

**Who Owns The Land in Lesotho? Land  
Disputes and The Politics of Land  
Ownership in Lesotho**

by  
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## I. INTRODUCTION

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Basotho have often been described as an agricultural society.<sup>1</sup> Although this assertion was certainly true until the end of the 1920s at the latest, more than 80%<sup>2</sup> of the population in Lesotho is rural and continues to regard the land as its source of livelihood. Life such as this clearly revolves around land to a more profound extent than say, in a society that is described as 'industrial'. Although both need land for activities geared towards producing the necessities of life, the dependence on land is much greater in a society that is described as agricultural. Here land is the source of food, pasture for animals, and the bearer of materials necessary for the production of handicrafts; ideologically, it is the receptacle for the ancestors who are perceived to look after the community's material and spiritual well-being. As Liversage put it, to such societies "Land... is the means of life in a far more complete sense than in more specialised communities..."<sup>3</sup> In the case of Lesotho, it is against this background that we can understand the bitter battles that were fought by Basotho against those who wanted their land. In fact, it can be argued that, given that the ability to retain land was very closely linked to Basotho's political independence, the question of land is one of the themes that dominate the political history of Lesotho in the nineteenth century. All the interaction between Basotho and European settlers - wars, correspondence and treaties - were over land and boundaries. Further, one of the major considerations in Basotho's preference to be colonised by the Cape or England as opposed to Natal was the fact that the Natal government not only destroyed the political institutions of those it ruled but also alienated their land. Thus it can also be argued that the question of land was responsible for the choice of a colonial master and therefore Lesotho's colonial and post-colonial history.

In spite of all this however, it has never really been clear who owns the land in Lesotho. In conflicts and other dealings with

foreigners on the question of land, people went to war or treaties were negotiated on the understanding that the land belongs to Basotho. Within the chiefdom itself however, the precise nature of the relationship of the various groups with the land in terms of ownership, right to access and the extent of such rights are matters which remain unclear. The phrase most commonly used to describe the land tenure system in Lesotho - the king holds the land in trust for the whole people - is a vague formulation which has over the years succeeded only to evade the issue of the ownership of land. This lack of clarity on who owns the land in Lesotho has a number of consequences and some of these will be discussed in this paper. A further aim of this paper is to illustrate how different social groups among Basotho see their relationship with the land and how this affects their attitudes towards it.

### **Methodology and Scope**

This paper attempts to look at the perceptions of land ownership and related politics over time. The sources used here are mainly primary and concern especially land disputes in the nineteenth and twentieth century, particularly the 1980s and 1990s. Nineteenth century material comes from the Lesotho National Archives while the research on the 1980s and 1990s was conducted in the District Secretary's Office, Mafeteng, in July 1994 and focused on land disputes in a number of wards in and around that district. The paper tries to identify the nature of different land disputes and to analyse them within the framework of changing perceptions of landownership. Our primary concern in this paper is to highlight contemporary problems that result from the traditional land tenure. The inclusion of a discussion on an earlier period is meant to illustrate that contemporary issues surrounding the ownership and allocation of land are not new. The significance of this is that it shows that conflicting interpretations leading to disputes over land are inherent in the traditional land tenure and that current socio-economic crises prevailing in Lesotho have only exacerbated them.

The discussions in this paper are limited to arbitrarily chosen geographical areas and historical periods. Even within these areas and historical periods the discussion is not exhaustive. There is a lot of material covering chiefly land disputes after 1880 and the cases that have been used are just examples. To do justice to that whole period would require a separate effort and would not be appropriate in a paper attempting to assess and highlight contemporary social experiences. Examples of the commoners' complaints against the chiefs' abuse of their powers to allocate and withhold land are also numerous. It is a measure of this abundance that the evidence presented here comes from articles published in newspapers from randomly selected years. Other material showing Basotho's attitude towards land, and the commoners' complaints against chiefs' abuse of their privileges regarding land can also be found in Legislative Council debates and other forums.

The emergence of a middle class in Lesotho and the neo-colonial character of the economy of the country have resulted in the emergence of a number of land tenure arrangements such as freehold in the urban areas, special arrangements for purposes of facilitating foreign investments, and the power of the government to attach and use any land in the manner it deems fit 'in the national interests'. Significant though the implications of these arrangements might be, they affect a very limited section of the population of Lesotho and the majority of the people in Lesotho continue to see their relationship with the land within the context of what is regarded as the 'traditional' or 'communal' land tenure. This is especially true in the rural areas, the areas which the social experiences discussed here come from. Thus it is on disputes and conflicts that take place within this 'traditional' or 'communal' land tenure - the tenure that forms the framework for rural perceptions of land transactions - that this paper focuses.

### **Towards an Assessment of the Value of Land among Basotho**

Although all societies recognise land as a primary means of

production, there are instances in the history of Lesotho which would seem to support the view that even more important among Basotho was cattle, the store of value. Casalis described Basotho as being like the biblical Jacob who possessed 'immense flocks' but when faced with famine sent his sons to Egypt to look for corn rather than slaughter part of his flock. Like other indigenous people of southern Africa, Casalis pointed out, Basotho "would speak exactly in the same manner. They are much more attached to their flocks than to their fields" despite the fact that "they depend more upon their fields than on their flocks for support". It was because of the importance that Basotho attached to animal wealth, that their chiefs could not understand how Cape settlers paid their Basotho employees with cattle - how could the value of their labour have been equal to the value of cattle? Thus Moshoeshe warned Basotho who brought animals from the Cape:

Take care... that the white men do not come some day to reclaim their property, and ask you how you could have imagined they were foolish enough to give you anything so disproportionate in value to the work you have done!<sup>4</sup>

A report written by an official of the Cape colonial government following his unsuccessful attempts to collect cattle from Basotho for compensating the settlers of Natal seemed to imply that cattle were still more important than land in the mid-1850s. In this report, the official wrote at length about how Basotho chiefs could not be trusted to release cattle they collected from their subjects in order to meet the number required for compensation. He ended by quoting Moshoeshe who was to have said on several occasions that: 'What is wanting in cattle we must give in land, land to sell, and pay the Natal people for the cattle.'<sup>5</sup> It seems from this that Basotho were quite prepared to lose land if this could help them keep cattle.<sup>6</sup> But for Basotho land and cattle could not be put on a scale of hierarchy of importance. How Basotho showed their relationship with cattle and land depended on the prevailing circumstances. Thus the

statement that Burnett associated with Moshoeshe above has to be seen in a context. Against it can be counter posed another remark which he is said to have made at an earlier period when confronted by settlers asking him to 'cut' some land for their occupation. On that occasion he is supposed to have said to those who put the request to him:

"You ask me to *cut the ground?*" said the sovereign of the Basuto to some white men who had settled on his land, and were absolutely determined, by means of a line of demarcation traced between themselves and him, to ensure for themselves the exclusive possession of the territory they had invaded. "Listen", said he, "to a story which is, I am told, in your great Book. 'It happened once that women disputed about a child...' That is the story... You, my friends, who are strangers, you think it quite natural that my ground should be cut. I, who am born here, I feel my soul revolt at the thought. No, I will not cut it! Better lose it altogether!"<sup>7</sup>

The emotional terms in which Moshoeshe spoke about the land - 'the land of my ancestors knows her children'; 'I, who am born here, I feel *my soul revolt* at the thought' - reflect a consciousness towards land which was detected among Basotho in general. Thus exciting the consciousness associated with the land was a powerful means of rallying the people to tackle any problem at hand. For example, "[a]t a time of public danger, [Moshoeshe] when haranguing his people finished his speech with these words: "Are shueleng fatsi la rona - Let us die for our country." The whole assembly was electrified."<sup>8</sup>

The arrival of white settlers seeking to expropriate large chunks of Basotho's land across Mohokare brought on an added sense of the importance of land to Basotho. Simply put, the presence of another community who like Basotho depended on land, meant an increase in the number of communities seeking to have access to the same resource. This tended to make land scarce and therefore a resource which it was critical to acquire at the expense of other competitors.

In later years, the commoditisation of agricultural produce further confirmed land as a means of production to be had at all costs. As pointed out above, Basotho went to war with the Free State Boers to retain the little land they still had by the mid-1860s; the Natal settlers lost out to the Cape in the race to colonise Lesotho in 1868 precisely because Natal settlers were known among Basotho to have a policy of alienating all land belonging to the indigenous communities under their rule; the Moorosi rebellion of 1879 was a result of, among others, the fact that the Cape colonial government had transferred to the magistrates the chiefs' cherished authority of allocating land and the magistrates were beginning to exercise it at the expense of the chiefs; in 1880 Basotho went to war with the Cape colonial forces partly (but significantly) because the Cape government had threatened to alienate some of Basotho's land and divide it into farms for white settlers. While these events were a result of Basotho's view of land as the land of their ancestors, the source of pasture for their store of value - cattle -, the opening up of diamond mines in Kimberley created a market for agricultural produce for Basotho and many had become prosperous from this trade. This fact made land even more precious and, it can be argued, added to factors which inspired Basotho's resistance to land dispossession.

### The Traditional Land Tenure Arrangement

The traditional or customary<sup>9</sup> land tenure in Lesotho is described in relation with two main social groupings, the chiefs, on the one hand, and the commoners on the other. The chiefs are described as having an *administrative title* which means that their role on matters of land is that of administering; that is, allocating land for agricultural and residential purposes to married males on the basis of their requirements, declaring pasture land reserved or open to grazing, and granting permission to individuals requiring *liremo* - reeds, grass and trees. Agricultural and residential land allocated to an individual reverts back to the administrative control of the chief who allocated

it if such an individual leaves the area under his jurisdiction. In other words, it is a *political* condition that an individual wishing to be allocated land recognises the overlordship of the chief from who he expects such an allocation; his ability to retain access to such land will also depend on his continued recognition of this political relationship with the chief.

On the other hand, to say (as the traditional land tenure says) that the commoners have a *usufructuary right* to land is to say that they have a right of access and of use provided that the political condition described above is satisfied and that the land is used under conditions and for purposes for which it was granted. An allottee does not really have rights of ownership over the land allocated to him. Rather, he has a right over the land as long as he occupies it and continues to owe his allegiance to the chief who allocated him the land. However, all improvements that he makes to the land belong to him. On the residential site, these include that building, fencing and other material that he did not receive from the chief in *liremo* and other forms; these are the things he can take if he were to leave his chief's area to reside elsewhere. On agricultural land he owns the crops that he cultivated with his labour and only has a right to that land during the agricultural season; in theory, at the end of the season the land reverts back to the chief. It is an arrangement which is quite common among peasant societies. Hobsbawm gives a number of examples from Peruvian, Italian and Russian peasant societies where the same conception of land ownership could be seen. In all these societies, in order to lay claim of ownership of a piece of land, the peasant must

...actually live on it and *labour* it, because their right to it is not like bourgeois property right, but more like the Lockean property right in the state of nature: it depends on mixing one's own labour with the resources of nature... we know quite a lot from nineteenth-century Russia about peasants' belief in the so-called "labour principle"... in Cilento, South of Naples, before the 1848 revolution "every Christmas Day the peasants went out onto the lands to which they laid claim

in order to carry out agricultural labours, thus seeking to maintain the ideal principle of possession of their rights." If you don't work the land you cannot justly own it."<sup>10</sup>

Thus neither the chiefs nor the commoners can really be said to own the land in Lesotho; the notion of *possession* probably describes better the various ways in which the chiefs and the commoners relate with the land in the customary land tenure in Lesotho. Scholars and others attempting to grapple with the problem of land ownership in Lesotho have elevated ownership out of the realm of these groups and identified the owners of land in Lesotho as 'the nation' or 'the people'. As Hammet points out, this is a Roman-Dutch law conceptualisation and, stated in full, it maintains that

...the land belongs to the nation and is held in trust by the Paramount Chief. The Paramount Chief is then thought of as delegating this trust to the high chieftainship, who in turn delegate to the sub-chiefs and headmen.<sup>11</sup>

It has been argued above that this formulation is vague because it does not satisfactorily identify any group with the right of ownership over land. Hammet's attempt to explain the meaning of this formulation is not any less indeterminate: "...the chieftainship is the mechanism whereby the 'national' ownership of land is given practical expression."<sup>12</sup>

More than just being confused, the ambivalence in this formulation makes possible contradictory interpretations of the land tenure. A classic example of this is a case related by Hammet and concerns an incident where a chief applied his administrative title to exclude some of his subjects from access to *leboella*. This act seemed to emanate from the chief's perception that the land was his to dispose of as he wished. On the other hand, his subjects' subsequent complaint was informed by their perception that the land belonged to the nation, that is, them. Both claims found sanction in the traditional land tenure system and subsequent legal action which followed

resulted in decisions which legitimised both of them.

...the Paramount Chief's court found against [the chief], stating in terms that '... *maboella* belong to the nation'... On appeal to the Judicial Commissioner, the chief was successful, the Court taking the view that though the chief's favouritism was deplorable and he had acted abusively, it was an administrative matter that fell within his discretion...<sup>13</sup>

Issues involved in these contradictory interpretations and decisions emanating from the same law code go far deeper than the fact that one decision was made in a traditional court and the other in a civil court. The land law does give title to the commoners and the chiefs. The commoners have a right of access for purposes of use which the chief cannot question. The chiefs have the right to administer which the chief can exercise as if the land belongs to him. As the decision of the Judicial Commissioner illustrates, according to the traditional land tenure, this sort of action by the chiefs can be justifiable.

Perhaps an extreme example of the manner in which the traditional land tenure allows the chiefs to act as if they have absolute power over land was the one which involved the Paramount Chief. In 1955 a South African mining magnate applied for a lease to prospect for and mine diamonds in Lesotho. Attempts to subject the application to popular discussion were consciously and brazenly brushed aside and in the end Paramount Chieftainess 'Mants' ebo gave Scott a lease covering the whole country without the permission of the nation in whose trust she was supposed to hold the land. This practice of leasing the country or parts of it without consulting the 'owners' continued after King Moshoeshe II succeeded to the throne in 1960.<sup>14</sup>

### Land Legislation in Lesotho

Apart from this traditional land tenure system, there are also Roman Dutch laws which form the basis for other forms of land

administration and holding arrangements.<sup>15</sup> The most recent of these is the 1979 Land Act. In the period immediately preceding and following independence the government of Lesotho found itself faced with a dilemma. On the one hand there was a series of grievances from the commoners complaining about the chiefs' abuse of their administration of land. As will become clear below, these complaints included the chiefs' arbitrary refusal to allocate land or the withdrawal of lands given to widows and old destitute women. On the other hand, in the 1960s a number of international financial institutions sent missions to investigate the land tenure system in Lesotho.<sup>16</sup> These were unanimous in their conclusion that the land tenure in Lesotho was not conducive to economic development in general and foreign investment in particular. The major weakness of the traditional land tenure, they argued, was the fact that it did not give potential agents for economic development a security of tenure. Economic development and foreign investments, the missions implied, could only be achieved if the land tenure was changed in such a manner as to give security of tenure to those who wanted to invest in Lesotho.

The post colonial government moved quickly and promulgated laws aimed at addressing both these dilemmas. A series of laws were promulgated "...democrat[ising] the decision-making process on land at the local level";<sup>17</sup> these laws included the 1965 Land Advisory Boards Procedure Regulations, the Land Procedure Act of 1967, and the Land Husbandry Act of 1969. On the other hand, the 1969 Land Husbandry Act and the 1973 Land Act gave the government greater control over land. In this way, these pieces of legislation made it possible for the government to give foreign investors a security of tenure in the name of economic development.<sup>18</sup> The 1979 Land Act contained much of what could be found in the 1969 and 1973 legislations.

However, although these laws have serious implications for changing land acquisition and land holding in Lesotho, none of them really took root in the rural areas of Lesotho. Rural dwellers - both chiefs and commoners - continue to relate to land pretty much in the

manner that their forebearers did in the past. What changes have occurred have been within the context of the traditional land tenure system. Thus even though it has been rightly argued that between the time when Lesotho got its independence in 1966 and when the last Land Act was passed in 1979 "...the powers of civil servants increased and those of chiefs decreased regarding land..."<sup>18</sup> this has been so only in so far as the law makes it possible, these laws and their provisions have not been implemented or have only been partially implemented in the rural areas and the traditional tenure remains the basis of the land transactions in the countryside.

### Chiefly Land Disputes, Late 19th - Early 20th Centuries

As the importance of land mounted under the circumstances described above, a contradiction emerged in which on the one hand, the economic importance that land had come to acquire gave commensurate political power to those who controlled access to it, the chiefs and, on the other, the commoners continued to apply the conventions of the natural economy and to view their access to land as a right. The consequence of this was the beginning of a hidden contest about who actually owns land in Lesotho. To a very large extent, the contradiction was resolved in the political terrain. From earlier times of the history of Lesotho - the period that has been characterised as having been 'feudal' - land was allocated by chiefs or heads of fiefs. Even though this did not mean that they owned the land - which was seen very much in communal terms - newcomers seeking access to land had to pledge their allegiance to them and the communities they led; further, members of the community had a right to continue to have access to land only to the extent that they owed allegiance to those individuals and to the whole community. To this political condition were added economic privileges - such as the right to a number of exactions - the effect of which was to enhance the economic endowment of the chiefs which was then used to confirm political power. Thus over time the chiefs accumulated enormous political power at the expense of the commoners. This process

benefitted enormously from the shortage of land and the economic conditions that were emerging as a result of the increase in the number of groups competing for land. In the days gone by when land was abundant, chiefs had to exercise caution in dealing with their subjects. Because of the right that they had to land and the total control that they exercised on the fruits of their labour, economically the subjects were totally independent of the chiefs. Political power which is not backed by some economic sanction tends to be fickle and chiefs who were not aware of this and attempted to exercise unmitigated political authority over their subjects were laughed at or lost their followers. But because of the shortage of land, the option to desert oppressive chiefs increasingly became impossible. Even the most oppressive chief retained his followers.

This had implications for the contest on who actually owns land in Lesotho because the chiefs could claim to and act as if they owned land without much challenge *in as long as they did not question the rights of their subjects to it*. Although the Reverend Emille Rolland detected the tendency by the chiefs to use their control over land to their economic benefit as early as the 1860s,<sup>20</sup> it was really towards the end of the 19th century that the chiefs' view of land as their property can be clearly demonstrated. By this time, another factor had been added to problems surrounding the ownership and control over land - the proliferation in the number of chiefs. This led to a series of chiefly disputes over land throughout Lesotho. Some of these actually ended up as conflicts of differing scales and severity. In these disputes, each of the contestants expressed his *private* claim to the disputed land and not the interest of the community that he led. Conflicts of this nature were many towards the end of the nineteenth and at the beginning of the twentieth centuries and had a number of common attributes

Essentially, the disputes revolved around the question of what chief owned what lands and to which chief people residing in disputed areas owed their allegiance. Thus in a land dispute between Joel and Jonathan in the early twentieth century the former complained to the Resident Commissioner that a man he had

instructed not to build on a specified piece of land was encouraged to disobey this instruction by chief Jonathan. Further, when chiefs were collecting money to contribute to a fund established by the Paramount Chief Letsie, a man residing in Joel's area, Masuebe, refused to pay to him pointing out that he and his sons took their contribution to chief Jonathan. Another man, Mpoteli, told Joel that in a similar exercise earlier he had obeyed him [Joel] and "[b]y doing so he had wronged Chief Jonathan who blamed him and as a result he suffers up to this day." The letter ended:

Chief, you have long been in Basutoland and know that according to Basotho law a man like Mpoteli at whose place I was placed should listen to me and be my servant. A man like Masuebe who also lives with me cannot be given a site by the chief who is at Leribe (that is, Jonathan), without consulting me. I say: People who, the chief said, should live with me may be made to respect me.<sup>21</sup>

Once a decision had been made in favour of a particular chief, people residing in the area had to pledge their allegiance to him or leave. Thus following the decision to award Motete - an area which Jonathan and Joel had fought over in the late nineteenth century - to Joel, Jonathan requested the Assistant Resident Commissioner, Leribe,

...to inform the Chiefs that I have actually sent to Motete the people [owing allegiance to me] who are said to be on Joel's side of the boundary line that they must really leave. And they themselves have been to the Chief's and heard it said that that place is not mine.<sup>22</sup>

Indeed people were moved and the Leribe Assistant Resident Commissioner reported to the Resident Commissioner as follows:

Messengers have returned to Buṭha-Buthe from Motete and

report that removals have taken place without friction and Mopeli's people have been placed there. Messengers now ask for orders as to dispose of crops and unroofing of huts at Motete and are waiting at Butha-Buthe for reply... I suggest that Jonathan's people be allowed to reap their crops when ripe but those who wish must remove roofing at once.<sup>23</sup>

A second example of these chiefly disputes over land was another series of wrangles between two sons of Letsie I, Lerotholi and Maama, also towards the end of the nineteenth century. One of these was over a piece agricultural land which was near Maama's cattle 'marsh' and which Lerotholi claimed to be *his*. As in the disputes between the sons of Molapo in Leribe, Lerotholi's position showed clearly the perception of both chiefs which informed the dispute. In a letter to the Resident Commissioner enumerating the areas they were contesting, he wrote as follows:

As here where I have ploughed belongs to *me*, the cattle too are mine and the corn is also mine which I plough for Letsie's children... Now Maama in replying to me says Koro-Koro is *his*, that I have taken it from *him*, the Koro-Koro plateaux are *his* and I have taken them from *him*, Makhaleng at Motsie's *belongs to him* and I have deprived *him* of it.<sup>24</sup>

As pointed out above, a further indication that the chiefs viewed the land as belonging to them was the practice where once a particular chief won the dispute people wishing to remain in the area had to be only those who pledged their allegiance to the winner of the dispute. Those who did not have to move. So it was that at one point in this dispute that Maama complained to the Resident Commissioner that "...Lerotholi tells me that my people who are on the [disputed] plateaux are to remove..."<sup>25</sup> However, in the end the dispute was decided in favour of Maama - paradoxically by Lerotholi himself<sup>26</sup> - and although in ceding the territory to his brother Lerotholi insisted that "...ploughing should be carried on together and no distinction be

made [on the basis of allegiance]",<sup>27</sup> he soon found himself faced with people whom Maama had forced out of the area that Lerotholi had ceded to him. Maama's reason for forcing these people out of the area he had newly acquired was that they refused to acknowledge his political authority and continued to view Lerotholi as their chief, as Lerotholi put it, Maama deprived these people of the lands "... because they say they belong to me."<sup>28</sup> At the occasion of awarding the disputed territory to Maama, while acknowledging that his elder brother had given him some territory, Maama urged his brother to "continue to remember that I am still hungry..."<sup>29</sup> This was clear indication not only that he saw the land as his but also a sign of his *personal* hunger for land.

Disputes like these grew in quantity as the number of chiefs grew and the land became scarcer and more valuable. As a government official investigating a dispute between the three sons of the chief Makhoakhoa found, by the early twentieth century "[t]here was no room in the locality indicated (sic) for any more new lands, the place was full up with the old lands..."<sup>30</sup> Not only brothers clashed over land but even fathers and sons bared teeth at one another when it came to ownership of land.<sup>31</sup> These clashes were often so passionate that they led to threats of war or the actual taking up of arms by a brother against a brother. As is clear from the two cases above, in their disputes, the chiefs were totally silent when it came to the interests of the commoners in the ownership of land. Neither was land claimed in order to accommodate more followers nor was it disputed 'in the name of the people'. It was then, that Alan Pim's Commission sent to Lesotho to investigate the financial and economic situation in Lesotho after the depression found not only a large number of individuals claiming to be chiefs but also that there existed "...a tendency in the National Council [a body dominated by the chiefs and their nominees] to describe the land as the property of the Paramount Chief..."<sup>32</sup>

Under these conditions - increasing shortage of land, proliferation of chiefs and their growing regard of land as their private property - although people continued to have access to land on the basis of

allegiance to the chief of the area, no longer was a commoner able to vote with his feet if he did not like his chief; it was now the chief who could force out of his area individuals whom he did not see eye to eye with. This led to a qualitative change in the relationship between the commoners and the chiefs to the extent that whereas before the chiefs had to attract more followers to enhance their political standing, they could now treat them as they wished counting on the fact that the shortage of land would make it difficult to find vacant land in another chief's territory. More importantly, these conditions strengthened the chiefs' view of land as their private property.

#### **Land Disputes: Commoners vs Chiefs, Chiefs vs Chiefs, 1940 - 1994**

As this perception of chiefs as the owners of land crystallised in the minds of both the commoners and the chiefs, in general the chiefs became more and more oppressive and treated their subjects in manners which were extremely excessive.<sup>33</sup> If a grievance was against an immediate chief, he could simply refuse to attend to it. Given intermarriages among chiefly families, the chief immediately above the one who had erred against his subject was likely to be a blood or marital relative of his immediate superior; on these grounds, the latter would routinely ignore complaints brought to him about his immediate subordinate. The system of parallel rule made it extremely difficult for the commoners' complaints against these excess to be dealt with. By defining cases between chiefs and their subjects as 'customary cases' to be attended by a customary justice system which was presided over by the chiefs, the system of parallel rule put such cases outside the purview of the magisterial justice system. Although with time the colonial justice system opened up its doors to cases some of which had earlier been designated 'customary',<sup>34</sup> the inability of the colonial justice system to intervene in cases where the customary system failed the commoners meant that they had to find a way of expressing their grievances. As Basotho became more literate, one means which was increasingly used to air

grievances was the press.

Being one of those areas where the chiefs' excessiveness was most flagrant, the question of allocation, denial, and use of land generated some of the bitterest complaints against the chiefs and was the subject of a number of newspaper articles throughout the colonial period. At the forefront of this campaign were the educated middle class and their organisations. They were aggrieved not only by the fact that the chiefs abused their control over land but also by the continued chiefly control over land. This arrangement, they argued, was responsible for the absence of meaningful development in Lesotho's agriculture. For them, the solution to problems facing agriculture in Lesotho lay in removing the control of land from the conservative chieftainship and passing it on to progressive Basotho. Given a chance to present their viewpoint to a colonial commission charged with identifying the economic problems of Lesotho after the 1930s depression, this grouping whom the commission referred to as 'progressive elements' complained of insecurity of tenure and accused the chiefs of arbitrarily denying them access to land as a way of penalising them for their progressive political views.<sup>35</sup>

Criticism and dissatisfaction at the way the chiefs distributed land continued to appear in the press in the 1940s. One contributor to *Leselinyana la Lesotho* questioned the sensibility of continuing to call Lesotho 'our fatherland' when "men [and] women... complain about having no fields, children are dying of hunger" and continued:

When a person reads history, he/she will find the blood of Basotho men, our grandfathers, I say their blood has been absorbed by the soil of this country... We do not hear that there is a chief whose blood was spilt to free Lesotho. Now I am always surprised when I hear a painful complaint, a person saying he/she does not have a field. And in fact land is being taken away from women and old women, whom the chiefs know very well that their husbands were warriors. of this country [The chiefs] say that there is no commoner who can claim land *To whom does the soil belong? To the chief*

[?] How? Was it the chiefs' blood which was spilt ?<sup>36</sup>

In the 1960s a contributor to *Moeletsi oa Basotho* raised a concern along the same lines as follows:

Here in Lesotho the statement that the British are oppressing us is common but to my mind I find that those who oppress the nation are the chiefs; because the question of fields has not be properly arranged. *A person does not actually know the extent to which a field is his; because he can have it taken away from him anytime.*<sup>37</sup>

However, it has not only been among the educated elites or middle class that the shortage of land has been felt and the confusion reigned about who owns land in Lesotho. Rural dwellers - dependent on pasture and crop land for their livelihood - have experienced the effects of land shortage and lack of clarity on land ownership more acutely. As land has become scarcer, people residing in neighbouring villages have become more and more reluctant to continue the age-old practice of sharing pasture land. Instead, it has become quite common for people from one village to describe as an 'invasion' the arrival of people from neighbouring villages seeking access to pasture for their animals - a practice which was quite acceptable in the past. Thus in a report concerning a dispute between two chiefs - one in the Matsieng and the other in the Matelile wards - one of the disputants was quoted as having stated that

...people from Matelile from the village of Chieftainess Mashoaepane Soko from the village of the headman Thabang Makha have invaded his place they cut the a whole *cheche* forest ululating and with the intention to cause the spilling of blood... He goes on to point out that even *liremo* like thatching grass and pasture they have invaded it [sic] by means of war. It is at a place called Maola.<sup>38</sup>

As pointed out above, in the not so distant past sharing resources such these was quite common; the fact that lately these acts are regarded as violations of ownership indicate the creeping sense of private ownership of resources by a community at the exclusion of its neighbours. This increasing of sense of private ownership of land by a community is matched by a similar sense of private ownership of land among the commoners over land allocated them. This is clear, for example, in the practice of cutting maize stalks for private use or sale after harvest as opposed to the old practice of allowing communal access to such stalks, the ability of people to retain rights over lands that belonged to their parents or grandparents in the rural areas after they move from the rural to the urban areas and the practice of inheriting land which has now become quite common. To a very large extent, the institution of chieftainship has not been able to contain this transformation. This seems to suggest that for the chiefs, the process of allocating land represents a permanent surrender of their administrative rights over such land. The loss of administrative control over allocated land has made it necessary that the chiefs tighten their grip over land and land resources that remain under their control, pasture and *liremo*. It is in this context that we can understand not only the continuing chiefly disputes over land but the increasing involvement of the commoners in land fights in which whole villages are burnt down and many lives lost.

Thus it can be argued that the traditional land tenure system in Lesotho is confused and leads to a situation where any one can claim land ownership and succeed in doing so provided he has the means to back his claim.<sup>39</sup> The shortage of land and the proliferation of chiefs and the consequent confusion of boundaries<sup>40</sup> have compounded problems generated by the confusion in the traditional land tenure system to create conditions such as prevail in the rural areas - armed conflicts, loss of life and destruction of property within the country and conflicts in a number of places along the border with South Africa between residents of South Africa and people from

Lesotho over pasture land and stock theft. That this system of land tenure has continued to operate is really because it does two things beautifully. On the one hand it provides a mechanism by which the chiefs can claim and secure the political allegiance of those to whom they allocate land and exercise authority over them as their subjects. Materially, this allegiance is realised in the form of a number of economic benefits that the chief exacts from his subjects for his personal gain. On the other, it gives the commoners an unquestionable right to access to land. Where land is available subjects who ask for it *must* be given it. However, this does not remove its weakness: its inability to determine land ownership clearly thus leaving this issue in a limbo. As Mahao has correctly pointed out, the introduction of legislation which is then only partially implemented in the middle of all this leads to nothing but a total chaos in which structures established by politicians and customary ones can all administer land each basing itself on a law of its choosing which it interprets in its own way. The inevitable result of this, as Mahao further points out, are cases where licences are issued at different dates to different people, by different structures on different dates in respect of a similar plot.<sup>41</sup>

### Consequences

The consequences of these disputes are many and are a source of potential instability, village displacements, lawlessness and may affect the ability of rural communities to feed themselves. Going through reports on various disputes, one is immediately struck by the frequent reference to actual as well as threatened 'spilling of blood'. It is quite common to find a chief asking another to vacate his land before *molamu o lla*.<sup>42</sup> In a running dispute between villagers from Ha Nkhabu and Ha Petlane in the Rothe ward, 17 houses belonging to fifteen people were burnt down or destroyed and 4 people killed - one in a fight in 1986 and three others in 1988.<sup>43</sup> In 1990 two people died in a clash between villagers from Pulela and Mahlasane.<sup>44</sup> In the Tajane ward, a conflict between chiefs quarreling over land ended

with 14 people injured and 2 dead.<sup>45</sup> Apart from loss of life and damage to property, as in the past, a chief who wins a land dispute with another still insists that people residing in the area he has just been awarded should only be those who recognise his authority. Thus in a dispute between a chief falling in the Matsieng ward and another falling in the Rothe ward a decision which was reached put houses belonging to some of the villagers under one chief and their fields under another. In view of this, people were asked to make a choice whether they uprooted to go and live in a village ruled by the chief under whose jurisdiction their fields now fell or to give up their fields and remain with their houses which were under another chief.<sup>46</sup> After the decision, the village in question, Thabana-Nts'onyana, fell under the Matsieng ward, while the fields of the villages fell under the Rothe ward:

...from that day [February 6, 1991] on, people from Bagomi (a village in the Matsieng ward) or [people] from Rothe should examine themselves, as to how their houses are affected by the boundary, as well as their fields, so that they can decide on their own as to by their own choice whether they follow their fields or they give them up, or whether they remain with their houses or they give them up.<sup>47</sup>

This creates problems in cases where the losing chief had actually exercised political authority in the area for some time and had developed some rapport with communities which are now awarded another chief. The problem can be even more acute if the number of people who continue to recognise the political authority of the losing chief are many and those recognising the authority of the new chief fewer in number. This is the situation that prevailed in the case of Thabana-Ntsonyana above. After the case was decided in his favour, the Principal chief of Matsieng found that many of the people who resided in the area he had been awarded preferred to be ruled by the Principal chief of Rothe and only a few acknowledged him as their chief. Not only does this undermine the authority of the chief in the

area but the few residents who decide to recognise the authority of the new chief are persecuted by the other villagers:

... the difficulty is that the people of this village are insisting on being ruled from Rothe except for two people who respect the decision which was arrived at that they are people of Matsieng and these [two] people have been made to sit on a spiky stone by these people of the village these ones of *mahana a busoa* (anarchists).<sup>48</sup>

Thus one consequence of these disputes is the loss of agricultural land or of a house. Needless to say, it cannot be easy for anybody to decide to leave his house - built at a great cost and located in the village where his ancestors are buried - or to give up his fields, the source of his and his family's livelihood - all in the name of observing boundaries which are drawn for the convenience of chiefly claims of land. In other cases individuals do not actually lose land but disputes can make it difficult for villagers to harvest their crops;<sup>49</sup> put disputed land out of reach of the contending parties for a long time<sup>50</sup> - unacceptable situations given the shortage of land and poverty among rural populations.

However, there has been the odd decision to allow people whose fields and homes end up falling under the jurisdiction of two different chiefs as a result of a decision on a dispute. Thus in a 1959 case between Ha Chele and Ha Thoahlane, the High Court of Lesotho passed a judgement that after the change of boundaries put the homes of people from Ha Chele and their fields under the jurisdiction of two different chiefs,

...the agriculture of the people of Ha Chele which they are living on on the side of Ha Thoahlane should remain as it is, [they should continue to] live on those same fields.<sup>51</sup>

Similarly, deciding on a case between a number of chiefs in the Tajane ward in 1981, the Minister of Interior wrote:

I have also noticed that people have come together by way of agriculture, especially at a place called Letjoing. Here I am making an order that people should continue to live on their fields. This is a decision that I am making on this matter which has already claimed a lot of lives.<sup>52</sup>

But it is important to note that these odd decisions to allow people to continue to use their fields after boundary dispute settlements put such fields in the jurisdiction different from the one where their homes are located - these sort of decisions have been made by non-chieftainship institutions such as the High Court or the Minister of Interior. The exception to this is the case referred to above between the people of Ha Petlane and Ha Nkhabu where the Minister of Interior asked people to uproot and follow their fields or to remain in their homes and give up their fields which now fell under the jurisdiction of another chief. But this is not surprising. At the time, the Minister of Interior was a younger brother of the king, chief Mathealira, and all he was doing was to do what chiefs did - force people to make a choice between their fields and their homes in compliance with chiefly claims of land. The fact that the chiefs have used their control over land for their own political ends and to the detriment of rural populations raises the question of whether an unaccountable grouping like chiefs should continue to have so much power over matters of land or such power should be exercised by accountable elected representatives.<sup>53</sup>

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## SUMMARY

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This paper has tried to describe Basotho's relationship with their land to show how perceptions of land ownership have changed over time. Key to understanding the process of these changes in perception, the paper has suggested, are the processes of Basotho's loss of land to the Free State Boers from the 1830s and commoditisation of agricultural produce especially in the 1870s. In essence, these changes involved the chiefs at various points of Lesotho's history claiming that or acting as if the land belonged them. This perception was challenged in various ways by the commoners. What made these shifts possible was the lack of clarity on the part of the traditional land tenure system on who exactly owns the land in Lesotho. We have suggested that the formulation describing the land tenure system in Lesotho is unclear precisely because it seeks to determine a vague arrangement. As the land became scarcer and more valuable, the chiefs took advantage of their administrative right to land to dispense or withhold it in a manner that suggests that they regard it as their private property. But the shortage of land has also affected the chiefs in that in their attempts to continue the old practice of allocating areas for their sons to rule, boundaries have become blurred with consequent disputes over land throughout the country. The paper has tried to show how in such disputes it is the commoners who suffer: it is them who have to move their homes or give up their fields if the settlement of the dispute puts their homes under the jurisdiction of one chief and their fields under the jurisdiction of another; it is them who have died in armed conflicts related to border disputes; it is them who end up being unable to cultivate or harvest their crops; and it is them who have to wait for periods of over ten years for judgement before resuming to cultivate their lands. These, we have suggested, are some of the consequences that befall the ordinary people as a result of the lack of

clarity on land ownership in the land tenure system of Lesotho.

The cases discussed here are used to make general arguments and tentative conclusions concerning the chiefs' attitudes towards land and the experiences of the commoners resulting from the manner in which the chiefs see their relationship with the land. There is quite clearly a need to carry out more in-depth investigations in some of the cases discussed here. For example, places like the Rothe ward and, in particular, clashes going on between villages like Ha Petlane and Ha Nkhabu in that ward need a study of their own focussing at the special problems in that area. Such in-depth studies are bound to have some impact on the arguments and tentative conclusions that have been made here.

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## ENDNOTES

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- <sup>1</sup> Kingdom of Lesotho, *Second Year five Year Development Plan 1975 - 1980*, vol. 1, Government Printer, Maseru, p. xi; World Bank, *Lesotho, A Development Challenge*, Washington, 1975, p. 1. This view has been correctly criticised by Colin Murray, "From Granary to Labour Reserve: An Economic History of Lesotho", *South African Labour Bulletin*, vol. 4, no 4, 1980, especially p. 1; and more recently James Ferguson, *The Anti-Politics Machine, "Development", Depoliticisation and Bureaucratic Power in Lesotho*, Cambridge University Press, 1990, chapter 1.
- <sup>2</sup> Ministry of Planning, 1994 *Lesotho Population Data Sheet*, Government Printer, n.d.
- <sup>3</sup> V. Liversage, *Land Tenure in the Colonies*, Cambridge University Press, 1945, p. vii
- <sup>4</sup> Eugene Casalis, *The Basutos, or Twenty three years in South Africa*, London: James Nisbet and Co., pp.154-155.
- <sup>5</sup> Burnet's Report regarding his mission to collect cattle from Basotho to compensate the settlers of Natal for cattle raided by Lesaoana, *Basutoland Records*, vol. 3B, C. Struik, Cape Town, 1964, p. 555.
- <sup>6</sup> Clearly to be pushed too far. It is quite possible that this sort of consciousness towards animal wealth was limited to the emerging ruling class given that, unlike land, cattle wealth was the one resource that they could lay *private* claim to and one which was critical in their efforts to consolidate their political power by attracting followers (e.g. through *mafisa*). Although land could

be used in this manner, access to it was still very much influenced by the conventions of the moral/natural economy in which it was the duty of those who held political power to ensure that their subjects had access to land.

- <sup>7</sup> Casalis, *The Basutos*, pp. 156-157
- <sup>8</sup> Casalis, *The Basutos*, p. 158
- <sup>9</sup> Perhaps the most authoritative source on Lesotho's customary law regarding land is *The Laws of Lerotloti*, especially Section 7. As we refer to other forms of land holding which are based on Roman Dutch law below, it is important to stress here that we do not subscribe to a dualist viewpoint which seeks to identify two distinct and unrelated systems - one 'traditional' and the other 'western'. Analyses of the so-called 'traditional' or 'customary' law in Lesotho reveal that customary law is really a set of codes and principles consciously selected from a body of precolonial conventions and canonised by the ruling class in Lesotho in the not so distant past and that these were further modified and adapted under colonial rule. So that an appraisal of the actual practice of land transactions is based on a mixture of principles that were generated under different political circumstances. These issues are discussed in Nqosa Leuta Mahao, 'The Law and Land Planning: An Overview of Customary, Colonial and Post-Colonial Initiatives', a paper presented at the *International Conference on Planning in Africa*, Maseru, 2 - 5 December, 1991; and Anita S. Franklin, *Land Law in Lesotho, The Politics of the 1979 Land Act of 1979*, Avebury: Aldershot, 1995.
- <sup>10</sup> E. J. Hobsbawm, "History from Below, Some Reflections", in F. Krantz, *History from Below, Studies in Popular Protest and Popular Ideology in Honour of George Rud'e*, Concordia University, 1985, p. 71. Italics in original.

- 11 Ian Hamnet, *Chieftaincy and Legitimacy. An Anthropological Study of Executive Law in Lesotho*, London: Routledge and Kegan Paul, 1975, p. 63.
- 12 Hamnet, *Chieftaincy and Legitimacy*, p. 63., p. 63
- 13 Hamnet, *Chieftaincy and Legitimacy*, pp. 64-65.
- 14 The manner in which the Paramount Chief and the chieftainship dominated Basutoland National Council colluded with the colonial administration to steer the subject of granting a lease to Scott away from discussion by the owners of the soil is very clear in colonial secret reports that were sent to England during 1955. See for example Tergos No. 2 of 1955, DO 35/4257 (Public Records Office, London).
- 15 There are two pieces of legislation which are seldom mentioned in the history of land law in Lesotho. The first one was a provision in the Annexation Proclamation of March 1868 which indicated that from the date of the publication of the proclamation "...the territory of [Basotho] shall be and shall be taken to be British territory..." thus transferring the suzerainty over land from traditional rulers in Lesotho to the Queen of England. Proclamation by the High Commissioner, P. Wodehouse, 12 March, 1868, *Basutoland Records*, vol. 3B, p. 894. The second one was the Concession Veto Proclamation of 1922 which gave the colonial administrators (acting of behalf of the Queen) the final say on matters on land in Lesotho. One of the reasons why these pieces of legislation are hardly ever mentioned is that they had almost no practical effect on the administration of land.
- 16 Among them the United Nations (1965), British Overseas Development Ministry (1966), a joint mission from the Bank of England and Bundesbank (1966). See Denis V. Cowen, "Land

Tenure and Economic Development In Lesotho", *South African Journal of Economics*, 35, 1967, especially p. 57.

- 17 Franklin, *Land Law in Lesotho*, p. 102. This book is the most recent contribution to debates in land tenure in Lesotho and Southern Africa in general and on the 1979 Land Act in particular. It summarises much of the literature and debates on land tenure in Lesotho and provides an historical perspective from the 1820s. Much of this section borrows heavily from this book.
- 18 The current government has gone further to pass legislation which actually makes it possible for foreign companies to own land directly without going through the Lesotho National Development Corporation as has been the case in the past. Minister of Finance, M. P. Senoana, Budget Speech, Parliament, Wednesday April 3, 1996.
- 19 Franklin, *Land Law in Lesotho*, p. 50.
- 20 See Emille Rolland, "Notes on the Political and Social Position of the Basuto Tribe", *Basutoland Records*, vol. 4, part 1, pp. 125 - 150; especially pp. 132 - 133. Judy Kimble also quotes sources to argue that Moshoeshoe I and his family viewed the mountain areas - which became valuable as land became scarce - as their prerogative and 'actively discouraged' the commoners from settling there by 'jealously guarding' the approaches to the area. *Towards an Understanding of the Political Economy of Lesotho: The Origins of Commodity Production and Migrant Labour, 1830 - c.1885*, National University of Lesotho, 1978, p. 63.
- 21 'President Molapo' to Assistant Resident Commissioner, Leribe, April 24, 1919. Lesotho National Archives (LNA), S3/5/11/1 - 4.

22. Jonathan to Assistant Resident Commissioner, Leribe, 4th February, 1920, LNA, S3/5/11/1 - 4
23. Telegram from Assistant Resident Commissioner, Leribe, to Resident Commissioner, February 18, 1920, LNA, S3/5/11/1 - 4.
24. Lerotholi to the Resident Commissioner, 11th November, 1896, LNA, S3/5/5/1 - 6. Italics added.
25. Maama to the Resident Commissioner, 18th November, 1896, LNA S3/5/5/1 - 6.
26. True enough only after trying a number of ruses clearly aimed at prolonging the issue as much as possible. One of these was failure to turn up at an appointed time and place to effect the allocation and then giving the Resident Commissioner (who was supposed to oversee the allocation) the flimsy and rather amusing explanation that he was purging: "...I was purging so badly it is the first time I have known myself to purge so much that I am alarmed..." Lerotholi to the Resident Commissioner, 28th October, 1897.
27. Lerotholi addressing Maama on the occasion of allocating the disputed territory to Maama, 30th August, 1897, LNA, S3/5/11/1 - 4.
28. Lerotholi to the Resident Commissioner, 28th October, 1897, LNA, S3/5/5/1 - 6.
29. Maama addressing Lerotholi on the occasion on which Lerotholi allocated the disputed territory to him, 30th August, 1897, LNA, S3/5/5/1 - 6. Italics added. See also Maama to Resident Commissioner, 8th August, 1897 in which Maama reported to the Resident Commissioner an incident where he and Lerotholi disputed over cut grass which each maintained had been cut on

his side of their common boundary. LNA, S3/5/5/1 - 6.

30. Report by Captain Sam Nchee on a dispute between Letsika, Potjo and Tumane, 24 July, 1912, LNA S3/5/2/5.
31. For example, in 1912 the entire Makhoakhoa ruling family was riven with internal divisions because of a series of disputes over various parts of the family's jurisdiction in the Botha-Bothe district. See S3/5/2/1, LNA.
32. *Financial and Economic Situation of Basutoland*, HMSO, London, 1935, p. 45.
33. Again a typical example of this was the case of Chief Letsika Matela who illtreated his subjects on a routine basis and with impunity. On the one hand, the magistrate at Botha-Bothe was constrained by the system of parallel rule to intervene on behalf of the commoners; on the other, Matela's immediate superior, chief Jonathan, was Matela's father-in-law and he ignored all complaints against his son-in-law. In 1924 the number of cases brought before the magistrate against Matela included those of (a) a man whose family and himself had been beaten at the instructions of the chief, on top of this, Matela had confiscated this man's horses and other animals for no apparent reason; (b) a man who Matela had personally assaulted and whose cattle he had taken; (c) a woman who had a case with Matela's wife and which case the chief had refused to attend to. In all these cases and others, complainants had taken their grievances to Jonathan in vain; most people had given up on the ability of the chieftainship system to come to their rescue and some had resorted to taking their cases to magistrates. LNA, S3/5/2/5. See also *Leselinyana la Lesotho*, 29 March, 1944 where an article contributor wrote about a situation in a village in Quthing where the local chief was ever litigating against his subjects and presiding on these cases himself. The result, the contributor said,

was that a large number of villagers were living in houses vacated by subjects who had left this village because of the injustices perpetrated by the chief. However, most people had to stay because there was no place to which they could migrate.

34. For example, the *Basutoland Native Courts Proclamation 62* of 1938 enabled courts established by the colonial administration to hear cases that had been previously described as falling within the purview of the chiefs as customary rulers.
35. *Financial and Economic Position of Basutoland*, p. 117. The elites in Lesotho had formed a number of organisations the most well-known of which was perhaps the Basutoland Progressive Association, BPA which translated its name to Sesotho as Khotla la Tsoelopele Lesotho, KTL. The report pointed out that its investigation of the allegations of arbitrary action by the chiefs could not find evidence that supported them.
36. Jacob Maxime Makhetha, "Na Lesotho ke fats'e la bo-ntat'arona", [Is Lesotho our fatherland?] *Leselinyana la Lesotho*, 26 January, 1944. Translated from Sesotho. Italics added.
37. *Moeletsi oa Basotho*, 4 February, 1961. Translated from Sesotho. Italics added.
38. DSLE/0/8/1, District Office, Mafeteng. See also chief L. B. M. Mohale to Minister of Interior, 19 April, 1988, DSLE/0/20/1, District Secretary's Office (DSO), Mafeteng, Principal Chief, Likhoele, to DS, Mafeteng, 19 May, 1989, on a dispute between Chief L. Mohale and Sechaba Sekake in which crops had been destroyed and cattle captured, DSLE/0/20/1, DSO, Mafeteng, Principal Chief, Matsieng, to DS, Mafeteng, 16 March, 1987, on a dispute between chief Joel Mohale and chief of Sekameng.
39. We will produce evidence in a forthcoming paper to argue that,

given this confusion and poverty in the rural areas, land has become a means by which rogue elements can profiteer by, for example, apprehending animals belonging to neighbouring/rival villagers, keeping them in a private kraal and the owners charged heavy fines which are privately appropriated by the apprehender.

40. When passing judgement in a case of a dispute between two chiefs in the Matsieng Ward, a magistrate justified his sentence by referring, among other things, to the fact that "...I found no boundary between you..." As research in the Mafeteng district amply showed, a direct result of this is a widespread practice where chiefs reserve pasture, allocate agricultural land, or even fence land belonging to or claimed by other chiefs. See for example DSLE 0/8/1 (Matsieng Boundary Disputes), DSO, Mafeteng; and the decision of the Minister of Interior, on a dispute between two chiefs one of whom claimed the other had been allocated land in his area by a chief under whom they both fell, 19 August, 1981, DSLE/F/14A/1, DSO Mafeteng.
41. Mahao, "The Law and Land Planning", p. 26. See also *Report of the Land review Commission*, Maseru, September, 1987, especially p. xxiv.
42. Loosely translated, 'before fighting with sticks begins'. Thus the chief of Thabaneng in the Matelile ward warned the chief of Ha Paki in the Matsieng ward: "... Also, I inform you that you remove that village from the plateau immediately before *molamu o lla*." The chief of Thabaneng to the chief of Ha Paki, 13 September, 1988, DSLE/0/8/1, DSO, Mafeteng.
43. Report on the conflict between Ha Nkhabu and Ha Petlane, 1988, DSLE/F/11A/1, DSO, Mafeteng.
44. The chief of Pulela to DS, Mafeteng, 7 March, 1994, DSLE/F/10A/11, DSO, Mafeteng.

- <sup>45</sup> Decision of the Minister of Interior on a matter between four chiefs in the Tajane ward, 19 August, 1981, DSLE/F/14A/1, DSO, Mafeteng.
- <sup>46</sup> The Sesotho expression used to describe this operation is '*ho reteletsa ntlo*'; that is, to turn the house around so that the door faces in the direction of the chief in whose area one's field is. This practice or a version of it was apparently rife in the 1930s, the time when the number of chiefs were said to be 'as many as stars in the heaven'. Thus the Allan Pim Commission found that people who complained of having been arbitrarily deprived of their lands by the chiefs were people who "...had 'turned their door' on the chief of the area..." *Financial and Economic Position of Basutoland*, p. 177.
- <sup>47</sup> Judgement in a dispute between Bagomi, Matsieng ward, and Rothe, February 6, 1991, DSLE/0/19/1, DSO, Mafeteng. See also the chief of Phamong to the chief of Qhoobeng, 11 November, 1992, DSLE/0/8/1, DSO, Mafeteng; a report on the dispute between Ha Nkhabu and Ha Petlane, indicating among other things, that 31 people had been affected by a boundary change between these two villages and that fields hitherto used by people from Ha Nkhabu now fell on the side of Ha Petlane. Principal Secretary, Interior to Minister of Interior, 6 April, 1988, DSLE/F/11A/1, DSO, Mafeteng, and DS Mafeteng to Principal Chief, Rothe, 5 August, 1988 in which the District Secretary reminded the Principal Chief of an earlier decision by the Minister of Interior that "...all people whose fields fall on the side of Ha Petlane as a result of the [new] boundary should stop cultivating them in compliance with a judgement by the College of Chiefs and the judgements of the courts which followed that one..." DSLE/F/11A/1, DSO, Mafeteng.
- <sup>48</sup> Principal Chief, Matsieng, to DS, Mafeteng, 10 January, 1994, DSLE/0/19/1, DSO, Mafeteng

- <sup>49</sup> In January 1988, the chief of Ha Nkhabu reported that his people who had planted wheat through a government scheme, *mants'a-llala*, in the 1987/88 agricultural season were prevented from harvesting it by people from Ha Petlane. Chief of Ha Nkhabu to Military Officer, Mafeteng, 14 January, 1988, DSLE/F/11A/1, DSO, Mafeteng.
- <sup>50</sup> An area of agricultural land whose ownership was contested by Ha Nkhabu and Ha Petlane remained untouched for a period of more than 12 years following the Principal's order and the subsequent slow movement of the wheels of chiefly justice. DSLE/F/11A/1, DSO, Mafeteng.
- <sup>51</sup> 1959 High Court Judgement on a dispute between Ha Chele and Ha Thoahlane, DSLE/0/10/1, DSO, Mafeteng.
- <sup>52</sup> Minister of Interior, judgement on a matter between a number of chiefs in the Tajane ward, 19 August, 1981, DSLE/F/14A/1, DSO, Mafeteng.
- <sup>53</sup> As the *Report of the Land Review Commission* shows, the question of who should control the land in Lesotho is a vexed one. During the work of the Commission arguments for the control of land by the chiefs on the one hand, and for control by the government or elected committees on the other, found equal support among the commoners and both sides put their arguments with equal force. See pp. 43 - 45.

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