

The Right to Adequate Housing in Lesotho

Background

Lesotho is a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR) which compels states to recognise the right of every citizen to an adequate standard of living, including housing and the continuous improvement of standard of living as stated in Article 11(1) of the ICESCR. Lesotho like many countries' signatory to the ICESCR, is required take appropriate steps to ensure the realisation of these rights. Inasmuch as Lesotho is signatory to several international obligations which have to do with housing as a human right, the Constitution of Lesotho as the supreme law notes that any laws inconsistent with, are regarded as invalid. For instance, Chapter III of the Constitution of Lesotho, particularly Section 30 which relates to socio-economic rights under the heading principles of state policy noted that 'principles' are not 'rights' hence, are not enforceable in the courts of law. On the other hand, section 34 of the Constitution specifies that Lesotho shall adopt policies which encourage its citizens to acquire property including land and houses. In general, the state policies do give assurance for access to land and housing. In a desk review conducted by Leduka (2018) for Habitat for Humanity Lesotho to understand current land ownership, policy, systems and gaps in Lesotho, the study noted that the Constitution of Lesotho does not recognise the right to housing, as a result may lead to the country's weakened commitment to housing delivery among others.

1. Distribution of responsibilities related to the right to adequate housing

1.1 At National level, the levels of government primarily responsible for responsible for housing programmes are the Ministry of Local Government and Chieftainship Affairs through the Department of Housing. The Lesotho Housing and Land Development Corporation (LHLDC) has low-cost housing program. LHLDC develops serviced sites, provides rental accommodation, and provides home ownership. Maseru City Council is responsible for housing programmes at municipal level. NGOs such as Habitat for Humanity Lesotho and the private sector also have housing programmes.

- 1.2 The Ministry of Social Development is mandated to lead and facilitate the provision of sustainable human development and social development services that are universally accessible to all groups in Lesotho in collaboration with relevant stakeholders. The Ministry's specific objectives are as follows;
- Formulate policy and strengthen legal frameworks for facilitating Social Development of the poor and marginalized groups
 - Oversee the provision of Social Development services to foster universal and equitable access to all poor and vulnerable groups
 - Protect and promote the rights of all poor and vulnerable groups to ensure that their basic needs are met
 - Mitigate the impact of HIV/ AIDS pandemic on vulnerable groups
 - Advocate and lobby for prioritization of the needs of the poor and vulnerable groups in the national development agenda and all aspects of life
 - Develop and promote innovative evidence-based interventions and approaches to Social Development.
- 1.3 The ministry has income support programmes for vulnerable groups such as the elderly (pension fund), people living with disabilities (disability grant), orphans and vulnerable children and these are at National level.
- 1.4 Tenancy and security of tenure legislation are offered at National and Municipal levels in line with the Land Act 2010. The government of Lesotho through the Lands, Surveys and Physical Planning (LSPP) administers tenancy agreements on government property. The Land Administration Authority (LAA) provides tenancy (Lease agreements) in for both urban and rural areas. According to the Land Act 2010, local authorities allocate land in their area of jurisdiction in consultation with the chiefs. This customary tenure system provides land rights documented as "Form C" which are issued by Chiefs in consultation with the Community Councils. This tenancy system falls under the Ministry of Local Government and Chieftainship Affairs.

- 1.5 Adequate housing as defined by the housing policy means adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities- all at reasonable costs. Infrastructure such as water, sanitation, electricity, roads are provided at national and municipal levels. The approach to achieve the fourth objective of the policy (improve infrastructure provision in informal settlements), is to facilitate new provision, upgrading and maintenance of infrastructure.
- 1.6 Objective 10 (Eliminate Inequalities in Land and Housing Rights) of the NHP sets out to enforce gender equality and non-discrimination in land, housing, and property rights. The policy has a provision of legal security of tenure and equal access to land and property rights to all people. This prohibition of discrimination in housing is based on the Constitution of Lesotho under Article 18, which prohibits discrimination on the basis of various factors such as, gender, poverty, social origin and other status.
2. The primary bases for the allocation of responsibilities among different levels of government are The Constitution of Lesotho, The Lesotho National Housing Policy, Local Government Act 1993, Land Administration Act 2010, Land Act 2010 and National Decentralisation Policy.
3. Government plays facilitation role, policy guidance, monitoring and evaluation and resource mobilization. These roles are guided by the Constitution of Lesotho, The National Housing Policy, Local Government Act 1993. The Land Administration Authority Act 2010 has merged and reorganised government departments that dealt with cadastre, national mapping and deeds registration into a new parastatal agency called the Lesotho Land Administration Authority (LAA). The LAA has a Director General (DG) reports to a Board of Directors, that in turn reports to the Minister of Local Government and Chieftainship Affairs. LAA has a responsibility to solve registration and cadaster complaints and

disputes. Local courts and human rights institutions also play a significant role in compliance with the right to adequate housing.

4. Most programs administered by local governments receive funding from the national level which in this case will be the Government through its responsible ministry (Local Government and Chieftainship Affairs). There are conditions attached to the funding issued to the local governments to ensure that resources are spent appropriately and effectively to protect the rights to adequate housing. Monitoring of the funds is carried out through use of different monitoring tools such as reporting.

B. Accountability of Sub-National Governments

1. Are sub-national governments legally accountable to the right to adequate housing on the basis of any of the following?
 - International human rights law? (**Yes/No**)
 - Constitution/National Bill of Rights (**Yes/No**)
 - National or sub-national legislation (**Yes/No**)
 - State level or municipal level Bills of Rights/Charters (**Yes/No**)
 - Inter-governmental agreements (**Yes/No**)
 - Conditional financing (e.g.: budget transfers from national level to sub-national) (**Yes/No**)

2. Legal Provisions in Lesotho
 - International human rights law? – Human Rights Act 1983
 - Constitution/National Bill of Rights - The Constitution of Lesotho
 - National or sub-national legislation – Lesotho National Housing Policy
 - State level or municipal level Bills of Rights/Charters – Land Act 2010,
 - Inter-governmental agreements – Local Government Act 1993, Land Administration Authority Act 2010, Land Act 2010, Land Regulations 2011, Land Court Regulations 2011, Sectional Titles Bill 2011 (Draft)

- Conditional financing (eg: budget transfers from national level to sub-national) – Land Act 2010

The above identified legal provisions are applicable at all levels.

Application of these means are as follows;

- The Directorate on Corruption and Economic Offence (DCEO) has partnered with the Public Accounts Committee (PAC) to ensure smooth use of governments funds in various ministries and demands reports on funds allocated at the end of each financial year as a means to ensure accountability. In a case where there are complications pertaining to accountability such cases are resolved in the courts of law. The means of enforcement (e.g.: courts, tribunals, national human rights institution, including ombudsmen, administrative mechanisms, etc.) and examples of how these means have been applied.
3. National Government report through Human Rights Institutions (Ministry of Law and Justice) who work/liaise with international Human Rights Institutions.
- 3.1 There are local courts in all ten districts of Lesotho. Public Accounts Committee, Directorate on Corruption and Economic Offence (DCEO),

Lesotho committed in implementing the New Urban Agenda, SDG11, and the National Strategic Development Plan to advance human settlements and urban development agenda in the country. The Ministry of Local Government and Chieftainship Affairs coordinates the implementation of these commitments. In order to review progress towards the implementation of these agendas, workshops are held with national government, local authorities, grassroots organisations, private sector and academia.

5. Challenges

- **Low priority of housing** -There is no dedicated Ministry of Housing, the responsibility for housing lies with a Directorate under Ministry of Local Government and Chieftainship Affairs, and it receives a very small share of the national budget. Lack of a dedicated Ministry to Housing lead to housing's low priority status. There is a need for political will to address

housing challenges in Lesotho and a dedicated ministry to housing will increase priority of housing issues in particular as a human right in Lesotho.

- **Institutional issues** - Lack of capacity of housing institutions, and insufficient coordination between Key public housing institutions –planning and programming (including providers of basic services).
- **Institutional Issues:** Lack of independent land and housing dispute agency. The establishment of a Land Dispute Agency with mediatory and arbitration capacities to address tenure disputes and those relating to housing issues and dispossession towards stronger land administration processes.

The right to adequate housing in Lesotho in response to COVID-19

The Ministry of Local Government and Chieftainship Affairs' mission is to promote, deepen and consolidate a sustainable and effective system of local governance for improved service delivery and enhanced quality of life. The ministry through the Housing directorate is mandated among others, to facilitate the delivery of affordable quality houses to Basotho within properly planned settlements (houses).

The National Housing Policy (NHP) is the national strategic framework aimed at achieving the progressive realization of the right to adequate housing for all; this by promoting housing as a basic human right; a social good; an economic investment; a job creator; and a strategy for poverty reduction. NHP is guided by the Constitution of Lesotho and relevant policies including, Lesotho Vision 2020, National Strategic Development Plan 2012/13–2016/17, National Decentralisation Policy and the draft Ministry of Local Government and Chieftainship Strategic Plan: 2015 -2019. The document was further developed within the UN-Habitat Global Housing Strategy (GHS) framework and Goal 11, Target 11.1 of the Sustainable Development Goals (SDGs). The NHP is further informed by the Lesotho Housing Profile which analysed the housing sector in Lesotho and delivery systems including underlying contributors to successful achievement of adequate housing for Basotho. The data and recommendations of the three municipalities namely, Maseru, Maputsoe and

Mafeteng urban profiles under the UN-Habitat's Participatory Slum Upgrading Program (PSUP) also informed the development of the NHP.

Since 2012, the national and local governments, academia, civil society and private sector worked with the UN-Habitat's Participatory Slum Upgrading Program (PSUP) to improve knowledge development, partners mobilisation and inform policy development aimed at improving living conditions of people living in informal settlements. The initiative to develop the National Slum Upgrading Strategy in Lesotho was based on the acknowledgement that in order for the country to achieve actions related to slum-upgrading, poverty reduction, environmental management, infrastructure development and service delivery, there was an overarching need to realise that slums are a development issue, which needs to be integrated into institutional mandates and national development framework. The Action Plan developed will guide the Lesotho in formulating targeted, integrated, multi-sectoral national slum upgrading programme with high human development impact for people living in informal settlements and contribute to the overall poverty alleviation and development index of the country.

Although there are no specific activities related to the right to adequate housing in Lesotho in response to COVID-19, notable priority activities are planned under the PSUP in the country as stated below;

- 1. Improvement of water supply** – The World Health Organization (WHO) advise washing hands more frequently – for at least 20 seconds – to prevent outbreaks. Yet the Lesotho- National urban Profile reveals that only 8% of the urban population have access to basic hand-washing facilities in their homes. Informal settlements constitute only 10% of this population and it is in these settlements where people experience regular shutoffs even when they do have piped water, making frequent hand-washing difficult or impossible. Improvement of water supply in informal settlements is a commitment under the Participatory slum Upgrading Programme. The funds will be utilised to procure drinking and hand washing facilities to be placed at some informal settlements, places of high congestion and bus stop areas in the Maseru, Leribe, Hlotse and Mafeteng Urban Centres.

- 2. Community mobilization and local campaigns-**Lesotho is experiencing legal and illegal crossing by people who are coming back home from the neighbouring Country, Republic of South Africa and other neighbouring Countries. This is occurring despite the launch of the Lesotho Defence Force (LDF) COVID-19 Save Live Operation which deployed members of the force countrywide to help in preventing people from crossing at illegal border posts. Outhing, Maseru, Mafeteng and Leribe districts are the hotspots for illegal crossings.

Due to the spread of the virus there are lots of misinformation about the virus. Most people have little knowledge about how the disease is spread and how it can be prevented; they are also less likely to seek care if infected.

It is on the basis of the foregoing that communities will firstly be mobilised to work in harmony with the forces to report illegal crossing, conduct tracing and to also work with health workers, Councils and other partners in the fight against the disease.

Training will also be conducted under PSUP Programme through the respective Urban Councils on how to take care of the water facilities, how to keep communities clean, wear masks, use sanitizers, practise social distancing, identify symptoms of the virus.

In order to spread the information about the disease – Key messages will be designed and disseminated through, radio clips, print material (Pamphlets, and Banners), Education TV drama and social media. Key messages will address key hygiene issues in informal settlements such as water, sanitation and waste management. Communities will be consulted to identify such messages.