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# LTC Paper

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## LAND TENURE CENTER

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An Institute for Research and Education  
on Social Structure, Rural Institutions,  
Resource Use and Development

Land Tenure Center  
1300 University Avenue  
University of Wisconsin-Madison  
Madison, Wisconsin 53706

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PROCEEDINGS  
LESOTHO LAND ACT POLICY SEMINAR\*

\* The seminar was sponsored by the Government of Lesotho, Ministry of Agriculture, and held in Quthing, Lesotho, 18-22 March 1984, with both national and international participation.

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## INTRODUCTION

The Land Act of 1979 has resulted in much debate and concern since its enactment. It incorporates the potential for a major shift away from traditional landholding patterns and many persons have correctly felt that careful study and review of the Act was essential before implementation in rural areas could proceed with confidence. The Land Act Seminar was the first high-level interministerial discussion of the Act and, as such, provided an opportunity to achieve that clarification of provisions which was previously lacking.

I am pleased to say that the seminar participants, coming from the Ministries of Cooperatives and Rural Development; Law; Justice; Interior; and Agriculture, in addition to participation by Principal Chiefs of the Nation, did not miss the opportunity to discuss objectively and with great candor, in open forum, the strengths and the weaknesses of the Act. As a result, the participants have contributed to the first stage of a continuing dialogue and a concerted program of action. I am sure that continuing effort will bring about improved land and tenure patterns leading to expanded commercial agricultural production while retaining valuable traditions to safeguard landholders whose interests are best served by existing tenure provisions.

I express my greatest gratitude to the participants of the seminar who came from various government ministries, the discussion leaders for their excellent papers, the rapporteurs who summarized the findings, and the program organizers. I also want to thank the Lesotho USAID Mission that provided funding for the seminar and the staff members of the Land Tenure Center at the University of Wisconsin-Madison who provided the guiding expertise which assisted the seminar to reach a successful conclusion.

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## 1. A REPORT ON THE LAND ACT POLICY SEMINAR

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### 1.1 The Land Act and Its Objectives in the Agricultural Sector

The Land Act, 1979, reflects an acute awareness of major changes in the demographic conditions of agricultural development in Lesotho. The traditional land tenure system operating in a largely subsistence economy had emphasized the principle of access to land for all Basotho. Land allocation authority had rested with chiefs and headmen and it was their responsibility, in order to provide land for new households, to reallocate land from existing holdings. By the 1970s, population pressure on land was intense. Virtually all arable land had been allocated, and most holdings were so small that it was questionable whether cultivation of those holdings alone could provide a livelihood or accommodate new technologies. Agricultural census data indicated that the proportion of landless households was increasing rapidly, reaching over 20 percent of all rural households in 1980, and the average size of holding was less than 1.4 ha. The economic viability of many rural households, including the viability of their farming operations, had become dependent upon income from modern sector employment by some family members, usually in the mining sector in South Africa.

In these circumstances, government decided to concentrate upon intensification of production through increased investment on existing holdings. A precondition of such intensification and investment was seen to be increased security of tenure. Thus, the primary objective of the Land Act 1979 was the enhancement of such security. This implied several important changes in the land tenure system. While the principle was preserved that all land was held on tenure from the state, the Act significantly alters the terms and conditions of such tenure and introduces new tenure options for arable land.

The traditional system had provided ready access to a security in subsistence opportunities, but it had done so at the expense of security of tenure in a particular piece of land. In particular, the possibility of reallocation of land from existing holdings for new families reduced security of tenure. By the 1970s, holdings had become so small that further reallocation could accomplish little. It was considered that a point had been reached where the disadvantages of such reallocation in terms of security of tenure outweighed its historical usefulness. Under the new Act, the power to make such reallocations was withdrawn, and inheritance became the key mechanism for passing land from one generation to the next. The modification and clarification of the rules on inheritance of land in the Act reflect an appreciation that:

- (1) for small farmers the building of a viable farm operation is often a multigenerational effort, and
- (2) it is necessary to minimize further subdivision of already small and fragmented holdings through inheritance.

So place in life-cycle determines  
→ whether families win or lose  
from this major change. Families young  
with a lot of kids win.

In addition to modification of the traditional allocation, however, the Act provides for the selective introduction of the agricultural lease, a tenure not previously utilized as a primary tenure for agricultural land (though sharecropping of allocations has of course been widely practiced), and one which was felt to meet the needs of farmers seeking to invest substantially in their holdings. The Act leaves the allocation, as it had been at customary law, nontransferable and therefore nonmortgageable. It was considered that mortgageability was a tenure characteristic which innovative farmers would need to have more ready access to credit and that this need could be met by a lease. Moreover, it was considered that a lease was needed to give the landholder more exclusive control over his holding. Traditionally, arable lands areas opened to stock after harvest and the holder of an allocation was not permitted to enclose his holding for improvement such as double-cropping or fodder production. A lessee with exclusive rights would be able to do so.

There was no general or automatic conversion of tenure to lease, however. Instead, it was left to holders of allocations with a felt need for the new tenure to apply for the conversion of their allocations to leases. An important exception to this was the provision in the Act for the general conversion to lease tenure in Selected Agricultural Areas (SAAs)--areas where government has decided it is necessary to pursue intensively the introduction of modern farming techniques. Because a lease is transferable under the Act, the possibility is also created for the beginnings of a market in agricultural land.

There is a second instance in which the Act provides for the automatic conversion of tenure in agricultural land, and, in so doing, the Act provides for another new tenure for agricultural land, the license. All agricultural land in designated urban areas is automatically converted by the Act from allocation to license. Here the objective was not to enhance security of tenure, but rather, the contrary: to provide government with enhanced flexibility in planning for urban development by providing a relatively insecure tenure regime for what was apparently viewed as a transient land use in the designated urban areas.

Finally, the Act creates and empowers institutions for the implementation of its provisions. Land Committees chaired by chiefs are to be created, to be responsible for making any further allocations and for supervising passage of allocations from one generation to the next by inheritance. The Commissioner of Lands is given control of the making and monitoring of agricultural leases and for licenses in urban areas. He also has the responsibility for advising and assisting the chairmen of the Land Committees in meeting their responsibilities. In addition, a Land Tribunal is created to hear certain categories of dispute under the Act.

These, then, are the key features of the Act:

- strengthening individual tenure rights to agricultural land through elimination of reallocation as a means of providing further subdivision of land. New provisions which authorize termination of allocations because of abuse or nonuse of land;

*Families lose.*

- modification and clarification of rules for inheritance of land;
- introduction of the agricultural lease, generally at the option of the landholder but also by government decision in Selected Agricultural Development areas;
- conversion of agricultural allocations in designated urban areas to licenses; and
- creation and empowering of Land Committees, the Commissioner of Lands, and a Land Tribunal for implementation of the Act.

The Land Act Policy Seminar was convened to consider the opportunities posed by the Act for agricultural development programs. While it was a major objective of the Act to provide an adequate tenure regime for agricultural development, it was also designed to cater for urgent tenure needs in the urban sector. In this event, initial implementation of the Act has concentrated upon the urban sector, and five years after enactment many basic decisions remain to be made concerning extent, rate, and manner of implementation of the Act in the agricultural sector. Many of these decisions must be embodied in regulations for orderly implementation of the Act. A draft set of such regulations prepared by the Ministries of Agriculture and Interior provided an important impetus for the seminar, and also a partial agenda on questions concerning agricultural leases and SAAs. The seminar provided a means of bringing together officials from different ministries and divisions within ministries affected by the Act so that they could deepen, through discussion, their understanding of the opportunities provided by the Act and consider and make recommendations upon the implementation of the Act in the agricultural sector. In the next section of this report, their recommendations are reviewed and the considerations behind them elaborated.

## 1.2 Discussion Topics and Recommendations of the Seminar

### Allocations

As has been noted, the Act modifies the terms of the allocation as it was known in customary law. It no longer confers the power to reallocate land from existing holdings to create new holdings, but provides for promulgation of regulations which have established the Land Committee's authority to revoke an allocation for abuse of the holding:

- overgrazing;
- refusal or inability to fight soil erosion, and
- a lack of cultivation of arable land for over three years.

The Land Committee is to review all allocations every three years to determine whether revocations are required.

*Are the clear  
criteria for  
these? Do  
land committee  
understand  
these?  
Potential  
for  
abuse however*

*Followed in practice?* 4

While allocations of arable land remain nontransferable and nonmortgageable, as they were at customary law, by virtue of the Act they become inheritable. In a major innovation, an allottee may make a binding designation of his heir. If he dies without making such a designation, the land passes to his first male child, who is to share it with his younger brothers in accordance with the family's advice. If there is no son, the land passes to the person named as heir by the deceased's family; and if no heir is named, the land reverts to the state for reallocation by the Land Committee. A surviving spouse does not inherit the deceased's allocation, but, if in occupation, has a right to remain in said occupation for life. Minor children are also protected.

The seminar did not make recommendations with respect to these provisions. Issues of interpretation were raised and discussed with respect of points of detail and regulations which deal with administration of succession to allocations, but there was no expressed need for other substantive or procedural regulations on these points at the time. Issues of interpretation will presumably be resolved in the courts.

#### Agricultural Leases

Any farmer may under the Act apply to the Commissioner of Lands for any agricultural lease over his existing allocation. Only a half-dozen such applications have so far been received, and public knowledge of this opportunity is virtually nonexistent. Prior to encouraging exercise of this option, both standards and procedures must be developed. The draft regulations prepared by the Ministries of Agriculture and Interior were helpful, and while the seminar did not review them in detail, the discussion group dealing with agricultural leases was able to focus on a number of issues raised by the draft.

Briefly, those draft regulations provided that:

- (1) Applications for these leases should first be made to the chairman of the Land Committee having jurisdiction over the land concerned, for the committee to certify that the allocation which he wishes to convert to an allocation is indeed his.
- (2) Applications should also be submitted to the District Agricultural Officer to determine the viability of the proposed agricultural undertaking for which the lease is sought and to certify such viability.
- (3) Only when the applicant has the necessary certifications from the Land Committee and the District Agricultural Officer should the Commissioner of Lands consider the application.
- (4) Once an application was approved, a survey would be carried out before issuance of the lease.

*\*//* The seminar endorsed these provisions, and the policy that a lease should be granted only where it is shown that a need for the new tenure exists. The applicant must have a concrete plan for development which cannot be accomplished with the holding as an allocation. This reflects a basic conception

of the role of land tenure reform in agricultural development which was articulated by a number of participants: tenure change will not by itself prompt agricultural development, but will be effective only where economic opportunities, relevant technologies, and incentives for expanded production exist. Then tenure change can release energies and facilitate development.

While agreeable to the basic approach taken to agricultural leases in the draft regulations, the seminar made the following recommendations:

- (4) The term of an agricultural lease should generally be for 100 years. Maximum terms for residential purposes (90 years) and industrial and commercial purposes (60 years) have already been set by the Land Act. The seminar considered that the agricultural lease should be of even longer duration because duration will be an important factor in whether agricultural leases will be requested. At the moment, the farmer has a lifetime interest. He would obviously be reluctant to convert to a lease of short duration.
- (5) There should be differences in ground-rent levels as between isolated agricultural leases and leases in SAAs, as leases in SAAs will benefit from direct government support in development of their holdings. Alternatively, development charges could be levied on leases in SAAs. In the case of isolated agricultural leases it was considered that rent levels should be modest. Otherwise, conversion to a lease for land which the holder now has for free would be discouraged. On the other hand, it was considered that ground rent would serve a useful purpose in ensuring that those who apply for leases have serious plans to invest and intensify production. There was a consensus that ground rent should be viewed primarily as a means of encouraging development of the holding. Rents should of course normally cover their collection costs, and, if it proves that they do not, they must be raised or waived.

The seminar thus recommended that:

- (6) Rents, while intended to insure that leases are applied for by people with genuine designs for the land, should at the same time not be so high as to be unaffordable to those who seek to invest in the lands. The imposition of these measures should include possible waivers or reduced rents in years with poor harvests.

A further point raised in the discussion of the recommendations of the seminar was that where development of the leased land did not proceed as expected:

- (7) There should be a relatively simple and easy way in which the lessee can surrender the lease, bringing his obligation to pay rent to an end and reconverting his holding to an allocation. Rights of mortgages should be protected.

Agricultural leases under the Act can be sold and mortgaged, introducing the beginnings of a market in agricultural land in Lesotho. The Land Act,

presumably reflecting a concern over the possible consequences of ill-considered transactions by the new lessees, requires that these transactions can be undertaken only with the consent of the minister. Regulations have not yet been issued specifying the criteria based upon which the minister should give or withhold his consent. The seminar recommended:

(8) The following criteria should be considered in controlling land transactions:

(a) As regards the purchase of leases, there should be stipulation of maximum agricultural leaseholdings for any one person beyond which new leases cannot be purchased, similar to those already prescribed for residential and commercial leases.

(b) As regards the seller of a lease, serious consideration should be given to objections by dependents which establish that sale of the lease will prejudice the welfare of the seller's family.

(c) As regards mortgages, the criteria should include the intended use of the loan to be secured by the mortgage and the soundness of that investment, with preference given to agricultural investment.

Selected Agricultural Areas (SAAs) in the Crop Sector

The Act provides for the setting aside of SAAs for the development of agriculture by modern methods. An SAA is to be declared by the Minister of the Interior on the advice of the Minister of Agriculture. When an SAA is declared, any allocation or license in agricultural land is terminated by a three-month's notice to vacate, given titles are made by the minister in the form of a lease, and, in considering applications for leases within the SAA, the minister must give first consideration to applications by previous allottees or licensees of land. Where such an applicant is refused, the minister must state his reasons for refusal. Compensation is not payable for any land taken from allottees and licensees for SAAs, though the Act may be interpreted to permit compensation for improvements.

The SAAs were the subject of sometimes intense discussion throughout the seminar. While the Act gives priority to applications for leases to those who have previously held allocations and licenses in the area, it does not preclude rejection of those applications where the minister considers there is an adequate reason for rejection. Seminar participants were both conscious of the potential advantages of the SAA and profoundly concerned about the prospect of existing landholders being made landless. This concern was acute both because the Act does not provide for compensation for land in these circumstances and because there is no guarantee for any other arable land to allocate to anyone who might be deprived of his holding. It was thus recommended that:

(1) The SAA is a potentially useful tool in promoting increased production, but implementation of SAAs should proceed with caution.

Discussion indicated that the SAA idea would likely be greeted by those in the area concerned with suspicion and a fear of loss of land. It was suggested

that policy should confine early implementation of the SAA concept to the project contexts for which it was originally intended--projects involving significant intensification of land use. For example, horticultural, fruit, and vegetable projects involving irrigation permit a major intensification of land use and significant increases in value of production per acre. In these circumstances it should be possible to accommodate existing landholders and provide employment opportunities for others.

The seminar considered these programs to be a more appropriate use of the SAA mechanism than those involving extensive grain production.

The seminar recommended that regulations should provide that:

- (2) The criteria for establishment of SAAs in the crop sector should include need for replanning of holdings, need for tenure change, and need to ensure a common or coordinated management scheme. Where a replanning of holdings is required but the necessity for a tenure change is not indicated, the SAA with its required conversion of tenure may not be the appropriate tool.
- (3) There should be full consultation at all levels, including the affected community, prior to the declaration of an SAA. The Ministry of Agriculture should consult the local Land Committee over the intention to declare an SAA in its area. While the legal right of the Minister of Interior to declare an SAA on the advice of the Minister of Agriculture is clear and unchallenged, an SAA could not provide the developmental results desired without the support of the affected community.
- (4) Displacement of people resulting from the establishment of SAAs should be avoided at all costs. Toward this end, only projects which will not involve significant displacement of people should be considered. It was considered that if initial SAAs resulted in the displacement of people and loss of their land, the future usefulness of the SAA concept would be gravely compromised. A means of avoiding displacement was recommended.
- (5) Where the holder of an allocation or a license does not wish or is unable to participate in the scheme of development for the SAA, that individual should nonetheless be given a lease but required to sub-lease to those who can and will participate in that scheme of development. Specific means of implementing this recommendation were not suggested, but it was considered that the SAA implementing authority should be involved in the selection of the sublessee. It was also recommended that insofar as anyone was displaced by an SAA, definite measures should be undertaken to relocate them.
- (6) Standards of farming appropriate to SAAs should be established through land use planning for the area concerned. These standards, and where necessary cooperation in a common management scheme, should be enforced through terms and conditions in leases.

- (7) Where individual agricultural leases already exist in an area declared an SAA, these should in general be maintained. However, where they are inconsistent with the plan of development for the SAA, they should be subject to replanning and variation of their terms. This could be provided for by a clause in all agricultural leases concerning such an eventuality.

Further recommendations on the use of SAAs in range management are set out in the next section of this report. The seminar noted the potential usefulness of the SAA provisions for the purposes of land conservation, erosion control, and reafforestation, but did not make detailed recommendations in this regard.

### The Land Act and Range Management

The Land Act is focused upon arable land and does not deal with grazing and range management. The institutions which it makes responsible for local land administration, the Land Committees, do not have the same authority with respect to mountain range or local pastures as with respect to arable land. The Range Management and Grazing Control Regulations 1980, issued under the Land Husbandry Act, deal with these matters. The local chief has control over and responsibility for issuing grazing permits with respect to local pasture, and the only involvement of the Land Committee comes through a recent amendment of the regulations to require the chief to consult with and take advice from the Land Committee in setting up leboella. The mountain pastures fall outside the jurisdiction of any Land Committee, being utilized by herders from many communities. The principal chief for the area concerned has control over the mountain pastures under the Grazing Regulations 1980, and issues grazing permits for these areas.

The provisions of the Land Act on the conversion of allocations to lease rights are not applicable to grazing rights, because grazing rights are communal and are not allocated to individuals. Moreover, range policy does not contemplate individualization of grazing land but rather improved range management through the creation of grazing associations. Here the seminar considered that the SAA provisions of the Act might have long-term potential, and it recommended:

- (1) The SAA mechanism could be an appropriate instrument for granting exclusive grazing rights to grazing associations and other groups.
- (2) Where this mechanism is used and a lease is given to the grazing association, the lease terms should require the adoption of specific animal and land husbandry standards as recommended by the Ministry of Agriculture. Failure to meet or maintain standards should lead to an appropriate penalty, including loss of the lease right.

The seminar considered, however, that there are several outstanding issues of individual rights and group liability under a lease that remain to be answered. A precondition to use of leases for grazing associations is the

creation of internal rules for grazing associations which permit them to confidently enter into a legal obligation such as lease. These include satisfactory solutions to problems of corporate management, transfer of individual rights within the group, dispute settlement, and sharing of financial obligations and legal liabilities. In addition, the seminar considered that a socially and economically viable producer association would normally be a precondition to the granting of lease rights to grazing land. The seminar therefore recommended a two-phase strategy.

- (3) Use of the SAA mechanism with respect to grazing land should be delayed until the questions raised in the preceding paragraph can be resolved. Solutions to those questions should be sought as a part of the follow-up to this seminar.
- (4) In the meantime, several steps should be taken to improve grazing management:
  - (a) Chiefs' incentives to carry out their range control duties should be increased by increasing the chiefs' share of the fine for impounded stock from 30 percent to 50 percent.
  - (b) The revenue receipt books for payment of fines, etc., now supplied to chiefs in English, should be revised and made available in Sesotho as well as English.
  - (c) The practice now followed by some principal chiefs of delegating authority to issue grazing permits to local chiefs should be encouraged by providing a clear legal basis for it in regulations, including a scheme which will allow principal chiefs to control the number of permits being issued by local chiefs.
  - (d) The Range Division should increase its capability to provide principal chiefs with better information on range conditions and advisable stocking rates.
  - (e) The Grazing Regulations should be amended to impose punitive fines for trespass on grazing areas and increased impoundment fees.
  - (f) A nationwide grazing fee structure should be devised and implemented to generate revenue for range and livestock improvement and to impose an economic cost on grazing as a means of controlling access to pasture.
  - (g) Steps are required to permit more prompt and effective action to require some negligent chiefs to carry out their range control duties. Present procedures for channeling action through the chieftainship hierarchy are causing delays and frustration, and new procedures must be developed in consultations among representatives of the Ministries of Agriculture and Interior and the chiefs.

### Licenses and Urban Agricultural Land

The urban areas of Maseru and Thota-ea-moli have been very expansively defined, and the seminar participants expressed urgent concern at the transfer of good agricultural land to residential and other nonagricultural uses. Participants believed that present urban boundaries exceed what is required for effective urban planning, and the seminar recommended:

- (1) The Ministry of Interior, in consultation with the Ministry of Agriculture's Land Use Planning Project, should redefine urban areas more restrictively, reducing the amount of agricultural land in designated urban areas.
- (2) Detailed land use and building expansion plans should be developed urgently for urban areas which preserve superior urban agricultural lands. Where such land remains within urban boundaries, it should be zoned agricultural. Means should also be found to reserve farmland on the periphery of urban areas, possibly utilizing the SAA provisions.

By virtue of the Land Act, all agricultural allocations in designated urban areas were automatically converted to licenses. The seminar, having reviewed the difficulties being experienced with urban implementation of the Land Act, concluded that the license is not adequate tenure for urban agricultural land. A license is subject to termination on three-months' notice, and a licensee can claim compensation neither for his land nor for improvements. He cannot dispose of his license or create subsidiary interests, and he can make alterations and improvements only if express permission is given in the license itself. A licensee must pay a prescribed annual fee set on the same basis as rents on agricultural leases. The insecurity involved in this tenure has contributed significantly to the fraudulent, back-dated land transactions which have plagued implementation of the Act in urban areas. The seminar recommended that:

- (3) The Land Act should be amended to permit licenses in agriculturally zoned portions or urban areas to be converted to short-term agricultural leases. Such leases might be for the 10-year minimum term provided by the Act.

Finally, again having reference to the implementation experience with the Land Act in urban areas, the seminar recommended:

- How? \*
- (4) The provisions of the Land Act should be applied consistently with a check on violations permitted by highly placed people.
  - (5) Steps should be taken to improve relations between chiefs and ministries, including more systematic consultation.

### Land Committees

The power to grant and revoke allocations, and to supervise successions to allocations, is assigned by the Act to Land Committees. Each committee,

to be chaired by the chief as an ex-officio voting member, is to decide matters by majority vote. The Land Committees have not yet been created, and in the interim the Act provides for the functions of the Land Committees to be performed by the Development Committees established for each chief and principal chief under the Land Regulations 1974. (These Development Committees are readily confused with the Village Development Committees and will be referred to here as the "Interim" Land Committees.) The Interim Committees, where there is a principal chief or ward chief, were to consist of nine persons, five elected at a Pitso and four appointed by the minister. For other chiefs, the committees were to have seven members, four elected and three appointed. There should be one Interim Committee for each gazetted chief, or 1,984 committees. Most--but possibly not all--these Interim Committees were created. The seminar lacked information on their level of activity.

The seminar was aware of the great economies achieved by devolution of certain land administration functions to local institutions. It expressed concern, however, over the ignorance of the provision of the Act by existing committees, as well as their general inability to execute their duties. The seminar recommended:

- (1) An interministerial committee is required to look into the following issues concerning the Land Committees called for by the Act:
  - (a) their terms of reference;
  - (b) the selection criteria of members;
  - (c) the structure of the committee;
  - (d) the involvement of technical officers such as land use planners when some decisions are made;
  - (e) the need to establish local Land Committees where none already exists;
  - (f) the need to institute a sitting allowance for all members of the committees; and
  - (g) upgrading the appellate Land Committee at the principal chief level to serve as new centers of competence in applying the Land Act and to assume new collaborative functions with government in areas such as land use planning.
- (2) This could be accomplished by expanding the terms of reference of an interministerial committee presently consisting of Village Development Committees to include Land Committees.

The pattern suggested by the seminar's recommendations involves maintenance of a large number of local committees to deal with the mass of regular matters concerning allocations, but also development of new competences in Land Committees at the principal chief level. These upgraded appellate committees must be able to educate local committees by reasoned decisions on appeals.

They must also be able to deal with new programs which require the cooperation of Land Committees, such as the Land Use Planning Project. Collaboration between ministries at the district level and Land Committees can never be simple, however, because the committees' geographical jurisdictions are based on chieftainship areas, which often cross district boundaries. The seminar participants appreciated that its recommendations in this respect require considerable elaboration by the interministerial committee.

In addition, the seminar became aware that there were problems with respect to appeals from Land Committee decisions. The functions of the Land Tribunal created by the Act were not well understood. Further, while regulations have been published which cover appeals from decisions of Urban Land Committees to the tribunal, there existed considerable confusion as to where appeals of rural Land Committee decisions should go after they are heard by the principal chiefs' Land Committees. In view of this, the seminar recommended:

- (2) The option of appeal and the procedures to be followed should be given greater publicity.
- (3) For appeals from rural Land Committee decisions, the process of appeal should be up to the principal chiefs' Land Committee and then to the Central Court. Only at this stage should the matter be referred to the Magistrate's court.

The seminar's second recommendation was based in its sense that the Land Tribunal was better fit to handle urban than rural land issues and that the system of appeals for rural land matters under the Land Act 1973 (now repealed) was satisfactory.

#### Land Act Education

The seminar noted the absence of knowledge generally on the provisions of the Land Act. This is the case with both the public and civil servants. The seminar recommended that:

- (1) Workshops should be arranged to acquaint civil servants at both headquarters and district levels with the provisions of the Act. This exercise should include officials in the offices of principal chiefs and the courts.
- (2) Special programs and materials should be prepared to publicize the provisions of the Act effectively with farmers and Land Committees.
- (3) The Ministries of Interior, Agriculture, and Rural Development should take the leading role in this undertaking, initially through the interministerial working group suggested by the seminar.
- (4) Special means should be found to deepen the understanding of the Land Act by the most senior officials, including ministers, who frequently receive questions on the Act from the public.

### Training and Staff for Implementation

The initiative for implementation of certain provisions of the Land Act affecting agriculture rests with the Ministry of Agriculture, and ongoing cooperation of Ministry of Agriculture's field staff is essential to effective implementation of the Act. However, the Ministry of Interior's Department of Lands, Surveys, and Physical Planning will bear the major burden of implementation. That department is already overextended in implementation of the Act in the urban areas. The seminar recommended that:

- (1) If implementation of the Land Act in the agricultural sector is seriously contemplated, the Department of Lands, Surveys, and Physical Planning should be provided with additional staff and resources, including resources for in-service and other training.

### Seminar Follow-Up

The seminar recommended that:

An interministerial working group based in the Ministry of Agriculture should be created to provide a systematic follow-up to the seminar and to ensure continued collaboration among the ministries and departments concerned.

## 1.3 Observations and a Tentative Agenda

### Observations

The seminar was a frank and sometimes surprising exchange of thoughts on the possibilities of the Land Act, involving participants from different disciplinary backgrounds and different governmental perspectives, as is appropriate for such a multifaceted topic as land tenure. While the discussions were hardly free of differences of opinion, it was remarkable that consensus emerged relatively easily on many points. This was particularly evident when the rapporteurs' reports from the three discussion groups were brought together. Topics were often touched upon by more than one group, but there were no serious conflicts in the recommendations by the different groups.

The thinking of the participants developed in important ways in the course of the seminar. These primarily concerned the relative potential of various portions of the Act for particular purposes and priorities in implementation.

The Selected Agricultural Areas provisions of the Act had been very much on the minds of many of the participants. In the course of the seminar, a number of themes emerged which should contribute to a realistic estimation of the potential of these provisions. First, there was a sense that initial implementation of SAAs will be greeted by suspicion and fear of loss of land by those affected. Implementation should therefore proceed with caution. Consultation with local people was emphasized, and it was felt that displacement of landholders, increasing already existing levels of landlessness, should be avoided. SAAs for the crops sector seemed best directed toward projects which

will facilitate this: for example, irrigated projects which greatly intensify production per acre of land and can thus accommodate more households. It was in any case in this type of project where the potential usefulness of the SAA mechanism appeared greatest, requiring as it does the replanning of holdings, tenure change, and cooperation in a common management scheme.

As regards the SAA in the grazing land context, the central issue emerged as to its usefulness in establishing discrete grazing areas for grazing associations. While the seminar concluded that the potential exists, it considered that, first, it would be necessary to arrange the affairs of grazing associations so that they could effectively undertake a legal obligation such as holding and utilizing leases of grazing areas.

Agricultural leases outside the context of SAAs had perhaps been less in the forefront of the thinking of participants as they came to the seminar, but emerged as a matter of considerable importance. Access to lease tenure for individual farmers with felt needs arising out of their concrete plans for investment in increased production may have a long-term impact on the development of agriculture, even greater than that of SAAs. Considerable time in the seminar was devoted to their appropriate terms and conditions.

Perhaps the most surprising development, at least from the point of view of the organizers of the seminar, was the profound concern which emerged concerning the fate of good agricultural land in the urban and peri-urban areas. Seminar participants proved anxious to make recommendations in this area, some outside the context of Land Act implementation strictly defined. Other recommendations--such as the inadequacy of the license as a tenure for agricultural land--involve key Land Act provisions.

Finally, certain concerns became evident about preconditions for the implementation of the Act in the agricultural sector. There was concern over the quality and potential of the existing Land Committees and a sense that they need a thoroughgoing review, in greater depth than was possible at the seminar. It was felt that knowledge of the provisions of the Act was very limited, at all levels of government and by the public in general. Educational programs, workshops, and in-service training were seen as major needs. In addition, as participants reviewed implementation of the Act in the urban areas, it became increasingly clear that the departments concerned with implementation will need additional staff and training, particularly in-service training, before implementation can effectively be undertaken.

#### A Tentative Agenda

The seminar recommended that an interministerial working group or committees be created to follow up on the recommendations of the seminar and to maintain momentum for implementation of the Act in the agricultural sector. This working group would, of course, establish its own agenda, but it seemed useful to categorize some of the tasks which emerge from the recommendations:

- (1) Policy Concerns: There are recommendations concerning policies and priorities to be considered, in particular those concerning use of the SAA mechanism in the crop production and range management areas.

These must be communicated to the highest levels in the Ministries of Agriculture and Interior and finally to Cabinet if they are to be effective.

- (2) Regulations: Many of the recommendations made by the seminar can be effectuated through regulations under the Land Act. Such regulations already exist in draft for two important areas: agricultural leases, and SAAs. And the working group could serve as a mechanism for their review and refinement. A set of regulations will ultimately also be needed for Land Committees, and the working group might serve as an effective medium for developing such regulations. There is a recommendation that an interministerial committee already considering Village Development Committees have its terms of references broadened to include Land Committees, and a decision will be needed as to which forum would be more appropriate and effective.
- (3) Land Act Amendment: While almost all the recommendations of the seminar concerning implementation of the Land Act could be readily effectuated through regulations, one recommendation of importance does seem to imply amendment of the Act: the recommendation that licenses of urban agricultural land be convertible to short-term agricultural leases. The working group could consider this recommendation and how best it could be implemented.
- (4) Education and Other Implementation Concerns: These working groups could usefully serve as forums for the development of educational initiatives, mechanisms for interministerial cooperation in implementation, and personnel and training requirements.
- (5) Complementary Recommendations: The seminar made a number of recommendations which do not strictly fall within Land Act implementations as such, but were seen as complementary and often necessary for implementation of the Act in the agricultural sector. This was particularly true as regards urban agricultural land and range management. The working groups could serve as mechanisms for reviewing these recommendations and, where appropriate, communicating them to the responsible government agencies.
- (6) Research Tasks: Insofar as the working group requires additional information for its deliberations it may usefully define and assign research tasks. The Institute for Southern African Studies at the University of Botswana has expressed its willingness to be of assistance.

### Conclusion

The Land Act 1979 confers on government not only the authority to implement land tenure change but also considerable discretion and flexibility concerning the rate and direction taken in implementation of many of the Act's provisions. Perhaps it would be useful in conclusion to suggest some of the broad considerations which should affect implementation decisions, as reflected in the papers presented to the seminar.

Land tenure change does not in and of itself usually give rise to major increases in agricultural production. There are important economic and technological preconditions to be met before it can make a significant contribution. There must be a proved plan for a new production model, with a clearly appropriate package of inputs and other technological innovations. Prices must be such as to make the adoption of the model remunerative, and it must be clear that adoption would be prevented or seriously retarded by existing tenure arrangements. Even once these points are established, serious consideration must be given to potentially damaging side effects of tenure change, such as impact on the labor-absorption capacity of the agricultural sector. Pace of implementation often determines the ability of economy and society to absorb such impacts. Because land tenure is so deeply intertwined with social structures, ill-advised or ill-timed tenure change has great potential for social dislocation. Careful consideration before irrevocable change is clearly indicated.

On the other hand, a land tenure system is a system developed by man to cope with issues of access to land resources in a particular economic and social environment. As that environment changes, tenure must and will change, however hesitantly and slowly. Inevitably such change involves uncertainty and disorientation. Planned tenure change, facilitated by government, can help bridge such transitions by providing farmers with a cleaner set of expectations upon which to operate and by reducing undesirable side effects of change.

These are some of the considerations which those charged with responsibility for implementation of the Land Act should consider as initial implementation decisions are made. Even more important, as implementation proceeds, it must be monitored and evaluated in terms of actual impact and directions in implementation shift as necessary. Planned tenure change is an act of social engineering, an infant discipline, and important corrections of course are almost always required.

## 2. RAPPORTEURS' REPORTS ON GROUP DISCUSSION

### 2.1 WORKING PARTY RECOMMENDATIONS ON THE LAND ACT 1979

Crops Discussion Group,  
D. Nkalai, Chief Conservation Officer,  
Ministry of Agriculture

#### 2.1.1 Introduction

The group discussed the role of the Land Act in implementing crop production programs. Two major issues arose. It was felt that the Selected Agricultural Area (SAA) provisions in the Act could be used to ensure compliance of farmers with land use plans and national production goals. The group also felt strongly that no farmers should lose their rights in land and that the compliance of farmers in SAA development should be secured in other ways than by the penalties provided in the current Act.

#### 2.1.2 Selected Agricultural Areas (SAAs)

The group recommended:

- That the SAA provision be used to increase production, control erosion, and for many other agricultural improvements. The farmers participating under the SAA program could lease their lands and use them as security for loans for the purchase of basic inputs such as fertilizers, improved seeds, and insecticides.
- Under the SAA program, the participating farmers would be operating as a group. Education on the control of soil erosion on their lands (as an example) would be facilitated because they would be trained as a group with similar interests.

The group was concerned about present provisions of §50 and §51, which terminate the right to land. The group recommended:

- That no one loses rights in land in an area subject to an SAA, though the tenure position of people in the area must change from allocations to leases.
- Farmers who did not comply with the production standards of the SAA would be able to sublease their land to others. The group did not decide who would implement subleasing. There was, however, a general feeling that the Land Committee or a technically qualified authority should be involved in the subleasing arrangements. The discussion group suggested that this issue could be decided by discussions between

the Land Committee and District/National Technical Officers of the Ministry of Agriculture, in consultation with the Ministry of Interior.

- That in cases where the nature of the proposed project requires re-alignment of the boundaries, all those who held rights in land within the boundaries should retain the right to participate in the project. In cases where the farmer does not wish to farm in accordance with project design and operation, the management of his land should be transferred to a substitute by the same procedure described above.
- That the Ministry of Agriculture, using land use plans as a guideline, define the standards of farming appropriate to specific areas. These should become the performance standards of SAA areas.
- For the purpose of increasing agricultural production, it would be desirable if people with allocations of land made application to obtain a lease to the same land. This might be particularly important in order to have better access to credit.

### 2.1.3 Urban Agricultural Land

Following considerable expressions of concern by the group, they recommended:

- That urban boundaries should be redrawn to exclude good agricultural land which is not needed for urban development. The present provision to maintain agricultural use under license is not secure enough to ensure good use of the land, because licenses can be revoked at short notice.
- That appropriate regulation is required to protect agricultural land from encroachment for residential use. If no other regulations are available, the SAA provisions of the Land Act might be used.

### 2.1.4 Education on the Land Act

The group felt that the public has very little information about the provisions of the Land Act and that it is very important to include publicity about the Act in training programs of the Ministries of Agriculture, Interior, Justice, and Cooperatives and Rural Development.

## 2.2 WORKING PARTY RECOMMENDATIONS ON THE LAND ACT 1979

Livestock and Range Development Group,  
G. Sibolla, Range Management,  
Ministry of Agriculture

### 2.2.1 Introduction

The committee considered numerous issues in the course of reaching its conclusions, some of which are still tentative and require further study and

discussion. The committee reviewed existing range control legislation and practice, national livestock and range policy, problems facing stockholders themselves in improving their production, and the various producer organizations and local and national institutions that can contribute for improved range control.

### 2.2.2 Livestock and Range Objectives

Before reaching any conclusions, the committee considered the objectives of the Lesotho government's policy in the livestock and range management sectors:

- To promote intensive livestock production in the lowlands, including dairy, poultry, and animal fattening at feedlots. Intensive forage production is one element of this strategy.
- Smallstock development gives priority to wool and mohair production, but it is necessary also to improve market outlets for meat sales.
- In the mountains, beef production will be emphasized, with particular emphasis placed on increasing marketing outlets and organizations and improving animal marketability.

This strategy has potentially broad implications for the Land Act. By improving producer control over specific grazing areas, producers may be able to improve their control over breeding practices and have increased control and responsibility for forage.

To improve cooperation among stockholders is an important ingredient in improving range management. This points out the importance of workable management units. Grazing associations will be promoted as primary, producer-controlled, range management institutions.

### 2.2.3 Agricultural Leases in Grazing Areas

The working party made the following points with regard to grazing tenure:

- That the terms and conditions of an individual's use rights to common property for grazing must be defined in the grazing association context and in other cases of group pasture use.
- The Land Act is silent on the question of communal grazing rights. Extension of lease rights to an "individual" (including legally constituted groups) assumes a prior allocation of land. Traditionally, grazing rights have not been allocated for individuals.
- That grazing allocations in mountain areas cannot be made under the Land Act by Land Committees as presently constituted, but only by principal chiefs.
- An SAA lease could be an appropriate instrument for granting exclusive grazing rights to associations and other groups.

An SAA lease should include stipulations requiring adoption of specific animal and land husbandry standards as recommended by the Ministry of Agriculture. Failure to meet or maintain standards should lead to appropriate penalties, including loss of lease right.

- The experience of the grazing association in Sehlabethebe was reviewed. Success in improving grazing management was attributed to beneficial animal and herd management practices adopted by the association itself. The imposition of lease stipulations has not been a factor in the success of Sehlabathebe association thus far. However, this would not necessarily be the case with all associations.

The group felt that there are several outstanding issues of individual rights and group liability under a lease. These are:

- the problem of corporate management;
- the transfer of individual rights within the group;
- the settlement of disputes;
- the sharing of financial obligations and legal liabilities.

These issues would need to be resolved before the SAA provisions could be utilized.

The result of the group discussion on the above issues suggests that the Land Act's usefulness in the range and livestock area might be limited in the immediate future.

#### 2.2.4 Improvements in Grazing Control and Management

The working party suggested a two-part strategy to improve grazing control:

- Clarification on the application of the Land Act to grazing areas should be sought. Consultation and study of the issues raised in the above section are necessary.
- Existing legislation can be used to improve grazing management, i.e., such as by amendments to the Range Management and Grazing Control Regulations 1980.

The working party recommended the following measures:

- (1) Financial incentives should be increased to induce chiefs to better carry out their range control duties. Chiefs' share of the fine for impounded cattle should be increased from 30 percent to 50 percent.
- (2) Many stockholders are unable to travel great distances to apply for grazing permits from principal chiefs. It is recommended that the principal chiefs be empowered to delegate authority for issuing grazing permits to local chiefs.

- (3) Principal chiefs require better information on range condition and advisable stocking rates. The Range Division is developing its capacity to provide such information.
  - (4) An amendment to the grazing regulations is necessary to better protect grazing areas under the jurisdiction of chiefs from trespass. Punitive trespass fines should be imposed.
  - (5) A nationwide grazing fee structure should be devised and implemented. This would have the effect of generating revenue for range improvements and imposing an economic rent on grazing.
- The Chieftainship Act could also be amended to permit Local Administrative Officers, acting on the advice of the DAO, to take action to require local chiefs to carry out their range duties. This would eliminate some of the frustration of present procedures which require the channeling of requests for action through the chieftainship hierarchy.
  - The grazing permit system should issue only that number of permits that corresponds to the nation's rangeland carrying capacity. Presently there are many more livestock than the range can safely support. A device is needed for equitably distributing grazing permits. However, the committee is unable to recommend a specific system at this time, feeling that this question requires further consultation and study.

## 2.3 WORKING PARTY RECOMMENDATIONS ON THE LAND ACT 1979

Land Act Administration Group,  
L. Mohapeloa, Planning Officer,  
Ministry of Agriculture

### 2.3.1 Introduction

The working party discussed the draft regulations for the agricultural leases and the Selected Agricultural Areas. The draft regulations set out the procedures to be followed in granting or revoking the leases, as well as selection in SAAs.

### 2.3.2 Agricultural Leases

The draft regulations include provision for the following:

- That applications for these leases should be made over to the chairman of the Land Committee having jurisdiction over the allocated land, for the committee to certify that the allocation he wishes to convert to a lease is in fact his.
- That the term of the agricultural lease should generally be set at 100 years to provide long-term incentives for farm improvement.

- That proposed ground rent levels, should they be accepted, should be lower for isolated agricultural leases than for those in SAAs, as the latter group will benefit from direct government support.
- That the rents, while intended to ensure that applications for leases are made by people with genuine designs for the land, should not at the same time be so high as to be beyond economic reach for those who wish to invest in the land. The imposition of these measures should include possible waivers or reduced rents in years with poor harvests.

### 2.3.3 Selected Agricultural Areas (SAAs)

The draft regulations in the case of the SAAs include the following provisions:

- that the minister will consult the local Land Committee over the intention to declare an SAA in its area;
- that the minister shall not be bound by the decision of the Land Committee;
- that Selected Agricultural Areas shall be declared for the purpose of replanning the land for better utilization.

As in the case of the draft regulations for leases, the meeting again had points which it felt should be considered. They are the following:

- That while the legal right of the minister to declare an SAA is recognized, it is highly desirable that efforts should be made to win the concurrence of the Land Committee, and the community it represents, by convincing them of the value of the intended SAA. The meeting thus strongly recommended that there should be close consultations at all levels, including with the affected community, during the planning phase.
- That in the selection process, land use plans should be consulted.
- That the displacement of people resulting from the establishment of SAAs should be avoided at all costs. Toward this end, only projects or programs that will not involve the displacement of people should be considered.
- That if, however, there are people who are not willing to join the SAAs in the area, the possibility of subletting their lands should be considered.
- That if it does happen that people should be displaced, immediate measures be undertaken to relocate them.
- That the clause in the draft regulations allowing people with leases in the SAAs to retain such rights should also ensure that the leases are not in conflict with the aims of the SAA.

#### 2.3.4 Education on the Land Act

The meeting noted the absence of knowledge generally on the provisions of the Land Act. This was the case with both the public and civil servants. The meeting therefore recommends the following:

- That workshops be arranged to acquaint civil servants at the headquarters and district levels with the provisions of the Act. This exercise should include officials in the offices of principal chiefs and the lower central courts.
- That special programs be designed to publicize the Act with the farmers. The Ministries of Interior, Agriculture, and Cooperatives and Rural Development could perhaps take the leading role in this undertaking.

#### 2.3.5 Urban Agricultural Land

The meeting expressed concern at the apparent lack of discretion witnessed in the use of land. Particular mention was made here of the change of good agricultural land to industrial and residential use. The meeting accordingly recommends as follows:

- That land use plans be designed to cover the urban areas.
- That, guided by the land use plan, there should be greater enforcement of the Land Act.
- That, in the process of enforcement, particular attention be paid to the following:
  - consistent application of the provisions of the Act, including a check on any violations permitted by people in authority;
  - improving relations between the chiefs and ministries.
- The Ministry of Interior, in consultation with the Ministry of Agriculture, should redefine the boundaries of urban areas.
- That agricultural licenses in agriculturally zoned portions of urban areas be convertible to short-term leases.

#### 2.3.6 Land Committees

The meeting expressed concern at the inability of the Land Committees to appreciate the provisions of the Act, as well as their general inability to execute their duties. As a remedial measure the meeting recommends as follows:

- That an interministerial committee be set up to look into the following issues:

- the terms of reference of the committees;
- the selection of criteria of members;
- the structure of the committee;
- the involvement of technical officers such as the land use planners when some of the decisions are made;
- the establishment of local-level Land Committees where none already exists;
- the need to institute a sitting allowance for all members of the committees;
- upgrading the appellate Land Committees at the principal chief level to serve as new centers of competence in applying the Land Act and to assume new collaborative functions with government in areas such as land use planning.

#### 2.3.7 Land Transactions

The meeting agreed that there is need to set criteria for controlling land transactions. The following points were set out as possible items for consideration:

- Stipulation of maximum agricultural landholdings beyond which new land cannot be purchased.
- Family objections, i.e., if the family feels that an intended transaction by the head of the family may prejudice the welfare of the rest of the family.
- In the case of mortgages, consideration should be given to the intended use of the funds secured by the mortgage. The concern here is to insure that the investment is viable, with, of course, preference being given to agricultural investments.

#### 2.3.8 Manpower

There was general agreement by the committee on the need to mount training programs for staff to implement the Act. Such training should be both short- and long-term for all related sections. In addition, funds should be provided for further recruitment of staff.

#### 2.3.9 Land Tribunal

It was noted that the general functions of the tribunal were not well understood and, as such, the tribunal is not being put to use. Further, the Act does not make it clear where appeals are to go from the principal chief's Land Committee. In view of this, the meeting recommends as follows:

- That the option to appeal be given publicity along with the procedures.
- That for litigation with respect to agricultural lands, the process of appeal should be up to the Land Committee of the principal chief then to the central court. Only at this stage can the matter be referred to the Magistrate's court. The Land Tribunal and the other courts would each have their own sphere of responsibility under the Act.

#### 2.3.10 Follow-Up to the Seminar

The meeting recommends that an interministerial working group should follow up on the results of the seminar.

### 3. PAPERS PRESENTED TO THE SEMINAR

#### 3.1 A LAYMAN'S GUIDE TO THE LAND ACT 1979

John W. Bruce, Land Tenure Center,  
University of Wisconsin-Madison

##### 3.1.1 Introduction

An attempt is made here to introduce the reader to the Land Act 1979 briefly and in language less technical than that of the Act itself. Brevity requires the elimination of quite a lot of detail, but hopefully the general framework of the Act then stands out more clearly.

Still, the paper follows the Act fairly closely. Often, though not invariably, the plan of organization of the Act is followed, and each statement is referenced to its basis in the Act. Unless otherwise specified, each section reference is to the Land Act 1979, and each regulation reference is to the Land Regulations 1980. All references to "the Minister" are to the Minister of the Interior.

This paper has been prepared for a Seminar on the Land Act Policy as it concerns the agricultural sector, and consequently emphasizes points of importance in that context.

##### 3.1.2 The Land Act and its Objectives in the Agricultural Sector

The Land Act 1979 reflects an acute awareness of major changes in the demographic conditions of agricultural development in Lesotho. The traditional land tenure system, operating in a largely subsistence economy, had emphasized the principle of access to land for all Basotho. Land allocation authority had rested with chiefs and headmen and it was their responsibility, in order to provide land for new households, to reallocate land from existing holdings. By the 1970s, population pressure on land was intense. Virtually all arable land had been allocated, and most holdings were so small that it was questionable whether cultivation of those holdings alone could provide a livelihood or accommodate new technologies. Agricultural census data indicated that the proportion of landless households was increasing rapidly, reaching over 20 percent of all rural households in 1980, and the average size of holding was smaller than 1.4 ha. The economic viability of many rural households, including the viability of their farming operations, had become dependent upon income from modern sector employment by some family members, usually in the mining sector in South Africa.

In these circumstances, government decided to concentrate upon intensification of production through increased investment on existing holdings. A

precondition of such intensification and investment was seen to be increased security of tenure. Thus, the primary objective of the Land Act 1979 was the enhancement of such security. This implied several important changes in the land tenure system. While the principle was preserved that all land was held on tenure from the state, the Act significantly alters the terms and conditions of such tenure and introduces new tenure options for arable land.

The traditional system had provided ready access to a security in subsistence opportunities, but it had done so at the expense of security of tenure in a particular piece of land. In particular, the possibility of reallocation of land from existing holdings for new families reduced security of tenure. By the 1970s, holdings had become so small that further reallocation could accomplish little. It was considered that a point had been reached where the disadvantages of such reallocation in terms of security of tenure outweighed its historical usefulness. Under the new Act, the power to make such reallocations was withdrawn, and inheritance became the key mechanism for passing land from one generation to the next. The modification and clarification of the rules on inheritance of land in the Act reflect an appreciation that:

- (1) for small farmers, the building of a viable farm operation is often a multigenerational effort, and
- (2) it is necessary to minimize further subdivision of already small and fragmented holdings through inheritance.

In addition to modification of the traditional allocation, however, the Act provides for the selective introduction of the agricultural lease, a tenure not previously utilized as a primary tenure for agricultural land (though sharecropping of allocations has, of course, been widely practiced), and one which was felt to meet the needs of farmers seeking to invest substantially in their holdings. The Act leaves the allocation, as it has been at customary law, nontransferable and therefore nonmortgageable. It was considered that mortgageability was a tenure characteristic which innovative farmers would need to have more ready access to credit and that this need could be met by a lease. Moreover, it was considered that a lease was needed to give the landholder more exclusive control over his holding. Traditionally, arable land areas opened to stock after harvest, and the holder of an allocation was not permitted to enclose his holding for improvement such as double-cropping or fodder production. A lessee with exclusive rights would be able to do so.

There was no general or automatic conversion of tenure to lease, however. Instead, it was left to holders of allocations with a felt need for the new tenure to apply for the conversion of their allocations to leases. An important exception to this was the provision in the Act for the general conversion to lease tenure in Selected Agricultural Areas (SAAs), areas where government has decided it is necessary to pursue intensively the introduction of modern farming techniques. Because a lease is transferable under the Act, the possibility is also created for the beginnings of a market in agricultural land.

There is a second instance in which the Act provides for the automatic conversion of tenure in agricultural land and, in so doing, the Act provides for another new tenure for agricultural land, the license. All agricultural

land in designated urban areas is automatically converted by the Act from allocation to license. Here, the objective was not to enhance security of tenure but rather the contrary--to provide government with enhanced flexibility in planning for urban development by providing a relatively insecure tenure regime for what was apparently viewed as a transient land use in the designated urban areas.

Finally, the Act creates and empowers institutions for the implementation of its provisions. Land Committees chaired by chiefs are to be created, to be responsible for making any further allocations and for supervising passage of allocations from one generation to the next by inheritance. The Commissioner of Lands is given control of the making and monitoring of agricultural leases and for licenses in urban areas. He also has the responsibility for advising and assisting the chairmen of the Land Committees in meeting their responsibilities. In addition, a Land Tribunal is created to hear certain categories of disputes under the Act.

These, then, are the key features of the Act:

All land in Lesotho is owned by the state, as representative of the Basotho nation (§3). The power to grant titles to land is vested in the King (§4), land administration falling within the responsibilities of the Minister of Interior. The granting of titles is delegated to Land Committees in the rural areas and Urban Land Committees in the urban areas (§5). It is to the chairmen of these committees that Basotho citizens can apply for new land. The applicant must be a citizen or the holder of a "permit of indefinite sojourn," and there are detailed provisions for determining the nationality of companies, corporations, partnerships, cooperative societies, and similar organizations (§6).<sup>1</sup>

### Rural Land

A "rural" area means any area which is not an urban area, a Selected Development Area, or a Selected Agricultural Area (§2). Land in rural areas is held either under an allocation (§7) or under a lease (§10). Allocations are similar to the traditional allocation (except that an allocation is inheritable), and all allocations made prior to the Act are to be treated as if they had been made under the Act (§10). There were also some "registrable titles" in the rural areas prior to the Act, which are converted to lease under the Act (§10), but these did not involve agricultural land.<sup>2</sup>

The Land Committees. The power to grant titles, both allocations and leases, is conferred on Land Committees in each chief's area of jurisdiction,

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1. The Land Regulation 1980 sets out procedures for monitoring the implementation of this Section (reg 3) and for the reference to the Minister of applications from clients and legally constituted persons (reg 5).

2. Defined as titles conferred for commercial, industrial, educational, charitable, religious, medical, and residential purposes (§2).

chaired by the chief, which decide matters by majority vote (§12).<sup>3</sup> Until arrangements are made for establishment of Land Committees under the Act, their functions are by virtue of §2 of the Act to be performed by the Development Committees for each chief or principal chief established under the Land Regulations 1974.<sup>4</sup> These should not be confused with Village Development Committees and so are referred to as Land Committees throughout this paper. An appeal from a decision of a Land Committee goes to the next senior Land Committee (§16 and reg 6), through a hierarchy which parallels that of chiefly authority. While the committee is normally the decision-maker, if the Minister, pursuant to regulations made by him under the Act, gives directions to a committee, the committee must follow them (§12). And if the land concerned in an application for a grant of title is to be used for a commercial or industrial purpose, the committee must refer the application to the Minister, who must seek the advice of the Minister of Commerce and Industry (§12).

Allocations. The allocation under the Act is the successor to the traditional allocation, and its basic terms are given in §8. An allocation to an individual can be for life or for a shorter specified period. If it is to a group such as a cooperative or a corporation, it can be for a limited or indefinite period. It cannot be sold but is inherited. An allottee may designate who is to take the land after his death. If he dies without making such a designation, the land passes to his first male child, who is to share it with his younger brothers in accordance with the family's advice. If there is no son, the land passes to the person named as heir by the deceased's family; and if no heir is named, the land reverts to the state. A surviving spouse does not inherit the deceased's allocation, but has a right to remain in occupation for life (§8).<sup>5</sup>

While most allocations are made for unspecified terms and can be inherited, a Land Committee in certain circumstances can revoke an allocation on thirty days' notice. The notice must clearly set out the reasons for revocation (§15). These are set out in the Regulations: abuse of the holdings through: (1) overgrazing; (2) refusal or inability to fight soil erosion; and (3) lack of cultivation of arable land for over three years (reg 3). The chairman is required to see that his Land Committee reviews all allocations

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3. The Minister has used his power under §18 to prescribe in regulations under the Act (Land Regulations 1980) the duties of the chairman and other procedural matters (reg 3-5), replacing corresponding portions (reg 10-12) of the Land Regulations 1974.

4. These committees, where there is a principal or ward chief, were to consist of nine persons, five elected at a Pitso and four appointed by the Minister; where there is not a principal or ward chief, they were to have seven members, four elected and three appointed (reg 3 of the Land Regulations 1974). Other provisions of these regulations, which largely remain in force, set out procedures for the convening of Pitsos, elections, the filling of vacancies, and the scheduling of meetings (reg 5-9).

5. Procedures for the hearing of claims on inheritance by Land Committees are set out in the Regulations (reg 7 and 8).

every three years to determine whether any revocations are required (reg 3). If an allocation is revoked, the allottee is entitled to compensation for the value of lawful improvements (§15).

**Leases.** Where a "registrable title"<sup>6</sup> existed in the rural areas before the Act, it is converted by the Act to a lease (§10). Also converted to lease is any land in rural areas held solely for residential purposes (§28). The lessee may apply for a written lease if he intends to engage in a transaction with respect to the land (§29). For new allocations, the allottee is expected to apply within six months of the date of allocation for a written lease (§9). The Commissioner of Lands has broad powers to compel application, and a holder who fails to apply within three months of receiving a notice from the commissioner loses his rights in the land, though he has a right to compensation for improvements (§9 and §32). In addition to requiring that any individual apply for a written lease, the commissioner may require all those holding land in a given area to apply for written leases (§30).

There is no automatic conversion of allocation of agricultural land, however. Instead, if an allottee of agricultural land wants a lease, he can apply to the commissioner, who will decide the matter in accordance with the Regulations (yet to be made) (§11).<sup>7</sup>

A lessee is entitled to exclusive possession of the leased land but can sell the lease or sublet or mortgage his interest in the land only with the consent of the Minister (§35).<sup>8</sup> Consent cannot be unreasonably withheld, but may be conditional (§36). In addition to consenting to a transaction with respect to a particular lease, the Minister can also issue general consents (for example, consent in advance to all transactions of a particular type in a specified area) (§36). Of course, anyone planning a transaction with respect to his lease must as a first step apply to the commissioner for a written lease, providing evidence that he is qualified to hold the land (a broad range of proofs are acceptable) (§29).

Leases cannot be made for fewer than 10 years, and there are also maximums: 90 years for residential, professional, educational, charitable, and religious purposes; 60 years for industrial, commercial, or hotel purposes; and 30 years for sale or storage of petroleum products (§39). (A maximum period has not yet been established by Regulation for agricultural leases.)

Under the Regulations, a lease can be inherited if the lessee dies. That inheritance pattern is essentially the same as that provided in Section 8 for allocations, but procedures differ. A lease can be disposed of by will or other designation of an heir. Where there is no will and the lease is not governed by a written law relating to succession, the matter will be handled by the Land Committee under Regulations 7 and 8, when there is no written

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6. See fn 2 above. This category does not include agricultural land.

7. The relevant regulations have not yet been issued.

8. Procedures and forms for such consents and the drawing up of leases are set out in the Regulations (reg 12 and 13).

lease (reg 9). If there is a written lease, the matter first goes to the commissioner, who, however, refers it back to the Land Committee (reg 9 and 10). If no legal heir is available to inherit the lease but a surviving spouse and/or minor children are in occupation, the commissioner should issue a certificate of occupation (reg 11), notwithstanding the reversion of the lease interest to the state (§8).

A ground rent is payable on leases, as prescribed by the Minister (§69). Rent levels are set by the Regulations.<sup>9</sup> However, a citizen who is a Mosotho and has attained majority is entitled to land rent-free for his own residential use (§69). "His own use" is interpreted to include his immediate family, and more than one rent-free residential lease is allowed in respect of polygamous marriages. There are limitations on the number and size of leases to be held by one person, set out in the Regulations (§89).<sup>10</sup> In addition to rent, a lessee may in an appropriate case be assessed development charge, for construction of infrastructure and provision of services (e.g., roads, street lights) (§69).

A lease may be terminated on one month's written notice by the Minister where the lessee has breached a condition of the lease and then failed to comply with a notice to remedy the breach within a reasonable period. He is entitled to compensation for lawful improvements. In these circumstances a mortgagee of the lease may insist upon a sale of the lease to satisfy the debt, though a sublease of the whole of the land receives protection (§42).

### Urban Areas

A separate regime is set out for the urban areas, 16 of which are listed in the Second Schedule to the Act (§19).<sup>11</sup>

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9. Where a person is required to pay ground rent for a lease, the rent is to be calculated according to the Second Schedule to the Regulations (reg 19). The Second Schedule provides rates for residential, commercial, and industrial properties on a lisente/m<sup>2</sup> basis, depending upon a grading of the holdings by the Commissioner of Lands. The rates for residential land range from 1 to 6 lisente/m<sup>2</sup>. For agricultural uses, the rate is set at lisente/ha for grazing or subsistence cultivation; lisente/ha for intensive agriculture/horticulture not within a Selected Agricultural Area; and 1 lisente/m<sup>2</sup> for poultry-keeping.

10. No single lease for residential purposes can be for over 1,000 m<sup>2</sup> and no one is to hold grants of residential land in excess of 5,000 m<sup>2</sup>, subject to exceptions for private land developers and hotels and such other exceptions as the Minister may make (reg 24). For commercial purposes, no one should be given a lease who already holds more than 5 leases or, in total, 2,000 m<sup>2</sup>; for industrial purposes, no one should be given a lease who already has more than 3 leases or more than a total of 3,000 m<sup>2</sup>. Exceptions are made for parastatals, and the Minister has the power to exempt others (reg 25).

11. Maseru, Maseru International Airport, Butha-Buthe, Leribe (hlotse), Maputsoe, Peka, Teyateyanang, Roma, Morija, Mafeteng, Mohale's Hoek, Quthing, Qacha's Nek, Mokhotlong, Thaba-Tseka, and Mapoteng.

Urban Land Committees. Decisions on applications for grants of title are made by Urban Land Committees. An Urban Land Committee is composed of the principal chief having jurisdiction as chairman; the District Coordinator or, if there is a town clerk, the Town Clerk; the Commissioner of Lands or his representatives; and three other persons appointed by the Minister (§24 and G.N. 7/81).

When land is available for grant, whether under a lease or a license, the commissioner advertises for applications (§21). A one-month period is given for any adverse claimant (someone claiming to already hold title to the land) to come forward. When no such claimant appears, the land passes to the applicant, subject to potential claims by adverse claimants for compensation for improvements on the land but not for the land itself (§23). This procedure in respect of adverse claims is applied to the issues of the lease as well as its grant.

If the land is for commercial or industrial purposes (and in certain other circumstances), the commissioner may invite tenders (bids) and may set the lowest tender acceptable for the grant (§22). In cases of commercial or industrial land, applications must be referred to the Minister, who is to seek the advice of the Minister of Commerce and Industry (§25). The committee is also required to call for tenders in any case in which more than one application is received, whatever the purpose of the land (§26). A committee is not bound to accept the highest tender (§26), but a committee can accept a lower tender or reject all tenders only with prior authorization in writing from the Minister (reg 23).

In urban areas the two basic tenures are the lease and the license (§20). The Act has automatically converted tenure in land used predominantly for agricultural purposes to license, while tenure in other privately held land (residential, commercial, industrial, etc.) has been converted to lease (§28).

Leases. These are subject to a largely uniform legal regime whether they occur in urban or rural areas (§35-43) and the important elements of that regime have already been covered in the discussion of leases in rural areas. The Act automatically converts all allocations in the designated urban areas, except land used predominantly for agricultural purposes, to leases (§28).

Licenses. These are a strictly urban phenomenon under the Act. All agricultural allocations in the designated urban areas are automatically converted to licenses by the Act (§28). These are subject to termination on three months' notice, apparently without any need to show a justification, and a licensee cannot claim compensation for improvements (§38). The licensee cannot dispose of his license or create subsidiary interests and can make alterations and improvements only if express permission is given in the license itself (§38). A license is, as a matter of general law, not inheritable. Any person holding a license from the state must pay a prescribed annual fee (§70). Such fees are set by the Regulations at the same level as rents (reg 19 and Regulation's Second Schedule).

Charges. The Minister in consultation with the minister responsible for works may prescribe development charges (charges for construction and provision

of services, including roads, main drainage, and street lights) upon leases or licenses, to be calculated according to the area of land held by the grantee; the Minister, in consultation with the Minister of Finance, may waive or decrease such charges if he considers it in the public interest to do so (§69).<sup>12</sup>

### SDAs and SAAs

The Act provides for two types of "selected area": the "selected development area" (SDA), for urban and rural areas; and the "selected agricultural area" (SAA), for agricultural areas.

SDA. An SDA is an area set aside for:

- (a) development or reconstruction of existing built-up areas;
- (b) construction or development of new residential, commercial, or industrial areas; or
- (c) readjustment of boundaries for the purposes of town planning (§2).

When the Minister declares an SDA, all titles to land within the area are extinguished, but substitute rights may be granted as provided by the Act (§44).

Where the area has previously been used for agriculture, allottees and licensees are given three months' notice to vacate by publication of the declaration of the SDA; if the area was previously an SAA, notice to vacate is given in the same manner, but it is specifically provided that titleholders are entitled to compensation for any loss incurred through loss of their land (§45). Where the area has not been used wholly or partly for agriculture, existing lessees and allottees are entitled to be offered leases of their old plots or if this is not consistent with the development scheme then new plots, provided the new plots are used, in exchange for their old plots, for the same purposes. Where the nature of the development will not permit this, each has the choice of a plot for a new purpose or compensation (§46). Similar rules apply when, as the Act permits, a private developer is given a lease for area (§47). All new grants of title in an SDA are to be made by the Minister, by lease or license (§49).

SAA. An SAA is an area set aside for the development of agriculture by "modern farming techniques" (§2). When the Minister declares an SAA, any allotment or license in the agricultural land is terminated by a three months' notice to vacate, given by publication of the declaration (§50). New grants of title are to be made by the Minister in the form of a lease, and in considering applications for leases of land within an SAA, the Minister must give first consideration to applications by previous allottees or licensees of land there

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12. The Regulations set out standards for the imposition of such charges (reg 20 and Third Schedule).

(§51). Where such an applicant is refused, the Minister must state his reasons for refusal (§51).

For both SDAs and SAAs, the Act provides procedures for advertisement (§21), invitation to tender (§22), and tender (§26) for land other than land given in exchange for a prior holding (§52). It is emphasized that no compensation is payable for land itself taken for SDAs and SAAs except where expressly provided in this part of the Act (§53), and no such provision is made for allocations. Compensation may be payable for improvements but the Act is less than clear on this point. Such compensation as is payable is to be calculated according to provisions on compensation for land taken for public purposes (§53).

### Other Provisions

Land Required for Public Purposes. A "public purpose" is defined at some length in the Act, but it generally includes public infrastructure, services, utilities, and facilities, as well as land and water conservation (§2). The Minister must consult the principal chief having jurisdiction and obtain the King's assent before publishing a declaration that it is necessary to set the land aside for public purposes, land under a lease (§14 and 54). Prior to the publication of the declaration, the Minister must serve a notice on the person holding the land (§55). When the notice is published the land reverts to the state, but the occupant can remain on the land for a period not exceeding six months from the date of publication (§14 and 54). Any person who wishes to claim compensation may file a claim (§56), and the Minister assesses such compensation (§54). Disagreements about the amount of compensation can be taken before the Land Tribunal (§56).

Land Tribunal. The Act creates a Land Tribunal consisting of a chairman and two assessors to be appointed by the Minister. The chairman is to be a judge of the high court or a resident magistrate, while one assessor is to be a principal chief or his alternate, and the other a lawyer or land economist (§64).

The Commissioner of Lands. The commissioner's responsibilities extend to land in rural areas which is the subject of a registrable title (converted to lease) and to all land within urban areas, Selected Development Areas, and Selected Agricultural Areas (§74). The commissioner is responsible for preparation of all leases, licenses, and similar documents required in urban areas, and he is to retain in custody copies of the documents and ensure that all those required to be registered are registered (§75). All dealings in land by or on behalf of the state must be conducted through him (§75). He is given broad authority to reclaim for the state any unutilized or undeveloped land held by a parastatal. The commissioner is also required, whenever practicable, to advise and assist chairmen of rural Land Committees in performing their duties, including the keeping of registers (§78).

ANNEX : BASIC LAND TENURES UNDER THE LAND ACT 1979

	PURPOSE	GRANTING AUTHORITY	DURATION	CHARGES PAYABLE	TRANSFER-ABILITY	INHERIT-ABILITY	TERMINATION
R U R A L	traditional uses, including both agricultural and mixed-purpose (residential/agricultural) holdings	Land Committee	-to an individual for life or a shorter specified period; -to a legal person, for a limited or indefinite period	none	cannot be sold	may be willed; in case of intestacy, to eldest son or, if no son, to nominee of family	by expiration of fixed term, also terminable for abuse of holding as defined in regulations
	for previous "registrable titles"; for modernized agriculture; and for solely residential plots	Land Committee and Commissioner of Lands; and, if a lease is for industrial or commercial purposes, the Minister	not less than 10 years, and subject to maximums that vary according to use	prescribed rents, except residential leases rent-free	can sell or mortgage with permission of Commissioner of Lands	same as allocation, unless lease is governed by written law	by expiration of fixed term; also terminable for breach of terms of lease
U R B A N	residential, commercial, and industrial purposes	Urban Land Committee and Commissioner of Lands; and, if lease is for industrial or commercial purposes, the Minister	same as rural leases	prescribed rents (residential leases included) plus development charges where applicable	same as rural leases	same as rural leases	same as rural leases
	agricultural purposes	Urban Land Committees and Commissioner of Lands	not specified in act but presumably indefinite	prescribed annual fees plus development charges where applicable	cannot be sold	not specified in Act, but generally not inheritable	subject to termination at the will of the grantor, by 3 months' notice

## 3.2 EXPERIENCES FROM IMPLEMENTATION OF THE LAND ACT 1979 IN URBAN AREAS

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### 3.2.1 Background

Any land policy program is adopted and undertaken with perceived social, economic, and political ends. No matter what the reason for change or the direction it takes, it always involves losses and gains for all concerned. In a country with a customary or cognatic system of land tenure, for instance, a change in land policy may result in the erosion of power from the traditional leaders. However, the country at large may reap social and economic gains through sound land administration, land use control, and conservation of the fundamental natural resource. Even where the legislation is enacted, its implementation could be frustrated by these conflicts of interests. It is not surprising that there are examples of many countries with progressive land laws in the statute books, where implementation has failed to take off not necessarily through lack of trained manpower and funds, but through strong opposition to those with vested interests in the old order.

During the formulation of the new land policy, which resulted in the enactment of the Land Act 1979, there were heated debates between those who advocated change and those who favored no change in the status quo. A notable example is a report by Dr. Phororo in his analysis of and suggested national policy for "Land Tenure in Lesotho, Soil Use and Conservation, Water Use and Irrigation." In this paper the writer is clearly opposed to any land policy changes as envisaged in the Land Act 1979. It is interesting to note that his paper was a result of the Farmers' Conference held in January 1979 at the time the new land policy was being finalized. Clearly this was designed to delay the introduction of the proposed new changes. The traditional leaders, whose powers of land allocation and land administration were to pass to Land Committees, were also openly opposed to the formulation of the new land policy.

Despite this bitter opposition, the Land Act 1979 was enacted late in 1979. It was brought into operation on the 16th of June 1980. At the time the Act came into force, there were still a number of policy issues to be finalized. The Land Regulations were not yet promulgated, the urban areas were not defined as required by the law, the Land Tribunal was not established, and the statutory forms for leases and licenses were still to be approved by the Law Office. Hence, for the first six months the actual operation of the law was deferred while clearing the policy matters. The lack of preparatory work before implementation was highlighted by insufficient publicity campaigns to sell the provisions of the new law to the public. Publicity material which was all prepared could not be printed through lack of funds. Nevertheless, the implementation of the Land Act, despite the constraints, was a major and a welcome step for the government to take. If that step were not taken, probably this seminar would not be discussing the experiences of implementation.

Admittedly, the Land Act 1979 has been in operation for a fairly short period, and all participants in this seminar will agree that three years and nine months is a limited time from which to draw reliable experience from

implementation of any land policy. Added to this, the preimplementation problems and constraints mentioned in the preceding paragraphs have further slowed progress. Another major constraint has been that the Department of Lands, Surveys, and Physical Planning, which is given the main responsibility of implementing the law, has operated under difficult conditions of limited manpower, insufficient funds, and inadequate office accommodations. Notwithstanding the difficulties, there has to be some progress from which to draw experiences that may well generate discussions in this seminar. While emphasis will be placed on operation of the law in urban areas, references will be made to the rural sector because the law is applicable countrywide. The intention is to review our experiences under the following headings: (1) tenure conversion; (2) new grants; (3) Selected Development Areas.

### 3.2.2 Tenure Conversion

The bringing into operation of the Land Act 1979 on the 16th of June 1980 meant the repeal of the Land Act 1973. The result was that all transactions in land were frozen and could take effect only after the old titles had converted into new titles. Before transactions could be processed titles with statutory conversions under Sections 10 and 28 have to be evidenced by lease documents--hence the requirement for titleholders to apply for the issue of leases and ministerial consents. By transactions it is meant transfers, mortgages, subleases, and the disposal of interest through donations.

This embargo necessitated numerous applications by deemed lessees who wanted transactions in land. Since June 1980 there were 2,940 lease applications, as on the 29th of February of this year. With the limited manpower resources, the department received instructions from the Ministry of the Interior to give to priority to such applications for obvious reasons that land development would be frustrated. This turn of events has resulted in sporadic tenure conversion; and with 70 percent to 80 percent of the Lands Division work concentrated on processing applications, it has not been possible to apply sections of the law which would lead to systematic tenure conversion. This is Section 30 of the Land Act.

The processing of lease applications involves thorough checking of the validity of title, where property is situated, and making sure that the chief and the local people agree on the common boundaries. This is some form of land adjudication. If the property is not depicted on mapping held by the chief surveyor, or if it were not surveyed previously, cadastral survey has to be carried out, mapping all developments with the site.

Out of the 2,940 applications, some 760 applications were still awaiting survey by the end of February. Although a simple general boundary registration of title system is used, there is a large number of properties without physical features such as fences, walls, hedges, etc., hence the high demand for survey work. There is no intention of describing the numbering of plots under the system but, for those interested, examples of cadastral sheets kept by the chief surveyor will be exhibited at this seminar.

By the end of February, 1,124 lease titles had been issued as a result of the processing of lease applications. Seventy-one applications had been

rejected because applicants had no intentions to transact in land. So far, only 6 applications have been the subject of adverse claims. As many as 355 applications are awaiting action by the applicants. These range from the signing of the lease documents and the paying of statutory fees before the leases can be executed by the Commissioner of Lands, to applicants' supplying key information for further processing. While 624 applications were in the various stages of processing, this includes leases sent for registration, applications advertised in the papers and awaiting 30-day statutory periods, and applications to be checked and adjudicated.

In the processing of lease applications, it has emerged that as many as 14 percent to 16 percent of the old titles are defective in one way or another. This is because many allottees failed to comply with the provisions of the previous land laws. In many cases, for example, allocations for commercial sites in rural areas and allocations for residential and commercial sites in urban areas were not registered under the Deeds Registry Act 1967 within the three-month statutory period. According to that Act, such unregistered titles have become null and void and the land has reverted to the Basotho nation. To rectify these defective titles, especially where the land has been developed, the minister has been persuaded to use his powers under Part V. This is to declare the properties as Selected Development Areas, and then make direct grants to the former allottees. This has turned out to be a cumbersome and expensive method of rectifying defective titles. Amendments in the new Act will be necessary to "quiet" title because of these many void titles.

Another experience gained from the processing of lease applications is that there is a lot of paperwork between the department and the Ministry of the Interior involving ministerial consents. The workload could be avoided by the minister delegating his powers to the Commissioner of Lands. Efforts to have certain responsibilities delegated have failed. Undoubtedly, this has slowed progress because at times it takes weeks or months to have the necessary consents signed by the minister. Furthermore, the Deeds Registry Office is housed in the Law Office, and the registration of leases results in daily correspondence with obvious delays and loss of important documents. An improvement could be made if the section of the Deeds Registry dealing with titles to land was within the department. It can be noted, therefore, that progress is slowed down not only by the sporadic approach to tenure conversion but by other administrative arrangements, and these require review.

### 3.2.3 New Grants

The Land Act 1979 makes provisions for the advertisement of land in urban areas when the land is ready for title grants. The rationale is to properly plan areas for new development. The cadastral survey would then follow before the provision of infrastructure and urban services. The serviced sites would then be the subject of advertisement. In this way, applicants may be aware of their contribution to infrastructural costs before they make applications. What is important is that through this approach to urban development the high costs of services will be rightly passed to the beneficiaries.

In the early stages of operating the new land an attempt was made to refrain from advertising unserviced plots, the intention being to persuade

government to adopt a policy of providing services before opening land for new developments. Unfortunately, this policy has not been adopted. More and more pressure has been on the commissioner to advertise land without infrastructure and services. No doubt this has been a major setback to the operation of the new law. But we in the profession have long learned that there will be many obstacles to implementing land policies and there are no easy solutions to problems. We have therefore adopted modesty, patience, persuasion, and a give-and-take approach.

Because of the constant pressure for new grants, unserviced sites were advertised in the various urban areas. The following table indicates sites granted by the respective Urban Land Committees and sites advertised for consideration by the committees.

DISTRICT	SITE ALLOCATED		SITE ADVERTISED	
	Residential	Commercial	Residential	Commercial
Maseru	94	12	-	1
Thaba-Tseka	18	2	-	10
Leribe	56	11	30	-
T.Y.	-	-	59	-
Qacha's Nek	-	-	55	13
Peka	48	12	-	-
Maputsoe	64	5	-	-
Mafeteng	-	9	-	-
M. Hoek	21	10	-	-
Quthing	21	-	-	-
Mokhotlong	24	-	-	-

Of the total number of 346 residential sites and 61 commercial sites, 180 lease documents have been prepared and issued. The remaining 227 sites have recently been granted by the Urban Land Committees and lessees should receive the documents in due course. In addition, more sites are being surveyed in Roma, Maputsoe, T.Y., Butha-Buthe, and preparations are in hand to carry out surveys in Mapoteng, Quthing, Mohale's Hoek, and Mafeteng.

The functioning of the Urban Land Committees varies in the different urban areas. In the remote districts such as Mokhotlong some members fail to attend meetings. Decisions in some cases conflict with set policy; for example, in commercial sites the highest tender is to be recommended, but this policy is sometimes ignored without advancing any reasons. Nevertheless, the Urban Land Committees with guidance seem to function.

It is worth noting that some allocations by Land Committees in the rural areas are monitored by the department. These are commercial and industrial sites which require referral to the Minister of Commerce and Industry. Very interesting statistics emerge. In the Leribe district, for example, 467 commercial sites have been allocated, while only 7 have been allocated in Qacha's Nek rural areas. In all the 10 districts, some 1,078 commercial sites have been allocated in the rural areas. This appears to be a very high number, and there is no way to assess the needs for such sites. What is evident is that the committees are probably not putting a brake on indiscriminate allocations which occurred under previous land laws.

#### 3.2.4 Selected Development Areas

Besides using the Selected Development Area provisions of the law to rectify defective titles, the Minister of the Interior has declared two large areas in Maseru as Selected Development Areas. One area is a former peri-urban area of Maseru at Ha Thamae. The purpose for declaring this area was to facilitate an upgrading project to provide infrastructure and services. The project is financed by the World Bank.

By declaring this area and extinguishing the existing rights, the widening of road reserves has been facilitated. Without the provisions of this new land law, it is evident that delays could have resulted and possibly the project might not have taken off. Through the declaration an opportunity also existed to encourage higher densification. In most peri-urban areas plots average more than 0.5 ha and, by encouraging densification, more homeownership would be achieved and the services would be affordable if more people shared the costs. However, this is a policy issue which has not been finalized. Indeed, the instructions have been to grant substitute plots in respect of original allocations without forcing landholders to subdivide their properties. It is obvious that the initiative by government to achieve homeownership and the necessary urban standards in these semi-rural, peri-urban areas will be lost.

With staff shortages, a junior land ranger has been assigned to carry out adjudication in this area. From this tenurial investigation, which has to be vetted by a special Advisory Committee, substitute leases are being prepared. Progress has been disappointing because of many factors. There are only 45 percent of properties in Thamae which have owner-occupation. The other 55 percent are under absentee landlord arrangements. Besides, it is often difficult to convene meetings for this special committee which is chaired by the principal chief. All these factors have obviously contributed to slow progress. Notwithstanding these constraints, substitute leases are being granted. More than 100 lease documents have already been issued.

The second Selected Development Area is the Maqalika Dam area and the Mapeleng area. In this area the reason for the declaration was for the adjustment of boundaries for town planning purposes. Because of pollution potential to the new reservoir at Maqalika, it was considered appropriate to freeze development around the dam. Thus allocations near the dam area were to be extinguished, and substitute sites elsewhere were to be granted. Some more than 300 sites were surveyed for such substitute sites. The minister granted 202 sites. However, the issue of lease documents was delayed because of illegal allocations by the former allocating authorities. Progress in this area has

virtually come to a stop. The prevention of illegal allocations is not a technical problem. Although efforts are made to curb these offenses by the chiefs, there appears to be little progress. Hence, the experience gained from this area is that unless the traditional leaders are brought into control by the government, the implementation of the provisions such as Selected Development Areas and the Selected Agricultural Areas of the Land Act will be impossible to implement.

### 3.2.5 Conclusion

From the review of experiences in the implementing of land legislation in urban areas, it is evident that there have been some positive gains and some disappointing failures. The statistics show that a total of 1,428 lease documents have been issued through tenure conversion, grants by Urban Land Committees, and grants by the Minister of the Interior. About 97 percent of these properties under the new tenure system are in urban areas. Obviously, the people in urban areas are beginning to reap the benefits of the new system. The demand for lease documents alone is indicative that benefits of the land policy are beginning to accrue. The financing agencies also have confidence in the security of tenure because in many cases they appeal to the department for the processing of lease applications to secure their lendings for the provision of funding for new clients.

Of fundamental importance, land administration is drastically improved. Reliable records on land transactions are kept, and the aggregation of landholdings is being monitored. Such information is invaluable in policy-making. Besides, through some of the constraints experienced in the implementation of the Land Act, it is possible to introduce useful amendments. As most participants will agree, any land policy program requires constant review and monitoring to make the necessary changes. Land policy is not a one-off exercise but a dynamic process. The experiences gained so far indicate that several amendments are required to improve the land policy.

Of equal importance is that land revenue is beginning to accrue to the government. Before the implementation of the Land Act, the department used to collect no more than M30,000 per annum through survey fees and the sale of maps. By the end of February of this year, that is, 11 months before the end of the financial year, some M147,756.74 had been revenue actually collected. With arrears in ground rent amounting to M42,924.84, the revenue potential is more than M190,159.00. Taking into account that land revenue does not depend on external forces such as the terms of trade or the weather patterns, it could be a small source of reliable income provided collection is improved. The unquantifiable benefits of the land policy are in the potential for investment in land development as a result of security of tenure.

The land policy program is having some successes in urban areas. The people in these areas are beginning to benefit from implementation of the new law. There is reason to believe that the agricultural sector can also gain from implementation of the agricultural provisions of the Land Act. Experiences from Selected Development Areas application will undoubtedly be of immense benefit in the use of Selected Agricultural Areas. What is needed is a bold step to implement the law in the rural areas.

### 3.3 THE ROLE OF LAND USE PLANNING IN AGRICULTURAL PRODUCTION IN LESOTHO

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#### 3.3.1 Introductory Background

By nature, land use planning implies an aggregate of multidisciplinary approaches. The making of realistic plans at farm, village, subnational (district, province, area, etc.), and national levels encompasses various phases of integrated studies (physical, socioeconomic) and the full involvement of the people and state structures concerned. It is therefore imperative that, at all phases of the technical work, close consultation and coordination is maintained, with the land users and the technical specialized departments concerned.

In Lesotho, the project "Development of Land Use Planning Institution for Rural Areas" (FAO/SIDA, Government Cooperative Program), now in its third year of operation, has so far concentrated its efforts at the national level, with reference to trial village community sites of the ecological zones. The project has so far accomplished the following:

- (1) established a land use planning unit in the Ministry of Agriculture and Marketing;
- (2) using available data, complementary work, and measured parameters, endeavored to produce basic technical documents at the national level (2-1 physical environment; 2-2 sociological environment); in addition, an economic study component at village level is carried out;
- (3) establishment of land use planners in four districts, with a work plan;
- (4) a training component including establishment of a postgraduate course at the National University of Lesotho;
- (5) initiation of a training dialogue involving district staff, extension agents, and farmers.

In full awareness of the physical and socioeconomic constraints facing Lesotho, the Land Use Planning Project, in reacting to a national land use plan, is preparing its strategy and approach. Strong emphasis is, however, placed on:

- (a) land use improvements at farm/village level, with particular reference to animal and crop production;
- (b) the thrust and projection of such an improvement at subdistrict and district levels;
- (c) national level and its feedback to the village level.

In its appreciation of the critical importance of the land resources, water and animal wealth possibilities to the daily life of the Mosotho, this paper attempts to make a presentation of the role of land use planning in facilitating and promoting agricultural production in Lesotho.

### 3.3.2 Role of the Data Base: Resources Assessment and Its Land Use Suitability and the Socioeconomic Aspects

Based on the UN/FAO land evaluation, (1) a soil/land resource compilation (geomorphological units and their major soil potential) was prepared at the national level, based on available data, complementary fieldwork, and interpretations. (2) Similarly, by computation of available climatic data, rainfall and temperature probabilities and duration of frost-free and growing periods were determined. (3) Using obtainable information on different types of land use requirements, estimated resource potential is matched against such requirements, with particular reference to Lesotho conditions. Such basic resource data are available and documented in maps ready for use for any planning exercise at national and subnational (district) levels.

The sociological survey, however, based on sample village analysis, (4) covered specific topics among which community structure, land tenure, agriculture, livestock and grazing, migrant labor, and family income are of direct relevance to land use planning, at all levels.

### 3.3.3 Methodology of Land Use Planning

#### Analysis of the Physical Data for Land Use Suitability Classifications

Environmental requirements of the 15 crops considered were matched against climate and soil/land suitability resource data, and scale classifications were made for each. Within the geomorphological units identified, crops' suitabilities against the existing slope ranges were estimated.

#### From Suitability Classifications to Cropping Systems

Fifteen land use (crops) suitabilities considered showed two major influential factors: soils/slope; and climate (figure 1). A lower soils suitability to a crop can be improved by better management, within a limited slope range.

A careful choice of the crops with the highest suitability obtainable in each case of climate and slope (soils) is made.

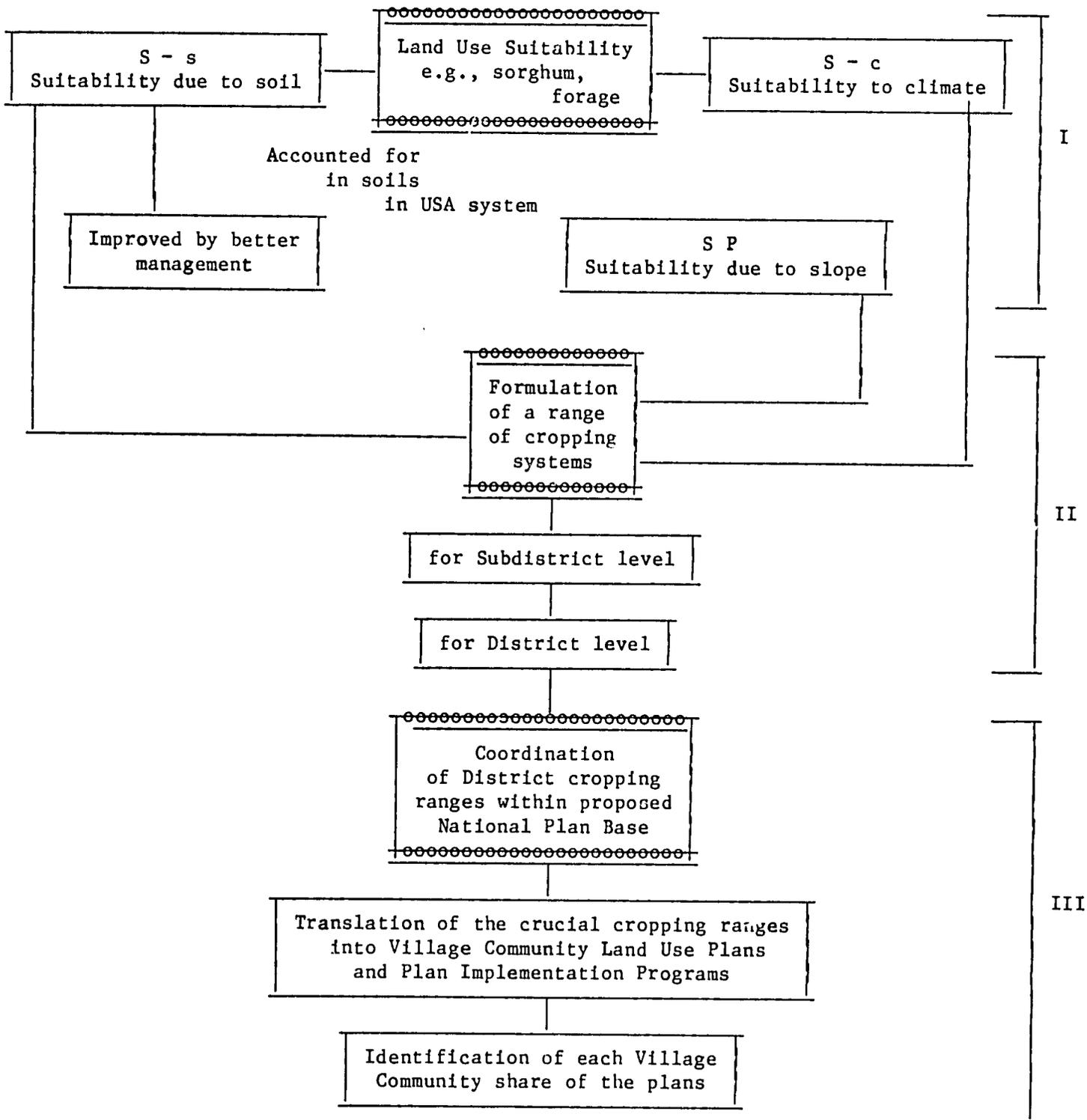
Then matching of the cropping systems formulated against simplified categories (good/medium/poor) of the computed growing periods takes place.

### 3.3.4 Identification of Land Use Alternatives

#### Making of the Choice

Before any choice of the most suitable land use is made, and as early as the suitability classification studies, pointers to relevant crops (e.g.,

FIGURE 1  
 Diagrammatic Representation of Scrutinizing Multifactorial Land Use Suitabilities, Formulation of Cropping Systems at All Levels, and Village Land Use Plans



fodder) are used. A simultaneous approach at village community trial sites is made for several reasons:

- (a) acquaintance of land user (farmer) and land use planner;
- (b) detailing the resource and farm management issues;
- (c) testing the alternatives;
- (d) sociological survey--peoples' aspirations, involvement in planning, and decision-making;
- (e) cost-benefit estimate studies of the present versus the improved land uses.

#### The Planning Role

- (5) Development of a strategy: national-level resource and sociological studies.
- (6) Analysis of data: basic reference; methodology of land use planning (limited literature).

Land use plan framework (involvement of national, subnational [district], and village-level structures).

### 3.3.5 The Land Tenure/Land Act 1979

#### Policy Implications

- (1) Interpretation of Lesotho's Land Tenure and the Land Act 1979. The modern school of thought maintains that the promulgation of the Act was followed by a chain of reactions to the traditional law, mainly in respect of:
  - (a) fragmentation of fields against major extensive development;
  - (b) power to the chief to withdraw land when not in cultivation and when production exceeds family needs, (4) thus creating insecurity for lack of possibilities.

Yet, some workers believe that the norms implied by the land tenure system in Lesotho are basic to Basotho social organization and should not be dismissed as an impediment to agricultural development; rather, its capacity for change and improvement should be carefully manipulated.

However, it is to be noted that, of the major subnational activities of national impact, one demonstration of the mechanized self-sufficiency project (TOU) is that large-scale investment can be carried out while land titles are maintained. In this context, in the case of the "Highland Water Scheme," land and land use implications should not be overlooked.

### Major Issues of the Land Act 1979

- (1) It establishes hereditary rights to land.
- (2) It gives more authority to the Land Committees.
- (3) It provides for the possibility of leasing.
- (4) It mentions selected agricultural lands.

### The Present Role of Land Use Planning in Relation to the Land Tenure and Land Act 1979

The drafted land use planning strategy (5) caters for the traditional land tenure at the village/community-level approach, while anticipating the outcome of the Land Act 1979 and its implementation.

At subdistrict and district levels, a broad-based strategy is advocated to allow for the expected policy and planning changes in consequence to the Land Act implementation, while providing an outlet for village/community agricultural development resulting in horizontal agricultural and urban expansion.

In addition, supporting educational and training land use programs (planning-based) are foreseen at the district and village levels to create awareness and ease dispersion.

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### 3.4 LAND ADMINISTRATION ISSUES IN AGRICULTURAL DEVELOPMENT

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#### 3.4.1 Introduction

This paper seeks to raise for discussion in the seminar a number of issues of importance for the future of land administration in Lesotho. It first examines the tools provided for land administration under the Land Act 1979, then takes as an example the land administration tasks involved in the development of an irrigated area for horticultural purposes, utilizing the Selected Agricultural Area provisions of the Act. Two problems are identified as critical:

- (1) how to mobilize and coordinate the respective expertise and competence of the Ministries of Agriculture and Interior; and
- (2) how to plan for the interaction between central ministry personnel and local institutions, in particular, the Land Committees.

The paper then returns to the national level for consideration of certain issues raised in the SAA discussion, especially the need to develop a realistic program for Land Committee institutional development. New skills and competences in land use planning need to be instituted at the local level. But at exactly what level? And how should the interactions with other local institutions and the ministry staff be arranged? The experience with Land Boards in Botswana is suggestive and is reviewed, but seminar participants will have to consider whether the lessons learned there are applicable to conditions in Lesotho.

#### 3.4.2 The Centrality of Land Administration

Since most of those attending this workshop are administrators in one sense or another, it is unnecessary to belabor the need for effective administration of development programs, whether we are concerned with administration of the national land resource or some other asset. We know that even the best-conceived program can lead to disappointing results if it is not well administered. If an adequate implementation machinery is not in place, implementation will stall and may produce unanticipated and unacceptable results. Legislative enactments are in a very real sense statements of aspirations which may or may not be realized. In developing countries the lack of trained staff and funds for implementation often gives rise to what legal scholars call "ghost legislation," laws which have little impact upon reality beyond the pages of the legislative supplements in which they are printed.

The institutions needed to implement programs do not, however, spring into being overnight. An act which seeks to give effect to policy generally indicates an implementation approach and administrative arrangements in broad outlines. These are then elaborated over time through a series of sets of regulations, some dealing with general matters, others with very particular

administrative and implementation issues. What stage has Lesotho reached in developing its system of land administration? And what does this mean for the implementation of agricultural development initiatives?

### 3.4.3 Land Administration and the Land Act 1979

In 1979, Lesotho set in place a legal framework for land administration. It provides for a modified system of land tenure and allocation, aimed at giving agriculturalists greater security and certainty in the landholdings.

This action at the national level was a necessary first step. The administrator of an agricultural development program or project simply does not have the legal authority to alter the property rights situation as problems arise in the locality or localities where implementation is under way. Sound national policy must be in place, together with implementing institutions, procedures, and sanctions. These provide the opportunity for effective and flexible land administration in the context of particular programs. Moreover, basic land issues cannot be thought through effectively strictly in the context of a single development initiative. They need to be decided in light of a broader range of considerations than those raised by any one program.

The Land Act not only provides a modified system of land tenure and allocation, it also creates and/or empowers institutions: the Land Committees, and the Office of the Commissioner of Lands. It is through these institutions that tenure change is to be implemented and the resulting tenure system is to be administered. The urban areas are for the time being the main focus of the attention of the Office of the Commissioner of Lands, though in time that office will become more involved in the rural areas, particularly in Selected Agricultural Areas. It is, however, the Land Committees which have the major role to play in the rural areas, and the planners and managers of agricultural development initiatives must learn to deal with these local institutions.

However weak the Development Committees currently performing Land Committee functions may be at the moment, it is important to recognize the great potential of the Land Committee idea. The postindependence experience of many African countries strongly suggests the importance of effective local institutions in land administration. These may be traditional institutions or new institutions created for the particular purpose in mind. The devolution of land administration tasks to local institutions has numerous advantages, among them:

- (a) access to local knowledge of land use and rights;
- (b) improved communication between rural people (including development program beneficiaries) and government planners;
- (c) an increased sense of citizen efficacy, with greater commitment to the development process; and
- (d) lower costs.

There are very real disadvantages to the alternative, the overbureaucratization of land administration. Planners invariably and seriously underestimate the costs of creating a bureaucratic land administration organization,

with all its necessary aids (cadastral maps, land registers, etc.), to effectively take over the functions of local institutions operating in a traditional style. Often, the staff and funds for such a bureaucratic approach do not exist. The result is a hiatus, confusion, and uncertainty.

It is important to note that these Land Committees, like the traditional land administrators before them, are engaged in something more than just allocating land to individuals in the appropriate tenures. By the way in which they respond to requests by individuals for land for particular purposes, especially as regards the locations where they allocate land, they determine land use patterns. This becomes clear if one considers the impact of allocations which permit fields to encroach upon communal pasture; and its preservation in the face of increasing population pressure on the land resource rests today with the Land Committees. And, insofar as the nuclei of small towns are being formed in rural Lesotho, it is the pattern of allocations by the committees which will give them their initial shape. The discretion involved in the allocation function gives Land Committee decisions important implications for emerging land use patterns.

There is a most systematic way in which land use planning can be implemented under the Land Act 1979--through the provisions of the Act on Selected Agricultural Areas (§50-53). These provide that where it appears necessary for the development of agriculture to do so, the Minister of Interior, acting upon the recommendation of the Minister of Agriculture, may by a notice in the Gazette declare any area of agricultural land to be a Selected Agricultural Area (SAA). All existing allocations or licenses to land in the area are then revoked as of three months from the publication of the notice. There is to be no compensation for loss of land. The Minister of Interior later grants new leases in the area in consultation with the Minister of Agriculture, subject to such conditions as they may think necessary. The minister is required to give foremost consideration to applications from previous allottees and licensees and must state his reason if he refuses such an application. In deciding who should receive the leases for land in the SAA (other than that granted in substitution for previous rights), the Minister of Interior may advertise for applications, but he need not do so. Similarly, he may after consultation with the Minister of Agriculture decide to call for tenders, but the Act makes it clear that grants can be made without following tender procedures. Alternatively, it appears that selection of lessees in an SAA could be made based on "settler selection" factors such as age of head of household, household size, acumen in farming, etc. There is considerable latitude.

These provisions on SAAs confer great flexibility, and it is hard to enumerate exhaustively the varied needs which might be served through their use. The provisions give the capability to systematically create a new layout of parcels for erosion control, to consolidate fragmented holdings, to rearrange holdings for access to a common resource such as water for irrigation, to require cooperation in certain agricultural tasks involving economies of scale such as aerial spraying of crops, or to establish discrete pasture areas and introduce rotational grazing. Moreover, a lease is a flexible tenure: by changing its terms (duration, rent levels, and conditions), you can create really very different arrangements and enforce development, cooperation, or investment covenants in furtherance of an overall plan for development of an

area. The SAA provisions of the Act seem likely to become a major tool in land use planning and control for agricultural development.

#### 3.4.4 Implications of the SAA Provisions

As we examined the process of land administration under the Land Act, a distinction emerged between land administration as tenure management (management of a system of state grants of rights in land to individuals), and land administration as land use planning and regulation. It is useful to think about these two land administrative functions as distinct for purposes of analysis, though it should be remembered that they overlap at certain points. For instance, the terms of leases (tenure arrangements) in an SAA can serve to regulate land use and realize a land use plan.

The administrative machinery set up by the Land Act is primarily for tenure management, but as we have seen it also has roles in local land use planning and regulation. (The Land Committees create and modify patterns of land use by their allocations, and the provisions on SAAs provide a major instrument for local land use planning and regulation.)

Other institutions, needless to say, have major roles in land use planning and regulation as well. The Ministry of Agriculture's expertise must be the foundation of any agricultural land use planning exercise. Dr. Mukhtar, of MOA's Land Use Planning Project, is addressing this seminar, and MOA's Crop Division has long experience with project area land use planning and project layout. Perhaps the most important general administrative issues in applying the Land Act, from the viewpoint of agricultural development, are:

- (1) how to mobilize and coordinate the respective expertise and competences of the Ministries of Agriculture and Interior so that land use planning and control and tenure management make effective contributions to realizing the objectives of a particular agricultural development program; and
- (2) how to plan for the interaction of personnel of these central ministries with local institutions.

The needs to be met will vary somewhat depending on the nature of the particular initiative, but hopefully most of the relevant issues will be raised if we take as an example a small irrigation project for horticultural purposes, utilizing the SAA provisions of the Land Act. Several institutions would have to be involved in the planning exercise, and I suppose their respective roles would be along these lines:

The Planning Division, MOA. This unit would take the first step by identifying the opportunity, determining its feasibility, and elaborating a proposal. The proposal would, among other things, indicate the potential for use of the SAA provisions and the objectives to be sought through their use.

The Land Use Planning Project, MOA. This unit would collaborate with the Planning Unit in identifying promising areas for implementation.

The Crops Division, MOA. This division administers irrigated projects and would be involved in developing the physical layout and land use plan for an irrigation area.

The Commissioner of Lands, MOI. The commissioner would likely act for the Minister of Interior in the planning for an SAA, and consultations would begin between his office and MOA's Planning Division as soon as a need for use of the SAA provisions is identified.

These concerned divisions and offices will need to collaborate on:

- delineation of the irrigated area to be declared an SAA;
- size, composition, and location of the leaseholds within the SAA;
- identification of those to receive leases in the SAA;
- terms and conditions in the leases, including:
  - rent,
  - duration,
  - other terms and conditions, which might include
    - probationary periods,
    - investment and development covenants,
    - covenants to cooperate in activities such as crop spraying, marketing, and the use and maintenance of irrigation works.

These needs are all fairly obvious, but complex. This seminar might consider whether a special collaborative mechanism is called for, such as ad hoc SAA Working Groups focusing on particular programs, or a permanent SAA Coordinating Committee. The seminar might also consider the extent to which some of the above matters can be dealt with in regulations, and the extent to which it is best to maintain the flexibility to prescribe these matters in relation to particular agricultural development initiatives in particular areas.

There is one need that is less obvious but possibly quite important, and I would like to raise it with this seminar for discussion. I have stressed the potential of the Land Committees in land management, and in general the Act relies heavily on these local institutions. However, the provisions of the Act on SAAs appear to assign no role to the Land Committees or other local institutions. The declaration of an SAA in effect shifts the administration of land in the SAA from a Land Committee to the Commissioner of Lands, and it is suggested that the Land Committee and its chairman will need to be consulted and involved in the transition. This would be advisable for a number of reasons. First, the Land Committee has badly needed knowledge of existing holdings in the SAA. The committee can be of immense help in establishing a list of existing holdings and holders. Second, it can provide a communication

link with the local community for explanation of the plans for and purposes of the SAA and its impact on the local community. Third, it is the Land Committee which will have to try to accommodate any farmer who held an allocation in the SAA area but for some reason does not receive a lease. Additional roles might be considered as well.

Some of the above comments are intended to sound a cautionary note. The provisions of the Land Act on SAAs place very broad and sweeping powers over land at the disposal of those planning and implementing agricultural development. It is suggested that these should be exercised with restraint, both in the interest of project-community relations and in order to take advantage of the considerable contributions which local institutions can make to smooth and effective implementation.

It should be remembered that the Act offers a valuable set of tools, but that there may be other, more consensual approaches. Where an objective can be attained by a little investment of time and effort in communication and consultation with local people, the SAA provisions may not be needed. This seminar could very usefully spend some of its time discussing which situations really require implementation of the SAA provisions.

#### 3.4.5 Creation of the Land Committee System

I would like in conclusion to raise some issues concerning the creation of the Land Committees envisaged by the Act. The development of mechanisms for the creation of these committees is a priority area for exercise of the minister's regulatory powers. When they are established, how many should there be? (There are over a thousand Development Committees currently acting as surrogates for the Land Committees.) At what levels in the chiefly hierarchy should they be created? There is a need to balance two equally desirable but hard to reconcile objectives:

- (1) The need to have committees local enough so that they have the detailed knowledge of local land matters required to perform their allocation function. This suggests many committees very low in the chiefly hierarchy.
- (2) The need to develop new skills in land administration at a local level (land use planning, lease administration, surveying and mapping, etc.). This suggests fewer, better trained and staffed committees at a relatively high level in the hierarchy--simply because to do a major upgrading of over a thousand committees would be a huge undertaking.

In this context, it is interesting to consider developments which have taken place in Botswana since the Tribal Land Act 1968 created twelve major Land Boards to take over land administration from the hierarchy of chiefs. A set of regulations governing the activities of the Land Board were published in 1970. In 1973, a system of twenty-six Subordinate Land Boards was created to take over traditional agricultural and residential allocations, leaving the major Land Boards to act in an appellate capacity with respect to those allocations, and to deal with the complex residential and commercial allocations in

the major villages where the Land Boards are located. The most significant link with the old system is through the headman's certificate of no objection, which each applicant for land must obtain and in which the headman certifies that the land applied for is free for allocation.

It is becoming increasingly clear that the Subordinate Land Boards have not been able to get control over allocations in their areas. They manage considerable territory and do not have detailed local knowledge of land matters themselves. They must thus rely on the headmen and often it seems to applicants that the key step in the application process is the obtaining of the headman's certificate of no objection, with the Subordinate Land Board just ratifying the headman's decision. There are accumulating indications from a joint research program being conducted by the Land Tenure Center and the Applied Research Unit of the Ministry of Local Government and Lands that in many areas outside the vicinity of major villages many--sometimes most--allocations for traditional purposes continued to be made by the headman without reference to the Subordinate Land Board.

A great deal of energy has been spent on the training for Land Board members and staff in new skills. On the other hand, it is emerging that the effective level of operations, at least for some functions, is at a much more local level. Recently a consultant for the research project recommended the creation of hundreds of local arable land committees which would extend the land administration structure down to a level corresponding roughly to Lesotho's Development Committee.

Perhaps the answer lies in a division of labor and a degree of specialization as between different levels in a hierarchy of Land Committees. This would appear to be a topic that could usefully be pursued in the course of the seminar.

### 3.5 LAND TENURE AND AGRICULTURAL DEVELOPMENT

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#### 3.5.1 Introduction

The question to be considered is whether changes in land tenure are needed in order to achieve development objectives. Achieving self-sufficiency in cereal production or intensifying agriculture by increasing production of fruits or vegetables could be examples of such development objectives.

It is not very likely that changes of land tenure will by themselves promote more rapid development. It's more likely that tenure may require modification when new activities are being attempted and the existing tenure rules make it difficult to accomplish what people are trying to do. For example, if mechanized production of cereals becomes profitable but requires a holding of at least 20 ha to be economic, then the communal tenure prohibition on selling

land may make it difficult to aggregate a holding of that size. But what this suggests is that the proper sequence for analyzing whether tenure reforms will increase the rate of development is:

- (1) Are there new agricultural activities which represent more profitable returns to land and labor?
- (2) Do these activities require modifications of present rules by which people get allocations of land or receive right to use land from others?
- (3) Can people, for this purpose, enter into new arrangements among themselves, or is a change in national legal rules of tenure required?

There are dangers in modifying tenure rules prematurely. When profitable opportunities for changing land use are absent, changes in tenure will promote little if any development, but they may well result in other unexpected and undesired changes. For example, making land salable may result in acquisition of land for speculative purposes and loss of land by members of rural communities, with little or no benefit to the nation in increased production.

Such dangers are not unlikely. One should remember how often development projects disappoint original estimates. It is very easy to overestimate costs and underestimate benefits as well as underestimate the organizational difficulties of implementing projects. Yet such project estimates are likely to be the basis for concluding that tenure changes are required to accomplish project objectives.

This does not mean that tenure reform might indeed not be very desirable. But the above considerations should be a reminder for the need to proceed tentatively and with caution, attempting to accomplish development objectives within existing tenure and monitoring carefully development experience to ascertain when tenure changes are needed and how implementation of tenure changes works out in practice.

### 3.5.2 Possibilities for Higher Returns from Land and Needs for Tenure Change

People with rights to land have a variety of alternative ways of deriving income from their labor and their land. Under Lesotho conditions the major alternatives are:

- (1) Using family labor and owned land under traditional farming.
- (2) Adults may work as migrant workers in South Africa, while women, children, and the aged work owned land under traditional farming; if, in the absence of migrants, family resources are inadequate, then a variety of traditional devices are available either to secure additional needed labor, livestock, and inputs from others or to allow owned land to be used by others.
- (3) Using family labor and owned land with improved technology.

The second option has become the dominant alternative. The attractiveness of new technology depends on how well it compares to all the other available alternatives. Probably the natural tendency is to compare the results of new technology to traditional agriculture. However, superiority of the new technology to the first alternative is not enough; the returns from new technology have to compete with returns available from migrant labor.

From the review of some case studies,<sup>1</sup> higher yields of maize and sorghum seem to be connected with planting in rows (typically by hiring draft cattle with a seed planter) and using fertilizer, while much lower yields are associated with broadcasting seed and using no fertilizer. The same case studies show complex arrangements for combining land, labor, and draft power and paying for cash expenses. In all these cases the adult male (husband and father) is absent in migrant work, but his remittances are crucial for hiring tractors or cattle for plowing and planting and for paying cash expenses. On the other hand, much of the necessary labor and often draft cattle are obtained for payments in-kind or by reciprocal exchange. These are devices used by households which manage their own land but lack adequate labor. Other households in the same situation entrust their land to land-poor households in return for the share of the crop. Tractor plowing and draft cattle for plowing and/or planting are provided by commercially oriented entrepreneurs; the impression given in the report is that these are full-time, relatively large-scale activities.

This description can be used to illustrate the sequential analysis proposed above, of the question whether tenure reforms are necessary. The information indicates that there is a range of productivity among rural households, and that rural households and commercial entrepreneurs have already evolved various tenure and labor arrangements as adaptations to migrant employment opportunities and available agricultural technologies. Many households already use higher yielding technologies than their neighbors. If even more productive technology is available for the grain crops, there seems to be no obvious reason why it could not be utilized under similar arrangements within the present tenure system by at least some rural households, as a part-time activity combined with migrant labor. It might be argued, however, that the present tenure system prevents transfer of land either (a) to land-poor households who would be more efficient part-time farmers than less progressive households which currently hold rights to land, or (b) to households which, if they had enough land, would be efficient full-time farmers. But, before such arguments are used as a reason for legal changes in tenure, several kinds of investigation should be conducted. Use of improved technology should be encouraged among households under the present tenure system, and economic returns should be ascertained. Then if the technology is economically attractive, research should be conducted to see whether households acquiring land by sharecropping and renting arrangements have any tenure problems which seriously impede the efficiency of their operation. Such attempts would provide a more reliable basis for finding out if legal change of land tenure is required in order to achieve the national objectives of greater self-sufficiency in staple grain production.

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1. Colin Murray, Families Divided: The Impact of Migrant Labour in Lesotho (Johannesburg: Ravan Press, 1981), pp. 78-85.

Other kinds of tenure problems might arise in the case of programs of intensifying agricultural production by shifting land to the production of vegetables or fruits. The present system of tenure might be inadequate in preventing use of land as security for credit, or the rights in land might not be secure enough to encourage necessary long-term investments in irrigation and other facilities. But again, before conclusions are reached, relevant technologies should be tested out under present tenure with households interested in using them, both to test out technologies and to find out what tenure problems arise.

Rights in land are important for a variety of circumstances and not just to earn income from agriculture. Income from migrant labor is an income of adult males who have to leave their families behind and who have to terminate their employment when they get older. Migrant labor opportunities might be terminated unexpectedly due to changes in demand for the product or due to accidents or sickness of the worker. Also they depend on South African policies about decreasing use of foreign workers in order to provide employment to African labor from within South Africa. For all of these reasons rural households value their rights in land as a residence for the families of migrants and a home for the time of unemployment or retirement from migrant work, even if the land contributes little to the household's food needs. Present arrangements for sharecropping, contracting, and pooling resources facilitate adjustments to these changing situations: they can be used to allow others to use the land while maintaining the household's right to reclaim the use of the land should that become necessary.

In addition, rights in land may be important in order to allow earnings from migrant labor to be invested in ownership of livestock.

### 3.5.3 Communal Tenure and Incentives

The differences between communal tenure and individual exclusive rights (freehold and long-term transferable leasehold) are often discussed as if incentives for increased productivity were always higher under individual tenure. But these issues cannot be discussed without distinguishing different ways in which tenure affects incentives in different situations. The main issues include security against losing rights in land, use of land as security for loans, and the advantages and disadvantages of making it possible to buy and sell land.

There is no reason why communal rights in land (either by administration of the Land Act 1979 or under previous allocation by chiefs) should not be secure in the sense that the holder of the rights in land is secure against dispossession by other tribesmen or by tribal or administrative authorities. Expectations of continued use are usually very secure and do not act as an impediment to household action to improve the productivity of land.

Rights in land may create problems in access to credit if both the right to transfer land does not exist and if there is no land market; in such conditions the lending institution does not have the recourse of repossessing and selling the land. However, it should be noted that major problems of default exist in small farmer credit schemes in countries in which land rights are

exclusive and transferable. Problems with access to credit may be due to non-tenure issues: that there is no economic use of credit because of lack of really appropriate technology, failures in delivery systems for inputs, or lack of markets. When credit can be profitably used there are ways of providing security for loans in other ways than on the basis of rights in land, such as by crop lien for production loans.

The kind of security which is required for credit is related to the purpose and length of loan. What kind of credit is most needed by those Basotho farmers engaged in improved crop farming and what kind of security would be sufficient for it? Are there ways to provide credit for longer terms without requiring security based on rights in land? In fact, in Lesotho migrant remittances are already a very important source of agricultural credit. Perhaps rather than using tenure changes for this purpose, less upheaval in the agricultural sector would result if remittances were to be used to an even greater extent, directly for production expenses and investments in the migrant's household and otherwise by being deposited in financial institutions lending to agriculture.

Another alternative is that donor agencies could offer a special credit program as a pilot project in order to experiment with new technology using unsecured loans as the basis for the credit. If the project succeeds, leasing arrangements and secured loans could be organized at a later date.

The crucial issue in the difference between exclusive or transferable rights (such as long leaseholds or freeholds) and communal tenure is the presumption that transferable rights make it easier for land to pass into the hands of those who can make more profitable use of it and thereby promote agricultural development. By contrast, communal tenure acts more to require that governments achieve development by encouraging people already on the land to engage in development of new activities; in that sense it calls for the difficult task of "betting" on the weaker segments of rural society. If there are limited opportunities outside of agriculture, this is not an undesirable requirement. Under Lesotho conditions, because of the importance of migrant employment, this may be less important. But the present communal tenure with sharecropping, contracting, and pooling of resources may be sufficient to provide land to those who can best use it, while retaining the right of rural households to reclaim the use of their land when they in turn need it. Also with some insecurity about the future of migrant employment it may be desirable to maintain a wide distribution of rights in land among rural households.

#### 3.5.4 Leases and Special Agricultural Areas

For many agricultural development activities it is best to rely on the judgments that individual households make in relation to their own varied circumstances. Such households with the aid of new technology and credit can make the best decisions about incrementally improving and modifying labor and tenure arrangements, as they have indeed been doing. However, there may exist genuine opportunities for individual progressive farmers or for integrated schemes (such as irrigation) which require access to exclusive tenure and/or which need to be utilized on larger blocks of land. For these needs the devices of a lease and of the Special Agricultural Area (SAA) in the Land Act 1979 are

desirable. But it is desirable to be cautious and not over optimistic in judgments about how good the opportunity or a particular progressive farmer is, and ways should be looked for to make lease rights tentative and conditional until proved. The administration of the granting of leases and SAAs would be improved if such conditionality were allowed for.

Applications for leases will probably originate from the individual initiative of persons holding allocations. In some cases, however, such persons might be encouraged to apply by a potential buyer of the land, someone who would hope to buy the land from the lessee. Present draft regulations allow the application to be approved with little review. The currently proposed process is as follows:

- (a) The Land Committee must certify that the applicant holds or is entitled to hold an allocation (and that there are no adverse claims).
- (b) The Local Agricultural Officer needs to review proposed use of land and consistency with approved agricultural land use planning. No evidence other than about six lines about proposed land use and levels of development planned seem to be required.
- (c) The Local Agricultural Officer can attach about four lines of conditions to his approval of a lease.

The above requirements on the potential lessee are not very onerous. The approval requirements are easy to fulfill as they are only promises of future action. However, once the lease is granted, the review of compliance with conditions may be considerably more difficult. More importantly, the procedures for revoking the lease for noncompliance with the conditions are liable to be politically and administratively difficult.

The following two amendments to the draft regulations could remove some of the potential difficulty in these cases:

- (a) The application for a lease should demonstrate in writing that proposed changes in land use cannot be accomplished under an allocation. Specific justification for needing a leasehold tenure would be required.
- (b) An initial period of a lease could be considered a trial period. A review of the progress of the lessee would be necessary before a lease is effected permanently.

Similarly, within SAAs, the evidence for a project should be supported by analysis of the necessity for tenure change. Most SAA applications would come from Lesotho government and donor agency-initiated projects. Reasonable evidence should be available to show cause why allocations rather than leases could or could not be used in the project. Thought might be given to the use of the SAA only as a device to institute land improvements with boundary realignments but without changing tenure from allocations to leaseholds.

The project analysis and supporting evidence should be presented to the local community at an early stage by means of a public hearing. The minutes

at that hearing should become part of a permanent file to be considered by more senior decision-makers as part of the evidence which determines the need for the imposition of an SAA.

The use of leases and SAAs to impose tenure transformation in order to achieve greater production goals should be carefully considered. Leases will be easy to approve, while the conditions of the leases will be difficult to enforce. SAAs will be used to initiate many large-scale agricultural projects, but it must be remembered that many projects have failed in the past. However, if an SAA is used then, whether a project succeeds or fails, the land tenure will have been converted to a leasehold, unless some provision is made which allows for reconversion to allocations.

With the application of the Land Act 1979 Lesotho will ultimately have a mixed system of tenure. Allocates and leaseholders will be intermingled in many areas, while SAA areas will be compact islands of leaseholds. The leases will be transferable, so speculation and accumulation of land may occur which bear little relationship to the achievement of production goals.

The main plea in this statement is for caution and flexibility. Leaseholds and SAAs can be welcomed as new tenure tools, but they should be used in specific situations when there is overwhelming local support and strong evidence of their appropriateness for promoting development and welfare; in many situations the introduction of new technologies and other development programs should first be attempted under present tenure rights of allocation. Such cautious procedure will test out the viability of development programs and the need for tenure changes that they may require.

### 3.6 LAND TENURE ISSUES IN LIVESTOCK DEVELOPMENT AND RANGE MANAGEMENT

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The conventional picture of African range use systems had a large number of individual stockholders grazing their privately owned herds on an uncontrolled common range. Grazing was free to the stockholder, at least in terms of conventional measures of land rent. This "freedom" of the commons encouraged stockholders to add animals to their herds without paying due regard to what their individual decisions implied for the condition, or carrying capacity, of the range.

The real cost to herders of these individual decisions was the potential decline in long-term range condition resulting from overgrazing. But the individual would enjoy the full benefit of each additional livestock unit added to his herd, while the costs of overgrazing were shared with the community of stockholders. It would not appear in any one individual's short-term interest to restrain his herd growth, because the grazing saved could then be consumed by his neighbors' herds. The prognosis was ecological collapse as each herder, acting in his own best interest, continued to add animals until overall

carrying capacity was exceeded, range condition declined, and in the event of drought, much of the herd died off.

A popular solution offered for this "tragedy of the commons" was tenure reform. Tenure reform has typically meant reduction of multiple claims to specific grazing areas. In some countries, including Kenya and Botswana, this has involved introduction of private rights to grazing land--in Kenya through freehold title, and in Botswana through long-term leasehold. Granting individuals exclusive rights to extensive grazing areas was justified by a corollary to the "tragedy of the commons" argument: only under individual tenure is the individual herder assured that his self-restraint in balancing herd size with range carrying capacity will not be exploited by other range users expanding their herds. Other tenure reforms, in Botswana, Kenya, and Tanzania, fell short of granting exclusive rights to individuals, but reduced multiple claims to grazing lands through creation of group ranches. Here, small groups of individuals were granted exclusive rights, on the principle that it is more practicable to coordinate range use among smaller groups than larger groups.

Have these tenure reforms been effective in reducing overgrazing? Unfortunately, a definitive answer to that question is not possible. On the whole, experience has been very mixed. And tenure reform has been used to promote objectives in addition to range conservation, so any blanket assessment of tenure reform from the point of view of conservation alone is not appropriate. But the following generalizations can be offered.

- (1) Many smallholders have not benefited from tenure reforms. To capitalize a private ranch with a permanent water supply, fencing, and so forth, requires a large holding with the owner willing to undertake regular market sales to pay back commercial loans. Group ranches were intended to provide economies of scale, but problems associated with devising workable group management structures and cost sharing and loan repayment arrangements among members have impeded group ranch establishment.
- (2) By permanently fixing ranch boundaries, private tenure systems restrict herd movement in response to variable rainfall patterns. This is particularly important in drier rangelands of East Africa. By not migrating, overgrazing increases on the fixed ranches. Ranchers have proved unwilling to reduce stock numbers to levels indicated by periodically low rainfall spells. The more typical response has been for ranchers to migrate in search of greener pastures, consistent with old communal tenure arrangements.
- (3) Change in tenure alone does not reduce overgrazing. Widespread overgrazing continues on many of the private ranches in Botswana. The high costs of private ranching lead many ranchers to run more cattle for commercial reasons than the range can support. Many herdsmen are unaware of the extent to which their herding practices are degrading the resource base. Improved range management techniques must be taught through extension programs.
- (4) Many herdsmen have responded favorably to tenure reform for reasons other than those offered by the planners. Herdsmen have seen reform

as an opportunity to clarify their land rights relative to their encroaching neighbors. "Individualization" of grazing land in Kenya has been welcomed as a means of keeping cultivators out of pastoralist range. That accomplished, traditional range use strategies have not changed.

This all too brief assessment of recent experience in Africa suggests that tenure is only one among several relevant factors in improving range management. One common criticism of the "tragedy of the commons" analysis is that it represents a highly deductive approach to the problem. That is, the strength of the argument is grounded in some very strict assumptions about herder behavior under communal tenure. Are these assumptions correct? Are there other factors at work that in combination with tenure lead to overgrazing? A more precise documentation of the facts of communal resource use should help identify a wider range of policy alternatives and lead to more effective policy formulation.

### 3.6.1 Another Perspective on Communal Tenure and Overgrazing

The "tragedy of the commons" analysis gives the impression that systems of communal resource use are intrinsically flawed. But cattle have been grazing on common pastures in Africa for centuries. Historically, communal tenure systems have proved suitable to the circumstances and met requirements of traditional livestock production systems. It would appear that instead of communal tenure itself being flawed, important aspects of the livestock production systems have changed, so that commensurate adjustments are needed in the tenure system. But typically, change has taken a variety of forms and directions, and we need to be sensitive to what different changes indicate for appropriate tenure reform. There are more than two choices--private vs. communal--and the choices are complicated by important administrative and legal considerations.

A clearer perspective on appropriate tenure reform can be achieved if we begin with an analysis of the factors contributing to the decline of so-called traditional tenure systems. First, it is important to note that traditional communal grazing systems were not without formal and informal rules that regulated access to particular ranges, seasonal grazing patterns, and even stocking rates. Such rules were administered by traditional authorities, usually the chief or headman, or grew out of long-standing practices or agreements between neighboring groups. In other words, communal tenure had an institutional dimension that acted to regulate range use roughly consistent with grass availability. This is the fact usually not appreciated by the "tragedy of the commons" analysts. Nevertheless, certain changes in the livestock production system and in other areas of traditional economy have made these institutional rules less effective. One important result is the overgrazing we see on much of Africa's rangeland today. At least three major factors combined to make past institutions less effective in regulating grazing under communal tenure: rapid human and animal population growth; changes in the economic organization of livestock production; and national political changes that have shifted responsibility for regulating resources.

#### 3.6.1.1 Demographic Changes

Livestock numbers have grown dramatically in Africa over the past thirty years. This is largely attributable to improved veterinary and animal health

practices, which have in many instances eliminated the threat of catastrophic herd losses due to epidemic disease. Improved water-lifting technologies have extended the range of grazing and have increased grazing intensity of established ranges. Rapidly growing human populations have increased the demand for livestock, as well as the demand for arable land, which has caused available pastureland to shrink. Traditional range control institutions and rules, which had evolved during times of relative resource plenty, were rarely equipped to deal with this demographic explosion. The typical method for dealing with localized overgrazing was to designate a new cattlepost in an unsettled area. The problem is that most of these surplus areas are today settled also. Similar demographic factors have contributed to the demise of traditional controls over grazing in Lesotho.<sup>1</sup>

### 3.6.1.2 Economic Changes

Much of the authority of local chiefs and headmen in regulating range use was derived from their broader involvement in the economic affairs of the community. The chief was very much an economic patron, providing land, sometimes employment, and assuring a basic subsistence to the unfortunate by distributing the surpluses of others. With the growing importance of external economic institutions, especially migrant labor opportunities, livestock markets, and imported food grains, the chief's or headman's influence on matters pertaining to resource use declines.

An associated problem is that as rural households increase their dependence upon external income sources, livestock may be of declining overall importance to the family. Families will continue to retain their livestock, since maintenance costs on free pasture tend to be quite low.

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1. A summary description of traditional systems of grazing management in Lesotho and causes for the decline of customary controls was offered in a 1978 study by LASA:

Under the traditional communal grazing system, control and access to the foothill and mountain pastures was supervised by the chieftainship. Although the range was considered common to all, loosely defined boundaries corresponded to district chiefdoms and the principal chiefs through their subchiefs and headmen recognized particular grazing areas as their own. Ideally every village in every district had its own "cattlepost(s)," and it was through these geographically identified areas that the chiefs could plan and manage seasonal grazing of the entire Maluti mountains.

The old system broke down as a result of the increasing population pressure (both animals and men) and the diminished power of the chiefs to control access to and use of the summer range. At present there is practically no control over livestock movement in the mountain grazing areas and consequently there are frequent disputes over prior rights at cattleposts and considerable theft of stock (LASA 1978:VII-7).

Nevertheless, labor shortages due to the absence of migrant males detract from herd and range management standards and make implementation of improved range management practices all the more difficult. Phororo (1979) notes that heavy reliance in Lesotho on young herdboys for most daily herd management tasks tends to further complicate introduction of many improved management practices.

### 3.6.1.3. Political Changes

In virtually every African country, the first twenty or thirty years of national independence have witnessed national legislation that redefines legal and administrative responsibility for resource regulation. Despite the legal reforms, the establishment of new, working, regulatory institutions on administrative procedures lags far behind, resulting in an administrative hiatus that has contributed to confusion over resource rights and responsibilities. Undoubtedly, this problem will be corrected in time, as administrative capability improves and resource policy becomes clearer. Nevertheless, this is a factor that contributes to present-day confusion.

### 3.6.2 Factors Affecting Choice of Tenure

These and other factors have undercut the rules and institutions associated with communal tenure. This suggests the need for new, or reformed, rules and institutions that account for the changed circumstances of livestock production. In devising more appropriate tenure rules, it is always best to begin with an understanding of the peculiar characteristics and requirements--the broad social, economic, and ecological environment--of the production system. Some of these factors are discussed below.

#### 3.6.2.1 Distribution and Size of Livestock Holdings

Most livestock in Lesotho are held in small herds. Data drawn from the 1970 Census of Agriculture indicate that an average-sized herd of cattle in the lowlands was 5.3 head, and 12.7 head in the mountains. Average herd size for sheep in the lowlands was 16.9, as opposed to 87.8 head in the mountains. These averages obscure skewed patterns of livestock ownership. A fairly small percentage of households owns a large proportion of the national herd, while almost one-half of rural households own no livestock. Table 3.6 provides data on the size and distribution of livestock in 1975.

Since fewer than one-half of Lesotho households own cattle, these data indicate that fewer than 10 percent of the population owns nearly one-half of the national cattle herd (LASA 1978:VII-13). Still, cattle holdings are small in size relative to what is normally considered sufficient scale to finance development of a private ranch. For instance, in Botswana, an individual rancher would have to own at least 500 head of cattle to qualify for loan assistance and an exclusive-use land allocation. It is expected that only herds of 500 and above can generate sufficient commercial offtake to finance private water development, fence construction, and various operating costs.

In Lesotho, emphasis has been placed on development of grazing associations to achieve many of the economies possible under large-scale holdings

TABLE 3.6  
Distribution of Cattle Ownership by Size and Holdings, 1975

CATTLE NUMBERS PER HOLDING	PERCENTAGE OF TOTAL NATIONAL HERD	PERCENTAGE DISTRIBUTION OF HOUSEHOLDS OWNING CATTLE
1 to 4 head	27.0	59.4
5 to 8 head	29.6	24.6
9 to 16 head	28.1	12.7
17+ head	<u>15.3</u>	<u>3.3</u>
	100.0	100.0

SOURCE: Lesotho's Agriculture (LASA, October 1978).

(Phororo 1979). Elsewhere in Africa, grazing associations have been seen as appropriate organizations for replacing some of the functions performed by traditional society, including regulations of grazing, providing some security against loss of animals, and regulations of conflicts over land use. In Lesotho, work is proceeding at Sehlabethebe to promote prototype grazing associations capable of performing similar functions. Certainly two functions the associations can perform are: providing a framework for assigning grazing rights to specific areas on the basis of membership in the association; and providing an institutional forum for agreeing upon local range regulations and controls. These are functions basic to any working, common property institution--the establishment of qualifications and standards for using a common resource.

### 3.6.2.2 The Ecology of Livestock Production

Ecological variability has implications for grazing tenure. The more variable the climate, in terms of seasonal or annual rainfall variation, or the more variable the terrain, especially in terms of altitude and associated interseasonal temperature variation, the more likely the tenure system will have to accommodate extensive seasonal migration of livestock. Hence, ecological variability makes exclusive tenures less feasible. In highly variable ecosystems, suitable institutions or rules must be created to coordinate the timing and direction of seasonal adjustments by groups of stockholders. For instance, this is an institutionalized role performed by chiefs when they proclaim the dates for moving cattle from the lowlands to the mountains, and vice versa.

It is widely agreed that Lesotho's pastures are heavily overstocked. For instance, Phororo (1979:xi) estimated that "to bring [Lesotho's] pasture to the required carrying capacity would entail 80% stock reduction in the lowlands and foothills and 20% in the mountains." Destocking programs are hardly

popular, and stock reduction can hope to succeed only as substitute fodder is provided and/or the benefits of fewer animals, in terms of higher quality and more valuable stock, are made clear to the producer. Many observers had noted that Basotho herders appear to prefer quantity over quality, but often for sound social and economic reasons, at least from the perspective of the herder. At the same time, efforts of the Dairy Section in the Livestock Division to convince many prospective dairy farmers to sell their scrub herds to purchase fewer, but high quality dairy animals appear to be bearing fruit. It is likely that opportunities for commercial dairy production will be largely limited to lowland areas, near to urban markets.

The mountains and the foothills are Lesotho's most important ecological zones for beef production and wool and mohair production. Competition with crops for land is less intense in these areas, and the mountains are on the whole better suited for extensive livestock grazing than for cultivation. In 1970, 66 percent of the nation's sheep and 51 percent of its goats were kept in the mountains. Two-thirds of the cattle were kept in the lowland and mountain areas (LASA 1978). Cattle, goats, and sheep have somewhat different grazing requirements (though they are often herded together because of labor shortages). The particular requirements of each must be accounted for when designing tenure changes.

A critically important factor influencing grazing patterns is water availability. Ecological and economic factors affecting the location and type of water supply (e.g., public riverbank versus a private well) often limit tenure options. It is hard to restrict public access to naturally occurring water supplies, such as rivers or springs. On the other hand, private ownership of boreholes can introduce a measure of de facto private control over surrounding grazing lands.

### 3.6.2.3 The Economic Strategies of Producers

It is often observed that the Basotho produce livestock for a variety of purposes and not just for market. In fact, in many households sales of animals or animal products rank low relative to other uses. Cattle, for instance, are used for draft power, and a variety of animal products, such as milk, meat, and hides, are consumed directly by the family. Livestock provide a source of savings and marketable assets for the family when cash is needed. Although livestock products, particularly wool and mohair, account for between 60 and 70 percent of national export revenues, it has been estimated that domestic utilization of livestock and livestock products is the equivalent of three times the gross revenue earned from exports (LASA 1978:VII-3).

The economic strategies of producers vary with implications to choice of tenure. Stockholders producing beef primarily for market will be better able to afford the capitalization costs, in water development and fencing, associated with individual landholdings. Households with smallholdings producing cattle for a variety of nonmarket purposes (e.g., draft power, milk, meat, etc.) will not be able to assume many kinds of ranch-type development costs. This is also true of cooperative associations where the membership is not undertaking livestock product sales on a regular basis. Noncommercial small and largeholders will typically require continuing access to low-cost communal range.

Livestock production is integrated into other land use patterns and agricultural activities, with implications for land tenure. Obviously, draft oxen need to be near cultivated areas, at least during a certain period of the year. Milk cows are ideally kept near the homestead to ensure a fresh supply for the family.

#### 3.6.2.4 Administrative Procedures and Costs

Every modern tenure system has characteristic administrative requirements. These are for the most part bound up with how land is surveyed and mapped; how land rights are adjudicated, allocated, and registered; and how land laws and land use standards are monitored and enforced. Whatever the tenure system, there are administrative costs involved. As importantly, the development of administrative capacities takes time. Surveyors and administrators must be trained, procedures have to be established, the public needs to be made familiar with new procedures.

In the early 1970s, Lesotho adopted a grazing permit system as a means of monitoring stock movements and grazing in accordance with carrying capacity. This approach appears to take account of many of the factors noted above. But the effectiveness of permit systems very much depends upon the availability of high levels of good information about local grazing conditions and stocking rates. Administrative costs associated with collecting information, issuing permits, and monitoring range use tend to be very high. Phororo (1979) recommended that the administrative capability of chiefs' offices be substantially upgraded to better implement the permit system. When considering steps to improve grazing management, it is clear that legislation other than the Land Act 1979 must also be considered. Grazing permit and grazing regulations are controlled by the Land Husbandry Act 1969. Our meetings should consider how the Land Act, the Land Husbandry Act, and the Range Management and Grazing Control Regulations relate to one another.

#### 3.6.2.5 Development Policy and Economic Trends

Tenure policies can be deployed in support of broader or long-term objectives. For instance, many analysts argue that by increasing security of tenure through granting of more definite land rights, farmers will be encouraged to invest in their land and thereby increase productivity and output. This argument has been extended to the livestock sector as well, particularly in Botswana and Kenya. Certain provisions of Lesotho's Land Act 1979 aim to promote economic development. This is most clearly the case with §2, relating to Selected Agricultural Areas. Obviously, tenure policy can be used to advance or protect the interests of certain categories of producers. For instance, if government, as a matter of economic policy, wanted to vigorously promote beef exports, tenure changes could help enhance the production environment of commercial beef producers.

Tenure change alone is not a very effective instrument for pursuing short- or even many intermediate-term policy objectives. Tenure change must be used in combination with other changes when pursuing broad social or economic development objectives. Exclusive tenures typically require greater capital investment, for water supplies, fences, and other facilities. These improvements

have to be paid for, typically through productivity gains or increased sales. Access to markets, relative prices, and economic interest in livestock production are factors that must be evaluated in assessing the merits of a tenure reform that assumes increased investment.

As suggested in 3.6.2.3 above, income strategies must be considered in the broadest possible context. For instance, as long as wage employment in South Africa remains a viable alternative for many rural Basotho, cattle will likely remain investment goods, sources of subsistence income, and inputs to other agricultural activities, such as plowing. Hence, livestock are often seen as auxiliary to more important sources of income, especially wage employment. Until producers are undertaking cattle or wool and mohair sales on a planned and regular basis, it is unlikely that they will be generating sufficient revenue to invest in range improvements. This would apply to smallholder members of grazing associations as well as to many largeholders. An important implication of this analysis is that Lesotho's range policy options will always be to a certain extent conditioned by macroeconomic factors (e.g., the availability of wage employment opportunities) and the relative returns to labor from wage employment versus investment in livestock.

### 3.6.3 Concluding Remarks

This paper has described how such factors as herd size and ownership patterns, range ecology, household income strategies, administrative resources, and economic forces interact to constrain tenure options. The single most important factor is herd size and ownership patterns. If most of the herd is owned by a few people, then granting of exclusive rights to individual tracts of land might be appropriate, taking due account of the continuing needs of smallholders. Alternatively, if the national herd is distributed among thousands of smallholdings, then some form of communal or collective tenure will probably be necessary. In the latter case, the tenure problem becomes very much a matter of defining the terms and conditions of individual use of common property. Common property arrangements can take a variety of forms, including group ranches, assignment of grazing rights through permit systems, granting preferential land rights or grazing privileges to grazing associations, and, in appropriate circumstances, granting long-term leasehold rights to individuals or small groups. A closer examination of size and distributional patterns of livestock holdings in Lesotho might suggest other organizational alternatives for better specifying grazing rights. Large individually held landholdings probably will not be feasible until such a time as the national herd includes a much higher number of large, commercial holdings.

Livestock production is undertaken subject to certain environmental factors, especially grass productivity, which is a function of soil and terrain factors, and seasonal rainfall and temperature patterns. Seasonally variable rainfall and temperatures (especially at higher altitudes) have imposed a transhumant pattern on the grazing regime of many herds in Lesotho. In other words, some form of pasture rotation, either between the lowlands and foothills and the mountains or within various altitudes in the mountains, is necessary to achieving optimum pasture utilization and animal productivity. Part of the tenure problem is defining rights to certain pastures during specific times, subject to range management standards. Private or even group ranches, if they

entail fixed ranch boundaries, usually do not encompass the full variety of land types necessary to sustain a herd throughout the year.

Tenure options are further limited by the economic use producers make of livestock and by the resources available to producers to invest in range improvements. Higher returns to labor in the wage sector may detract from adoption of many range improvements, even though many households will continue to retain their livestock as supplementary income sources. These economic considerations imply that most stockholders do not have the financial resources to invest in ranch-type improvements characteristic of more exclusive tenures, but may also lack the labor resources and interest necessary to forging workable cooperative tenure arrangements.

Though I have offered these factors as constraints to using tenure change as an instrument for pursuing development objectives, I do not want to leave the impression that tenure policy is entirely dependent upon factors beyond the influence of public policy, including land law. Deploying land tenure change in pursuit of development objectives is very much a matter of making choices among alternatives. Associated with each alternative are social benefits and costs. Trade-offs must be made. Government and the political process weigh the merits of these alternatives and use land law, along with other institutional resources, to pursue those courses of action that are finally agreed upon.

Of course, this is usually not a very neat process, and decision-making is all the more complicated by the transitional character of the social and economic environments in developing countries like Lesotho. Economic change is a dynamic process, putting severe limits on the ability of usually static legal rules to maintain relevancy.

Very little has been done in the way of thinking through provisions of the Land Act 1979 to grazing management objectives. Several questions come to mind. Do Sections providing for creation of Selected Agricultural Areas (§2) and granting of long-term leases for agricultural lands (§11) provide potentially useful instruments for promoting range management objectives? Can grazing associations be granted leases to rangeland? What sort of legal or organizational standards must associations meet in order to qualify for leases? By declaring a Selected Agricultural Area, can desirable range use standards be established and effectively enforced?

Certainly an appealing aspect of the Land Act 1979 is the measure of flexibility in allowing government to target certain tenure provisions to specific areas where local conditions may warrant change. For instance, certain rangelands might be declared Selected Agricultural Areas if it were demonstrated that the local grazing association is well established and shows promise for increasing commercial off-take.

It is my impression that the Land Act is sufficiently flexible to accommodate much of the variety of livestock production strategies in Lesotho and thereby help encourage improved range management practices across the board. This seminar provides an opportunity for officials and specialists to consider how specific aspects of the Land Act can be realistically applied in support of Lesotho's livestock development and range management policies.

A N N E X

Program : Land Act Policy Seminar  
Orange River Hotel, Quthing/Maseru  
18-22 March 1984

Sunday, 18 March 1984

6:30-7:30 p.m.

Cocktails.

Function Room, Orange River Hotel.

7:30

Dinner.

Monday, 19 March 1984

7:30-8:15 a.m.

Breakfast.

8:30-10:00

Welcome.

Topic: "A Layman's Guide to the Lesotho Land Act of 1979."

Speaker: J. Bruce, University of Wisconsin.

Topic: "Experiences from Implementation of the Lesotho Land Act 1979 in Urban Areas."

Speaker: A. Mosaase, Commissioner of Lands.

Discussion.

10:00-10:30

Tea Break.

10:30-12:45

Topic: "The Role of Land Use Planning in Facilitating Agricultural Production."

Speaker: O. Mukhtar, Land Use Planning Project.

Topic: "Land Administration Issues in Agricultural Development."

Speaker: J. Bruce, University of Wisconsin.

Discussion.

12:45-2:15 p.m.

Lunch.

2:30-4:30	Topic: "Land and Labor Issues in the Crop Sector." Speaker: D. Kanel, University of Wisconsin.
2:30-4:30	Topic: "Land Tenure Issues in Livestock Development and Range Management." Speaker: S. Lawry, University of Wisconsin. Discussion.
7:00 p.m.	Dinner.

**Tuesday, 20 March 1984**

7:30-8:15 a.m.	Breakfast.
8:30-10:15	Group Discussions.
	(1) Administration of the Land Act.
	(2) The role of the Land Act in implementing crop production programs.
	(3) The role of the Land Act in implementing livestock and range management programs.
10:15-10:45	Tea Break.
10:45-12:30	Discussions resume in the same groups.
12:45-2:00 p.m.	Lunch.
3:00	Vehicles depart from Maseru.

**Wednesday, 21 March 1984**

Public Holiday.

**Thursday, 22 March 1984**

Venue : Lesotho Agricultural College Auditorium.

8:30-10:00 a.m.	Summary: Administration of the Land Act.
10:00-10:30	Tea Break.
10:30-11:30	Summary: The role of the Land Act in implementing crop production programs.
11:30-12:30	Summary: The role of the Land Act in implementing livestock and range management.
12:30 p.m.	Closing Speech.