



POLICY OPTIONS TO MEET THE 2018 NATIONAL HOUSING POLICY OBJECTIVES OF LESOTHO

URBAN LEGAL CASE STUDIES | VOLUME 13

UN HABITAT
FOR A BETTER URBAN FUTURE

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MINISTRY OF TOURISM,
ENVIRONMENT AND CULTURE
Qoba tšebeliso e mpe ea Tai
Baballa bophelo ba hao le
ba ba Batho ba bang
"LETŠOELE BET POHO MOSOTHO"



INTRODUCTION



UN-Habitat was requested by the Ministry of Housing in Lesotho for technical support to develop a new housing Act to implement the country's 2018 National Housing Policy. UN-Habitat's Policy, Legislation and Governance Section worked with a long-standing partner, the Institute of Advanced Legal Studies at the University of London, to develop a comparative analysis of housing Acts and a report on the options to meet the policy objectives. The present report supplements the comparative analysis on housing Acts.

The Ministry of Housing, through the National Housing Policy, aims to address increased demand for urban housing, improve residents' quality of life, enhance services accessibility, and improve mobility and security of tenure, while recognizing the environmental impact of climate change.

A policy or legislative solution helps to achieve the policy goal by addressing a socioeconomic issue (Xanthaki, 2014, p.42). The need for law reform can emerge when comparative research is conducted on legal instruments in home and foreign jurisdictions that have common needs; thus, the solutions that arise will be relevant in the local context (ibid., p.45). Policy options or concepts may be transplanted from one jurisdiction to another (Xanthaki, 2008, pp.659, 663) and there should be a link between the issue to be resolved and the shortlisted policy or legislative solution (Xanthaki, Xanthaki, 2014, p.52). It is very difficult to find a one-size-fits-all method to problem solving (ibid., p.54).

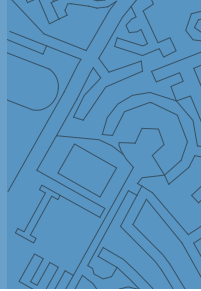
A rational or evidence-based legal solution can be found when the lawmaker analyses the issue, ascertains the objectives and shortlists, and compares possible options to solve the problem; this also includes analysing the advantages, disadvantages, costs and benefits (Mousmouti, 2019, pp.41-42). Every policy solution comes with its own strengths and weaknesses that may be effective in varied contexts (ibid., p.42). It may not be possible for the lawmaker to find an "optimal" or a "right" solution, so an attempt must be made to search for a "good solution that sits well in the jurisdictional context and has the potential to work" (ibid., p.44). An effective regulation achieves the policy goal at the lowest cost to all members of the society (Organisation for Economic Co-operation and Development, 2008, p.4), maximizes the positive economic, social and environmental impacts, and minimizes the negative ones (ibid. p.10).

This report contains the shortlisted options which are the most effective to achieve the policy aims of the National Housing Policy of 2018 for Lesotho. The objectives are already determined under the respective policy aims; several policy options are identified in this report and an analysis and discussion of their potential impact compares the advantages and disadvantages of each in terms of costs and benefits (wherever appropriate). This will establish which option or combination of options would achieve the objectives and ultimately the policy aims.



Leribe Ha Ramapepe Community (Lesotho) by Tash McCarroll, source: Flickr

POLICY AIM 1: TO PROVIDE AFFORDABLE HOUSING



OBJECTIVE: TO PROVIDE INCENTIVES FOR DENSIFICATION

Issue identified: there are insufficient affordable housing units for the urban poor in Lesotho. For example, in the formal housing sector, the size of plots is considered to be too large to be developed in a sustainable manner (UN-Habitat, 2015, p.11). The **Planning Standards 1990** attempt to mitigate this by allowing the construction of malaene (a rectangular building, normally made of concrete blocks, with a shallow, single-pitched corrugated iron roof) alongside the main dwelling as it acts as both a source of income for the owners and as cheap accommodation for the renters in the urban area (ibid.). Still, this requirement is not enough to solve the housing needs; landowners should be encouraged to construct more malaene rooms to maximize/optimize the use of the plot, or to reduce their size to save considerable amounts of land (ibid., p.xiii). The large plot sizes result in urban and peri-urban areas being too widespread and with little habitation in them (ibid., p.53).

OPTION 1: OWNER CEDING A PORTION OF LAND TO THE GOVERNMENT FOR COMPENSATION

In Colombia, through the New Urban Development Operation in the locality of Usme in Bogotá, (Programme Nuevo Usme), owners give a part of their private land to the Government in return for compensation to install infrastructure. Through the local plan for development parcels (Plan Parcial), the concept of equitable distribution of costs and benefits between the owner of private land and the Municipality of Bogotá is applied. This approach permits government

authorities to have part of the developed plot in return for investment in its development; with this, the Government gets a free or low-cost plot which may be later developed for social housing (Copello and Smolka, 2003).

The aim of this programme was to provide priority housing solutions to counter the housing deficit in Colombia and to manage a large area of land with a fragile ecological structure and difficult terrain (UN-Habitat, 2018, p. 58). This situation is similar to that of Lesotho, which has large formal plots that are underused and need to be developed in a sustainable manner without any loss of fertile land in the mountainous regions (UN-Habitat, 2015, p.53).

POTENTIAL IMPACT

Private owners ceding a portion of their land reduces the cost of infrastructure development for social housing for the Government since it can negotiate cheaper expropriation rates directly from these landowners. This process will also enable the Government to create a land bank. Other advantages are that owners can capitalize on their large and unused plots by gaining access to capital, and the urban poor have access to formal and serviced land which they otherwise did not. This further strengthens the initiative taken by the Government to allow the construction of malaenes alongside the formal dwellings by incentivizing the owners to build more infrastructure.

The risk or disadvantage with this approach is the lack of active participation by the municipality since public administration in Lesotho is not streamlined and lacks capacity (UN-Habitat,

2015, p.26). Moreover, the private landholder may be reluctant to cede or develop their land as the burden of land development then falls on them. The fact that the plot size will be reduced could also be a disincentive, as this may go against the cultural norm of owning large plots of land. Finally, the success of this approach relies on the effectiveness of the cadastral system in Lesotho and whether those who own private land can be ascertained, they have proper documentation, and they form the majority within the land titling system.

OPTION 2: INCENTIVE FOR LANDOWNER FOR LAND READJUSTMENT

In land readjustment, the Government usually combines different plots, provides infrastructural development, then gives the plots back to the landowners (UN-Habitat, 2011b, p.35). **The Town Planning Scheme of India** and **the Land Readjustment Scheme of Japan** are examples where plots under varied ownerships are pooled together and developed in a systematic manner by the Government, directly or indirectly (Jain, 2019).

A key feature of this approach is that the land from the owners is developed without being fully acquired. The owners may pay betterment charges, part with between 25 per cent and 40 per cent of their land to earn an income tax exemption on the compensation given by the Government (ibid., p.16) and the development authority may reserve approximately 5 per cent to 10 per cent of the land for low-income people, which is offered to them at a subsidized value through a lottery (ibid., p.4).

POTENTIAL IMPACT

The cost of land development by the Government is reduced due to betterment charges and a

percentage of land is given by the owner for improvements, which increases the value of the plot. If this scheme was applied in Lesotho, landowners would have the option of retaining their land at approximately the original plot size and the public authority would still have the ability to control the design and development of large and unused areas of land by creating malaenes, thereby promoting urban growth and social housing at low costs. This would also reduce the burden of planning and construction of malaenes for the landowners. Land readjustment is therefore a “win-win” situation for both landowners and Government.

On the other hand, the owners have little control over delays and the way in which land is to be developed by the Government. The Government may not have the capacity to undertake this task due to shortages in adequately skilled staff and thus may have to incur additional costs in recruitment and training of human resources.

Analysis of options 1 and 2

Both options 1 and 2 offer incentives to the landowners in the form of compensation. Under option 1, the landowner gets infrastructural development to their land while in option 2, the compensation is in the form of increased in land value. In option 2, landowners would be required to use their land optimally which would create more social housing units in the form of malaenes. With both options, the Government would have access to low-cost land that could be used for the purpose of social, affordable housing. However, unlike option 2, option 1 puts the technical burden of land development on the landowner, which may disincentivize landowners. Thus, option 2 is the preferred approach.



Maseru, Lesotho by Steve Lamb source: Flickr

POLICY AIM 2: REDUCE OVERCROWDING AND IMPROVE URBAN DENSIFICATION

OBJECTIVE: TO REDUCE OBSOLETE HOUSING STOCK AND OVERCROWDING

Issue identified: There is a considerable amount of outdated housing stock that requires servicing as it is built in the informal sector, in a layer-by-layer, incremental manner. This takes a lot of time

and results in several incomplete structures and more urban sprawl (UN-Habitat, 2015, p.29). The table below is taken from UN-Habitat's Lesotho Housing Profile of 2015 and depicts the need for social housing by 2025.

| | Rooms | Dwellings |
|---|---------|-----------|
| Needed to reduce crowding to 2 people per room | 7,850 | 4,511 |
| Needed for extra household by 2025 | 104,400 | 60,000 |
| Needed to replace obsolete stock at 3 per cent of 120,000 per annum | 57,456 | 34,200 |
| Total needed by 2025 | 169,706 | 98,711 |
| Needed per year | 8,932 | 5,195 |
| Needed per week | 179 | 104 |
| Needed per day | 30 | 17 |
| Needed per hour | 3.7 | 2.2 |
| Minutes to build one | 16.1 | 27.7 |

Table 1: Urban housing deficit in Lesotho

OPTION 1: COMMUNITY PARTICIPATION IN SLUM UPGRADING

In Thailand, the Baan Mankong, or the "secure housing" programme, involves many stakeholders ranging from residents in community groups to government and private actors to create strong networks (UN-Habitat, p.50) by establishing a Community Organizations Development Institute which gives loans and technical support to communities for slum upgrading (Boonyabanha, 2005, p.21). The end product has legitimacy since it is produced by the entire community of stakeholders. This process also

provides skills to the community by creating small building groups called Chang Chumchon (Guilds of the Commune), which are involved in either total house construction, providing labour or technical skills on one element of development (UN-Habitat, p.50). This programme aims to upgrade slums and reduce settlements on a national scale through a local, community-driven process. This aim resonates with the National Housing Policy of Lesotho which is striving to reduce the current obsolete housing stock by way of upgrading it to accommodate the urban poor.

POTENTIAL IMPACT

In Lesotho, for the urban poor, the housing is usually delivered by owner-financed, incremental construction, which is informal, unplanned and non-serviced (UN-Habitat, 2015, p.29). This kind of process of community participation, as seen in Thailand, will bring more support and organization in the construction process and still enable the residents to enjoy more involvement and control over the decisions in the upgrading process. This will save residents on the per unit costs and it will ensure that affordable housing is delivered in a timely manner.

Technical support as offered through the Community Organizations Development Institute in Thailand and the idea of sustainable construction such as horizontal incremental construction could be a viable option for Lesotho, where more residents could start moving in as and when the rooms are ready. This approach also has the advantage of empowering the community by creating employment opportunities in the labour market as most construction activities are labour-intensive in Lesotho (ibid., p76).

The downside with this approach is that the Lesotho Government may lack the required resources to fund a body equivalent to the Community Organizations Development Institute to provide loans to organized communities for the aforementioned activities. However, this issue may be countered if the network of stakeholders could fundraise or pool resources and, through a body equivalent to the Community Organizations Development Institute, make an application for annual funds from the government budget as an independent public organization.

OPTION 2: SELF-HELP HOUSING CONSTRUCTION

In Angola, the National Urbanization and Housing Programme promotes urban development, including slum renewal, by promoting “self-help” housing construction (Cain, 2020). As part of this programme, the non-government organization Development Workshop sets up a construction assistance unit based on a social enterprise model to provide the necessary advice and support on technical and building material aspects. This has strong support from the local authorities and communities. The programme reinforces the traditional house building process in which the concept of the owner also being the builder, architect and contractor is common, thus, the owner decides the layout, arranges finances, finds local building material, engages family labour and specialists in construction work (UN-Habitat, 2011, p.48). In Angola, 90 per cent of the current urban housing is substandard (Cain, 2020, p.185) and more than 40 per cent of the urban population live in overcrowded houses (UN-Habitat, 2011, p.21). Thus, Angola has the same problems of obsolete housing stock and overcrowding as Lesotho. Angola also has the same problem of highly centralized State structures, which results in limited institutional coordination with local bodies in the implementation of programmes and information-sharing (Cain, 2020, p.185).

POTENTIAL IMPACT

Self-help housing construction suits the financial and technical capacity of the household as opposed to a profit-driven developer or contractor and gives residents greater control in the construction process. On the other hand, the process of completion may take several years due to the expense which may be high as it is

rare for banks and other financial institutions to fund an incremental housing process due to the engagement of paid and unpaid labour, several contractors and suppliers as well as unprofitable costs in transactions (UN-Habitat, 2011, p.48).

OPTION 3: RELOCATION

The Jawaharlal Nehru National Urban Renewal Mission in India is a city modernization scheme with a particular focus on the needs of economically weaker sections and lower income groups (UN-Habitat, 2011, p.42). Under this scheme, the State of Andhra Pradesh aims to provide for relocation projects for which the State government has created land banks and direct purchases from manufacturers of construction materials such as steel at fixed rates and below the market price, to ensure consistent quality and quantity for large-scale housing construction (ibid.). Investment in these projects is through a combination of contribution by the central Government, State government, local bodies and beneficiaries (Burra, Mitlin and Menon, 2018).

In Bangladesh, programmes for Asrayon (shelter), Gharey Phera (return home) and Ekti Bari Ekti Khamar (one homestead, one farm) promote the return of landless urban poor people to their villages and engage them in income-generating activities, where the Government provides them with group housing and small agricultural plots, credits and other benefits (UN-Habitat, 2015, pp.37-38). This helps to reduce overcrowding in urban areas.

POTENTIAL IMPACT

In Lesotho, peri-urban areas have low population densities and have a servicing deficit (UN-Habitat, 2015, p.113). Setting up relocation projects and aiding them to carry out income-generating activities in such areas will improve

the infrastructure and encourage more migration to such areas. This type of initiative would encourage the Basotho people to become self-reliant and would enhance productivity, in particular in the agricultural sector, which has been in severe decline (ibid., p.4). In this way, the Basotho people could escape the overcrowding and thereby reduce the urban sprawl and attain a better standard of living. However, relocation might add to the traveling expenses for those who go to workplaces and schools in urban areas, and it also makes it difficult to maintain social connections which are significant to their well-being. Moreover, relocation requires contribution of funds from all levels of society, from local to central government, including the beneficiaries themselves. Though these initiatives may help Lesotho with the issue of overcrowding, the problem of the existing obsolete housing stock will persist.

ANALYSIS OF OPTION 1, 2 AND 3

Options 1 and 2 tackle the issue of upgrading obsolete housing stock and overcrowding, whereas option 3 focuses only on overcrowding. Thus, option 3 is not a viable approach. Option 1 engages the entire community through a network of stakeholders to create a support system for upgraded houses while option 2 promotes self-construction on an individual basis. Since option 1 reduces the financial and technical burden through community fundraising, it is the most suitable option.



Maseru, Lesotho by Steve Lamb, source: Flickr

POLICY AIM 3: GIVING EFFECT TO LAND RIGHTS AND SECURITY OF LAND TENURE



OBJECTIVE: ADDRESS LAND EQUITY AND GENDER EQUALITY ISSUES BY PRIORITIZING SOCIAL AND AFFORDABLE HOUSING FOR VULNERABLE AND MARGINALIZED GROUPS

Issue identified: Though there are more women than men in Lesotho (UN-Habitat, 2015, p.2), gender inequality persists in land ownership as women are usually excluded from the benefit schemes for housing projects and services (ibid., p.xiii). Despite Lesotho prohibiting discrimination, women continue to experience inequalities and are disadvantaged in accessing land and housing.

OPTION 1: QUOTA FOR WOMEN IN LAND ALLOCATION

In Zambia, the Gender Policy of 2000 required 30 per cent of all the allocated urban land parcels to be reserved for women (UN-Habitat, p.35). This was raised to 50 per cent in 2014, coupled with awareness-raising amongst general public and authorities about women's land ownership, inheritance rights, priority of statutory law over customary to eradicate gender discrimination and to create an environment that made it easier for women to own land (Japan International Cooperation Agency and Japan Development Service, 2016, p.21).

The situation in Zambia is similar to that in Lesotho where women are governed as per the Basotho customary law under which they are deprived of the right to land and are not entitled to any allocation, inheritance or management of land (UN-Habitat, p.107). Section 19 of the Constitution of Lesotho provides equality for all citizens but in practice women are still

marginalized and discriminated against under the customary laws. Zambia too has a two-tier system of land ownership, consisting of state and customary laws (JICA, 2016, p.21). Both, the Land Act 1966 in Zambia and the Land Act 1979 in Lesotho provide for the possibility of women being landowners, but customary laws play a huge role and they discriminate against women in formal land allocation (UN-Habitat, p.65).

POTENTIAL IMPACT:

The 30 per cent quota allocation of distributable land to women for social housing along with the awareness campaigns on this state initiative will be a positive step in the direction of harmonizing statutory and customary laws in Lesotho by making land accessible to women and sensitizing the citizens on gender equality.

However, the quota allocation approach may not be enough to completely change the patriarchal mindset of the public and the authorities. The authorities may still have a negative attitude towards women and there is also the risk that they may impose a requirement that the beneficiaries of social housing should be married women and not single women, which would be a significant setback (ibid., p.106). Moreover, women may still lack adequate credit to buy property.

OPTION 2: QUOTA FOR WOMEN IN DECISION-MAKING BODIES FOR SOCIAL AFFORDABLE HOUSING

In Somalia, the Garowe Housing Programme reserves 20 per cent of seats for women on committees that are involved in steering the

housing programmes for internally displaced persons and women engaged in the planning and design of the social housing units that they will reside in (UN-Habitat, p.37). Overall, it is an option to provide quotas for women in public authorities that decide on land rights in communities, especially amongst those which function as per the customary laws (UN-Habitat, 2014, p.72). Although in Lesotho the issue of internally displaced persons is very limited, the concept of reserving seats for women in decision-making bodies could be applied.

POTENTIAL IMPACT

Women in decision-making bodies address their personal requirements in the design of the house as men and women differ in their housing needs; for example open and safe spaces for the children to play (UN-Habitat, p.37), room layout, relationship with the street and community spaces, etc. As women in Lesotho spend more time indoors and in the vicinity of their house, cleaning and fetching water (UN-Habitat, p.107), their needs will be considered in the design decisions. Quotas for women to be represented in public institutions that make decisions regarding housing rights will further harmonize statutory and customary laws and encourage more pro-women decisions with respect to land rights.

In terms of cost, this approach requires expenditure of government funds on training and recruitment of women and sensitization of persons in the workplace to counter discriminatory attitudes. Evidence from Somalia shows that due to the limited presence of women in senior positions in government agencies, there has been little impact with this approach (ibid., p.106).

OPTION 3: PRIORITIZATION OF WOMEN

In Brazil, the Zone of Special Social Interest, which is a legal instrument for land ownership regularization in the City Statute, prioritizes women in land regularization by giving them priority rights. The Special Concession for Use of Public Land for Housing Purposes, a form of land tenure regularization of informal settlements, aims to decrease women's social vulnerability. Unlawful female occupants of land due to de jure or de facto reasons, as an exception to the rule of adverse possession, may still get possession titles of the plot and such concession documents are accepted as guarantees for housing financing loans (UN-Habitat, 2006, p.33).

In São Paulo, clauses to several affordable housing programmes give priority to women as beneficiaries of government funds for housing and professional training courses, among other things. Women, especially single, married and women who are heads of a household, get priority in the issuance of documents related to the transfer of property, land titles, financing contracts, joint possession and acquisitions etc. (UN-Habitat, 2005, pp.74-75).

POTENTIAL IMPACT

In Lesotho, prioritization of women as a form of affirmative action will reduce incidences of discrimination and may have a positive impact through the easy registration of immovable property and access of the title in their own name under the Legal Capacity of Married Persons Act, 2006 (UN-Habitat, 2015, p.105). Also, there would not be any substantial cost involved in prioritization in the current legal environment of Lesotho.

ANALYSIS OF OPTIONS 1, 2 AND 3

All three options are about improving the land, housing and property rights of women who continue to face discrimination in landownership and social housing schemes. Option 1 would produce positive results, but it may not be enough on its own without a change in attitude and culture. Option 2 might require government expenditure on recruitment and training as well as an intentional approach, in practice, to appoint women in leadership positions and public office. Option 3 is the most viable approach since the prioritization process can be easily incorporated into the existing legal framework which is favourable from a financial perspective. Additionally, option 3 will mandate authorities to prioritize the issuance of ownership documents such as like land titles.

CONCLUSION



There are several policy objectives outlined in the 2018 National Housing Policy of Lesotho. The purpose of this report is to suggest possible approaches that exist in foreign jurisdictions that could be used to achieve the objectives in Lesotho, and then shortlist the most suitable option that fits with the local context. The options listed in this report are not exhaustive and the shortlisted options may not be the perfect solutions, but they should provide a roadmap for reform in Lesotho. The preferred options have benefits that outweigh any disadvantages and are the most cost-effective solutions of all options.

To meet the objective of providing incentives for densification under the larger policy aim of affordable housing, two options were listed, namely, owners' cessation of a portion of their land to the Government for compensation as carried out in Colombia, and land readjustment as carried out in India and Japan. Of the two, the latter option was the preferred option, because unlike the first option, it does not place the technical burden of land development on the landowner, which may be a disincentive.

In relation to the policy objective to reduce obsolete housing stock and overcrowding, the report suggested three options: community participation as practiced in Thailand, the self-help construction approach in Angola and the relocation technique in India and Bangladesh. Of these options, the most suitable one was the community participation approach in Thailand. Community participation give a project legitimacy as the beneficiaries have more involvement and control over the decisions in the upgrading process and it puts a lesser financial burden on the beneficiaries since they can earn a living as paid labourers and funds can be pooled by the network of stakeholders.

Finally, in relation to land equity and gender equality in social and affordable housing, three options were outlined: providing a quota for women in land allocation as practised in Zambia, a quota for women in decision-making bodies as is done in Somalia, and the prioritization of women in the legal framework and housing schemes as is the case in Brazil. The latter option was suggested as the most viable approach; no costs will be required as the prioritization process can be easily incorporated into the existing legal framework in Lesotho. However, some resources would need to be spent on awareness campaigns on gender equality.

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