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ACT NO. 8 OF 2010

Land Act 2010

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ACT NO.8 OF 2010

Land Act 2010

An Act to repeal and replace the law relating to land, provide for the grant of titles to land, the conversion of titles to land, the better securing of titles to land, the administration of land, the expropriation of land for public purposes, the grant of servitudes, the creation of land courts and the settlement of disputes relating to land; systematic regularisation and adjudication; and for connected purposes.

Enacted by the Parliament of Lesotho.

PART 1

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Land Act 2009 and shall come into operation in respect of all or any provision on the date or dates as the Minister may, by notice published in the Gazette, appoint.

(2) Different commencement dates may be appointed in respect of all or any of its provisions as the Minister may, by notice published in the Gazette, appoint.

Interpretation

2. In this Act, unless the context otherwise requires –

“adjudication” means the process which establishes, recognises and confirms with certainty with respect to any particular parcel or plot of land, what rights and interests exist, by whom they are exercised and to what limitations, if any, they are subject;

“agency” for purposes of expropriation of land for a public purpose or servitudes means a Government Ministry or department or an agent named in the notice of declaration to hold the land or benefit from the servitude for a public purpose;

“agricultural land” means land used exclusively or mainly for agriculture, whether as arable, pasture, grazing, orchard or seed growing, or for fish farming, forestry (including forestations), or for the breeding or keeping of livestock, including any creature kept for the production of food, wool, silk, skins or fur;

“allocating authority” means a local authority or other agency empowered to make allocations under this Act;

“allocation” means the granting of a right to occupy and use land;

“allottee” means a person other than the holder of a lease to whom an allocation of land is made under this Act;

“alternative dispute resolution” includes arbitration, conciliation, mediation, settlement out of court and negotiation whether done in accordance with the rules and principles of the customary law or in accordance with the rules and principles of the common law or in accordance with statutory procedures or by private agreement between the parties;

“approved development plan” means a general land use plan approved in accordance with the Town and Country Planning Act 1980¹;

“Commissioner” means the Commissioner for Lands;

“consent” means the certification or authorisation by the Commissioner to the applicant to deal in or to engage in a transaction on land under sections 35 which is meant for the preservation of the integrity of the land tenure system in Lesotho;

“corrupt practice” means the offering, giving, receiving, or soliciting of, directly or indirectly, anything of value to influence improperly the actions of another party in rendering of land services;

“Deeds Registry” has the meaning ascribed to it by the Deeds Registry Act 1967;

“demarcation” means the delineation by means of a land survey of boundaries of a plot of land;

“demarcation map” means a provisional cadastral map prepared in respect of an adjudication section pending finality;

“District Land Court” means the District Land Court established under section 75;

“fraudulent practice” means any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;

“foreign enterprise” means:

(a) partnership in which any partner is a non-citizen; or

(b) a body corporate which any of the directors or shareholders is a non-citizen;

“land” includes land covered with water, all things natural or man-made growing on land, and buildings or other structures permanently affixed or attached to land;

“Land Court” means the Land Court established under section 74;

“lease” means a right granted or issued under this Act and the instrument evidencing the same;

“Local Council” carries the same meaning as Local Authority in the Local Government Act 1997;

“Minister” means the Minister responsible for land;

“notice” when used as a noun, and unless the context otherwise requires, means a written notice;

“overriding interest” means all the encumbrances, in interests, rights and powers capable of overriding first registration or subsequent registration or an allocation, without itself being registered;

“person” includes any company or association or body of persons, corporate or incorporate;

“pipeline” includes water and sewerage pipelines;

“private servitude” means a servitude created by agreement between private parties with the consent of the Commissioner;

“prescribed” means prescribed by this Act or regulations made pursuant to this Act;

“proper authority” means any public body or officer or any official or any other person empowered under any law to discharge land duties, whether as a short term or long term assignment;

“public interest” means the circumstances listed in section 51;

“public purpose” means the circumstances listed in section 50;

“public servitude” means a servitude granted by the Minister under section 53;

“registable title” means title to land which has been allocated:

- (a) for commercial or industrial purposes;
- (b) for purpose of an ecclesiastical, benevolent, charitable, or educational institution of a public character;
- (c) for purpose of a hospital, clinic or dispensary;
- (d) for such other purposes as the Minister may, by notice published in the Gazette, declare;
- (e) for residential and agricultural purposes in residential areas;
- (f) a title deed registered under the Deeds Registry Act 1967;

“Registrar” means the Registrar of Deeds;

“registration” and all derivatives of that word means registration in the Deeds Registry;

“regulations” means regulations made under this Act;

“regularisation” means-

- (a) the process of surveying, planning, adjudicating and registering the boundaries and rights associated with a parcel of land informally occupied; or
- (b) the readjustment of boundaries for the purpose of town planning;

“rural area” means an area which is not an urban area;

“sectional title” has the meaning ascribed to it under section 9;

“servitude” means a right attached to a parcel of land which is the subject of a lease either to use other land in a particular manner or to restrict its use to a particular extent;

“sporadic adjudication” means the adjudication of a specific parcel of land undertaken in isolation from any contiguous or surrounding parcels of land;

“surveyed land” means land the boundaries, area and situation of which have been surveyed to the standard required for a lease of such land to be registered;

“systematic adjudication” means the ascertainment of rights and interests of a defined area of land that consists of more than one parcel of land in which the boundaries and extent of each parcel of land within the area is demarcated and surveyed and the rights and interests therein recorded;

“unsurveyed land” means land which has not been surveyed;

“urban area” means an area defined and declared by the Minister under section 3 of the Local Government Act 1997 to be an area under the jurisdiction of either an Urban Council or a Municipal Council.

Application

3. On and after the commencement of this Act, notwithstanding any other written law to the contrary, except the Constitution of Lesotho 1993, this Act shall apply to all land in Lesotho.

PART II VESTING OF LAND

All land vested in the Basotho Nation

4. (1) Land in Lesotho is vested in the Basotho Nation and is held in trust by the King.

(2) A person shall not hold any title to land except as provided for under this Act.

(3) Where the customary law is inconsistent with this Act, this Act shall prevail.

Overriding interests

5. (1) A lease or allocation shall be subject to such of the following overriding interests as may, for the time being, subsist and affect the lease, notwithstanding that the overriding interests have not been recorded in the Deeds Register or record of allocation:

(a) water rights;

(b) any rights to mines, minerals, coal, mineral oil, or gas;

(c) any flora or fauna naturally occurring or present on the land;

(d) any paleontological or archaeological remains;

(e) rights of compulsory acquisition, sale, resumption, entry, search and user conferred by any other written law;

(f) subleases or rental agreements;

- (g) the rights of a person in actual occupation of land or in receipt of the rents and profits thereof where enquiry is made of such person and the rights are not disclosed;
- (h) any unpaid rates and other moneys which, without reference to registration under this Act, are expressly declared by any written law to be a charge upon land;
- (i) rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions; and
- (j) electricity supply lines, telephone and telegraph lines, poles, pipelines, aqueducts, canals, weirs and dams erected, constructed or laid in pursuance or by virtue of any power conferred by any written law.

(2) An overriding interest referred to under subsection (1) shall bind the title-holder whether or not the title-holder is aware of it.

Persons who may hold title to land

6. (1) The persons who may hold title to land are –

- (a) the Government of Lesotho;
- (b) a citizen of Lesotho who is not less than 18 years of age except –
 - (i) where the person is married;
 - (ii) where title is a result of a gift; and
 - (iii) where title is a result of inheritance;
- (c) a foreign enterprise for investment purposes, provided Basotho, whose land may be valued so that it may form part of the shareholding in such a partnership, form at least 20% of the membership or shareholding of the enterprise;
- (d) a company duly incorporated or registered under the laws of Lesotho, of which shareholders are Basotho and carrying on business in Lesotho;
- (e) a partnership carrying on business in Lesotho of which shareholders are Basotho;
- (f) a cooperative society, friendly society and a society or body of persons registered under the laws of Lesotho;
- (g) an association established under the laws of Lesotho; and
- (h) Commonwealth or foreign governments or public international organizations for which Lesotho enjoys similar reciprocity for purposes relevant to their activities.

(2) In the case of an unmarried person less than the age of 18 years, a duly authorised trustee or guardian shall hold the title for the period that the person is less than 18 years of age.

(3) Sub-section (1) shall not be construed as prohibiting any person disqualified under it from holding any right subsidiary to a lease, including a sub-lease or mortgage, subject to the consent of the Commissioner being obtained where so required under this Act.

(4) In considering a grant or allocation of land to a foreign enterprise under sub-section (1)(c) the following factors should be considered -

- (a) the magnitude and origin of the tangible and intangible assets;
- (b) employment generation;
- (c) strategic nature of the enterprise;
- (d) whether the business in relation to the application provides for the transfer of business expertise;
- (e) advancement of business undertaking owned by citizens; and
- (f) environment protection.

Power to grant titles vested in the King

7. The power to allocate land, to grant titles to land, to grant or allocate servitudes, to revoke or derogate from a grant, to terminate a lease or a servitude is vested in the King and shall be exercised as provided for under this Act.

Applications for allocation of land

8. Application for allocation of land shall be made in the prescribed form to the allocating authority having jurisdiction.

Sectional title

9. (1) There shall be title rights to be known as sectional titles.

(2) A sectional title shall be enjoyed in a unit within a complex or building without necessarily exclusively holding the title to land on which the complex or building is attached.

(3) An existing leaseholder may create sectional titles in accordance with the regulations.

(4) The Registrar may register leases and derivative rights in respect of sections of buildings, whether or not the section or common area is attached to land.

(5) All cadastral and registration documents in relation to sectional titles shall take into account the distinction between rights attributable to individual units and rights attributable to common areas of the building which is the subject of registration of sectional titles and shall -

- (a) divide the building into sections and common area; and

(b) provide for separate ownership in the sections, coupled with joint ownership in the common area.

(6) Upon registration, rights to individual sections may be freely transferred in whole or in part.

Presumption of joint title in marriages

10. (1) Where persons are married in community of property, either under civil, customary, or any other law and irrespective of the date on which the marriage was entered in to, any title to immovable property allocated to or acquired by anyone of them shall be deemed to be allocated to or acquired by both partners, and any title to such property shall be held jointly by both.

(2) Subsection (1) shall apply in the same manner in the case of polygamous marriages as if each household was a monogamous marriage.

(3) Transactions in relation to land shall be conducted by both spouses in monogamous marriages in community of property jointly or with the consent of another spouse, and where any document requires a signature the document shall be signed by both spouses unless they agree in writing that one spouse shall represent and sign on behalf of the other.

(4) Subsection (3) shall apply in the same manner in polygamous marriages and each of the multiple wives shall be responsible for land matters relating to her household.

(5) Where any of the spouses is for any reason unable to sign or give consent or unreasonably withholds a signature or consent where such is required under this Act, the other spouse may apply to a District Land Court for leave to perform the act without the required consent or to sign alone.

PART III ADMINISTRATION

Commissioner of Lands

11. The office of Commissioner of lands established in the public service shall continue in existence.

Functions of the Commissioner

12. (1) The functions of the Commissioner shall be:

(a) to administer land and shall include the following tasks -

- (i) establishment and maintenance of an accurate and complete database containing information on landholding in Lesotho;
- (ii) granting consents for land transactions whenever necessary;
- (iii) issuing leases to land;

(iv) maintaining a record of all land registrations in the land cadastre;
and

(b) to administer the land cadastre system, which includes the following tasks -

(i) retaining accurate information and maps on the land cadastre system;

(ii) registering land onto the cadastre on request from the title holder;

(iii) updating the cadastre with details of any consolidations, subdivisions or other changes in legal boundaries; and

(iv) providing maps and other information regarding the cadastre upon request;

(c) to resolve registration and cadastre complaints and disputes with regard to land parcel boundaries;

(d) to disseminate land information to the public;

(e) to advise allocating authorities in the performance of their duties under Parts IV and V of this Act;

(f) to levy and collect fees for services performed, and to issue bills with regard to the levying and payment of fees;

(g) to retain copies of all records relating to land;

(h) to deal in interests in land on behalf of the State and to execute all documents relating to such dealings subject to directions from the Minister;

(i) to prepare or execute or cause to be prepared and executed –

(i) all leases and other land documents to be registered by the Registrar;

(ii) deeds of transmission where a sub-lessee or mortgagee succeeds to a lease in accordance with section 37;

(iii) annexures or deeds of variation of leases;

(iv) public servitudes; and

(v) all documents and notices for publication in the Gazette by the Minister,

and retain in his custody copies of the documents listed in paragraphs (i) to (v) and of servitudes executed by him under section 34(4);

(j) to keep records of land held by Government within and outside Lesotho;
and

(k) to perform any other functions as the Minister may determine.

(2) Upon execution of any document referred to in this Act, the Commissioner shall collect from the grantee or transferee all duties which may be payable under the Stamp Duties Order 1972⁵ or the Transfer Duty Act 1966⁶ in the case of a deed of transmission and any registration fees.

PART IV

ALLOCATION IN RURAL AREAS

Application of Part IV

13. (1) This Part applies to allocation of land in rural areas.

(2) Allocation under this Part shall be in accordance with an approved development plan.

(3) The Minister may, by notice published in the Gazette, define the boundaries of a rural area.

Allocating authority

14. (1) Subject to subsections (2) and (3), the power to allocate and to revoke allocations to land shall be exercised by the local authority having jurisdiction in the area in consultation with the chief having jurisdiction in the area.

(2) Where in pursuance of the regulations the Minister has given directions to a local authority, the local authority shall act in accordance with those directions.

(3) The allocation authority shall not exercise its powers of granting title to land for commercial and industrial purposes unless it shall have first referred the application to the relevant District Council which shall for these purposes include a representative from the Ministry of Trade and Industry, a representative from the Department of Lands, Surveys and Physical Planning and a representative of the business community in the area.

(5) An allocation that is not made in accordance with this section has no effect.

Procedure for allocation in rural areas

15. (1) An allocation made under this Part, if made in respect of land which is used for agricultural and residential purposes and subject to the conditions laid down in the certificate of allocation and to the power of revocation, shall entitle the allottee to the use or to use and occupy or to allow another person to use the land for the purpose stated in the certificate of allocation for a period which -

(a) in the case of a body corporate or unincorporated may be a limited or indefinite period;

(b) in the case of an individual, may be a limited period or his lifetime but shall not endure beyond his lifetime.

(2) Subject to subsection (3), an allocation made under this part, which is not the subject of a registrable title shall be transferable even where a lease has not been obtained.

(3) Notwithstanding subsection (2), where an allottee of land dies, the interest of that allottee –

(a) shall in the case of spouses married in community of property and where there is no surviving spouse pass to the person designated by the deceased;

(b) where paragraph (a) does not apply the interests of the deceased allottee shall pass to a person nominated as the heir of the deceased allottee by the surviving members of the deceased allottee's family; or

(c) in any other case the land shall revert back to the Basotho Nation, and the relevant allocating authority shall record in the register the passing of that allocation.

(4) In the case of spouses married in community of property and where there is a surviving spouse, upon re-marriage of such spouse, the land shall not form part of any community of property of any subsequent marriage and upon the death of the surviving spouse, subsection (3) shall apply.

(5) Notwithstanding subsection (3), a minor child of a deceased allottee shall be entitled to remain in occupation of the land allocated to the deceased allottee under the assistance of a trustee or guardian until the minor attains majority age.

(6) Where the heir under subsection (3)(a) or (b) is a minor, a trustee or guardian shall be appointed in accordance with prevailing inheritance laws to represent the interests of the minor.

Leases for residential allocations

16. An allottee of residential land in a rural area may apply to the Commissioner for a lease in respect of that land.

Leases for commercial and industrial purposes

17. Where a grant of title under this Part relates to land which is the subject of a registrable title, section 29 shall apply.

Leases for agricultural purposes

18. (1) An allottee of land used for agricultural purposes may apply to the Commissioner for the issue of a lease in respect of that land.

(2) The Commissioner shall not issue a lease on the application of an allottee unless the allottee's land satisfies the conditions which the Minister may by notice in the Gazette

determines in respect of the use to which the land is put and the level of development which the land attained or is intended to attain.

(3) An allottee aggrieved by the decision of the Commissioner under this section may appeal within 3 months of the date of the decision to the District Land Court.

Continuation of existing allocations

19. Allocations of rural land made prior to the commencement of this Act shall be deemed to have been made under this Act.

Compliance with prescribed use

20. (1) The Commissioner shall not issue a lease on the application of an allottee unless the allottee's land is used in accordance with an approved development plan.

(2) An allottee aggrieved by the decision of the Commissioner under this section may seek review within 3 months of the date of the decision to the District Land Court.

(3) This section shall not apply in cases where leases are issued under an approved and gazetted land regularisation scheme.

Revocation of allocation

21. (1) An allocation may be revoked by the local authority having jurisdiction for the area at any point prior to grant of a lease for breach of terms and conditions of allocation .

(2) Before exercising its power under subsection (1), the allocating authority shall give at least 3 months' notice to the person affected to remedy the breach.

(3) The notice referred to under subsection (2) shall set out clearly the nature of the breach and the consequences of failure to remedy the breach.

Review against revocation

22. A person aggrieved by a decision of an allocating authority in exercising its powers under section 21 may seek review of the decision in the District Land Court.

Allocating authority to issue certificate

23. (1) An allocating authority, when exercising its powers of allocation, shall issue or cause to be issued to the allottee a certificate of allocation in the prescribed form.

(2) An allocating authority shall keep or cause to be kept a record of all allocations made by it and shall endorse thereon any cancellation, any revocation or any derogation resulting from the grant by the Minister of a public servitude.

PART V

GRANT OF TITLE IN URBAN AREAS

Application of this Part

24. (1) This Part applies to a grant of title in an urban area.

(2) Allocations of urban land made prior to the commencement of this Act shall be deemed to have been made under this Act.

(3) Grant of title under this Part shall be in accordance with an approved development plan.

(3) The Minister shall, by notice published in the Gazette, define the boundaries of each of the urban areas.

Allocating authority

25. (1) The power to grant title under this Part shall be exercised by an allocating authority having jurisdiction in an urban area in consultation with the chief having jurisdiction in the area.

(2) The allocating authority shall include a representative from the Ministry of Trade and Industry and from the business community when exercising its powers in respect of commercial and industrial grants.

(3) A meeting of an allocating authority concerning any application relating to land within its jurisdiction shall be convened as soon as practicable after the specified date for the lodging of applications referred to in the advertisement notice issued under section 26.

Available land to be advertised

26. (1) Where land is available for grant of title, the Minister shall, by notice in the Gazette, publicise the fact.

(2) The notice referred to in subsection (1) shall -

- (a) state that the land is available for lease;
- (b) contain a sufficient description of the land to enable its identification;
- (c) give particulars of the permitted land use, the ground rent or fee payable, where appropriate, and of the amount to be paid for the improvements, if any, made to the land; and
- (d) invite members of the public to lodge applications with the allocating authority by a specific date.

Notice by the Commissioner

27. In addition to the notice by the Minister under section 26, where land is available for grant of title the Commissioner shall by notice with the particulars appearing in section 26(2) publicise the fact in at least one newspaper circulating in the country and in the offices of the allocating authorities having jurisdiction and invite applications for grant of title.

Adverse claims on land

28. (1) A person claiming title to land affected by a notice issued under section 26(1) or 27 may, within one month from the date of publication of the notice, lodge a claim to such land before a District Land Court.

(2) The Clerk of the District Land Court shall notify the Commissioner forthwith of any claim lodged under sub section (1).

(3) Until determination of the claim by the District Land Court or the Land Court on appeal or review from the District Land Court, applications in respect of the land subject to the claim shall remain in abeyance.

Allocating authority to issue certificate relating to grant of title

29. (1) Whenever a decision to grant title under this Part has been taken, the allocating authority shall issue a certificate of grant of title in triplicate.

(2) The allocating authority shall, within 14 days of the grant of title, forward to the Commissioner the certificate referred to under subsection (1) and the Commissioner shall, within 3 months of the receipt of the certificate, cause a lease document to be prepared for execution.

(3) An allocating authority shall publish or cause to be published a notice of all allocations made, and such notice shall contain a description of the land in respect of which the grants of title were made.

(4) An allocating authority shall keep or cause to be kept a register of all allocations made by it and shall endorse any revocation or termination of a lease, as the case may be, and any derogation resulting from the grant by the Minister of a public servitude.

Application for a lease

30. (1) Whenever a person holding land other than land held under a lease upon commencement of this Act is desirous of registering it or creating or granting any interest in the land held by him, he shall lodge an application for a lease with the Commissioner for issue of a lease in the manner prescribed in the regulations.

(2) Whenever a person to whom sub-section (1) applies lodges an application for a lease, that person shall produce the following:

- (a) evidence that he is qualified to hold land under section 6;
- (b) a description of the boundaries of the land in question (by reference to a plan or otherwise); and
- (c) any one of the following documents –

- (i) a registered certificate of title issued by the Registrar of Deeds under the Deeds Registry Act 1967;
- (ii) a registered deed of transfer or a certified copy thereof if the registered copy is lost;
- (iii) an affidavit by the chief or other proper authority that the applicant lawfully uses or occupies the land;
- (iv) an affidavit by three persons resident for over 30 years in locality in which the land is situated to the effect that it is their personal knowledge that the applicant and his predecessors have been occupying and using the land for a period of at least 30 years;
- (v) a certificate of verification of title issued by the Commissioner or an allocating authority in the prescribed form;
- (vi) any other official document evidencing that the applicant is in lawful occupation of the land.

PART VI

LEASE RIGHTS AND TRANSACTIONS

Application of this Part

31. Save as otherwise provided, this Part applies to all leases and land transactions emanating from leases.

Duration of leases

32. (1) A lease shall not be granted for a term exceeding –

(a) 90 years, where the lease is for –

- (i) residential purposes;
- (ii) agricultural purposes;
- (iii) purposes of exercising a profession or calling; or
- (iv) any devotional, religious, benevolent, educational, recreational, charitable and medical purposes;

(b) 60 years, where the lease is for –

- (i) heavy industrial purposes;
- (ii) commercial or light industrial purposes, other than the sale of petroleum by retail; or
- (iii) hotel purposes;

(c) 30 years, where the lease is for –

- (i) purposes of sales of petroleum or oil; or
- (ii) purposes of wholesale storage of petroleum or oil.

(2) A lease shall not be granted for a term of less than 10 years.

(3) On application by a lessee made not later than 6 months before expiry of the term of the lease, the lessee shall be entitled to the grant of a new lease on terms set by the Minister on condition that the land or part thereof is not required for any public purpose.

Conditions of a lease

33. (1) A lease shall be subject to such terms and conditions as may be prescribed in the regulations.

(2) Where a lessee is a Commonwealth or foreign government or an international organisation, and a statutory condition is inconsistent or incompatible with any agreement with such government or organization, that condition shall not apply.

Application for servitudes

34. (1) Where a person wishes to enjoy the benefit of a servitude -

(a) over land which is not the subject of a lease; or

(b) over land subject to a lease;

such person shall, in both cases, apply to the Commissioner for the creation of a servitude.

(2) Where the Commissioner allows a creation of a public servitude, the Commissioner may attach such conditions to it as the Commissioner may think fit.

(3) A servitude created under this section shall attach to leased land for the duration of the lease in whose favour the servitude is created, unless earlier terminated.

(4) Where subsection (3) applies, the instrument creating the servitude shall be prepared at the instance of the lessee in whose favour the servitude is created but shall be executed by the Commissioner.

(5) A creation of private servitudes between 2 or more parties shall be subject to registration in the Deeds Registry after approval in writing by the Commissioner.

Rights of a lessee

35. (1) A lessee shall be entitled:

(a) subject to any statutory conditions or other conditions attaching to the lease

—

(i) to the exclusive possession of the land leased;

(ii) to encumber the land leased by mortgage;

(iii) to provide for inheritance of the lease in the event of death, except that where such disposal is to a non-citizen, a lessee shall obtain the Commissioner's consent;

(iv) to surrender the land leased;

(v) to donate his interest, but where a donation is to a non-citizen a lessee shall obtain the Commissioner's consent; and

(b) subject to obtaining the consent of the Commissioner –

(i) to dispose of his interest;

(ii) to sub-let the land leased;

(iii) to create private servitudes; or

(iv) to deal with his interest in such other manner as the law may permit.

(2) In the event of a lessee dying intestate –

(a) where the lessee qualifies, the disposition of his interests in land shall be governed by the written law relating to succession; or

(b) where the lessee does not qualify under paragraph (a), section 15(4) and (5) shall apply as if he were an allottee and the Commissioner shall request the Registrar of Deeds to endorse any registered lease or other registered document of title accordingly.

(3) Nothing in this section shall be construed as affecting the lessor's right to terminate due to breach of any condition or the compulsory sale under any law or by a mortgagee of land held under a lease.

Consents

36. (1) The Commissioner shall have power to grant consents upon payment of a prescribed application fee and may delegate that power whenever such consent is required under this Act.

(2) In every case where the Commissioner withholds consent the reason for such refusal to grant consent shall be given in writing.

(3) An appeal against the Commissioner's decision shall lie to the District Land Courts.

(4) A review against a decision of the Commissioner to withhold consent shall lie to the District Land Court.

(5) Consent may be given in writing specifically or generally.

(6) Where consent is given –

(a) specifically, it may be given subject to terms and conditions included in the regulations; and

(b) generally, the Minister shall, by notice published in the Gazette, publish the terms and conditions in the regulations under which the general consent is given.

(7) The decision of the Commissioner regarding an application for specific consent shall be communicated to the applicant within 30 days from the date of lodging the application.

(8) Where the Commissioner has failed to comply with subsection (7), the applicant may appeal to the Minister who shall direct the Commissioner to communicate the decision within the time to be determined by the Minister.

Termination of lease for breach of condition

37. (1) A lease may be terminated by the Minister by giving at least one month's notice to the lessee where the lessee is in breach of any conditions of the lease and has failed to comply with a notice from the Commissioner calling upon him to remedy the breach within a reasonable specified period of time.

(2) Notice of termination of a lease shall be served by the Commissioner upon the lessee, sub-lessee, mortgagee or occupant of a parcel who benefits from a servitude burdening the leased land and any other individual or entity with an interest in the land.

(3) Publication of the notice in the Gazette or a national newspaper shall constitute sufficient notice to interested persons not appearing in the Deeds Register.

(4) A mortgagee of a lease subject to termination under this section shall have the right to demand the disposal of the lessee's interest and, if he wishes to exercise this right, shall, upon receipt of the notice of termination, inform the Commissioner in writing before the termination date specified in the notice.

(5) Subject to any mortgagee exercising the right of disposal under subsection (4), a sub-lessee, who has not condoned or been a party to the breach of conditions referred to in subsection (1) and who is willing to acquire the lessee's interest at the value assessed under subsection (8) shall, before the date specified for termination of the lease apply to the Commissioner for the transfer of the lessee's interest to him.

(6) Where a lessee's interest is disposed of pursuant to subsection (4) or where a sub-lessee's application for the transfer of a lease under subsection (5) has been approved by the Commissioner, the purchaser or sub-lessee, as the case may be, shall, forthwith, succeed to the lease without any conveyance, assignment or transfer save that the Commissioner shall prepare and execute a deed evidencing the transmission of the lease to the purchaser or sub-lessee and shall cause the same to be registered and the original lease to be endorsed as "transmitted by operation of law" by the Registrar.

(7) Where no person succeeds to the lease under sub section (5) and (6) and the lease is accordingly terminated, the lessee's interest in the land shall revert to the Basotho Nation.

(8) Subject to any claim by a mortgagee, the lessee whose lease is terminated under this section shall be entitled to the market value compensation for improvements lawfully made by him on the land leased.

(9) Where there is a dispute regarding the value of improvements made, such dispute shall be determined by the District Land Court having jurisdiction.

Rights of lessee upon expiry of lease

38. (1) A lessee shall, at the expiry of the term of the lease, be entitled to the first option for a new lease over the land.

(2) Where, except at the instance of a lessee, a new lease is not issued to the lessee, compensation shall be payable to the lessee for improvements on the land at the time of expiry of the lease.

Rights of lessee upon surrender of lease

39. (1) A lessee may, using the prescribed form, surrender his lease in part or as a whole to the Commissioner, subject to such conditions as the Commissioner may prescribe, and upon such surrender he shall cease to be entitled to any rights enjoyed by virtue of the lease.

(2) A surrender of a lease which in fact or by reasonable deduction has as its purpose or effect the fraudulent, dishonest or unjust deprivation of a derivative right shall be invalid.

Surrender of lease not to extinguish obligation for payments

40. (1) A person who surrenders a lease shall remain liable to pay all premiums, ground rent, taxes, municipal rates, fees, interests and loans taken out on the security of the lease and any other dues owing and due for payment at the time of the surrender of the lease.

(2) A person who surrenders a lease shall be liable for breach of conditions subject to which the lease was issued and for breach of any rules relating to the use of that land which came into force during the occupation of that land for which the person was responsible up to the time of the surrender of the lease.

Derivative rights to revert to State upon surrender of lease

41. A derivative right granted out of a lease which is surrendered under this Act shall, as from the date of the surrender, be held by the State on the same terms and conditions as it was held by the person who has surrendered the lease.

Change of use

42. (1) Where land has been granted or allocated for a specific purpose and the lessee or allottee wishes to convert the purpose to another which is consistent with physical or town and country planning in relation to the area in which the land is situate, he may apply to the

Local Council having jurisdiction for a change of use, and, if granted, in respect of land held under a lease, to the Commissioner for a variation of the lease accordingly.

(2) The Minister may agree to variation on such terms and conditions as are necessary, but no lease so varied shall extend for a term exceeding in aggregate that appropriate to the purpose to which it is converted.

(3) Any variation of a lease under this section shall be evidenced by a document which may be an annexure to the original lease or a new lease as the Commissioner may deem appropriate and shall be subject to such stamp duty as may be payable on the lease as varied and to registration in the Deeds Registry.

Abandonment of land

43. (1) Agricultural land shall be taken to have been abandoned where –

- (a) The lessee or allottee has failed to cultivate the land for at least 3 consecutive years;
- (b) The lessee or allottee has abused the land through overgrazing; and
- (c) The lessee or allottee has refused or is unable to combat soil erosion.

(2) Any land other than agricultural land shall be taken to have been abandoned where –

- (a) The lessee or allottee has failed to develop the land within 5 years of allocation or granting of a lease;
- (b) The lessee or allottee of developed land has vacated and neglected the land for at least a period of 10 years and the land has fallen into a state of dilapidation that it has become a danger to the health and safety of the neighbours;
- (c) The lessee or allottee of developed land has vacated and neglected the land for at least a period of 10 years and neither the chief of the area or any other person knows of his whereabouts; and
- (d) The allottee has formally declared to the allocating authority his intention to renounce his title to land.

(3) Where it appears to the Commissioner, the allocating authority or the chief of the area that land has been abandoned, the allocating authority shall carry out an investigation and submit a report to the Minister who shall determine whether the land qualifies as an abandoned land in terms of subsection (1) or (2).

(4) Where the Minister has made a determination on the basis of the report submitted under subsection (2) or a report of any further investigations that land appears to

have been abandoned, the Minister shall publish in the Gazette and shall cause the Commissioner or allocating authority, as the case may be, to publicise in a newspaper that circulates in the country a notice of abandonment which shall -

- (a) state the location of the land;
- (b) state the boundaries of the land;
- (c) set out briefly the grounds on which the Minister intends to rely in determining that the land has been abandoned; and;
- (d) set out the time, being not less than 90 days from the date of the publication of the notice, within which a person who claims to have an interest in the land may show cause why the land should not be declared to be abandoned.

(5) Where, after the expiration of 90 days under subsection (3) the Minister determines that the land has been abandoned, the Minister shall publish in the Gazette a declaration of abandonment and revocation of title and shall send a copy of that declaration to the lessee or allottee at his last known place of abode and last known address, to the chief of the area and the allocating authority having jurisdiction.

(6) Where land has been declared to have been abandoned, and title has been revoked, such land shall revert back to the Basotho Nation and shall be subject to re-allocation in terms of this Act.

(7) Notwithstanding subsection (1)(a) a lessee or allottee may cede the rights on the land to an agricultural scheme established by the Regulations published by the Minister responsible for agriculture in consultation with the Minister responsible for land.

PART VII

LANDHOLDING CEILINGS

Limitations on size of landholding

44. (1) The following limitations on size of landholding shall apply –

- (a) a person shall not be allocated land or granted a lease in respect of an area or plot of land exceeding such ceiling on landholdings as the Minister may prescribe in the regulations;
- (b) a person shall not be entitled to occupy or hold under one or more leases or certificates of allocation land exceeding such ceiling as the Minister may prescribe in the regulations; and

(c) a person shall not be entitled to occupy or hold under one or more leases or certificates of allocation land in excess of such number as the Minister may prescribe in the regulations.

(2) Notwithstanding subsection (1), a person who wishes to hold land in excess of the limitations set out in that subsection shall apply to the Minister.

(3) Where the Minister consents under subsection (2), the Minister shall, by notice published in the Gazette, furnish reasons for the consent together with the name of the person to whom the consent has been granted.

(4) Ceilings on landholding for the developer of sectional titles shall be based on the land and not on the number of sections.

(5) This section shall not apply to land which was lawfully granted or allocated before the coming into operation of this Act.

PART VIII

GOVERNMENT ACQUISITIONS

Allocations to Government

45. Allocations may be made to Government in accordance with the provisions of Part IV and Part V for such purposes as the Commissioner may specify.

Temporary occupation of land by Government

46. (1) The Government or its agency may apply for temporary use of land if such land is required for temporary use for a public purpose: Provided that such temporary use shall not exceed a period of 5 years.

(2) Where the land is required for more than 5 years, the Government shall apply for a lease in respect of the land.

(3) Where land is occupied under subsection (1), the Commissioner shall issue a certificate of use in favour of the Government or its agency.

Acquisition of leases by Government

47. Except as provided for in Part IX, every acquisition of land or servitudes by the Government from a lessee or lessees shall be by private contract.

PART IX

ACQUISITION AND EXPROPRIATION OF LAND FOR PUBLIC PURPOSE

Declaration of land for public purpose or public interest

48. Whenever it appears to the Minister that land which is unallocated is required for public purpose or public interest, the Minister after consultation with the allocating authority having jurisdiction shall by notice in the Gazette declare the land to be so required.

Expropriation of land for public purposes

49. (1) Whenever it appears to the Minister that any land which is not held under a lease is required for public purposes or the creation of servitudes for public purposes, the Minister shall, after consultation with the local authority having jurisdiction, by notice in the Gazette, declare the land to be so required.

(2) Whenever it is necessary in the public interest to set aside for public purposes land held under a lease or to create a public servitude, the Minister shall, after consultation with the local authority having jurisdiction and the lessee, by notice published in the Gazette declare the land to be so required.

(3) Prior to the publication in the Gazette of a declaration notice the Minister shall cause a copy of the notice to be served upon any person known to be in occupation of, or to have an interest in, the land.

(4) A declaration notice by the Minister under this section shall be published in the Gazette and shall contain such particulars as shall be set out in the regulations and shall invite any person having any claim in the land to submit his claim to the Minister.

(5) On publication in the Gazette of the declaration notice, interests in or affecting the land to which the notice relates shall cease to subsist, a lessee's interest in the land shall revert to the State, and the Registrar shall cancel the registration of all deeds evidencing those interests.

(6) On publication of a declaration notice relating to a public servitude a lessee's rights as affected by the declaration and subject to compensation where necessary shall cease to apply.

(7) Notwithstanding subsection (4), a lessee, or lawful occupier, of the land subject to a declaration notice may remain in occupation of the land for a period not exceeding 3 months from the date of settlement of compensation.

Public purpose or public use

50. (1) The following shall constitute circumstances under which land may be expropriated for public purposes -

- (a) providing roads, aerodromes, railways, canals, water supply, drainage, sewerage;
- (b) providing social services including but not limited to schools, hospitals, hostels, cemeteries, playing fields, parks, swimming baths, nature reserves, low income housing;
- (c) water conservation by means of watersheds, water catchment areas, reservoirs;
- (d) land conservation through afforestation, and erosion prevention;

- (e) providing Government housing for; residences, offices, storage; research and agricultural stations; and defense and security requirements;
- (f) furthering sport, culture, industry and tourism, including the provision of hotels;
- (g) providing any public utility service;
- (h) alleviation or eradication of consequences of natural disaster; and
- (i) providing any service which is in the public interest or would enhance or promote national resources and prosperity.

Expropriation and acquisition of land for the public interest

51. (1) Where it appears to the Minister in the public interest that land is required for purposes of development, the Minister may, after consultation with the relevant allocating authority and by notice published in the Gazette, declare any area of land for development.

(2) The following shall constitute circumstances under which land may be expropriated in the public interest –

- (a) setting aside land for the development of agriculture by modern farming techniques;
- (b) construction or development of a new residential, commercial or industrial area; or
- (c) development or reconstruction of existing built-up area.

(3) Where expropriation or acquisition relates to a development scheme to be sponsored and operated wholly or partly by a person other than the State or a parastatal organisation, the Minister may grant to that person a lease of the whole or part of the area, as the case may be, subject to conditions that –

- (a) The developer shall, where specifically directed by the Minister, make provision under the scheme for:
 - (i) sub-division of the land
 - (ii) transfer to a former lessee or allottee, on terms to be approved by the Minister, of his interest in any sub-division previously held by such former lessee or allottee; and
 - (iii) subject to the prior rights of former lessees or allottees, subleases or transfers of his interest in other sub-divisions to other persons;
- (b) If the developer fails to provide substitute rights to a former lessee or allottee, he shall pay compensation to such former lessee or allottee.

Principles behind expropriation

52. An expropriation under sections 49 and 51 shall be subject to the following principles:

- (a) the Government shall first negotiate with the holder of land rights which are the subject of potential expropriation and resort to expropriation only upon failure of the negotiations due to the unreasonableness of the holder of the rights to the land;
- (b) prior adjudication of the land proposed for expropriation and other lands, whether adjoining or not as may be affected by the expropriation;
- (c) payment or settlement of compensation as provided for in Part X of this Act and under the regulations;
- (d) a party whose land rights are the subject of expropriation by the Government shall have the right to seek review from the Land Court against any decision of the Government in this regard.

Public servitudes

53. (1) Whenever the Government, a Local Council, a statutory corporation or undertaker requires a public servitude over any land the subject of a title under this Act for the construction of public utility works or the supply of public utility services, the Minister may grant it to the body so requiring the public servitude and that body shall, subject to section 54, be liable for any compensation arising from the grant.

(2) Where the Minister has granted a public servitude over land allocated under Part IV, which is not the subject of a title, the Commissioner shall so inform the allocating authority having jurisdiction which shall make the appropriate derogation entry in the register but failure on the part of the allocating authority to make the entry shall not affect the validity of the grant of the servitude.

Compensation for public servitudes

54. (1) No compensation shall be payable under section 53(1) where -

- (a) the land which suffers damage has been either replaced or restored;
- (b) movable property damaged has been either replaced or restored; or
- (c) the works constructed do not interfere substantially with the enjoyment of land.

(2) Nothing in subsection (1) shall be deemed to preclude the payment of compensation for damage to crops on the land affected by the exercise of the servitude.

(3) Where the exercise of a public servitude over land subject to a lease interferes substantially with the enjoyment of the land, the lessee shall have the right, in lieu of any

compensation which he may claim under subsection (1), to request the Minister that the whole of the land leased be set aside for public purposes.

Excess expropriated land to revert to State

55. (1) Whenever it appears to the Minister that any land held by the Government or agency of the Government by operation of Part VIII and IX of this Act is surplus to the requirements for which it was acquired or allocated or permitted to be used, the Minister may, by notice published in the Gazette, revoke the expropriation declaration relating to the land, and such land shall revert to the State unless within 90 days from the date of revocation, the original title holder, having been given notice by the Commissioner, expresses interest to be allocated the land.

(2) Where land acquired under Part VIII and IX ceases to be required by the Government, the Minister shall publish a notice to that effect in the Gazette and the land shall revert to the State.

(3) No land acquired under Part VIII and IX of this Act may be used for a purpose other than the one declared under section 48, 49 and 51 without re-publication of the declaration notice.

(4) Section 43 shall apply to land acquired under Part VIII and IX as if the acquisition was by a private person.

PART X COMPENSATION

Deprivations of land to be compensated for

56. In all cases in which the implementation of this Act results in compulsory acquisition of property, the person deprived of such property shall be entitled to compensation at market value.

Obligation for compensation

57. The obligation to compensate shall lie with the body conducting the expropriation.

Period for claiming compensation

58. (1) Notwithstanding an adjudication made in terms of section 52(b), any person who claims to have an interest which, by reason of section 49(1) and 51(1) ceases to subsist may, if not already approached by the Minister or the relevant Government agency, within 3 months from the date of publication of the declaration notice, claim compensation.

(2) In assessing compensation, regard shall be had -

- (a) to the value of the property as certified by an odd number of valuers one of whom shall be the Government valuer, having regard to the present and replacement value; and

(b) to the expenses incidental to any necessary change of residence or of place of business.

Conflicting claims

59. Where conflicting claims are submitted to the Minister pursuant to section 58(1), the Minister shall, within one month from the last day of the period prescribed in section 58(1), refer the case to a District Land Court having jurisdiction in the area where the land in question is situate.

Compensation must precede expropriation

60. Compensation shall, in all cases of compulsory acquisition, be made before conclusion of expropriation.

PART XI

REGULARISATION AND ADJUDICATION

Scheme of regularisation

61. The Commissioner shall, after consultation with chief and residents or occupants of the area selected for regularisation, prepare a draft scheme of regularisation in accordance with the regulations and in conjunction with Local Councils within whose jurisdiction the proposed scheme area is situate or most closely contiguous to where the regularisation area is situate.

Declaration of regularisation area

62. Upon Ministerial approval of the scheme of regularisation the Minister shall, by notice published in the Gazette, declare the area to which the scheme applies.

Implementation of a scheme of regularisation

63. The Commissioner shall be responsible for the implementation of a scheme of regularisation, but may delegate the whole or any part of the implementation of such scheme to the Local Council where the regularisation area is situate or most closely contiguous to where the regularisation area is situate.

Findings of regularisation to supersede previous records

64. In all matters of fact relating to the size or dimensions of the land in a regularisation area, the findings of the scheme of regularisation shall supersede all previous records.

Adjudication to precede registration

65. Every registration of a lease under this Part shall be preceded by an adjudication of the rights relating to that land.

Systematic adjudication

66. Systematic adjudication shall be carried out in conformity with the regulations for adjudication of interests in land and the criteria under section 30(2) or any other criteria that may be determined during adjudication shall apply in the determination of rights.

Registration period

67. (1) At the conclusion of the adjudication and regularisation, an adjudication record shall be sent to the Commissioner for issuance of a lease and subsequent forwarding of the lease and the adjudication record to the Registrar for registration of a lease.

(2) The Registrar shall, within 60 days of receiving a lease and the adjudication record, register a lease.

Presumption of sporadic adjudication

68. All land for the time being not under systematic adjudication shall be deemed to be under sporadic adjudication.

Systematic adjudication to prevail over sporadic adjudication

69. Where the Minister, pursuant to the regulations, publishes a notice in the Gazette declaring an area to be an adjudication area for purposes of systematic adjudication, then section 68 shall automatically cease to have effect in respect of all land defined in the said notice.

Tenants may be compensated during regularisation

70. Where an occupant of land has rented out the land or developments to third parties, such third parties may be entitled to compensation for any deprivation arising from the regularisation process, provided that the compensation shall be a reduction on the quantum of compensation due to the occupant.

Land acquisition and redistribution in compliance with planning laws

71. The State may re-align land for purposes of compliance with the zoned use or for the better planning and layout of the land, including pooling and sharing of the same, and the creation of servitudes of necessity.

Appeals against regularisation

72. A person who is aggrieved by a determination of a regularisation or adjudication process may, within 30 days of the publication of the adjudication record and demarcation map, seek review from the District Land Court against that determination.

PART XII

CONFLICT RESOLUTION

Establishment of Land Courts

73. The following courts are established with jurisdiction, subject to the provisions of this Part, to hear and determine disputes, actions and proceedings concerning land:

- (a) the Land Court; and
- (b) District Land Courts.

The Land Court

74. The Land Court shall be a Division of the High Court.

District Land Courts

75. The Subordinate Courts are the District Land Courts for the purposes of this Act.

Rules

76. The Chief Justice may, in consultation with the Minister responsible for land, make rules for the practice and procedure in the land courts.

PART XIII

LAND REVENUE

Ground rent

77. (1) There shall be payable ground rent in respect of leases, unless a lessee is exempted from such ground rent as the Minister may, by notice published in the Gazette, determine.

(2) Ground rent shall be paid in such instalments and at such intervals of time during the year as the Commissioner shall determine or as is provided in the lease.

(3) Ground rent shall be paid to the Commissioner or an authorized officer at the office of the Commissioner or at any other place which the Commissioner determines or which may be prescribed.

(4) In assessing the amount of ground rent, the Commissioner shall have regard to –

- (a) the area and location of the land which is the subject of the lease;
- (b) the use of land permitted by the lease;
- (c) the value of land as evidenced by the assignment of leases and other dispositions of land in the market in the area where the lease has been granted.

(5) A citizen of Lesotho shall be entitled to the lease free of ground rent which he leases and occupies for his own residential use.

(6) Subsection (5) shall not apply to subsequent residential leases held by a person referred to in that subsection.

Development charges

78. (1) The Minister may prescribe development charges, being charges for the construction and the provision of services, including roads, foot-paths, main drainage, street lighting and any other charges which are not prescribed under any other law, which shall be calculated in relation to the area of land held by the lessee.

(2) The Minister may waive or reduce any prescribed development charges where that is considered to be in the public interest.

Allocation premiums

79. (1) The Minister may, on the advice of the allocating authority having jurisdiction and by notice published in the Gazette, determine areas in which premiums shall be payable in respect of all allocations, including grants of title.

(2) The premium referred to under subsection (1) shall be payable in such manner as may be prescribed in the regulations.

PART XIV CEMETERIES

Cemeteries

80. (1) An allocating authority shall in consultation with the representative of the Ministry responsible for Public Health and the chief having jurisdiction, designate places or sites to be used as cemeteries.

(2) Save as provided in section 72(2) of the Public Health Order of 1970⁷, it shall be obligatory to bury the dead in cemeteries and it shall be unlawful for a person to bury the dead in any place other than a place designated by the allocating authority as a cemetery.

PART XV
MISCELLANEOUS

Offences

81. (1) A person who does anything contrary to this Act commits an offence and shall, on conviction, be liable to the punishment set out in subsection (2).

(2) Without prejudice to the generality of subsection (1), a person who –

- (a) grants a title of land contrary to this Act;
- (b) conducts a transaction relating to land contrary to this Act;
- (c) carries out a transaction without the consent of the Commissioner where such consent is required;
- (d) save as under section 42, converts land granted for a specific purpose;
- (e) occupies land or aids or abets the occupation of land by another person without proper authority,

commits an offence and shall on conviction be liable to a fine of M5,000 or 5 years imprisonment or both.

(3) A transaction carried out contrary to this Act is of no effect.

Powers of the Court

82. (1) Where the Court having jurisdiction has convicted a person under section 81(1) or (2), the Court may –

- (a) order the person to vacate the land forthwith or within a specified period of time; and
- (b) order the person or any other authority to demolish and remove within a specified period of time any structure or building work thereon.

(2) Where the order made under subsection (1)(a) is not complied with, an officer of the court may seek the assistance of the police or other relevant authority in the area concerned in evicting the convicted trespasser from the land.

(3) Where a person convicted under subsection (1) or (2) has failed to comply with an order made under subsection (1)(a), and any person or body has incurred any expenses in executing the order, such expenses may be recovered from the person against whom the order was served.

(4) For the purposes of this section, occupying land without proper authority includes remaining in occupation after the date on which the land should have been vacated as a consequence of a termination notice, a revocation notice or any other notice to vacate given under this Act.

Additional offences

83. (1) A person who –

- (a) knowingly makes a false statement, orally or in writing, in connection with a disposition or other transaction affecting land or any other matter arising under this Act;
- (b) knowingly gives false information or makes a false statement, either orally or in writing, in connection with a call for information or in connection with an investigation into the commission of an offence under this Act;
- (c) knowingly gives any false evidence either orally or in writing in connection with the implementation of this Act; or
- (d) fraudulently procures –
 - (i) the registration or issue of a lease or any other document or instrument relating to land;
 - (ii) the making of an entry or the endorsement of a matter on the document or instrument referred to in subparagraph (i); or
 - (iii) the cancellation or amendment of any of the aforesaid documents or instruments or entries or endorsements;
- (e) fraudulently alters, adds to, erases, defaces, mutilates or destroys a document or instrument relating to land or an entry on or endorsement of the document or instrument; or
- (f) suppresses or conceals any material, document, fact or matter from a public officer or an officer of a local authority or an officer of any body exercising powers under this Act or assists or joins in so doing,

commits an offence and is liable on conviction to a fine of M10,000 or imprisonment for a term of 10 years or to both.

(2) A person who, without reasonable excuse, fails to produce a document as required by a notice served on him under this Act commits an offence and is liable on conviction to a fine of M500 or imprisonment for a term of 5 months or to both.

(3) A person who fails to vacate land after the expiry of the period specified in an order to vacate land issued by the court having jurisdiction and served on him to vacate that land

commits an offence and is liable on conviction to a fine of M1,000 or imprisonment for a term of one year or to both.

(4) A person who wrongfully obstructs or encroaches on to a public servitude and who does not within the time specified in an order served on him or where he has appealed against the order, within the time specified in the order after the hearing of the appeal where the court has rejected that appeal, remove that obstruction or cease that encroachment commits an offence and is liable, on conviction to a fine of M1,000 and in the case of a continuing offence, to an additional fine of M500 for every day during which the offence shall have continued.

(5) A person who wilfully and unlawfully –

- (a) delays;
- (b) obstructs;
- (c) hinders;
- (d) intimidates; or
- (e) assaults,

a person authorised under this Act to enter and inspect any land in the lawful exercise of the power in that behalf commits an offence and is liable on conviction to a fine of M1,000 or to a term of imprisonment of one year or to both the fine and imprisonment.

(6) A person who corruptly accepts or obtains or agrees to accept or attempts to obtain from any person, either for himself or herself or any other person, any gift or consideration or service as an inducement or reward for doing or omitting to do or for having done or omitted to do any act or make any official statement which it is or was his duty to do or to make or refrain from doing or making under this Act or for showing or refraining from showing favour or disfavour to any person in relation to any matter referred to in this Act commits an offence and is liable on conviction to a fine of M10,000 or to a term of imprisonment of 10 years or to both.

(7) A person who corruptly gives or agrees to give or offers a gift or consideration or service as an inducement or reward for doing or forbearing to do or for having done or forborne to do an act in relation to a duty imposed upon a public officer, an officer in the employ of a local authority, or a person exercising functions under this Act commits an offence and is liable on conviction to a fine of M10,000 or to a term of imprisonment of 10 years or to both.

(8) Where a court has convicted a person of an offence under this section and the commission of the offence enabled the person to obtain or retain or regain an interest in land which he would otherwise not have been able to obtain, retain or regain, the court may, in addition to a

punishment provided for by this section imposed on that person, make an order in relation to that interest in land so obtained, retained or regained by that person as appears to the court necessary to ensure that such person does not profit by the offence of which he has been convicted and without prejudice to the generality of this provision, the order may direct –

- (a) the Commissioner in the case of a lease and any derivative interest from such lease to commence proceedings to –
 - (i) terminate the lease;
 - (ii) terminate any derivative interest in land; or
 - (iii) terminate a servitude;
 - (b) the Commissioner to take such other action as the court may deem fit;
 - (c) the Registrar to cancel an entry in the register which has been obtained by virtue of or on account of the offence;
 - (d) a person conducting an adjudication to cancel an entry in the adjudication record which has been obtained by virtue or on account of the offence;
- or

such person to make restitution to a person who has suffered loss by virtue of or on account of the offence, including taking all necessary action to transfer to the person any interest in land obtained, retained or regained by such offence from that person, and the order may be made subject to such conditions as the court may consider just and reasonable.

Corrupt transactions

84. (1) Nothing in this Act shall be construed to give any legal effect to any transaction or issue of any document purporting to confer rights to land on a person which transaction or document was obtained or induced by a corrupt or fraudulent action, on the part of any public officer, whether that officer was directly or indirectly involved in that transaction.

(2) For purposes of this section, a transaction shall be taken to be affected or tainted by corruption when a party to or involved directly or indirectly in the transaction in respect of which it is alleged that an action was corrupt is convicted of corruption.

(3) A person occupying land which he obtained as a consequence of participating in any of the transactions referred to under subsection (1) shall be liable to forfeit that land to the State without any entitlement to compensation whatsoever.

(4) A person occupying land as a consequence of a corrupt transaction shall be and shall always have been obliged to comply with all the terms and conditions of the transaction and of the lease, or other right to occupy the land acquired as a result of that transaction as if it had been a valid transaction.

Void transactions and titles

85. Any transaction or dealing in land and any title acquired pursuant to any transaction or dealing carried out contrary to this Act shall be of no effect.

Common law remedies not affected

86. Nothing in this Act shall take away or interfere with the right of the State or a person to recover, under common law, compensation or damage for injury caused by an offence committed under this Act.

Savings and transitional provisions with respect to transactions

87. (1) Unless the contrary is specifically provided for in this Act, any right, interest, title, power or obligation acquired, accrued, established, coming into force or exercisable before the commencement of this Act shall continue to be valid in so far as it is consistent as if it complied with the law applicable to it immediately prior to the commencement of this Act.

(2) Unless the contrary is specifically provided for in this Act or the circumstances are such that the contrary is to be presumed to be the case, where a step has been taken to create, acquire, assign, transfer or otherwise execute a disposition, any such transaction shall be continued in accordance with the law applicable to it immediately prior to the commencement of this Act.

(3) All transactions to which subsection (2) applies and which are not completed within 2 years of the coming into effect of this Act shall be deemed null and void and shall be subject to recommencement under this Act.

(4) All actions leading to the grant of a lease stipulated to be done under any law prior to the coming into operation of this Act not yet commenced at the coming into operation of this Act shall be commenced under the provisions of this Act.

(5) An instrument executed before the commencement of this Act where a disposition permitted under this Act is completed may be presented for registration in the deeds register and –

(a) the question whether the instrument so presented is to be registered shall be determined by the Registrar by reference to the law in force at the time of its execution; and

(b) subject to paragraph (a), this Act shall apply to such instrument as if it had been executed after the commencement of this Act.

Savings and transitional provisions with respect to rules, orders, etc.

88. Any rule, order, regulation, direction, notice, notification, condition, permit or other administrative act made, given, issued or undertaken before the commencement of this Act

under any law repealed or amended in a material particular by this Act shall, if it could have been made, given, issued or undertaken under any corresponding provision of this Act, continue in force and have the like effect as if it had been so made, given issued or, as the case may be, undertaken.

Transitional provisions with respect to judicial proceedings

89. Where a case relating to land was pending before the High Court or Subordinate Court prior to the coming into effect of this Act, the case may continue to be heard by the High Court or Subordinate Court until completion and the ruling emanating therefrom shall have the same effect as if made after the coming into effect of this Act.

Authority derives from Minister

90. Every power, function or duty exercised under this Act shall be deemed to be done under the authority of the Minister in accordance with section 109 of the Constitution of Lesotho.

Appeals

91. An appeal shall lie to the Minister against any administrative decision made under this Act.

Regulations

92. (1) The Minister may, by notice published in the Gazette, make regulations prescribing anything which may be prescribed under this Act and generally for the better carrying into effect of the purposes and provisions of this Act and removing any difficulties occasioned by the coming into operation of this Act.

(2) The Minister may, without prejudice to the generality of subsection (1), make regulations -

- (a) for the procedure of allocation of land;
- (b) prescribing terms and condition under which a foreign enterprise for investment purposes shall be hold land;
- (c) defining the use purpose of land;
- (d) for the administration and transaction of sectional titles;
- (e) prescribing the terms and conditions of leases and the manner in which leases are to be executed;
- (f) prescribing the procedure for application for a lease;
- (g) prescribing the land holding ceilings;
- (h) for prevention of speculative dealings in land;

- (i) prescribing the conditions and circumstances under which the disqualification imposed upon companies and partnerships under section 6 may be waived;
- (j) for terms and conditions under which consents shall be granted;
- (k) for compensation arising from operation of this Act;
- (l) in respect of ground rents, fees and calculations thereof, and the circumstances under which personal levies may be attached to ground rents payable by particular lessees;
- (m) prescribing terms and conditions under which ground rent may be waived;
- (n) in relation to notices, orders and calling of information under this Act;
- (o) for entry and inspection, at reasonable times, of leased premises by the Commissioner, a local authority representative or other authorised persons;
- (p) prescribing the forms and schedules for the better carrying into effect of this Act;
- (q) prescribing procedures for declaration of land for public purpose and public interest;
- (r) for expropriation of land for public purposes and in the public interest; and
- (s) as the Minister considers necessary for the effective implementation of this Act.

Repeal

93. The Land Act 1979 is repealed.

NOTE

1. Act No. 11 of 1980
2. Act No. of 1968
3. Act No. 12 of 1967
4. Act No. 6 of 1997
5. Act No. 5 of 1972
6. Act No. 7 of 1966
7. Order No. 12 of 1970
8. Act No. of 1979

GOVERNMENT NOTICE NO. 45 OF 2010

Statement of Objects and Reasons of the Land Act, 2010

**(Circulated by the Authority of the Minister responsible for Local
Government and Chieftainship Affairs)**

1. The proposed reform

The Land Act 2010 proposes the consolidation of the Land Act 1979 amendments and related laws. It also introduces reforms in land administration and land tenure security with a view to promote efficiency in land services and enhance use of land as an economic asset in Lesotho. In a nutshell the Act repeals the 1979 Land Act.

2. The Current Position

Research, consultations and practice have proven that the land tenure system and its administration under the 1979 Land Act are not responsive to the economic needs of the country. It is perceived to be costly, slow, inefficient, restrictive and not transparent. The end results are that registered land rights are not provided to the majority of citizens and this hampers investments and creates dysfunctional land markets. The current tenure system does not also bring much revenue to the state. Furthermore, the following have been found to be some of the shortcomings in the 1979 Land Act –

- (a) limitation of land holding to foreigners - section 6(c) as amended by section 4 of the Land Amendment Act No. 27 of 1986. This section is to the economic detriment of the country;
- (b) inefficient control of growth of urban and pen-urban areas and the absence of planning creates problems for the creation of infrastructure;
- (c) land disputes not disposed off quickly, Land Tribunal centralized in Maseru and its jurisdiction limited to certain cases - section 64 of the Land Act 1979;
- (d) single plot not capable of being held by more than one title holder;
- (e) cumbersome procedures which lead to inefficient land administration services - section 35 of the Land Act 1979;
- (f) lack of land tenure security;
- (g) numerous amendments to the 1979 Act which render it not user friendly;
- (h) in equality between boy and girl child and lack of protection of minor orphans;
- (i) lack of information to the public on land matters;
- (j) absence of land holdings and cadastral database;
- (k) no provisions criminalising corrupt practices by officials and authorities in rendering of land services and issuance of land documents.

3. Rationale/objectives to be achieved through the Land Act 2010

The intention of this Act is to address the following issues –

- (a) regularisation will ease provision of access roads and utility services. Adjudication on the other hand will formalise settlements and this will reduce disputes;
- (b) speedy disposal of land matters through creation of specialised Land Courts is necessary so that economic activities on land are not hampered;
- (c) secured titles will encourage people to develop their properties and use their properties as economic assets;
- (d) all land allottees upon allocation of land will have documentary evidence in a form of a certificate;
- (e) land records will be updated;
- (f) there will be greater efficiency in the conduct of land transactions;
- (g) land market will be improved as there will be more players and more leases;
- (h) there will be gender balance in land dealings;
- (i) there will be fair and prompt compensation following expropriation of land;
- (j) protection and security to orphans who become vulnerable upon death of the parents.

3.1 Consultations with stakeholders

The Land Act 2010 builds on research which was carried out overtime in an endeavour to improve the land administration laws and policy in Lesotho. It incorporates among others the findings of the Late Chief Magistrate L. Mapetla's Land Policy Review Commission of 1987, the recommendation of Justice Ramodibedi's Land Policy Review Commission of 2000 and the views gathered from the Land Forums of 2007/2008. The findings of all these studies revealed that the 1979 Land Act has some shortcomings which promote unequal distribution of land and also hinder utilization of land as an economic asset. Following the production of the draft Land Bill 2009 consultations were made with relevant stakeholders. The first exercise was held at Victoria Hotel on the 3rd and 4th April, 2009 and it involved amongst others; the bankers, chambers of commerce, law administration officials, private surveyors, private developers, estate agents educators, government ministries and departments, local authorities, chiefs, Non-Governmental Organizations, donor based international organizations. The sensitization session was held with members of the National Assembly in their capacity as representatives of the electorate. The last one was with members of the Senate.

The most sensitive issue which came out of all these sensitization sessions is land holdings by foreign investors. The general feeling was that if there are no strict conditions or restrictions in their being allowed to hold land in Lesotho, this might jeopardize the interests of Basotho.

