lesotho." Unpublished Ph.D. Thesis, Department of Geography, University of London. 579 pp.

This thesis represents the work of nearly a year residence in a Sesotho village by the author. Most of the analysis is based on a detailed collection of farmer perceptions from field interviews. While the document does not formally address land tenure issues it does contain a description

in order to provide a context for the analysis of farming (pp. 144-161). The author concludes this section by stating the basic function of land tenure in Lesotho to be to "provide as many Basotho households as possible with some share of the basic subsistence resources offered by arable land." Thus, he finds it more a welfare institution than a growth institution, a circumstance he feels "reflects the economic realities of contemporary rural life." The thesis is an important reference for any scholar interested in Lesotho's agriculture. Its strength is its village level perspective.

30. TURNER, S.D., 1979. Field Realignment for Conservation, Department of Geography, National University of Lesotho, Roma. 24 pp.

Dr. Turner was engaged by the Thaba Bosiu Project authority to investigate what went wrong when the project had realigned fields to accommodate conservation works. The paper contrasts views from the project personnel with those of the affected villagers. It is an interesting study of the interaction between traditional villagers with a traditional institution and a new technology requiring adjustment in the established ways. As a result of the experiences gained and Turner's recommendations efforts to reallocate fields were disbanded. One cause of difficulty which Turner slights was that the reallocation effort took place while the Land Bill was under consideration and villagers, not knowing the future, clung tenaciously to their established pieces of ground, whatever their shape and location. This paper and that of Wallman (1965) can be considered companion studies on the sociological problems of modernizing change in a very traditional society.

31. UNDP, 1980. "Multi-Donor Agriculture Sector Evaluation Mission."

At the November 1979 Donor's Conference, the donor spokesman called for a special Donor's Conference on Agriculture to be preceded by a review and assessment of the agricultural sector to be done by a team of high level specialists. Ultimately the World Bank Agricultural Sector Review study (reported elsewhere in this study) which had been commissioned for other reasons became the technical foundation of the Multi-Donor Mission's (MDM) work. The MDM then concentrated on raising a wide range of policy issues for GOL consideration. Although land tenure issues appear throughout the text, a 10-page (of the draft) section deals explicitly with item 8 of the MDM terms of reference. That item states:

"(The Mission will) review the present land tenure system and assess the extent to which the Land Act of 1979 may remove some of the constraints to agricultural development. In particular, review and appraise the Government's program for implementing the new Land Act."

The draft in hand (final version expected in September 1980) provides a very abbreviated summary of the present (pre 1979) system followed by a list of three "advantages claimed for the traditional system"

and "ten constraints imposed on farming improvement". The report then turns to questions dealing with implementation. Among its conclusions are that implementation will accelerate "urban drift". They find that at the time of writing there were no clear programs for the application of the Selected Agricultural Areas provisions nor any planning to steer the changes in farm size and agrarian structure the Land Act could bring. They stress the application of the Selected Agricultural Areas provisions to range land and grazing control. They conclude by pointing out that Lesotho's agriculture could be transformed to some 100,000 "viable small farm units" by the year 2000. (There are presently 225,000 holdings, JE) and drops the suggestion of small annual levies for land use or grazing rights.

Note: The final draft of this document is not yet in hand nor has Government reacted formally to it.

32. UNIVERSITY OF CHICAGO, 1963. "Recommendations and Reflections on Some Problems of Land Tenure in Basutoland." Report to Motlotleki Moshoeshoe II, Paramount Chief of Basutoland, Chicago.

In 1962 at the request of the Paramount Chief (King) the Law School of the University of Chicago fielded a team to examine land tenure in Lesotho and make recommendations. Their point of departure is that land policy must be directed toward removal of conditions preventing the limited supply of land from being effectively utilized. They state: "Our recommendations do not call for a new land law at this time. We have taken into account a large body of testimony --- that what was needed at this stage was a comprehensive reorganization of the administration of the system designed to remove uncertainty and anomalies, rather than the abandonment of its fundamental principles." Therefore, their report provides many suggested means of improving or strengthening the Laws of Lerotholi. As such it represents one of the few serious attempts by an expatriate group to strengthen, instead of replace, the existing traditional system.

The report is important in other respects as well. In its mix of issues it reflects the Basotho perception of what the key land issues were in the early 1960s. In its approach and recommendations it offers the view that the traditional system was viable and could have been made to work effectively. The recommendations were never implemented.

33. WALLMAN, SANDRA, 1965. "The Communication of Measurement in Basutoland." Human Organization, 24(3): 12 pages.

This paper is an excellent examination by an anthropologist of the incompatibility of modern terms of measurement with the perceptions of traditional villagers and the problems this causes for government programs which, by their nature, require the use of communicated measurements of various types. For our purposes the important section is that on area measurement (pp. 1-5). After pointing out that in Sesotho a

rectangle is "measured" by adding the length of one side to the length of the adjacent side and that the "size" of a circle is its diameter (as with rondovals), Wallman points out that the common Sesotho acre measures "twelve paces along one side and covers the full length of the field in the opposite dimension." Thus a Sesotho acre can be 12 x 10, 12 x 30, or 12 x 200 paces leaving the actual area indeterminate. Her analysis then describes in detail the difficulties this poses when farmers attempt to negotiate with others (farmers or government) for plowing services. Attempting to shift to a charge per tractor hour runs into equally severe conceptual problems with respect to the village understanding of time. The author describes a series of experimental attempts by the FarMech Scheme to surmount these difficulties. The paper is very interesting reading and provides a much more detailed description than Seape, 1976.

34. WILLET, SHELAGH and DAVID AMBROSE, 1980. Lesotho, A Comprehensive Bibliographical Guide, World Bibliographical Series, Clio Press, Oxford.

Contains nearly 2500 references on many aspects of Lesotho, each with a short abstract by the authors, and key word descriptors. Contains 20-25 entries identified by keywords Land Tenure or Land Systems. Extremely valuable overall bibliographical reference on Lesotho.

35. WILLIAMS, JOHN C., 1972. Lesotho: Land Tenure and Economic Development, Communications of the Africa Institute No. 19, Pretoria.

This paper is an outgrowth of Dr. Williams' doctoral research done on agricultural and economic development in Lesotho. He has attempted to provide a thorough analysis illustrating points with data from the 1949/50 and 1960/61 censuses of agriculture. Unfortunately Williams errs on the side of being overly negative as well as by using almost entirely expatriate sources for reference. There are few local viewpoints included and it is doubtful that many of the positions reached would have received Basotho concurrence. The study, therefore, provides the classic archetype of an expatriate report condemning a traditional system on grounds that are irrelevant to the local people whose system is being condemned. Unfortunately this paper is readily available and thus provides a confused introduction for the newcomer to the subject.

The study is valuable for its presentation of several facts and references which are unavailable elsewhere. There is considerable substance in this paper but the conclusions are extended far beyond what the substance supports. The principal error is in reading sections of the Laws of Lerotholi and assuming, without data or research, how these sections actually operate in the village. In view of these deficiencies the chapter on "Suggested Reforms" is of little import. Nevertheless, the paper does raise a number of issues and as a generator of ideas and questions serves a useful purpose. For definitive answers, however, the reader will want to consult other sources.

36. WORLD BANK, 1975. Lesotho: A Development Challenge. Washington, D.C. 98 pp.

This document presents a thorough discussion of Lesotho's economy and development problems as viewed in 1973 and 1974 when the IBRD economic mission headed by Willem Maane visited Lesotho. It has been one of the basic and most widely cited references on Lesotho's development since it was published. It is only now becoming obsolescent as the data contained is superceded by more recent material.

Chapter II, "The Setting" contains a subsection entitled "Land Tenure: An Insurmountable Obstacle?". Its principle contribution is implicit in the questionmark in the title since this is one of the few expatriate written documents which challenges the orthodox view. The authors take pains in 11 paragraphs (pp. 8-11) to point out several assets of the present tenure system as well as its liabilities. They also stress the flexibility inherent in the system. With respect to rural land they state "Encouraging findings with respect to land tenure so far or that the lack of security of tenure and the inability to use land as security for credit are, at present, less of an obstacle than previously believed---." In discussing urban land the authors point out several changes implemented between 1965-73 which were attempts to permit urban land to be mortgaged or in other ways used to encourage long term commercial, industrial or residential investment.

This reference should be read first by those interested in Lesotho's land tenure because it raises the central question, discusses both sides of the question and does not automatically opt for the "insurmountable obstacle" viewpoint. Rather they seem optimistic.

37. WORLD BANK, 1980. Lesotho Agricultural Sector Review, Report No. 3039-LS0, Washington, D.C.

This document is available only in draft at present so detailed comments would be inappropriate. Annex 5 of the draft presents a review of the traditional tenure system (synopsized from LASA, 1978), a short summary of highlights of the Land Bill, 1979 and a brief, unbiased summary of the different opinions concerning land tenure issues in the context of a development strategy. The draft in hand errs in its implication that leasehold arrangements are available only in selected agricultural areas.

The perceptions of the World Bank team are then integrated throughout the text and its voluminous annexes. Since at the point of the report's drafting, the Land Act was only an unpassed bill, the author's do not provide an in-depth analysis of its implications. What analysis is provided, however, is basically correct. In the description of impediments to growth, the report draft reaches the standard conclusion that the possibility of having land taken away and reallocated if not plowed every two years "contributed to the low level of farming practices by many families for whom cultivation is little more than a means of maintaining access to a continuing social security asset" (from Annex 7).

## B. The Legal Framework for Lesotho's Land Tenure

### Legal and Regulatory Documents

1. "Weeds Proclamation" (Short Title), Proclamation 47 of 1951 (31 August 1951). Source: "Basutoland 1960: Agricultural and Livestock Laws of Basutoland," 1960. Cape Times Ltd. (printers), Cape Town, 1961.

Purpose is given as "To make provision for the eradication of certain weeds on land situated on Government Reserves, and on land occupied by Africans where such land is not situated on a Government Reserve."

This act empowers the Resident Commissioner to declare any plant a weed through Notice in the Gazette, any government officer to provide written notice requiring the eradication of gazetted weeds, and compliance failing, to enter the premises, eradicate the weed and recover costs from the occupant. Despite the explicit wording quoted above from the "purpose" of the act, every clause in it restricts its application to "persons occupying land on a Government Reserve - - - or any person other than an African who occupies land not situated on a Government Reserve - - -." This glaring inconsistency is unexplained. Furthermore this was apparently the only piece of formal legislation on the books in 1960 affecting land use practices.

This Proclamation was followed on 13 December 1954 with the Government Notice 33 of 1954 which declared spear thistle, burr weed and cockle burr to be weeds.

2. Land (Advisory Boards Procedure) Regulations 1965, Regulation No. 15 of 1965.

These regulations were issued by the Resident Commissioner as a means of partially implementing provisions the Constitution set out in Schedule 2 of the Basutoland Order 1965. The regulations had as their principal purpose the establishment of orderly procedures for the election and functioning of Advisory Boards to advise the Chief in land administration matters.

3. Land (Procedure) Act, 1967, Act 24 of 1967, Enacted by the Parliament of Lesotho, Date of Assent - 1 June 67; Date of Commencement 16 June 1967.

The language of the Act itself spells out its purpose as follows:

"To make provision for the procedure relating to applications for allocation of land or for a grant of any interest or right in or over land: for the hearing of cases relating to revocation of or a derogation from any allocation or grant or the termination or restriction of any interest or right: for the hearing of appeals: for the convening of pitsos and for other matters incidental thereto."

This Act was written as partial implementation of the provisions of the Constitution of Lesotho (since suspended) relating to land. It instructs every Chief and Headman to convene a pitso for the purpose of electing an advisory board for land matters. Procedures are established for the election of advisory board members, for their disqualification, for filling vacancies and for their tenure. Procedures are laid down for applications, for appeals, and for hearing of cases. The Act stipulates that a register of all allocations of land or grants of any right or interest in land be kept by the appropriate deciding Chief. Section 13(1) clearly states that this Act shall not supplant any procedure in force under Basuto customary law, which would seem to give a definite de facto legitimacy to the Laws of Lerotholi. Finally, the Act repeals The Land (Advisory Boards Procedure) Regulations, 1965.

4. "The Weeds Eradication Act 1969," Enacted by the Parliament of Lesotho as Act No. 18 of 1969, Date of Assent - 23 April 1969.

The Act supercedes previous legislation and regulations concerning weeds. Many provisions of Proclamation 47 of 1951 are retained except that the various assignments of responsibility reflect the post-independence governmental structure. No ethnic distinctions are made as to applicability. While weed eradication procedures are only remotely related to land tenure, they indicate, in part, the methods attempted by government to influence land use.

5. "The Land Husbandry Act 1969," Enacted by the Parliament of Lesotho as Act No. 22 of 1969. Date of Assent - 23 April 1969.

The intent of this Act is "To control and improve, in respect of agricultural land, the use of land, soil conservation, water resources, irrigation and certain agricultural practices and to provide for incidental or connected matters." This legislation establishes a definition of agricultural land. The Act then grants the Minister of Agriculture the power to make regulations (both proscriptive and prescriptive) in respect of agricultural land. Interestingly, this legislation empowered the Minister of Agriculture to control and regulate grazing and limit the number and species of livestock that may be grazed among other broad powers.

Relationships between this Act and traditional laws and authority differ from those prescribed in, say, the Land (Procedure) Act 1967. The Minister must consult with Principal or Ward Chief prior to regulation, however, their counsel is not necessarily binding. With respect to the Laws of Lerotholi the Act states that sections 7(1) (Allocation of land generally) and 7(3) (Deprivation of land not used or ill used) of Part I "are subject to the provisions of any regulations made under this Act." Finally several sections in Parts II and III of the Laws of Lerotholi which apparently conflicted are repealed by this Act. The traditional law was definitely supposed to be subsidiary to the 1969 Land Husbandry Act.

6. "Administration of Lands 1973", Act No. 16 of 1973, Enacted by the Parliament of Lesotho, Date of Assent - 28 February 1974, Gazetted 15 March 1974.

This Act was an attempt to establish orderly and more modern procedures for administering land. It established a system of leases and licenses the former being the more flexible. In this and many of its provisions this Act anticipated (or provided the model for) the 1979 Land Act. With effect from the commencement of the Act all rights in land except those concerning agricultural land or land within a road reserve were to be converted to leases. Agricultural land rights were to automatically become licenses. The Act permitted the Minister in charge of land administration to declare "Selected Development Areas," a provision that is repeated in the 1979 legislation. Selected Development Areas, however, were to permit a variety of non-agricultural developments, and do not appear to apply to arable or grazing lands.

Provisions are included for charging rent in respect of leases, for setting land aside for public purposes, the establishment of a Land Tribunal and for creating necessary administrative powers. This Act bears primarily on allocation and use of land for non-agricultural purposes. Many of its provisions filled needed gaps in the administration of lands. This Act plus the Land Act 1973 are consolidated into the Land Act 1979.

7. "Land Act 1973", Act No. 20 of 1973, Date of assent - 28 February 1974, Gazetted 15 March 1974.

The Act seeks "to make provision for the procedure relating to applications for allocation of land or for the grant of any interest or right in or over land; for the appointment of Development Committees; for hearing of appeals and related matters."

The Act makes law the provisions of the Laws of Lerotholi vesting land powers in the King and the Chieftainship. In exercising powers of allocation and revocation the Chief in a particular area shall act "after consultation with a Development Committee established for such an area." The appeals process identified is up through the hierarchy of the Chieftainship until ultimately reaching the court system. Development committees must be consulted at each level of appeal. Similar but separate procedures are established for rural and urban land.

This Act in the main reinforces the position of the Chieftainship with respect to land matters, provides for a greater measure of popular representation through the involvement of Development Committees and seeks to regularize and formalize the interactions between parties. Considerable attention is given to the protection of individual land holders through the elaborate appellate process defined. Finally, the "Minister" is empowered to establish Development Committees and Land Advisory Committees through regulation.

8. "Land Regulations 1974," Legal Notice No. 9 of 1974, Gazetted 8 March 1974.

These regulations are issued according to the powers granted by the Land Act 1973 for the purpose of establishing Development Committees. Specifications are laid down for membership, the manner of their selection or appointment, re-election, disqualification and other necessary rules. Development Committees are prescribed "for the area under the jurisdiction of every Chief in the rural areas." This in effect provides for a hierarchy of Development Committees parallel to that existing within the Chieftainship. Land Advisory Committees are established for urban areas.

#### Legal Analyses and Related Material

1. Associated Research Consultants, Ltd., 1974. Development Plan for Tourism for Kingdom of Lesotho, published independently by ARC, Nairobi, 185pp.

The report is a comprehensive statement of measures needed to launch a large scale tourist industry in Lesotho. Chapter 9, pages 121-132, is entitled "Land Tenure and Administration." At the time of the report's preparation the Administration of Lands Act 1973 had just been passed. Chapter 9 offers very explicit recommendations for the implementation, utilization and amendment of this new Act to provide the basis for supporting tourism. Major sections deal with urban land, rural land and the role of the Commissioner of Lands. Much of the discussion deals with land administration as it was seen to possibly affect foreign investors associated with tourism. The report was a sincere effort, however, neither the land legislation of 1973 nor the recommendations of this report were ever implemented.

2. Duncan, Patrick, 1969. Sotho Laws and Customs, Oxford University Press, Cape Town, 162pp.

This small volume is subtitled "A Handbook Based on Decided Cases in Basutoland together with the Laws of Lerotholi." The author was Judicial Commissioner in Basutoland from 1950 to 1952. Chapter 4, pages 74-99, deals with land use law. The insights provided are interesting because they give a picture of the chieftainship courts in action, the types of cases brought before them and the precedents and interpretations given to land law by cases occurring roughly between 1944-1957. Cases and judgements concerning land law are grouped into the following subheads: grazing and *maboella*, stray stock, pounds and trespass, *mafisa*, earmarks, cattle-posts, pigs, tenure of arable lands, half-shares plowing, trees, gardens, home sites and use rights affecting wild flora. The section on Tenure of Arable Lands (pp 86-94) is particularly useful as an examination of selected provisions of the Laws of Lerotholi illustrating those provisions that were upheld or interpreted in court judgements.

One of this book's major assets for the scholar is the annex (pp 116-162) which presents the complete Laws of Lerotholi as well as orders issued by the Paramount Chief to implement or administer certain provisions. Those sections dealing with land are reproduced in the Appendix to the present report.

3. Palmer, V.V. and S.M. Poulter, 1972. The Legal System of Lesotho, The Michie Company, Charlottesville, Virginia, 574pp.

This book provides an excellent and detailed analysis, including common law, customary law, statutory law and the various constitutions of Lesotho. The work is thoroughly referenced, drawing on relevant materials from the entire period of Lesotho's history. In the present context three sections are important. Pages 105-108 lists and discusses the various sources of written evidence on customary law, in which land is treated. Pages 172-189 present a synopsis of customary law relating to land. A significant portion of this section (pp. 177-186) is a summary of the observations and recommendations of the University of Chicago team which were made largely to strengthen and refine the existing land law as embodied in the Laws of Lerotholi. Finally, pages 254-268 elaborate the treatment of land under the 1966 Constitution. The book is an excellent reference; required reading for any serious student of Lesotho's land tenure.

4. Poulter, Sebastian, 1972. "The Place of the Laws of Lerotholi in the Legal System of Lesotho," African Affairs (71)283:144-162.

The author traces the origin and development of the Laws of Lerotholi and describes some of the difficulties that have arisen in their recognition by higher courts. He shows, through a detailed historical analysis, that problems relating to the status of these "Laws" stem from the system of colonial administration operative at the time of their formulation and subsequent revision. Poulter describes the problems arising in the last half of the 19th Century due to the absence of a codified set of customary laws, the proposal (at the first sitting of the Basutoland National Council on 6 July 1903) for a written formulation of Sesotho law, and the process that followed to produce one. He then chronicles the changes that occurred over the years.

The second half of the paper examines carefully the issues which have gradually defined the status of the Laws of Lerotholi in the legal framework. The question came suddenly to the fore in 1943 in a major court case concerning succession to the position of Paramount Chief. In that case the court ruled that the Laws of Lerotholi, since they did not emanate from a legislative body, were not binding. Many subsequent developments established differences in legal status between the several parts of the Laws of Lerotholi. Part I (which contains the land tenure customs) was explicitly recognized as not being law whereas other parts had a different status in that they derived from legitimate

powers of administrative regulation. The non-recognition of Part I was confirmed explicitly for the land provisions in another major court test in 1953. Poulter's final conclusion is that the true status of Part I is " - - - ambivalent. Seemingly authoritative in the lower courts, it is only partially recognized in the higher courts."

This paper is excellent but highly focused on its single topic. Valuable primarily for the serious scholar.

5. Poulter, Sebastian, 1976. Family Law and Litigation in Basotho Society, Clarendon Press, Oxford, 361pp.

This study provides the first detailed and systematic account of family law and related litigation, presenting the law as it applies in the courts today while carefully providing the historical perspective of the law's development as well. As with many of the most detailed works on Lesotho this is drawn from the author's doctoral dissertation. While the book does not focus on land per se, issues of land tenure law are analyzed as a matter of course in discussions concerning appropriate family situations. Land related topics covered include: amount of allocation, allocation to bachelors, allocation to divorced women, allocation to separated wives, allocations to unmarried women, land deprivation, the effects of divorce on land rights, inheritance and rights of widows to land. The text is thoroughly referenced with examples drawn from nearly 400 cases of litigation. The overall impression is one of a land tenure embodying a great deal of flexibility to meet a variety of needs. (See also reference in Section III-C).

6. Poulter, Sebastian, 1979. Legal Dualism in Lesotho, Morija Sesuto Book Depot, Morija.

Book is subtitled "A Study of the Choice of Law Question in Family Matters" and deals largely with legal issues concerning marriage, differential treatment of husband and wife, relationships between parent and child and the dissolution of marriage. The general thrust of the book is an analysis of the interactions and conflicts between two co-existent legal systems; Roman-Dutch as introduced by the British and the traditional as embodied in the Laws of Leretholi. While land legislation is not central to the analysis, it is referred to periodically.

### Endnote

Material bearing on the structure or implications of the legal foundation of Lesotho's land tenure is found in several references cited in other sections. In particular, see:

Anonymous, 1966  
Cape Parliament, 1873  
Hamnett, 1975  
Sheddick, 1954  
University of Chicago, 1963

### C. The Available Data Base

#### Introduction

One of the very curious aspects of the land tenure debate in Lesotho is the serious shortage of field data which might shed light on the system in operation or dispel some prevailing fictions. Despite a voluminous literature stretching over 25 years the amount of solid data could be presented in its entirety in perhaps ten pages or less. Undoubtedly this results from a natural sensitivity to proposed or feared changes in something as fundamental to the structure of society as the traditional tenure system. Cowen notes "that accurate information concerning the land system tends to become a jealously-guarded mystery, and that specific proposals for reform languish" (Cowen, 1967, p. 58).

This section discusses the statistical content of a few of the above references as well as others. To my knowledge, these are the only data sources available that are based on field enumeration. There are, of course, several agricultural development projects that have attempted to describe land holdings, farm sizes, numbers of fields and similar information for their project area. These sources are not discussed since the same information is available nationally from more systematic and controlled field work in the three agricultural censuses.

#### Censuses

1. Douglas, A.J.A. and R.K. Tennant, 1952. Basutoland Agricultural Survey 1949-50, Basutoland Government, Maseru, 115pp.

Popularly called the "1950 Census" this study was the first attempt to develop systematic data on agriculture in Lesotho. The study was undertaken during the 1949-50 crop year using methodologies suggested by FAO for the World Agricultural Census. It filled a badly felt vacuum of data but unfortunately no further data of similar nature were collected until the 1960-61 agricultural census. Consequently one is at a loss to attribute differences between the two to long-term trends or to differences in field methodologies. One of Douglas and Tennant's more lasting contributions was the definition and mapping of ecological zones (Lowlands, foothills, Mountains and Orange River Valley) which are still in use after 30 years as one of the basic classifications in agricultural statistics and planning. Data are cross tabulated by district and ecological zone.

Statistics included which relate directly to land tenure covered: mean size of fields, number of fields per household, arable acreage per household, number of landless households, and distribution of holdings by farm size.

Douglas and Tennant present one table which, unfortunately, has never been repeated. Their Table 8a entitled "Mean period during which land has been continuously occupied" presents data on the average time fields have been held by the present holder. Since these figures show that fields were being held for periods very nearly equal to farmer's average active farming careers, these data have been often cited as proof that adequate security of tenure exists in Lesotho. There is an urgent need to repeat this question nationwide since there are many factors which could have wrought change since 1950. The remaining tables in this excellent pioneering study deal with land use and productivity rather than land tenure.

2. Morojele, C.M.H., 1962-63. 1960 Agricultural Census, Basutoland, Agricultural Department, Maseru.

This census was issued in seven volumes each covering different facets. The volumes are excellent for their narrative as well as the data included. Most data deal with land use. Volume 3, Agricultural Holdings (88pp) contains data on sizes of holdings, their distribution, holdings operated by progressive farmers and absentee holders. This volume gives disproportionate attention to tabulations by number of fields rather than by acreage. Consequently some analyses, e.g. per capita acreage distributions, cannot be accomplished. This volume contains the first data (and the most thorough data thus far) on numbers, area and distribution of "yards around homesteads" and vegetable gardens; two productive areas which Sheddick points out are not covered by the traditional land tenure and thus presumably unconstrained in their use.

For analytical purposes, one must be careful to note that field data were collected in the crop year 1960-61, thus an interval of 11 years exists between Douglas and Tennant's survey and 9 years between the 1960 and 1970 Censuses, the latter being enumerated in 1969-70.

3. Bureau of Statistics, 1972. 1970 Census of Agriculture Report, Government of Lesotho, Maseru, 243pp.

This third agricultural census of Lesotho, again, presents data on land use throughout. Only a few tables deal with land tenure. In these (pp 42-46) the only tenure stratifications given are a) owned and operated by household members, b) owned and fallowed during census year, and c) owned and operated in partnership (presumably share cropping).

One of the strengths of this source of data is that nearly every table is stratified by farm size class. With some effort further analysis is possible to relate various land use activities to the size of allotted farm lands. One unique table appears on page 49 in which farms are cross tabulated by household size and farm acreage. These data, which have never appeared elsewhere, permit the calculation of per capita land holdings and an analysis of the presence or absence of equality in land allocations. Such an analysis is provided in LASA, 1978.

Pending the publication of the 1980 Census of Agriculture this document remains the basic data source for agriculture. It is unfortunate that practically no direct data on the land tenure situation is provided.

### Other Materials

1. Lesotho Agricultural Sector Analysis Team, 1978. (See page 15).

Although this report does not contain field data its two contributions lie in original analyses and in a concise presentation of trends with respect to land holdings. In the latter category data are developed showing that the distribution of holdings by size has shifted over time to ever smaller units, and that this is the result, not of subdividing fields but almost exclusively results from fewer fields per household. These data are combined with household size data to show that per capita acreage in rural farming households declined 36 percent between 1950 and 1970. An increasing trend of landlessness is quantified.

Finally, retabulating the 1970 Agricultural Census data, a distribution of land holdings is developed on a per capita basis. The result establishes a less equitable land distribution than previously supposed, thus suggesting that agricultural planners specifically identify "land restricted", "median", and "land abundant" target groups for explicit treatment in development strategies.

2. Makhanya, Edward M., 1979. (See page 15)

As noted earlier Makhanya conducted comparative interpretations of areal photography from 1950, 1970 and 1976. His contribution of original data lies in the quantification and mapping of changes in land use patterns occurring over the 20-25 year period. In addition to information on agricultural uses, the maps show shifts in settlement patterns associated with population growth. Implied competition between village and farming demands can be imputed.

The monograph combines existing data, the photo interpretation results and the author's field survey throughout and provides considerable original data on land use but practically none on land tenure per se in the Thaba Bosiu project area.

3. Pim, A.W., 1935. Financial and Economic Position of Basutoland, presented by the Secretary of State for Dominion Affairs, London.

Hidden on page 41 of this document is a collection of data representing a sample of taxpayers in Qacha's Nek district. The data is organized by the length of time a man has been a taxpayer and thus corresponds closely to the age of the households. These data (relevant portions reproduced below) support hypotheses of a growth path whereby households accumulate land, cattle and dependents as the household matures. Apparently, in Qacha's Nek, in 1935, most villagers were succeeding

in receiving the full three fields (lands) which was considered the traditional norm.

	Qacha's Nek Statement		
	Taxpayers for periods of:		
	0-5 yrs.	5-10 yrs.	over 10 yrs.
Average Cattle Owned	.27	1.67	5.93
Average Horses Owned	.08	1.12	2.04
Average Small Stock	.57	26.20	30.00
Taxpayers w/No Stock	80	32	17
Average Number of Fields	.22	1.25	3.12
Taxpayers w/No Fields	84	30	9
Number of Dependents	.67	2.93	5.88
Fields per H.H. Member*	.13	.32	.45

\*Calculated from original source.

4. Poulter, Sebastian, 1976. (See page )

Poulter provides one table (p. 295) based on three small village investigations conducted by himself that bears directly on the question of whether, on the demise of the male household head, land passes to his heir or remains with his widow. The question has arisen formally in the form of a 1948 resolution by the Basutoland National Council that the Laws of Lerotholi be amended to provide direct inheritance by the heir. The amendment was struck down by the courts and Poulter later collected his data to gain an impression of what the factual situation really was. His table is reproduced verbatim below:

Analysis of the landholdings of 36 widows in the three villages of Lenono's, Manteko's, and Morija

	Number	Percentage
Widows with more lands than at their husbands' death	3	8.3
Widows with the same number of lands as at their husbands' death	16	44.4
Widows with less lands than at their husbands' death	3	8.3
Widows who have no lands and whose husbands had none	5	13.9
Widows who have moved from one village to another	5	13.9
Widows whose husbands' heirs have taken over the lands	3	8.3
Widows who don't know how many lands their husbands had	<u>1</u>	<u>2.8</u>
	36	99.9

5. Sheddick, Vernon, 1954. (See page 20)

Sheddick's work contains quite a few tables. A few are particularly relevant. Pages 88-101 contain narrative and data from his field studies on the distribution of acreages, distribution fields and distribution of livestock holdings by households. He has noted those holdings held by "administrative" (Chiefs and Headmen) households *vs* those held by "commoners", permitting a quantification of differences between the two in access to land resources. A marked concentration of both land and cattle in the hands of administrative families is shown to have existed in the early 1950s.

6. Thaba Bosiu Project, 1979. Raw data from General Economic Survey of Thaba Bosiu project area, stored by Ministry of Agriculture in Ministry of Finance Computer Center for research use. Maseru.

The GES compiled data on two key questions relating to land tenure from the mid 1970s. Respondents in two sample villages were asked the length of time each field had been held. The average, for 332 fields, was 16.4 years, corresponding closely to the results of Douglas and Tennant (1952). 155 individual respondents were asked if they had ever lost a field. Nineteen (12.3%) indicated yes but in about half of these cases it was possible to show that such losses were actually transfers to the next generation. Focusing on specific fields, the survey was able to show that 59 percent of all fields sampled had been previously held by a relative, generally of the preceding generation.

While the sample is limited to two villages in one project area, it suggests that there is a definite security of tenure, appreciable *de facto* inheritance and probably very little revocation of allocations except to pass land on to younger family members. While not conclusive this small survey is significant enough to suggest further research on the subject.

D. Partial List of Land Tenure References  
for Southern Africa Excluding Lesotho

1. BEHRMANN, H.I., 1965. "Technique and Tenure in South African Agriculture," Inaugural Lecture, 14 May 1965, University of Natal Press, Pietermaritzburg.
- This lecture is basically general in nature. It establishes a series of stages characterizing agricultural development throughout history as well as a series of tenure forms through which agricultural evolution normally passes. Professor Behrman then shows that all stages and tenure forms coexist in South Africa, from the hunting-gathering Bushman of the Kalahari Desert to some of the most modern, highly capitalized farms in the world. Some comparisons are drawn between "European" and "Bantu" systems. In looking to the future Behrman ignores white farms on the grounds that privately owned land presents no problems, and focuses his discussion on methods of improving agricultural production and tenure in native areas.
2. BRIETZKE, P.H., 1973. "Rural Development and Modification of Malawi's Land Tenure System," Rural Africana, Vol. 20, No. 1: 53-68. Michigan State University, East Lansing.
  3. FAZAN, S.H., 1944. "Land Tenure in the Transkei," Bantu Studies 3(2): 45-64.
  4. HOUGHTON, D. HOBART, 1938. "Some Economic Problems of the Bantu in South Africa," South Africa Institute of Race Relations, Number 1, Johannesburg.
  5. JONES, B.M., 1964. Land Tenure in South Africa - Past, Present and Future. Durban, 193 pp.

This study was commissioned by the Council of the Institute of Land Surveyors of Natal in the belief that the land survey profession should be ready with "firm proposals for the establishment of a sound and secure cadastral system in the Bantu areas" when it inevitably became necessary to introduce individual tenure to these areas. The study was intended to make such proposals to provide "such security of tenure as will stimulate economic development." The author was specifically instructed to formulate recommendations that would be compatible with the policy of apartheid.

The study's strength is its very detailed description of the South African land registration and cadastral survey systems. In this regard the paper is excellent, reflecting Mr. Jones' standing as a leading authority on these. A parallel description, though with much less depth, is given of the "Bantu land registration system" as it existed in South Africa in the 1960-64 period. The description of existing traditional African tenure systems is reasonable for areas within the present South Africa but very shallow for the BLS countries. Of the three, Lesotho is least well treated although Sheddick's excellent work is referred to throughout when giving generalized descriptions of traditional tenure systems. For example, one paragraph uses very superficial logic to conclude "---the whole of Basutoland may ---be considered Crown land" (page 22). Elsewhere an interesting but brief comparison of western vs. African conceptions of security of tenure is included (pp. 35-36). Finally, the seven page bibliography provides a fairly complete guide to references, legislation and court cases relating to South African (not native) land tenure prior to 1963.

6. JONES, EDITH B., 1940. "South African Native Land Policy," Bantu Studies, June 1940.
7. JOUBERT, J. and J.A. GROENHOLD, 1974. "Land Tenure Systems in White South African Agriculture," appearing in four parts in Agrekon, Vol. 13, Nos. 2, 3, 4. Department of Agricultural Economics and Marketing, Pretoria.

Paper is based on Joubert's M.Sc. (agric) thesis. Describes historical development of land tenure systems in White farm areas, analyzes trends in farm numbers and farm sizes. The major quantitative section is Part III in which regional differences in the structure of land holdings are examined with considerable data. Comparative financial results for farming in different regions and with different tenure types are presented. The analysis is based solely on published national data and contains no field survey material. Part IV closes the paper with a discussion of legal aspects of leases under South African law.

8. MILLS, M.E.E. and M. WILSON, 1952. "Land Tenure," Keiskammahoek Rural Survey Vol. 4, Pietermaritzburg.
9. PODEDWCORNY, HENRYK, 1971. "The Customary Land Tenure; Selected Problems of Agrarian Reforms and Agricultural Development in Countries of Africa South of the Sahara," African Bulletin No. 15. Warszawa; reprinted as LTC Reprint No. 111, Land Tenure Center, Madison, 1974.

Paper provides a good general overview of land tenure structures and land reform problems for sub-Saharan Africa. Utilizes examples from Rhodesia and Malawi. Sixty-six references indicate wealth and breadth of literature on the subject. An excellent first introduction for the prospective student of these issues.

10. RUTMAN, GILBERT L., 1969. "Innovation in the Land Tenure System of the Transkei, South Africa," Land Economics, 45(4), 1969:467-471.

The paper examines an experiment attempted by South Africa in Transkei to introduce an individual tenure system. The intent is to stimulate investment in agriculture even though the author points out that traditional powers of native authorities will be eroded. Fearing resistance the White officials chose to move only to an intermediate stage rather than completely to individual tenure.

The traditional system apparently parallels that of Lesotho closely. At the time of writing White officials had taken over the allocation authority for land. They then modified the tenure system by making a clear distinction between arable and grazing land, divided the arable land into rectangular plots, granted title to these plots, and stipulated that these plots must be passed on to the eldest son. The author finds these measures "an insignificant move toward individual tenure" and foresees the development of a landless class of rural residents. He then presents a section on the effects of this modification on private investment in agriculture, which effects he finds negligible and closes with the assertion (unproved) that a "precondition" for agricultural development is individual tenure over both grazing and arable land.

This article is typical of those of expatriate origin which so often lay the bulk of Africa's agricultural problems at the door step of land tenure, then flatly recommend an individual tenure system.

11. SARCCUS, 1968. "Symposium on Traditional Systems of Land Tenure," Conference proceedings, Southern African Regional Commission for the Conservation and Utilization of the Soil. Salisbury. 65 pp.

The conference suffered noticeably from the absence of Black African delegates (one attended). Papers presented reflect viewpoints of White southern Africans and in general do not display much depth of understanding. Little research or primary data is used to support positions taken or conclusions reached. One notable exception is the paper by Mr. A.O. Jackson.

The following papers are included together with summaries of the discussions that followed their presentation:

1. "A review of the traditional systems of land tenure in Southern Africa." Mr. J.S. Murray.
2. "Traditional land tenure, social structure and the effects of change." Mr. A.O. Jackson.
3. "The effect of agricultural legislation on land use under traditional tenurial systems." Mr. Noel Robertson.

4. "The value of educational methods in relation to traditional land tenure systems." Mr. C.P.R. Nottidge.
  5. "The value of community development in the proper use of land." Mr. A.V. de E. Castro.
  6. "The effects of land use planning on tribal trust lands in Rhodesia." M. Keech.
  7. "The evolution of agricultural credit in Angola." Messrs. E.C. de Carvalho and F. de V. Guimaraes
12. SCHAPERA, I. 1943. Tribal Legislation among the Tswana of the Bechuana-land Protectorate, London.
  13. TOMLINSON, et. al. 1955. "Summary of the Report of the Commission for the Socio-Economic Development of the Bantu Areas within the Union of South Africa." Report of the Tomlinson Commission, Union Government No. 61, Government Printer, Pretoria.
  14. UNITED NATIONS, 1976. "Land Tenure Conditions in South Africa." Document No. 37/76 of the Centre Against Apartheid, Department of Political and Security Council Affairs, New York, 71 pp.

Study was undertaken by FAO at the suggestion of the U.N. Special Committee Against Apartheid. The paper contains an ethnic and political history (brief), a more elaborate description of land tenure systems and agricultural production since 1910 and devotes the last thirty pages to an analysis of racial issues which are intertwined with agricultural and tenurial issues. The study is essential reading for the serious student of these issues in South Africa. It is not so relevant for the student of traditional tenure systems because, through necessity, its treatment of the subject is overgeneralized.

#### IV. THE LAND ACT 1979

In September 1979 the Land Bill 1979 passed its third and final reading in Parliament. Royal Assent was received on November 15, 1979. This legislation officially became law with publication in the Government Gazette on December 14, 1979. The official commencement of the Act was June 16, 1980 per announcement to that effect by the Minister of the Interior.

Basic References are:

"The Land Act 1979," Act No. 17 of 1979, Supplement No. 1 to Gazette No. 41 of 14th December 1979. Government Printing Office, Maseru.

Department of Lands, Surveys and Physical Planning, 1980. "Notes on the New Land Law for Lesotho," mimeograph issued February 14, 1980. Maseru, 12 pp.

"Land Regulations, 1980" being drafted by Ministry of Interior. To become official when published in Government Gazette.

The Land Act, 1979 attempts to provide the following changes:<sup>1</sup>

- a. A consolidation of viable portions of previous land legislation.
- b. An improvement in the security of tenure.
- c. To create a limited market in land use rights.
- d. To create conditions where land use rights can be transferred, inherited and be used as collateral.

Underlying these specific changes was a desire by government and farmers alike to increase land use efficiency and to structure a tenure system, differing for urban and rural areas, that would accommodate modernization and growth.

Key features of the Act include:

- a. Vesting the power to grant and revoke titles to land in:
  - i. Land Committees chaired by the Chiefs in rural areas;
  - ii Urban Land Committees chaired by the Principal Chiefs for urban areas;
- b. Rules of inheritance;
- c. Definitions of explicit types of rights in land;
- d. Procedures for taking land for public purposes;

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<sup>1</sup>The following four paragraphs borrow heavily from "Notes on the New Land Law for Lesotho."

- e. Establishment of a Land Tribunal;
- f. Provisions for declaring "Selected Development Areas" (for non-agricultural uses) and "Selected Agricultural Areas";
- g. Requirements for annual land revenue payable to the State under certain circumstances.

Three types of rights in land are specified. They are leases, allocations and licenses. Leases provide a right to use and occupy land exclusively providing terms and conditions of the lease are met. Leases apply principally to urban areas; they are transferable and inheritable. An allocation, drawing from traditional practice is a land use right in rural areas for farming, gardening and other traditional purposes. Allocations are inheritable. Licenses are non-exclusive rights to specified uses of land. Licenses cannot be transferred or inherited.

One of the Act's chief purposes was to provide a greater security of tenure. In the Act itself the power of revocation with respect to allocations is vested in the Land Committee, of which a majority of members are popularly elected. These powers must be implemented in accordance with specified procedures. In these procedures and in the role of the Land Committees can be seen some safeguard against capricious or unfair reallocations by Chiefs acting individually. The Land Regulations 1980 will lay down explicit grounds for revocation, which should provide further guarantees.

The Act's main contribution to security of tenure is found in the provisions for leasing. An agricultural holding can be converted to a lease in two ways; by application of an individual for such a conversion or by the establishment of a selected agricultural area. The lease is an inheritable and transferable right providing "exclusive possession." As such it should permit enclosure by fencing. This exclusivity, combined with the inheritance provisions should remove most disincentives to investment in land improvements by the serious farmer.

A lease may be sublet. This provision presumably will contribute to more effective utilization of the nation's land resource in the following manner. Holdings which are too small to constitute viable farms or land holdings of households which do not have the labor or resources to manage them effectively can be sublet to farm managers who are in a better position to farm the land. The lease holder receives a land rent while the sub-lesor can accumulate a larger and presumably more economic holding. While the distribution of land holdings should not change, actual use of land could gradually concentrate into the hands of the better farmers. The number of farms, defined as operational units, should decline and the average size of those units increase.

Two considerations are important. The 1979 Act contains no restrictions on the accumulation of land, therefore no maximum farm size is yet accepted as policy. The technologies for farming very large units are readily available in the South African market and relative factor prices in the region induce land extensive, capital intensive production techniques. It is possible that accumulation by a few farmers could shift large numbers of households from agricultural income earners to simply land renters.

To illustrate the point consider the following data. Lesotho's land resource is presently distributed among 220,000 households. Most are responsible for management of their own fields for farming. If the effect of the Land Act were to consolidate these very small holdings into operational units of only 4 hectares average, there would exist only 75,000 farm units. At that point some 145,000 holders of land allotments would be receiving modest rental incomes only. If land accumulation is allowed to continue until the average farm size reaches 20 hectares, only 15,000 farm units will remain in operation. For the displaced, offsetting wage employment in agriculture will probably not develop since 20 hectares (or even 40) can be comfortably operated by a single family unit with only limited mechanization. Consequently, controlling the potential problems of excessive land accumulation seems a high priority policy objective as the Land Act is implemented.

Another fundamental component of the Act is the provision for inheritance. Both leases and allotments may be transferred to succeeding generations in a manner consistent with the laws of succession. With respect to allocations the Land Act is specific, stipulating the "passing of the interest---to the first male issue of the deceased", or in the absence of a son to "the person<sup>1</sup> nominated as---heir by the surviving members of---the family." These provisions should work to effectively stop further subdivision of land holdings.

Effective with implementation the long-term trend toward ever smaller holdings has been arrested.

The trade-off is that land allocations are essentially frozen as they exist at present. A household may expect to retain their land holdings from father to single heir. However, any new additions to the number of households will be landless. Since household numbers grow reflecting population growth there should be a rapid increase in the number of landless rural households. Non-farm employment opportunities in rural areas are essential if an intolerable flood of job seekers to the cities is to be avoided. In the next 20 years, the number of landless rural households should increase from 30,000 to 120,000.<sup>2</sup>

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<sup>1</sup>Note singular form.

<sup>2</sup>Eckert, J. and J. Mohapi, 1980. "The Future Environment for Agricultural Planning, 1980-2000," LASA Discussion Paper No. 9, Ministry of Agriculture, Maseru.

The combination of a consolidation of lands into a limited number of agricultural farm units plus the expected increase in landless rural households suggests that a dramatic restructuring of rural income sources will occur over the next 20 years. The data below compare the present situation with that which could occur if agricultural land is organized into farms averaging four hectares in size.

Hypothetical Distribution of Land Resource Assuming  
Full Land Reform to Create "Viable" (4 ha) Farms<sup>1</sup>

Year	Household Numbers (000)			
	Total	Without Land	Managed by Household	Leased to Others
1980	247	27	220	(see note)
2000	337	117	75	145

Note: An appreciable amount of sharecropping exists at present but it is not reliably quantified at the national level.

If such a complete land reform occurs, there will be approximately 75,000 farm units which could earn a decent living from agriculture. Nearly 150,000 will receive only modest rental incomes from their allotments. Nearly 120,000 households will not have access to land as an income generating resource. This potential situation suggests far reaching consequences with respect to the development objectives of employment and income distribution. If rural employment is successfully provided for the landless as well as those leasing parcels out, it seems likely that the nature of rural Sesotho society will change rapidly, away from its present agrarian structure and towards a nation of wage earners employed in industry, commerce, informal and service sectors. Simultaneously, more efficient management of the arable land base by the better farmers could relieve much of Lesotho's present food dependencies. In short, the Land Act of 1979 is potentially the most fundamental element of change that will affect the Nation of Lesotho throughout the rest of this century.

The provisions for declaring Selected Agricultural Areas deserve special mention. The Minister of Interior, upon the advice of the Minister of Agriculture, is empowered to declare any agricultural region, large or small, as a Selected Agricultural Area. At that point all rights to land in the area cease and new rights will be established as leases in accordance with a particular development or land use plan. Priority will be accorded previous holders in the allocation of new leases.

<sup>1</sup>From Eckert and Mohapi, 1980.

These provisions permit experimentation with a wide range of novel development efforts, many of which have been constrained in the past. Enclosure and controlled access is legally possible and could be used to good effect for range management and/or watershed protection. Establishment of winter crops or year-long crops can be considered.

Private commercial fodder production could be excused from the threat of open winter grazing. Afforestation, intensive horticultural crop and others become somewhat more feasible.

An interesting aspect is that the right to manage land (the lease) need not be granted to individuals but can be granted to some form of village farmers organization or to a village-government joint venture. In this way Selected Agricultural Areas provide a form of enabling legislation supporting government's interest in encouraging village management of resources.

Finally, these provisions of the Act permit complete reorganization of the land, its fields and structures, if the agricultural development effort proposed requires such reorganization.

In conclusion, a caveat. There have previously been several significant attempts to effect change in Lesotho's land tenure.<sup>1</sup> None have been fully successful. Some designs have languished unutilized; others have reached the stage of legislation only to be incompletely implemented. The Land Act 1979 differs in the extent of debate and participation during its preparation through seven drafts, and in the thorough and systematic preparations being made for its implementation. It does, however, offer many changes, some of which are fundamental to the structure of society and the polity. It remains to be seen whether, and how far, implementation can proceed.

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<sup>1</sup>See: Basutoland National Council, 1964; Anonymous, 1966; University of Chicago, 1963; Act No. 22 of 1969; Acts No. 16 and 20 of 1973 and Legal Notice No. 9 of 1974.

## APPENDIX I

### Selected Excerpts Dealing with Land

from

### THE LAWS OF LEROTHOLI\*

#### Part I

#### Declaration of Basuto Law and Custom

##### *Allocation of Land*

7. (1) *Allocation of land generally:* Every Chief and every Headman declared as such by the High Commissioner by Notice in the Gazette published in accordance with the provisions of section 3(1) of the Native Administration Proclamation, 1928 (Chapter 54 of the Laws of Basutoland), is responsible, within his area of jurisdiction, for the allocation of land to his subjects. It shall be the duty of the Chief and Headman to see that land is allocated fairly and impartially.

Note — Land may be allocated for several purposes, e.g. residential business, planting of trees, growing of vegetables or tobacco, cultivation of crops, burial of the dead, erection of churches for purposes of worship, building of stables and kraals, etc.

Comment — The existing sub-paragraph (1) is redrafted on account of the High Court decision in the case of *Mampha Nkhasi v. Shopane Nkhasi*, 1955 H.C.T.L.R. at 39.

(2) *Inspection of land allocated for the growing of crops:* Every Chief and every Headman declared as such by the High Commissioner shall frequently inspect all lands allocated by him in his area for the cultivation of crops and is empowered to take away land from people who in his opinion have more lands than are necessary for their and their families' subsistence and grant such land so taken away to his subjects who have no land or insufficient lands.

(3) *Deprivation of land not used or ill used:* It will be at the discretion of such Chief or Headman to take away a land or lands which he has allocated to any of his subjects who, through continued absence or insufficient reason, fails for two successive years properly to cultivate or cause to be cultivated.

(4) *Retention of lands by widows:* No widow shall be deprived of her land except under the provisions of paragraphs (2) and (3).

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\* Quoted from P. Duncan, Sotho Laws and Customs, Oxford University Press, Cape Town, 1960.

(5) *Provision of lands for minors and other sons on the death of their parents:*

- (a) On the death of the father or mother, who ever dies last, all arable land allocated to them shall be regarded as land that has become vacant and shall revert to the Chief or Headman for reallocation. Should however there be minor dependents left in such household, it shall be the duty of the guardian of such minor dependents, or in his absence the person who has the custody of the minors, to report the presence of such minors to the Chief or Headman, and it shall be the duty of the Chief or Headman to make provision for such minor dependents, during the period of their minority, from the land or lands of their deceased parents. If the minor dependents are sons, the Chief or Headman shall, on such sons attaining majority, confirm them on the land or lands used for their benefit during the period of their minority.
- (b) In the reallocation of lands which have reverted to the Chief or Headman on the death of the previous occupier and after the needs of any minor dependents have been satisfied as in the previous sub-paragraph (a) prescribed, the Chief or Headman shall give priority, as regards the allocation of the remaining lands should there be any, to the requirements of any adult son or sons of the deceased provided such son or sons reside in the village of the deceased.
- (c) Any person aggrieved by the action of the Chief or Headman in failing to observe the provisions laid down in this paragraph (5) may complain to the Principal or Ward Chief as the case may be, and if dissatisfied, with the decision of the Principal or Ward Chief he may appeal to the Paramount Chief.

(6) *Right to select which land to surrender:* When under paragraph (2) or (4) above a Chief or Headman orders that a land or lands be surrendered, the person so ordered to surrender a land or lands shall have the right to choose which land or lands shall be surrendered.

(7) *Land allocation for gardens and tree plantations, etc.:* On the death of a person who has been allocated the use of land for the growing of vegetables or tobacco, or for the purpose of planting fruit or other trees, or for residential purposes, the heir, or in the absence of their heir, the dependents of such deceased person shall be entitled to the use of such land so long as he or they continue to dwell thereon.

(8) *Land required in the public interest:* Except in the public interest it shall not be lawful for any person to be deprived of his lands, gardens or tree plantations except in accordance with the provisions of this law.

PART II

Rules Issued by the Paramount Chief with Approval  
of the High Commissioner, Under the Provisions of  
Section 15(1) of the Native Administration  
Proclamation No 61 of 1938

*Tree plantations*

31. (1) It shall be lawful for Chiefs and Headmen to grant land to their people for the purpose of planting trees. Whenever possible, blocks of land adjacent to dongas or below dams shall be allocated for this purpose and such blocks shall be sub-divided into individual plots. Beacons shall be erected to define the boundaries of each plot.

(2) (a) The trees so planted shall belong to the family that planted them so long as they continue to dwell in the caretaking of the Chief or Headman who allocated the plot. If such family removes it will be permitted to cut and sell the trees before removing.

(b) If the trees planted by the family are non-coppicing trees, the plot shall then be reallocated by the Chief or Headman concerned; if the trees planted by the family are coppicing trees, the products of the plot shall thereafter be distributed amongst the people free of charge by the Chief or Headman concerned.

(3) It shall be at the discretion of the Chief or Headman to take away from the family that has not fully planted a plot allocated to them within two years that portion of the plot which has not been planted and to allocate it to another family.

(4) The plantations which were established in the past by *mitaemzi* labour, shall remain the property of the people. When trees so planted are sufficiently mature they may be used by the people free of charge, but felling shall be controlled by the Chiefs and Headmen under the discretion of the Paramount Chief.

(5) No person shall, without the prior permission of his Chief or Headman, cut down or destroy or cause to be cut down or destroyed any tree or bush other than his own personal property, whether indigenous or exotic. Any person contravening this order shall be liable on conviction to a fine not exceeding £5 or to one month's imprisonment or to both such fine and imprisonment.

32. (1) No person shall burn or set alight any grass or bush in a grazing area.

(2) A Chief may, after consultation with the local Agricultural Officer, permit the burning of grass where this is found necessary for the improvement of grazing.

Note — Grass-burning will only be permitted on the following grounds:

- (a) For purpose of destroying *behalahala* or *sekikitlela*;
- (b) for purpose of destroying old grass;
- (c) in any other areas where it is considered by the Agricultural Department to be necessary for the improvement of grazing.

(3) Grass burning will not be permitted until after the first rain in spring.

(4) After burning, grass must be allowed to grow undisturbed for a period of four weeks.

(5) Any person who contravenes this rule shall be liable on conviction to a fine not exceeding £10 or to imprisonment for a period not exceeding two months or to both such fine and imprisonment.

(6) Where grass burning has been done wilfully or negligently without the approval of the Chief and Agricultural Officer of the district, the Chief may order that such an area shall not be grazed for a period of one year or more according to the state of the grazing.

#### *Soil erosion*

#### 4. (1) *Construction of anti-erosion works through cultivated fields and pasture land*

- (a) It shall be lawful to lay down anti-erosion works, such as contour terrace banks and contour grass strips, anywhere in Basutoland where these measures are considered necessary, irrespective of field boundaries.
- (b) It shall be unlawful to reduce buffer grass strips to a width of less than six feet (two yards).

Note — 'Countour banks' are banks of soil running across the slope at intervals. 'Buffer grass strips' are strips of grass running across ploughed slopes at intervals.

#### (2) *Ploughing on the contour*

In areas where there are contour works ploughing shall be carried out by land holders on the contour parallel to the terraces or grass strips. Ploughing up and down the slopes between the contour works, or ploughing into or over or at an angle to the contour works, is prohibited.

Where anti-erosion work has not yet been carried out the land should be ploughed across the slopes.

(3) *Prevention of damage to anti-erosion works*

Ploughing into or across anti-erosion work is prohibited.

(4) *Protection of anti-erosion works*

It shall be lawful for the surveying and marking necessary for the construction of soil conservation works through cultivated land to be carried out during the period June to October inclusive. Such works may be marked with two furrows from six to twelve feet apart, and when duly marked the works may be constructed at any time of the year.

Should it be found necessary to survey and mark out new works during the main growing season, namely November to May, this shall be done only after consultation with and with the consent of the Chief and local Headman.

Works may be constructed at any time of the year through pasture land and land not under crops.

(6) *Meadow strips and inlets*

- (a) It shall be lawful to establish meadow strips and inlets in cultivated lands or wherever necessary for the disposal of surplus water.
- (b) It shall be lawful for the Agricultural and Livestock Officer of the district to define the boundaries of meadow strips and inlets by fencing or by placing beacons visible one to the other along the line of the boundary. Where such meadow strips or inlets are defined by beacons it shall be the duty of the occupier or occupiers of the fields adjoining the boundaries to maintain such beacons.
- (c) It shall be unlawful to plough or cultivate any meadow strips or inlets.
- (d) The grazing of meadow strips or inlets may be carried out during the winter for such periods and in such manner as laid down by the Agricultural Officers. All such instructions will be addressed in writing to the chief concerned.

**Note** — 'A meadow strip or inlet' is a strip of grass running down the slope which carries the surplus water from the terrace banks on either side to a suitable disposal point. Artificial meadow strips are only necessary where there are not other suitable water channels available, such as rocky outcrops and established grass water ways. A large number of meadow strips have been established successfully. These strips are narrow and seldom exceed the width of two terraces; the area occupied is, therefore, very small.

(7) *Dams*

It shall be lawful to construct dams and to fence or demarcate these wherever necessary:

(8) *Badly eroded areas*

It shall be lawful after consultation with the Chief to fence badly eroded areas and plant these with trees for the use of the people. Where such areas are not fenced, they may be demarcated and beacons and the trespass of stock prohibited.

(9) *Protection of vegetative cover in dongas*

- (a) For successful donga reclamation it is essential that all natural or introduced vegetative cover in dongas be protected. It shall be unlawful, therefore, to graze stock in any dongas which adjoin or are situated above a terraced area.
- (b) It shall be lawful for any Chief or Headman after consultation with the Agricultural and Livestock Officer of the district to declare land adjacent to dongas in his area to be prohibited from grazing or cultivation to an extent equal to the depth of the donga on either side: Provided that grazing may be permitted on such land during winter for such periods and in such manner as is laid down by the Chief or Headman.

(10) *Repair and maintenance of anti-erosion works*

All works which are constructed require repair from time to time, and these repairs must be carried out by the people themselves in the following ways:

- (a) Each land holder shall be responsible for the repair and maintenance of those works which cross or adjoin his field or fields: Provided that where a diversion furrow has been constructed, the land holder or land holders whose fields are protected by such diversion furrow shall be jointly and severally liable for its maintenance.
- (b) The village community shall be responsible for the repair and maintenance of those works which are constructed in their local village site or communal grazing area.

(11) *Interference with or damage to fencing or beacons*

It is unlawful to interfere with or damage fencing which has been erected to protect soil conservation works or to remove or destroy beacons which have been placed to mark the boundaries of a protected area.

(12) *Compensation for failure to maintain soil conservation works*

When any person is convicted by a Native Court for the contravention of any paragraph of this order, the Native Court shall be empowered to order that in addition to any fine which may be imposed, compensation not exceeding 10s. shall be paid to the Chief or Headman who has taken the case to Court.

5. (1) It shall be the responsibility of the Chief and Headman of any area in which land is ploughed to safeguard that land against erosion, as advised by the Agricultural and Livestock Officer of the district or his representative.

(2) (a) No Chief or Headman shall permit virgin grassland (*thite*) or land which has been out of cultivation for more than three years (*mashooqa*) to be ploughed unless he has issued to the person wishing to plough the land a written certificate on the advice of the Agricultural and Livestock Officer that the land is suitable for cultivation and that the necessary protective measures have been effected as defined in (c): Provided that a certificate will not be required in the case of land which has been out of cultivation for more than three years but which is adequately protected against soil erosion; and: Provided further that where there is disagreement the matter shall be referred by the Principal or Ward Chief to the Paramount Chief whose decision after seeking the advice of the Director of Livestock and Agricultural Services, shall be final.

(b) No person shall plough virgin grassland (*thite*) or land which has been out of cultivation for more than three years (*mashooqa*) without permission of the Chief or Headman, and the certificate required in (a): Provided that a certificate will not be required in the case of land which has been out of cultivation for more than three years but which is adequately protected against soil erosion.

(c) The necessary protective measures, without which the Chief or Headman will not issue a certificate as prescribed by sub-section (a) shall consist of as many of the following as the Agricultural and Livestock Officer may consider necessary in respect of that land:  
Buffer grass strips on the contour at 6 feet vertical intervals and not less than 10 yards apart;  
terrace banks on the contours;  
diversion furrow above or through land to be cultivated.

(3) If the Chief or Headman and the Agricultural and Livestock Officer of the district fail to agree as to whether an area of virgin land or land which has been out of cultivation for more than three years should be ploughed the matter shall be referred by the Chief or Headman to the Principal or Ward Chief of the area. If the Principal or Ward Chief and the Agricultural and Livestock Officer fail to agree, the matter shall be referred by the Principal or Ward Chief to the Paramount Chief, who shall decide in consultation with the Director of Livestock and Agricultural Services whether ploughing shall be permitted.

(4) A Chief or Headman shall, if such measures are considered necessary by the Agricultural and Livestock Officer of the district or his representative, order that ploughing shall not be commenced until the protective measures endorsed on the certificate have been completed in the land to be ploughed.

(5) A Chief or Headman shall, on the advice of the Agricultural and Livestock Officer, order any land which has been cultivated in unsuitable places or areas to be returned to grassland.

(6) A Court shall, in addition to any punishment which it is empowered to award, order that any grassland which has been ploughed without the written permission required by (2) (a) shall revert to grassland.

*Lands on precipitous slopes*

5. (*bis*) Where in the opinion of an Officer on the staff of the Agricultural Department duly authorized thereto a cultivated land is situated on a slope where serious erosion will take place regardless of conservation measures which may be applied, such Officer shall consult with the responsible Chief or Headman who shall order that that land shall revert to grazing. In cases of disagreement the matter shall be referred by the Chief or Headman to the Principal or Ward Chief of the area. If the Principal or Ward Chief and the member of the Agricultural Department staff fail to agree, the matter shall be referred by the Principal or Ward Chief to the Paramount Chief whose decision, after seeking the advice of the Director of Livestock and Agricultural Services, shall be final:

Provided that if an occupier of land is dissatisfied with a decision of a Chief or Headman, or of a Principal or Ward Chief, ordering that a land occupied by him shall revert to grazing, he shall be permitted to petition the Paramount Chief in writing for leave to appeal against the decision, and such petition shall show the grounds upon which the occupier bases his appeal. The Paramount Chief may permit the occupier to appeal or not as shall in the circumstances to him seem just.

*Prevention of soil erosion caused by over-grazing*

5. (*ter*) (1) Control of grazing in the cattle-post areas shall be the responsibility of the Principal or Ward Chief in whose ward the grazing is found: Provided that his responsibility may be delegated in writing by the Principal or Ward Chief to any other person normally living in his ward.

(2) *Sectional survey*

On the advice of an Officer of the Agricultural Department nominated for this purpose by the Director of Livestock and Agricultural Services, every Principal and Ward Chief shall ascertain the number of livestock to be grazed in each section of his cattlepost country.

**Note** — For the purposes of this Order one head of large stock (cattle, equines) shall be considered as being equal to five head of small stock (sheep and goats). A section of cattle-post country shall mean an area well defined by natural features and never greater than 12 square miles in extent.

(3) *Review of carrying capacity*

The carrying capacity of any section may be subject to review from time to time, at intervals of not less than 3 years.

(4) *Records*

A written record shall be kept by each Principal or Ward Chief of the sectional carrying capacity of his cattle-post areas. From this it follows that cattle-post areas shall be defined, i.e. their lower limits where contiguous to village areas shall for each section be described for the purposes of the written record.

(5) *Permits*

No person shall use cattle-post areas for grazing livestock without the written permission renewable annually in October of the Principal or Ward Chief in whose area the cattle-post is situated and on which is stated the number of livestock which that person may graze. Such authority must be kept at all time by the person in charge of the livestock.

(6) *Grazing open to all*

No Principal or Ward Chief shall refuse to grant written permission to any person to graze livestock at cattle-posts within his ward: Provided that permission may be refused if the grant thereof would result in the grazing capacity of the ward being exceeded.

(7) *Rotational grazing*

All cattle-post sections shall be divided for rotational grazing purposes by the Principal or Ward Chief on the advice of the Agricultural and Livestock Officer of the district. Areas declared as *miboella* for the purposes of this paragraph shall be subject to customary *leboella* regulations as applied in village areas. Damages for trespass shall be paid to the Principal or Ward Chief's nominee in cases where control has been delegated as provided for in paragraph (1) of this Order.

(8) *Sitting of cattle-posts*

No person shall establish a cattle-post at a site other than that indicated by the Principal or Ward Chief or his representative appointed for that purpose.

**Note** — Cattle-post sites will normally be allowed only at valley bottoms, and not on mountain slopes.