

https://dspace.org/

People, poverty and the need for a rights based approach to land policy reform in Africa: a study of the importance of socially and environmentally focused land policy coordination in Africa to achieve the right to food, health and housing: the case of the Democratic Republic of Congo (DRC) and the Kingdom of Lesotho

Lotter, Desyree

2016-01-28
http://hdl.handle.net/10539/19383

Downloaded from a DSpace repository. https://dspace.org/

PEOPLE, POVERTY AND THE NEED FOR A RIGHTS BASED APPROACH TO LAND POLICY REFORM IN AFRICA:

A Study of the Importance of Socially and Environmentally Focused Land Policy Coordination in Africa to Achieve the Right to Food, Health and Housing

---

THE CASE OF THE DEMOCRATIC REPUBLIC OF CONGO (DRC) AND THE KINGDOM OF LESOTHO

DESYREÉ LÖTTER

16 February 2015

A research paper presented in partial fulfillment of the requirements for the Master of Arts (MA) Human Rights, Witwatersrand University, South Africa

DECLARATIONS

I DESYREE LŐTTER, hereby attest that the written work I am submitting for the evaluation is my original work and that all materials taken from another source have been duly acknowledged in keeping with the rules of the University of the Witwatersrand. I also attest that I am fully aware of the rules against plagiarism that apply at the University of the Witwatersrand and the consequences of violating them.

The word count of this project is within 20 000 words

SIGNED ……

DATE……..

ACKNOWLEDGEMENTS

This thesis paper would not have been completed without the help of a number of people. Specifically I would like to thank my supervisor, Professor Vinodh Jaichand for his guidance throughout the writing process as well as moral support over challenges experienced when taking on the task of research writing. I would like to thank Dr. David Hornsby for his assistance in helping me with understanding research methodologies and research structure. I would like to thank my life coach, Felicity Hart, for her time, wisdom and guidance through the process of my Masters Study programme. I would also like to thank my MA class members. I thank my classmates for their creativity and assistance in working through research challenges and topical debates. Finally, I would like to thank my family and friends for their keen assistance in editing and reading throughout the writing process.

TABLE OF CONTENTS

	Page
Declaration	2
Acknowledgements	3
Table of Contents	4
List of Acronyms	5
List of Appendices, Figures and Tables	5
Abstract	6
Chapter 1: Introduction	7
1.1 Introduction	7
1.2 Hypothesis and Research Questions	8
1.3 Background Statement and Problem Statement	9
1.4 Research Method	10
1.4.1 Theoretical Framework	10
1.4.2 Data Collection and Analysis	11
1.4.3 Primary and Secondary Data	12
1.5 Validity, Reliability and Limitations	14
1.6 Significance and Scope of Study	15
Chapter 2: Literature Review	16
2.1 Literature Review	16
Chapter 3: Presentation and Analysis of Information	26
3.1 Presentation and Analysis of Information	26
3.1.1 Land Policies of the DRC	26
The Forest Code of 2002	31
Mining Code of 2002 and Agricultural Law of 2011	32
3.1.2 Land Policies of the Kingdom of Lesotho	33
3.2 Population growth and biodiversity loss in the DRC and Lesotho	37
3.2.1 Population Growth	37
The DRC	37
The Kingdom of Lesotho	39
3.2.2 Biodiversity Loss	43
The DRC	43
The Kingdom of Lesotho	46
3.3. The Right to Food, Health and Housing	48
3.3.1 The Right to Food	48
3.3.2 The Right to Housing	51
3.3.3 The Right to Health	53
Conclusion	56
Bibliography	57

List of Acronyms

ACHPR – African Charter on Human and Peoples Rights

AfDB – African Development Bank

AU – African Union

CRG – Conflict Research Group

DRC – Democratic Republic of Congo

ESCR – Economic, Social Cultural Rights

FAO – Food and Agricultural Organisation

GDP – Gross Domestic Product

HA – Historical Analysis

HRW – Human Rights Watch

HIV / AIDS – Human Immuno-Deficiency Virus / Acquired Immune Deficiency Virus

IBHR – International Bill of Human Rights

ICC – International Criminal Court

ICESCR – International Covenant on Economic Social and Cultural Rights

IDMC – Internal Displacement Monitoring Centre

IDP – Internally Displaced People

IFAD – International Fund for Agricultural Development

IFI – International Financial Institutions

IIED – International Institute for Environment and Development

IMF – International Monetary Fund

IPCC – Intergovernmental Panel on Climate Change

MCC – Millennium Challenge Corporation

NGO – Non Governmental Organisation

ODI - Overseas Development Institute

OHCHR – Office of the High Commissioner for Human Rights

PLAAS – The Institute for Poverty, Land and Agrarian Studies

REC – Regional Economic Communities

TB – Tuberculosis

UNHCR – The United Nations High Commissioner for Refugees

UDHR – Universal Declaration of Human Rights

UNECA – United Nations Economic Commission for Africa

UNPO – Unrepresented Nations and Peoples Organisation

WB – World Bank

WHO – World Health Organisation

List of Figures

Page 8: Figure One: Policy Formation Lifecycle

Abstract:

The research looks at the coordination of land policy with population growth and biodiversity loss as a means through which economic, social and cultural rights may be achieved. The argument is made that poor coordination of land policy with social and environmental systems may perpetuate the circumstances that drive poverty in Africa. This given the fact that land policy is a public policy that may challenge the legitimacy of economic, social and cultural rights when not properly coordinated with social and environmental systems. The research questions what considerations are taken into account when determining land policy that reflects the economic, social and cultural needs of the people within a respective State. Given clearly identified dependencies on land for development by the majority of the African population, the research aims to address how land policy may be reformed in order to take on a multilateral perspective regarding coordination, as opposed to the current unilateral perspective that stays within the realm of land administration and commoditization of land. The hypothesis of the paper assumes that current land policies in Africa challenge the legitimacy of economic, social and cultural rights since coordinated with the systems of population growth and biodiversity loss as representatives of social and environmental sectors that most influence poverty are non-existent. The research focuses on the Democratic Republic of Congo and the Kingdom of Lesotho as comparative regions where; regardless of the differing characteristics of both regions, population growth and biodiversity loss prove to be common factors that influence society's experience of poverty. The paper makes use of structural functionalism and conflict theory as a framework for analysis. Finally, the paper makes suggestions for further study into multilateral land policy reform as a contributing factor to the achievement of human rights.

Key Words:

Biodiversity Loss, Child Mortality, Corruption, DRC, Economic Social and Cultural Rights, Environmental Services, Food Security, Health, Housing, ICESCR, Land Policy, Land Tenure, Lesotho, Population Growth, World Bank

CHAPTER ONE

1.1 Introduction

The objective of the research is to discuss Economic, Social and Cultural Rights *(hereon known as ESCR)* from the perspective of land and its relevance to poverty reduction in Africa. The paper argues that poverty reduction hinges on the degree to which ESCR are achieved since ESCR forms the framework for economic, social and cultural participation within society. The paper aims to demonstrate that in Africa the delivery of ESCR becomes far more attainable when the State coordinates its land policies with the drivers of societal change. In this study, population growth and biodiversity loss have been identified as such drivers. The reason why poverty reduction is tied to the achievement of ESCR, and ESCR are subsequently linked to the degree to which land policy, is coordinated with population growth and biodiversity loss is a result of two facts. Firstly, more Africans are reliant on land to meet basic needs; and secondly population density, land availability as well as ecosystem health, and the provision of natural resources, are necessary for the attainment of human well-being in Africa.

When discussing poverty reduction as a result of rights based land policy we must have a clear understanding of what this is. Poverty as a broad subject can be defined in numerous ways; however the economic and social perspectives are most commonly understood. Ruth Lister provides the perspective that 'poverty is increasingly being conceptualized as a denial of human and citizenship rights, where a person's inability to participate in society is caused by both a low income and a low standard of living'.[1] Amartya Sen's analysis of poverty, builds on Lister's perspective through defining poverty in terms of functions and capabilities where poverty is understood to be an outcome of one's capability to achieve human well-being. Sen describes human well being to be,

> the quality or the "wellness" of a person's being or living, and living itself can be seen as consisting of a set of interrelated "functioning's" – the things that a person can do or be. The level of well-being thus depends on the level of those functioning's, i.e. how well a person can do or be the things she has reasons to value – for example, to what extent can she be free from hunger or take part in the life of a community, and so on.[2]

[1] R Lister *Poverty* 1 ed (2004) 14, 15
[2] OHCHR, 'Human Rights and Poverty Reduction, A Conceptual Framework' (2004) 1, 6

Therefore poverty in the context of this study is understood to be the inability to achieve well-being. For the purpose of this study well-being is framed within the context of achieving the right to food, health and housing. Understanding this, it becomes clear that land may therefore become an important resource that may address the barriers to achieving the right to food, health and housing since approximately 60% - 70% of Africans are reliant on land to meet their economic, social and cultural needs. Land however can only become an effective resource to meet these rights when all who need land have land; and that land is fertile enough to farm and build on. Therefore population growth and the distribution of land as well as biodiversity protection to ensure land is arable become important deciding factors in the attainment of human well-being. In generating a geographical context for the study, the paper focuses its research on the land policies of the Democratic Republic of Congo's (DRC) and the Kingdom of Lesotho (Lesotho). Both countries demonstrate disjointed land policies that are supported by poor land laws and an under-resourced judiciary that cannot enforce this law. Both countries also demonstrate high poverty levels along with an imbalance that exists between population growth and available arable land for individuals. This is however further discussed in greater detail in chapter three.

1.2 Hypothesis and Research Questions

Considering the introduction, the hypothesis states that, *'land policy that does not adopt a rights based approach and is not coordinated with the systems of population growth and biodiversity loss will challenge the legitimacy of ESCR and worsen the circumstances that drive poverty'*. As an example, if there is a law in place that says 'all people have the right to food', yet there is no measure put in place to support access to food through giving people land to farm on where there is no other option to access food, the law protecting the right to food becomes meaningless. Taking this into account, the research puts forward three research questions: (1) Does the current land policy in two states in Africa demonstrate a clear representation of population growth and biodiversity loss in its land tenure strategy? (2) Are land policies aligned to poverty reduction strategies? (3) Does current land policy in those states consider thuman rights obligations, particularly when discussing the right to food, health and housing?

1.3 Background Statement and Problem Statement

The background of the problem reflects the issues of 'Control', 'Inclusiveness' and 'Ownership' in land policy. Control has historically featured in land policy as a tool through which political power is enforced; and where self-seeking governments control population groups and create segregated, hierarchical communities. This is not only evident in the colonial period but is also experienced in Africa's post-independent period. Much of Africa's land is owned by the State and so selective development may occur where land concessions are determined according to individual objectives of State leaders, officials and public elites. This impacts the larger population in terms of what resources are available to whom and the degree to which needs are met. Inclusiveness features in terms of who is included in the land policy process. Policy struggles in its effectiveness given the poor prioritization of rural, displaced and landless people over market driven policy objectives and centralized seats of power. The literature will demonstrate that consultations with community groups in assessing socio-economic need when discussing land policy objectives is poor to non-existent. This creates problems both through society's experience of government, and government's experience of society culminating in a loss in much needed financial, human and ecological resources.

From an 'Ownership' perspective, land policy coordination in Africa has been led by international institutions since the 19th century given the heavy reliance on international debt servicing. Taking ownership of land through developing land policy that reflects the needs of the State can be challenging when dependencies exist between a country and international financial institutions or donor agencies. As an example, the Millennium Challenge Corporation (MCC) a US government aid agency provided $362.5m as project support in Lesotho in 2008. 'The funding however was attached to a number of conditions, one of which was the development of a new Land Act. The new Land Act had to enhance tenure security, ensure gender equity in land ownership and provide a land registration framework'.[3] While these requirements by the MCC may seem reasonable, they do not consider the country's traditional land structures, the availability of land for equitable land ownership or the availability of arable land to meet socio economic needs. Lesotho is not alone. In Chapter 2 we discuss the impact of the World Bank and its stipulations on African land

[3] S Turner 'Lesotho' in K Kleinbooi (ed) *Review of Land Reforms in Southern Africa, 2010* (2010) 1, 17 - 18

management. Since this dependency doesn't allow for complete freedom in land policy development, prioritization of population growth or biodiversity loss in land management may fall away.

Given the background the identified problem statement of the paper is that current land policy in Africa has not evolved to reflect the economic, social or cultural needs of the majority of Africans reliant on land in order for their rights to be realized. Land policy tends to be non-inclusive, slow to implement and limited regarding its effectiveness given the narrow scope of information used to develop the policy and the restricted focus of policy itself. Land policy is also slow in its ability to evolve and largely reflects the economic objectives of both the state and the international community. In addition it can be said that African land policy is still representative of colonial, centralized state systems that want to hold onto land as a source of power. Both the DRC and Lesotho are excellent examples of this. If the state were to adopt a rights based approach to land policy, considering social and environmental factors, the chance that communities may be able to achieve the right to food, health or housing and reduce their experience of poverty could be greatly increased.

1.4 Research Method

1.4.1 Theoretical Framework

The research adopts a rights based approach for the analysis of land policy – this through a social lens and not a legal lens. The human rights approach is used more from the perspective of whether or not economic, social or cultural inclusion is taking place within society through land policy over the consideration of whether or not land policy challenges international human rights laws. The ICESCR is an international human rights treaty that when signed creates obligations for the state, however if land policy does not take on a rights based approach, a crime against humanity is not being committed and international law is not being broken. Of course one could argue that if land policy does not provide a basis through which one can meet his or her right to food, then land policy creates further challenges for international human rights law to be implemented. However it is not the purpose of this paper to discuss international human rights law. The structural functionalist theory is used in conjunction with the rights based approach as part of the study's theoretical framework.

This theory allows the research to look at the intended, unintended and undesirable consequence of land policy from a rights based approach - otherwise referred to as Manifest, Latent and Dysfunctions consequences respectively.[4] Drawing from this, the paper can make its argument for or against the hypothesis and suggest improvements in land policy development that supports ESCR. As an example, a manifest function of land policy could be that this policy outlines the way in which the state could achieve the right to food through equitable distribution of land. Latent functions of land policy may be that other State sectors are motivated to integrate their policies into the State's land policy program, changing patterns of trade and development, decreasing threats of conflict and violence in sensitive countries or creating cohesive communities. Dysfunctions may be negative consequences of land competition, such as the stimulation of violence or the discrimination of various sectors of society to attain land and so not meet their right to food.

1.4.2 Data Collection and Analysis

The research adopts a qualitative method of data collection and analysis. Data is collected using the Case Study, Historical Analysis and Document Analysis approach. Theoretical sources are used as opposed to observations or questionnaires. The research compares existing land policies of the two identified African States. The intention for comparison is to prove that the relationship between land policy and systems of population growth and biodiversity loss is a universal one that must be considered irrespective of the varying geographical or demographic contexts that characterize a region. From an academic perspective, Pennings et.al refer to authors Lane and Ersson, Dogan and Pelassy, and Keman ,as well as Roberts, ; Macridis and Burg, and Almond *et al.*, when discussing two specific approaches to carrying out comparative research. The former states that comparative research is carried out 'either on the basis of its supposed core subject, which is almost always defined at the level of political and social *systems*'.[5] The latter states that comparative research may be carried out through 'descriptive features that claim to enhance knowledge about politics and society as a *process'.*[6] In order to discuss both systems and processes, 'cases' must be selected to determine variables of comparison. Land policy and human rights are discussed as core subjects, along with their descriptive features within the country context.

[4] Devi Prasad Subedi 'Structural Functional Perspective in Sociology' *Academia.edu* (November 2010), <http://subedi.orgfree.com/docs/Structural_functionalism.pdf>
[5] P Pennings, H Keman & J Kleinnijenhuis 'Doing Research in Political Science' 2006, 3
[6] Ibid Pennings, et. al, (note 4 above) 3

1.4.3 Primary and Secondary Data

Case Study Analysis – Primary Data

Robert Yin suggests that three types of case studies exist; these are Exploratory, Explanatory or Descriptive[7]. The thesis adopts the descriptive case study approach. This method enables the paper to focus on land policy coordination with external systems as a descriptor of how policy impacts ESCR. Yin states that, '...descriptive case studies are pertinent when your research addresses a descriptive question - what is happening or has happened?'.[8] The study focuses on what is and has been taking place in the debate regarding African land policies so as to determine the impact of policies on ESCR; and why coordination of land policies with population growth and biodiversity loss is significant to poverty reduction and the realization of ESCR. The selection of case study countries is guided by the hypothesis (section 1.2) and problem statement (section 1.3) which ultimately outlines that a current land policy falls short in meeting the needs of the large percentage of African reliant on land, therefore the case study countries demonstrate opposite characteristics when considering topography, natural resource endowments, and population size and to some degree land policies in order to prove through comparison that a rights based approach to land policy irrespective of population size and biodiversity wealth still remains critical when considering the impact of land policy on ESCR and poverty reduction.

The DRC and Lesotho are the case subjects of comparison. The study adopts a theory testing case study approach given the fact that a deliberate opposite country context is chosen to provide various theories around land policy and the conditions that impact this policy such as population growth, biodiversity loss and varying human rights conditions. According to George and Bennett theory testing case studies allow research to 'assess the validity and scope conditions of a single or competing theory'.[9] Hence the validity of whether or not a rights based land policy must consider population growth and biodiversity loss in order to achieve poverty reduction is tested and the scope of how such policy along with population growth and biodiversity loss impacts poverty is assessed. Theories regarding formal and informal land policy are also questioned within this scope. The theory testing case study approach works in conjunction with the paper's theoretical framework where the intended and unintended consequences of these policies are discussed

[7] R Yin *Applications of Case Study Research* 3 ed (2012) 5
[8] R Yin *Applications of Case Study Research* 3 ed (2012) 5
[9] A L George and A Bennett *Case Studies and Theory Development in the Social Sciences* (2005) 75

through a human rights lens. Outside of the differences though both countries speak to the hypothesis and research problem as they both demonstrate land policies that are predominantly focused on national economic growth objectives. The study will demonstrate that the land policy development process in both countries favour elitist minority groups and lack any form of practical, implementable human rights or poverty interventions. The opposing country contexts allow the study to mitigate the argument that a smaller country may not have as many poverty or human rights issues as a larger country or vise versa, particularly when addressing practical issues such as food, health and housing.

The Historical Analysis and Document Analysis Approach – Secondary Data

Historical analysis focuses on providing a description of an event. Gardner writes that, 'Historical analysis is commonly used in social research as an introductory strategy for establishing a context or background against which substantive contemporary study may be met'.[10] Since the objective of the paper is to re-look at land policy and its impact on poverty, the Historical Analysis approach is constructive as it becomes necessary to understand past events and experiences on the topic in order to provide an analysis of the present perspective on land policy. For this research historical data will be sourced from journal articles, International NGO reports, web articles, newspaper articles and legal documents to name a few examples. Document Analysis therefore becomes critical to support the Historical Analysis approach. This approach allows the study to 'elicit meaning, gain understanding and develop empirical knowledge'.[11] Glen Bowen writes that 'document analysis is often combined with other qualitative research methods as a means of triangulation'.[12] Triangulation allows for the study to draw on multiple sources of evidence which creates a better foundation to prove credibility of information and 'reduces the impact of potential biases that can exist in a single study'.[13] Given the fact that this study makes use of a variety of document sources focused on the DRC and Lesotho to outline the various concepts of the study, proper analysis of these sources becomes critical. The sourced documents convey the background information that,

> supports the research purpose, identify questions that will to direct the research, discover supplementary evidence to support theories, track changes in the subject area of research over time (given historical data)

[10] P Gardner 'Historical Analysis' in V Jupp (ed) *The SAGE Dictionary of Social Research Methods* (2006) xi,134-135
[11] G Bowen 'Document Analysis as a Qualitative Research Method' (2009) 9 *QRJ* 27, 27
[12] Ibid 28
[13] Ibid 28

and allow for comparisons, particularly with identified case studies. Various sources of evidence can also be compared to prove the accuracy, authenticity and relevance of information.[14]

The documents reviewed regarding the case studies makes clear outlined patterns in poverty as related to land policy in Africa and how population growth, biodiversity loss and the presence of ESCR policies attached to land policies or the lack thereof affect communities within the identified case study regions. The study examines authors and institutions that are at the forefront of the land policy and socio economic development in Africa through their documents detailing to what end and for who land policy is and should be designed.

1.5 Validity, Reliability and Limitations

Validity and reliability are centered on attention to detail. To ensure this, care is taken to include theoretical data that is relevant and pertinent to the topic through the research methods adopted as stated above. The qualitative research method contributes toward non-invasive data collection; however it runs the risk of losing focus. For this purpose the study has firstly adopted a Small-n study approach. The small-n or small sample approach selects a small number of case studies for analysis. This paper has selected two specific case study countries and so is considered to be a small sample study. Small-n studies are particularly useful when 'researching historical and comparative problems'.[15] The key to a small-sample case study is that there is a preference for researching specific concepts as opposed to general concepts. For this study specific concepts have been identified within the framework of land policy in the DRC and Lesotho and how this relates to the achievement or non-achievement of ESCR and poverty reduction. The discussion around these concepts is a far more detailed, with a stronger focus on each case. Using the small-sample study approach does mean that the outcomes of research may not be largely applicable and would require large-sample testing if they are to be expanded. Understanding the drawback of a small sample case study, the research does support the information collected with historical data and information from a broad array of sources. The research ensures relevance and reliability of comparisons and the corroboration of facts through undertaking proper document analysis (*see Point 1.4.3. secondary data*).

[14] Ibid 28-30

[15] S Lieberson 'Small N's and Big Conclusions: An examination of the Reasoning in Comparative Studies Based on a Small Number of Cases' (1991) 70 Social Forces 307, 307

Although, Historical Analysis does not allow for direct observations challenges may occur in classification of historical data. The risk is that documents may be interpreted incorrectly, be inaccurate, be false in their original preparation, or have experienced errors in recording original facts. Therefore various sources are compared and a healthy amount of skepticism is maintained in analysis. Some challenges may exist in the Document Analysis approach particularly where 'document selection may be biased, documents may not provide sufficient detail that is relevant to the research topic and documents may be difficult to access through search engines for example'.[16] However document analysis is efficient as one selects data as opposed to collects data. Information is more readily available as many of the sourced documents are publically available and more reliable as names, places and sources are documented. Document analysis also provides a broad coverage; they cover a long span of time, many events, and many settings'.[17] In addition Bowen quotes Yin (1994)[18] in stating that 'documents are 'unobtrusive' and 'non-reactive' to the research process and gives the example that observations in comparison may proceed differently when the subject is aware that he or she is being observed.

1.6 Significance and Scope of Study

The study approaches human rights as a natural outcome of properly coordinated land policy; as opposed to independent activities of the state outside of its policy obligations. Proper coordination with the specific systems of population growth and biodiversity loss also add to the significance of this research as these systems are usually only briefly touched upon within current land policy discussions and texts as secondary factors challenging land reform and this study places these concepts as primary factors. The scope of the study is demonstrated in four parts. The first provides the context of the paper, the motivation for which the study is being conducted and the methodolgy used to conduct research. The second part illustrates the current litertature that speaks to land policy perspectives and the impact this has on the scope and direction of land reform. The third chapter presents and analyses information collected through historical records and theoretical sources in order to create an argument in which to prove or disprove the hypothesis. The conclusion provides recommendations for future study.

[16] G Bowen (note 11 above) 31.
[17] G Bowen (note 11 above) 31.
[18] R K Yin 'Case study research: Design and methods' 2nd ed (1994)

CHAPTER TWO

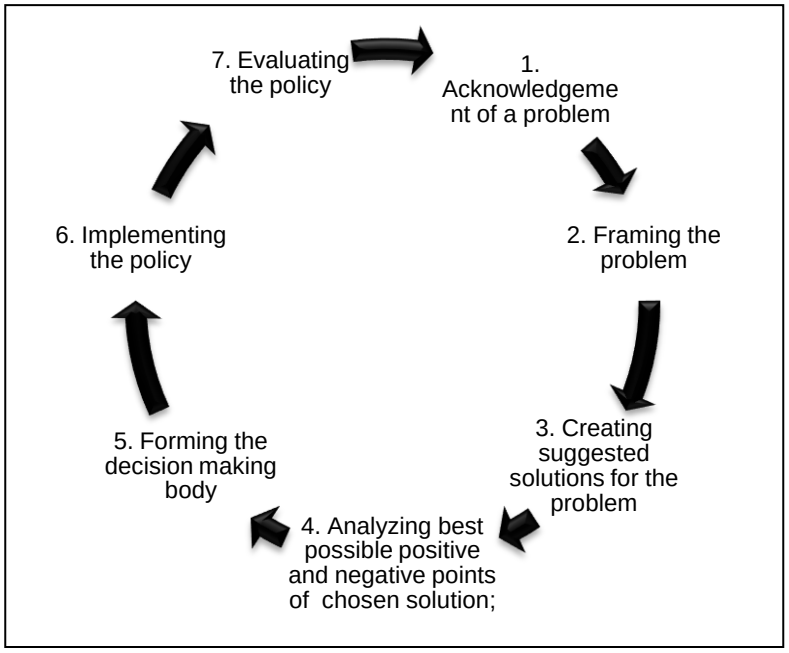
2.1 Literature Review

The literature review reflects on the perspectives of key international and African bodies; and authors of the 20th and 21st century that contribute current information on land policy. Since land policy is a public policy it is important to briefly look at the history of public policy so as to understand its role and importance in society. After the Second World War the development of public policy became as important as the human rights movement. The race for political and economic dominance between the communist and capitalist States gave way to 'competition' between public policy as a means through which State administrations could manage economic and political developments of the time. Vázquez and Delaplace refer to this by speaking of the battle between eastern socialism and western democratic capitalism for dominance in the Korean War. The authors define public policy to be 'a rationalization of government actions'.[19] Since rationalization indicates that policy is a directive activity that follows a process of justification, a life cycle is observed. This lifecycle is characterized by seven distinctive steps (see figure 1); however these steps are interpreted slightly differently across various texts. The process is continuous and in many instances steps merge into one another. This lifecycle gives insight into the process through which the State may chose to include or exclude information.

Applying this understanding of public policy to land policy then creates the understanding that the aim of land policy is to create a framework that guides state action to be transparent and consistent, particularly when justifying government decisions toward management, allocation and use of land. This therefore creates an expectation that government understands the value of land in all its various aspects, whether this be social, biological or economic. Understanding the value of land requires fully comprehending the different problems that face land management within all sectors of society. In addition to understanding what a public policy is and its cycle of development it is important to clarify the meaning of land tenure as this also influences the direction policy may take within its lifecycle. There are four different tenure systems - these being statutory, customary, religious and informal tenure. Focus is placed on customary and statutory tenure arrangements; particularly since the literature will demonstrate that competition between these two tenure forms dominate the international land policy discourse.

[19] D Vázquez. & D Delaplace 'Public Policies from a Human Rights Perspective: A Developing Field' (2011) 8, *IntJHR* 6, 34

Figure 1: Policy Life Cycle



Applying this understanding of public policy to land policy then creates the understanding that the aim of land policy is to create a framework that guides state action to be transparent and consistent, particularly when justifying government decisions toward management, allocation and use of land. This therefore creates an expectation that government understands the value of land in all its various aspects, whether this be social, biological or economic. Understanding the value of land requires fully comprehending the different problems that face land management within all sectors of society. In addition to understanding what a public policy is and its cycle of development it is important to clarify the meaning of land tenure as this also influences the direction policy may take within its lifecycle. There are four different tenure systems - these being statutory, customary, religious and informal tenure. Focus is placed on customary and statutory tenure arrangements; particularly since the literature will demonstrate that competition between these two tenure forms dominate the international land policy discourse.

Simply put, the predominant texts on land tenure discussed in this study provide the description of statutory tenure as being an established legal processes that differentiate land between private and public ownership and customary tenure being more communally focused where land is shared by a group that either follows the same custom or cultural practice. Land is also not allowed to be rented or sold to members outside of the community. Customary land is generational and is inherited through patriarchal systems where formal or

statutory land may be purchased by anyone who has the means. With this understanding of land policy and land tenure the paper begins with discussing the first perspective on land policy which is that of the World Bank. The World Bank directs its focus on problems regarding building land markets, generating credit access, stimulating financial markets and attaining the highest value from statutory land rights versus customary rights. The World Bank also prioritizes the issue of investments made into land as a commodity for the purpose of stimulating economic growth in policy discussions. The 1975 World Bank land reform policy advocated for the abandonment of customary tenure systems (which still dominates the African land tenure landscape) for private property rights given the fact that customary tenure was seen as creating 'dead land', meaning that land that was not held under legal title, could not be used for collateral to secure credit for the occupier to develop the land since there was no formal ownership.[20] However, given lessons learnt over the past 37 years, the World Bank has altered its perspective somewhat.

The Bank is shifting to support customary tenure, placing renewed emphasis on the importance of policy that reinforces the foundational structures that must be in place before titling can occur. This, given the pitfalls for the poor where disadvantaged communities are rendered unable to participate in land acquisition and titling processes due to high registration costs, ineffective and inefficient titling offices and weak laws meant to support policy that emphasizes private property rights. The Bank has also changed its perspective on large commercial farming as a means of stimulating economic production and development by stating that 'owner-operated smallholder farms are desirable from both an equity and efficiency perspective'.[21] The World Bank demonstrates that not only do perspectives change between organizations, but within an organization too. As global changes occur and policies put forward show their inconsistencies in dealing with the needs of communities over time, problem identification must motivate changes in land policy.

As an example, the Bank points to the importance of land rental markets as a means of access to land for the poor. The Bank also considers land conflicts and corruption in land redistribution. The consensus is that politically motivated land reform has failed, leading to land being used as a means of gaining voter support as well as stimulating conflict where land competition and social exclusion of community groups occur.

[20] K Deininger & H Binswanger 'The Evolution of the World Bank's Land Policy: Principles, Experience and Future Challenges' (1999), 14, *WBRO*, 247, 248

[21] K Deininger & H Binswanger 'The Evolution of the World Bank's Land Policy: Principles, Experience and Future Challenges' (1999), 14, *WBRO*, 247, 249

From a human rights perspective, the World Bank speaks of policy that ensures an integrated framework with other development initiatives. Deininger and Binswanger refer to the work of Bardhan, Bowles, and Gintis.[22] in providing the example of food security stating that land allows for a 'significant contribution to food security, households' nutritional well-being, and their ability to withstand shocks'.[23] Therefore we see that the World Bank's perspective on land policy considers poverty and economic development; which are issues that take center stage in Africa and have a large impact on the ability of African countries to effectively participate in international trade and be part of the global community.

Further perspectives on land policy are introduced by Lorenzo Cotula et al. The authors pay particular attention to the argument between customary and statutory land rights, debating which system impacts human rights the most. The authors speak of population growth as a possible threat to security of land in customary tenure given land is redistributed periodically in order to accommodate increasing numbers.[24] Land insecurity may therefore be high given the fact that land may be appropriated and redistributed even though investment into that land has occurred and returns have not yet been realized by current occupiers – however efficiency in agricultural production may be higher than large scale farming due to vested interests of family labour over hired labour. However if we look at statutory tenure, for many Africans this presents its own challenges,

> titling processes require a clear legal basis and a streamlined institutional infrastructure that is capable of administering the process efficiently...many African countries have a plethora of institutions, programs, and projects—often with overlapping competencies and responsibilities, contradictory approaches, and high resource requirements—that make it impossible to administer a titling program effectively or to instill confidence in the validity of the titles issued[25]

The question therefore remains as to which form of tenure best serves to meet the needs of the State to participate in global economic development activities and meet the economic social and cultural needs of the poor. Cotula puts forward the notion that customary tenure systems are adapting over time anyway and

[22] P Bardhan, S Bowles, & H Gintis. Forthcoming 'Wealth Inequality, Wealth Constraints, and Economic Performance' in A Atkinson and F Bourguignon (eds) *Handbook of Income Distribution* (1998) 541, 542-597
[23] K Deininger & H Binswanger (note 9 above) 256
[24] L Cotula in L Cotula (ed). *Changes in "Customary" Land Tenure Systems in Africa* (2007) 5, 9-11
[25] Ibid K Deininger & H Binswanger ..(note 9 above) 260, 261

so one could argue that there is a merging of customary and statutory parameters. The authors explains that,

> In recent decades, major changes have taken place in African economies and societies, including demographic growth, urbanisation, monetarisation of the economy, livelihood diversification, greater integration in the global economy, and cultural change. These processes have had major implications for local land tenure systems. Although such systems claim to draw their legitimacy from "tradition" and are commonly referred to as "customary", they have been profoundly changed by decades of colonial and post independence government interference, and are continually adapted and reinterpreted as a result of social, economic, political and cultural change[26]

Given this statement, the authors go further to suggest that statutory tenure is part of a natural evolution toward individualization in land rights; without consideration of occurrences such as population growth and increased need for agricultural production. Commercializing land through statutory tenure therefore requires greater government intervention, particularly when discussing land management. The inverse problem also exists in the case that where foreign investors and local elites are able to access resources to purchase land under statutory tenure systems, "lack of legal protection for local land rights based on customary systems may result in local resource users losing land access".[27] Chimhowu and Woodhouse further support Cotula stating that,

> These two positions (customary and statutory) reflect two different priorities for broader development policy. On the one hand African governments, actively supported by the International Financial Institutions that fund them, are seeking to raise the productivity of their agricultural sectors... On the other hand, an increasing number of African governments and their international donors have undertaken commitments, through the adoption of internationally-supervised Poverty Reduction Strategies, to ensure that processes of socio-economic change benefit the poorest groups of their population, and believe that one way to achieve this is to maintain access to land by the poor.[28]

[26] L Cotula .(note 12 above) 1
[27] L Cotula (note 12 above) 4
[28] A Chimhowu & P Woodhouse 'Customary vs Private Property Rights? Dynamics and Trajectories of Vernacular Land Markets in Sub-Saharan Africa' (2006) 6 *JAC* 346, 361-362

The paper indentifies a conundrum, higher cost titling for the predominant purpose of increasing agricultural output requires that 'modernization of farming through capital investment in technology occur. Security of land tenure is needed to safeguard the returns that investors can expect to receive from modernized farming, hence the advocacy of individualized land titles to protect investment and profits'.[29] In addition, lower cost titling for the poor creates incentive to register land as this ensures investment of resources that might not be secured in communal land. Titling may also serve to meet the needs of those not wanting to own land and prefer being absorbed into larger agricultural farms as labour. In Africa however statistics demonstrate that customary tenure remains the predominant tenure arrangement. In fact Cotula refers to Deininger [30], stating that, "between 2 and 10 per cent of land in sub-Saharan Africa is held under freehold title".[31] This therefore suggests that the remaining approximate 90% is open for customary tenure.

The literature by Benjaminsen and Lund [32] ; Bruce [33]; Cheater[34]; Palmer [35]; also quoted in Chimhowu and Woodhouse places further emphasis on the current tenure arrangement across Africa as an indicator as to how policy has been formed. The authors point to a third perspective in terms of coordinated customary and statutory systems in that 'commoditized transfers of land within the framework of customary tenure are essential if state land policies are to succeed in promoting the interests of the poor'.[36] This perspective is also supported in the literature by Toulmin and Quan[37] where the authors put forward that statutory land tenure and customary land tenure seek common ground. However the counter argument regarding this perspective is that securing customary land through commoditized transfers by the 'development of a land market opens the possibility of distress-sales by the poor in times of hardship, thus accelerating social differentiation and landlessness among the poor'.[38] This particularly in African states that are politically unstable. The work of Prosterman and Hanstad points to the issues of landlessness, illustrating that 'In

[29] Ibid 362
[30] K Deininger 'Land Policies for Growth and Poverty Reduction' (2003) *World Bank* vxii, xxi
[31] L Cotula (see note 12) 6
[32] T A Benjaminsen, & C Lund 'Formalisation of Land and Water Rights in Africa: An Introduction' (2002) 14 *EJDR* 1, 1-10
[33] J Bruce 'Do Indigenous Tenure Systems Constrain Agricultural Development?' in T.J. Basset & D.E. Crummey (eds) *Land in African Agrarian Systems* (1993) 35, 35–56.
[34] A Cheater 'The Ideology of "Communal" Land Tenure in Zimbabwe. Mythogenesis Enacted?' (1990) 60 *Africa* 188, 188–206.
[35] R Palmer 'Struggling to Secure and Defend the Land Rights of the Poor in Africa' (2003) XIX *AJDS* 1, 6–21.
[36] A Chimhowu & P Woodhouse 'Customary vs Private Property Rights? Dynamics and Trajectories of Vernacular Land Markets in Sub-Saharan Africa' (2006) 6 *JAC* 346, 346
[37] C Toulmin & J Quan 'Evolving Land Rights in Africa' (2000) 10 *Development in Practice* 721, 722 - 723
[38] A Chimhowu & P Woodhouse (see note 24) 347

countries where they represent a large part of the agricultural population, these landless families form a deep concentration of poverty and human suffering, as well as an impediment to the process of economic development and, in many settings, a potential threat to political stability'.[39]

The research shifts focus and brings attention to the Food and Agriculture Organisation (FAO) perspective on land policy and land tenure. This literature contributes an additional perspective to that of legal pluralism, tenure, administration and distribution of land. The organisation supports the idea that policy is a rationalization of government action by stating that, '... a land-use policy is essentially an expression of the government's perception of the direction to be taken on major issues related to land use and the proposed allocation of the national land resources over a fixed period of time. It has a production and a conservation component'.[40] From this statement we see that the FAO is one of the few multilateral organizations that speak of conservation and natural resource protection within land policy discussions making reference to issues of sustainability. The organisation believes that 'to achieve the policy objective of sustainable production and conservation of natural resources, governments should pursue strategies which actively promote forms of land use which are both attractive to the people and sustainable in terms of their impacts on land resources'.[41] This idea of sustainable land use may be challenged where human need, human greed and development clash with the importance of protecting endangered biodiversity.

In some regards this is where population growth and biodiversity loss compete with one another in land management processes. History has demonstrated that biodiversity protection ultimately loses when economic development and increasing populations require more and more resources to survive. Therefore the FAO brings an important point to light. Without sustainable land use no one can survive, therefore the scope of land policy in its current state will need to be broadened. Finally, the literature review discusses, '*Framework and Guidelines on Land Policy in Africa'* – a document collectively supported and written by the African Union (AU), Regional Economic Communities (REC's), United Nations Economic Commission for Africa (UNECA) and African Development Bank (AfDB) as well as independent African states. The document

[39] R Prosterman & T Hanstad 'Land Reform in the Twenty-First Century: New Challenges, New Responses' (2005) 4 *SJSJ* 762, 764
[40] FAO 'Land Policy and Planning' *Food and Agriculture Organisation of the United Nations* (February 2015) <http://www.fao.org/nr/land/land-policy-and-planning/en/>
[41] FAO 'Land Policy and Planning' *Food and Agriculture Organisation of the United Nations* (February 2015) <http://www.fao.org/nr/land/land-policy-and-planning/en/>

conceptualizes the land question in Africa through consultations across the continent during 2007 and 2008. The authors acknowledgement that,

> there is evidence that many African countries have, over time, accumulated a multiplicity of sectoral policies and laws relating to land, its management and use without over-arching policies which rationalize, harmonize and clarify the otherwise uncoordinated approaches and complex interactions between these sectoral laws and policies.[42]

Given this acknowledgement of poor land policy coordination, the contributors to the document have summarized issues that can assist improved coordination of policy through the development of a framework that outlines six key areas. Firstly, the geographic and ecological context which illustrates that 'in spite of extensive dependence on farming, not much of the continent's land is arable or potentially arable; hence large parts of the continent are facing ecological damage'.[43] Climate change impacts bring with it water scarcity issues as well as the need for modified seeds for planting. In many parts of Africa the technology is not available for the adaptations required to meet geographic and ecological changes.

The second key area is the political involvement in land, which focuses specifically on the laws and policies used to rectify colonial rule, which have not been successful (as can be seen by the continuing inequitable distribution of land). In addition, focus is placed on conflict related to inequitable land distribution in the post independent era. These conflicts are experienced between indigenous and migrant communities as well as between indigenous communities, the State and the private sector motivated by commercial interests and involvement with the international community. While efforts have been made in terms of land reform through titling; in many cases individual tenure efforts have failed in many African regions.

Third, the economic context, suggests that as has been mentioned earlier in the paper that '60% of the African population derives its income from farming and livestock activities. Agriculture contributes 25% to the sub-Saharan GDP and almost 40% to the countries such as the Central African Republic, the DRC, Ethiopia,

[42] AUC-ECA-AfDB Consortium 'Framework and Guidelines on Land Policy in Africa, Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods' (2010) 1, 2
[43] Ibid AUC-ECA-AfDB Consortium, 2010 (Note 31 above) 5

Rwanda, and Tanzania'.[44] Land policy as per the framework must address current problems in stimulating low levels of productivity, increasing investment into technological advances in agriculture and protecting the small farm sector that represents the majority of African farmers. This is particularly true in countries where there is a high dependence on food imports given the underutilization of land and labour as is in the case of Lesotho..

Fourth is the social and cultural context which speaks predominantly to the human rights focus on land policy. This key area focuses more on women and indigenous groups than on any other area of the international declaration of human rights. Land is associated quite strongly to cultural identity and the continuation of heritage. It is recognized that heritage is a largely patriarchal system in indigenous African culture and so discrimination in the administration of land is prevalent. Although women are represented in many of the Constitutions across Africa, the framework implies that discrimination has been solidified by 'imported land law and by "clawback" clauses in many African Constitutions and the *African Charter on Human and Peoples Rights* (ACHPR) permitting discrimination on matters of personal law which often operate against women's right to equal treatment before the law'.[45] In opposing these clawback clauses, the AU's 2003 Maputo protocol to the ACHPR on the *Rights of Women in Africa* and the 2004 *Solemn Declaration on Gender Equality in Africa* 'call for action to address gender inequalities including women's unequal access to land'.[46] In addition to women, minority groups are challenged in terms of land acquisition. Although women and indigenous people are represented in land policy discussions, they are not fully acknowledged to the extent that much change has occurred across the Continent. As examples, marginalization can still be experienced by the "San of Botswana; the Herero of Namibia; the Bakola, Bagyeli and Batwa of the countries of Central Africa; and the Ogiek of Kenya".[47]

Fifth, the demographic context takes into account population growth, migration and urbanization in terms of land availability. 'In a number of countries, such as in West Africa, as much as 50% to 75% of the populations live on about 25% of the national land along the coastal zones, leading to much higher

[44] AUC-ECA-AfDB Consortium, 2010 (Note 31 above) 7
[45] AUC-ECA-AfDB Consortium, 2010 (Note 31 above) 8
[46] ibid 9
[47] Ibid

densities in these areas'.[48] Although migration due to civil war is common in a number of African countries, environmental issues such as water shortages and loss in arable land has also forced people to migrate, either to urban areas for the purpose of finding employment or for the purpose of subsistence farming. This causes scenarios of urban sprawl and overpopulation in rural areas that already face a heavy burden on limited spots of arable land; particularly in areas that do not have the resources or infrastructure to support rapidly growing population groups.

Sixth, is the global environmental context. Political and economic global pressures are considered given the intense pressure on Africa's natural resources. The Framework states that,

> Land policy reforms will need, therefore, to pay particular attention to the design and implementation of mitigation and adaptation measures, including the mobilization of capacity to manage long term implications of such change. For coastal countries evidence already indicates that rising sea levels will require relocation of populations, innovative land use planning and massive land acquisitions accompanied by large scale infrastructure and service delivery, not to mention the costs associated with the flow of "climate" refugees into the contiguous urban areas....[49]

The recognized need for relocating populations and investing in land and infrastructure again reinforces the dependency on foreign direct investment and the exploitation of natural resources in terms of oil, logging and minerals to generate income. This creates high risk scenarios from the perspective of land viability, ecosystem health and biodiversity protection as well as civil and political conflicts. Although the framework highlights significant key areas, it is clear that human rights, biodiversity loss and population growth are not discussed in depth, or at least to a degree that allows the reader to understand how land policy is going to be 'reformed' to support positive changes that will address challenges in these areas. On the other hand, the framework is progressive in the fact that these issues are highlighted and included in land policy discussions to begin with.

[48] Ibid
[49] AUC-ECA-AfDB Consortium, 2010 (Note 31 above) 10

In summary, the literature review has provided a brief basis for understanding where public policy originates from and why it plays an important role in coordinating society. Insight into the areas that can currently be referred to as mainstream land policy development make it clear that the multiplicity of perspectives identified speaks to the complicated nature of land policy. The literature also demonstrates the link that already exists between land and poverty. Given the definition of poverty (as stated in chapter one), the reader is able to draw a connection between how land can be a resource to meet basic needs such as food, health and housing; and so address ESCR. The role of population growth and biodiversity has in this relationship also becomes clear where competition for land could be caused if policy does not consider the distribution of land and the protection of biodiversity to keep land arable. The literature indicates that current land policy discourses skirt around poverty as a motivator for land reform; given the communal capabilities that land reform can support.

However no direct reference is made to official human rights obligations outside of referring to women and indigenous groups. In addition, population growth and biodiversity loss are mentioned briefly in certain texts however it becomes clear that this is not explicitly included in policy discussions. Since the argument of the paper is that land policy must be coordinated with the sectors or areas that influence ESCR and poverty in order for land to be used as a means through which poverty can be reduced, the paper moves to present information on the land policies of the DRC and Lesotho as well as present information regarding population growth and biodiversity loss; and the right to food, health and housing.

CHAPTER THREE

3.1 Presentation and Analysis of Information

3.1.1 Land Policies of the DRC

Much of the literature specific to land reform and human rights in the DRC demonstrates a clear relationship between land rights and the ongoing civil and political conflict that has taken place over the last 20 years in the region. Since the end of the Congolese war in 2003 little cohesion has existed between various policies that govern certain aspects of land. In 2011 President Kabila acknowledged that land law and socio-economic development had to be aligned and so a national land reform conference was held along with UN-Habitat in Kinshasa in 2012 discussing land rights and the possibilities of developing a comprehensive land policy. Koen Vlassenroot outlines the DRC's predominant land issues. The region has a wide variety of land governance

systems, as well as a number of overlapping legal frameworks. In addition, there is a weak constitutional land law and judicial system that cannot mitigate conflict derived from competition for land between indigenous and migrant communities or commercial groups. The working paper by Johannes Beck supports the findings of Vlassenroot stating that,

> Land is fiercely contested in the densely populated and ethnically heterogeneous eastern provinces of the Democratic Republic of the Congo...For the great majority of the rural population; access to land is the primary condition for subsistence. Frequently, the same piece of land is claimed by various parties, but legal pluralism hampers the unambiguous determination of the legitimate owner. The state and its judicial structures being largely absent after almost two decades of armed conflict and insecurity, law and order have widely been replaced by the right of the strongest.[50]

Given these statements, one can argue that the poor legal and policy framework regulating land has contributed toward the strengthening of armed groups and corrupt government officials seeking land as a form of "currency", used as a means of gaining bargaining power between these factions. This contributes toward poverty and continued instability in the country. The United Nations High Commissioner for Refugees (UNHCR) states that, 'there are some 2.7 million IDPs within the country in 2014 due to ongoing armed conflict in the east'.[51] This places further pressure on neighbouring countries where 'about 450,000 refugees remain in Burundi, Rwanda, Uganda and the United Republic of Tanzania'.[52] This statement by the UNHCR demonstrates that resettlement is challenged as available land for IDPs is limited. The issue of landlessness places people in vulnerable scenarios where access to health services, food or achieving secure housing is hampered by the fact that they have no secure place to reside, and little to no means of generating an income or withstanding economic and political shocks. This then fuels further human rights abuses such as sexual violence, kidnapping of children and the use of children as child soldiers.

The 2012 report identified that population density and natural resource competition are main issues in land disputes, however it can also be said that land administration was and still is a serious problem given that it

[50] J Beck 'Contested Land in the Eastern Democratic Republic of the Congo Anatomy of the Land-Related Intervention' (2012) 2 *IFHV Warking Paper* i|v, i|v
[51] UNHCR 'Democratic Republic of Congo' *UNHCR Global Appeal 2015* (February 2015) <http://www.unhcr.org/pages/49e45c366.html>
[52] UNHCR 'Democratic Republic of Congo' *UNHCR Global Appeal 2015* (February 2015) <http://www.unhcr.org/pages/49e45c366.html>

still retains characteristics that are representative of the colonial period. Huggins, et.al., reminds us that colonial land administration saw 'a "modern" system of land administration for white settlers...superimposed on traditional systems, with compensation paid to the customary leaders (*mwami)*, rather than to the people, and leading eventually to an undermining of both the customary and statutory systems".[53] Huggins describes the past structures that negotiated land dispute settlements in the DRC as poorly funded and corrupt; this has greatly impacted the way in which policy is formulated today. Huggins goes further to say that,

> The "hollowing out" of the state under Mobutu's corrosive and opportunistic regime ensured that state institutions lacked the capacity to provide services or, in particular, to act as a neutral arbitrator when disputes occurred between individuals, groups or institutions. The judicial sector, like all branches of the public service, was underpaid and poorly run, and became highly corrupt. The land administration machinery was similarly starved of funds, meaning that those with some access to power and wealth could easily use it to dispossess those with valid claims under custom or statutory law.[54]

Chris Huggins gives insight into the fact that poor land administration is not only a problem of colonial greed but continues on as part of an organized effort by political elites in post independent DRC. What is interesting is the contradiction that occurs between what is outlined in the DRC's Constitution and the elitist activities that prevail over land management. The DRC has long since made a commitment to upholding ESCR within its Constitution. The Constitution of the Democratic Republic of Congo, 2005 reads in the preamble, paragraph five,

> Reaffirming our adherence and attachment to the *Universal Declaration of Human Rights*, the *African Charter on Human and Peoples' Rights*, the United Nations Conventions on the Rights of the Child and the Rights of Women, particularly to the goal of equal representation of men and women in the institutions of the country, as well as to the international instruments relating to the protection and promotion of human rights[55]

[53] C Huggins, H Musahara, P M Kamungi, J S Oketch & K Vlassenroot 'Conflict in the Great Lakes Region – How is it linked with land and migration?' (2005) 96 *Natural Resources Perspectives* 1, 2
[54] C Huggins 'Land Power and Identify, Roots of Violent Conflict in the DRC' 2010 *International Alert* 1, 20
[55] Constitution of the Democratic Republic of Congo, Preamble of 2005

The question therefore arises, 'how can there be a commitment to human rights while engaging in corrupt land practices?' Undermining the judicial and public service arms of government in effect undermines the ability of the country to realize its human rights obligations. The Kinshasa report from the 2012 UN-Habitat conference further supports the fact that there is a real breakdown in the DRC in terms of the interface between government and society. The report outlined population density and natural resource competition along with administration, implementation and community engagement as problems when enforcing land policies. As a basis from which to analyze policies more effectively we see that, Title 1, Article (9) of the Constitution of the Democratic Republic of Congo, 2005 outlines that: 'The State exercises permanent sovereignty over the Congolese soil, subsoil, water resources and woods, air space, rivers, lakes and maritime space as well as over the Congolese territorial sea and the continental shelf. The conditions for the management and the granting of concessions with regard to the State domain referred to in the preceding paragraph are determined by law'.[56] While land is therefore held in trust by the State, Title 2; Chapter 2; Article (34) states that,

> Private property is sacred. The State guarantees the right to individual or collective property acquired in accordance with law or custom. It encourages and supervises the security of national and foreign private investments. No one may be deprived of his/her property except for reasons of public utility and in return for prior payment of just compensation under the conditions established by law. A person's assets may only be seized by virtue of a decision issued by a competent judicial authority.[57]

A definite contradiction between law and practice is observed. If population density and natural resource competition are the predominant issues contributing to conflict over land, then the State being the self-proclaimed 'owner' of land within the country who also provides land concessions to both private and commercial interests, falls at the centre of creating this conflict through poor land management. Article (34) states, 'no one may be deprived of his/her property except for reasons of public utility'.[58] This creates room for insecurity, particularly when one can be removed from the land that has been invested in before reaping the rewards of that investment, particularly in the case of poor people who do not have resources to re-invest if removed from land. Thirdly, insecure land tenure and the threat of State appropriation of land

[56] Constitution of the Democratic Republic of Congo, Title 1, Article 9 of 2005
[57] Constitution of the Democratic Republic of Congo, Title 2, Chapter 2, Article 34 of 2005
[58] Constitution of the Democratic Republic of Congo, Chapter 2, Article 34 of 2005

create an unstable environment for human rights to be realized. Even though the preamble to the Constitutions states that there is a respect for the Universal Declaration of Human Rights, this commitment must be translated into all aspects of societal functions and not simply remain a statement. In addition poor land management by the State creates the perception that the State makes use of land as a means of societal control, again reflective of the colonial period.

The government of the DRC however concluded at the 2012 conference that a revision of the Land Law of 1973, along with all laws related to land, was necessary in order to create harmony between land policy and law. Issues of implementation of policies were also highlighted as well as engagement with local communities. One could argue for a decentralized approach to land reform. However, in order to achieve the objective of harmonization of land policy; adequate law must exist to support policy development. In the DRC land is regulated by Act No. 73-021 of 20 July 1973 (Amended by Act No. 80-008 of 18 July 1980. This land law provides the parameters through which property, land tenure, real estate and securities is governed, to the extent that it covers the agreements regarding tenure and governance of concessions and contracts of private and commercial use.

The 1973 Land Act supports the 2005 Constitution and works in conjunction with Law 011/2002 of 29 August 2002 otherwise known as the Forest Code of 2002; Agricultural Law, no. 11/022 of 24 December 2011; and Law No. 007/2002 of 11 July 2002 otherwise known as the Mining Code of 2002. The International Land Coalition states that the 1973 Land Act was 'originally designed to protect the State's right over soil and natural resources'.[59] This supporting what has already been mentioned regarding the States ownership of land, however the law doesn't seem to protect the people's rights over land and natural resources. While the predominant focus of the Land Act is the regulation of land and land contracts; there is no specific provision for population growth or biodiversity protection related to poverty reduction or communal support in terms of land tenure. This leads the reader to draw the conclusion that while the State may acknowledge that a coordinated effort must be made to align the various laws related to land and the Land Act of 1973, the State in fact seeks to control all resources as a means to control power. The research moves to discuss Forest Law 011/2002 of 29 August 2002; Agricultural Law, no. 11/022 of 24 December

[59] International Land Coalition 'Democratic Republic of Congo'*International Land Coalition* <http://www.landcoalition.org/en/base-country/democratic-republic-of-congo

2011; and the Mining Law No. 007/2002 of 11 July 2002 so as to understand how such land use tools spur on unregulated land allocations and land use.

The Forest Code of 2002 (Law 011/2002 of 29 August 2002)

The Forest Code was put into effect in 2002, under Forest Code, Law 11/2002 dated 29 August 2002. The Forest Code determines the concessions of forest made available to community or commercial groups. This is carried out through a 'rental agreement' and not through a titling or sales agreement. The Forest Code does not have any authority over land concessions. The Code outlines 38 regulations that speak to general guidelines on forest concessions. Article 2 in the Forest Code states that the Code 'fosters rational and sustainable management of forest resources with a view to increasing their contribution to the economic, social and cultural development of today's generations, while preserving forest ecosystems and forest biodiversity for future generations'.[60]

Therefore this creates the initial intention of managing people and biodiversity. The Code makes provision for consultations with community members regarding forest management in Article 15 and Article 84. Article 44 outlines user rights in terms of any population groups that reside on forest concession peripheries where the customary rights are in question. However this article does not speak to agricultural practices and states that customary user rights are protected 'insofar as it is compatible with forestry exploitation'.[61] Article 77, 99 and 100 outlines regulations for sustainable forest management where logging is concerned. The *Arrête Ministériel No. 107/CAB/MIN/ECN-T/15/JEB/09 of August 20, 2009* on the creation, composition, organization and functioning of a National Forestry Zoning Steering Committee, is by far the most important feature of the Forest Code as the steering committee presides over land use and land management.

The Committee is made up of private sector, civil society organizations, government and international NGO's. It provides assistance with regards to forest zoning, land competition, conflicts in legislation, and tenure for commercial use by sectors such as mining, logging, hydro electricity and agriculture. The Forest Code determines fairly extensively how communications with forest communities must take place, how concession of forest must be managed in terms of protecting customary rights, forest capacity and conflicts

[60] Forest Code of 2002, Law 1 1/2002 dated 29 August 2002, Article 2
[61] Forest Code of 2002, Law 1 1/2002 dated 29 August 2002, Article 44

between commercial and community interests. However, without adequate policy to carry this law out, the country falls short of achieving this objective since a disconnect remains between what do to and how to do it. The law presiding over forestry compliments land law, however it is only focused on the 68% of forest land and holds no jurisdiction over any other lands within the DRC.

Mining Code of 2002 and Agricultural Law of 2011

The Mining Code, Law No. 007/2002 of 11 July 2002, regulates mining insofar as it outlines prohibited areas, conditions for prospecting, environmental evaluations, artisanal mining and site rehabilitation. Article 6 of the mining code gives the President of the country the right to shut down any mining activity where mining endangers communities or the environment. The Mining Code does not make reference to the use or management of land, however provides for regulated mining to take place at the discretion of licensed contractors. The Agricultural Law, no. 11/022 of 24 December 2011, entered into force on 24 June 2012 is specific to the agricultural concessions of 'the 80 million hectares of arable land in the DRC'.[62] As has been stated before, only an approximate 11% is available for exploitation and so this law creates challenges where foreign people may not have access to agricultural land. The restrictive nature of this law protects access to land for indigenous communities however do not support increased agricultural output, therefore keeping the country in state of being food insecure.

Again from the observation made in the Mining Code of 2002 and the Agricultural Law, no. 11/022 of 24 December 2011, the research identifies a disconnect between law and land management. Economic opportunities are clear and indigenous protections are clear – but protection without the provision of adequate resources for the local population to contribute within the space of agriculture or mining retards the process of development. Communities remain within a space of subsistence farming on land that will never be their own. From the laws stated that support the 1973 Land Act, little attention is given to land tenure and administration; much of the focus is on resource management. The Land Coalition's perspective regarding the Agricultural Law, no. 11/022 of 24 December 2011 in conjunction with the 1973 Land Act is

[62] Jonathan van Kempen & Nady Mayifuila 'The Democratic Republic of the Congo new agricultural law n° 11/022 of December 24, 2011 is currently being amended and supplemented' (2 April 2013) <http://www.cabemery.org/2013/04/02/the-democratic-republic-of-the-congo-new-agricultural-law-n-11022-of-december-24-2011-is-currently-being-amended-and-supplemented/#.VNttALQcQzo>

that the Act does not address issues of land tenure or land management; it also does not address land disputes, which are the key focal points. The Land Coalition states that the 1973 Act,

> resulted in the de facto entrenchment of a dual legal land system, as a result of the recognition of rights rooted in traditional systems of land management...In this context and in the absence of a national land-use policy and of appropriate land-use planning tools, DRC has experienced over the last 15 years dramatic and unregulated increases in the allocation of land...this causes increased pressure on the land, and creates situations of overlapping rights, which in turn become sources of conflict as they are handled inadequately.[63]

The DRC has made a commitment to biodiversity management within its Forestry Code; however this is not carried through to any form of land policy. The Mining Code makes no provision for biodiversity offsets even though vast amounts of forest will be irreversibly destroyed, placing more pressure on land. The country aims at developing a conservation law and has ratified 21 biodiversity related conventions however it is the implementation and enforcement of laws and policies that become a problem. The paper now moves to discuss the land policies of Lesotho in comparison to that of the DRC.

3.1.2 Land Policies of the Kingdom of Lesotho

Lesotho has a high population density, high HIV AIDs prevalence rate and a poorly resourced economy. In comparison to the DRC, Lesotho has little natural resources or arable land. While Lesotho's land issues are not aggravated by conflict as is in the DRC, they are by the high unemployment rate and high rate of HIV AIDS infections. Lesotho's Bureau of Statistics measured an 'unemployment rate of 25.3% in 2008'.[64] Hence there is a high dependency on land for the generation of income and food; the International Fund for Agricultural Development (IFAD) supports this perspective stating that,

> The agricultural sector, which accounts for about 17 per cent of GDP, is the primary source of income, or an important supplementary source, for more than half of the population in rural Lesotho. Of the country's total land area, only about 10 per cent is classified as arable. The majority of small-scale farmers live on what they can produce from cultivating an average of less than 1.5 ha of land or from herding livestock on grazing land

[63] International Land Coalition 'Democratic Republic of Congo'*International Land Coalition* <http://www.landcoalition.org/en/base-country/democratic-republic-of-congo

[64] Lesotho Bureau of Statistics '2008 Lesotho Integrated Labour Force Survey' (2008) 1, 104

> that is increasingly and severely degraded, or on occasional income from other sources such as casual labour or remittances. About 30 per cent of rural people live in extreme poverty.[65]

Although a third of the country lives in poverty and is reliant on subsistence agriculture, a poor legal and policy environment still exists, which ultimately ensures that pressure on urban and peri-urban centers remains high due to poor management of the densely populated region and limited land availability. A draft white paper on land policy was developed in 2002 and 2003. Formulation of a Land Bill has been a consistent activity of the government since 1999, with reform of the Bill taking place in 2004, 2005, and 2006. By the end of 2009, the Bill was tabled after being rejected by the Land Minister due to continuing conflicting perspectives between the protection of the customary tenure system over the statutory tenure system. The country has experienced increased urban sprawl with people migrating to urban and peri-urban areas to bypass rural land tenure restrictions. The consequence thereof was an increase of 'uncontrolled growth of urban populations which could reduce the resources available to the existing urban population and could lead to the decimation of the small percentage of arable land left for agricultural'.[66] A study conducted by Moses Daemane from the University of Lesotho on Lesotho's land tenure system since 1966 supports the work of Turner, finding that Lesotho's predominant land tenure issues are

> abused land expropriation not for the benefit of public purpose and public interest but for the benefit of both the political and foreign business capitalist elite working jointly to enrich themselves; land deprivation of the ordinary citizens; lack of proper and efficient land management and administration as well as lack of efficient and effective execution of the land tenure system towards attaining food security/sustainable development; environmental conservation and development of sustainable livelihoods; irregular settlements in the urban areas and hassles in land administration; urban sprawling/encroachment, migrant population and the poor lacking access to land; and shortage of arable land due to rapid urban population growth and mushrooming of formal and informal settlements on arable land.[67]

Daemane points to a number of interesting observations. Much like the DRC, land is a means through which an elitist few gain power; even though the land is not rich in minerals like that of the DRC. Equitable

[65] IFAD 'Enabling poor rural people to overcome poverty in Lesotho' (2008) 1, 2
[66] L Turner 'Lesotho' in K Kleinbooi (ed) *Review of Land Reforms in Southern Africa (*2010) 2, 17
[67] M M M Daemane 'Problems of Land Tenure Systems in Lesotho Since Post-Independence: Challenging Perspectives for Sustainable Development in Land Administration and Management' (2012) 14 *JSDA* 164, 164

distribution of land is also a problem, given population density. Land policies and laws are also poor and so land is not appropriately managed. Much like the DRC, the Kingdom of Lesotho expresses a commitment to human rights in its Constitution. The Constitution of the Kingdom of Lesotho was adopted in 1993 and was subsequently amended in 1996, 1997, 1998 and 2001. The research references the Constitution of the Kingdom of Lesotho of 2001. Article 4 (1) outlining that, 'Whereas every person in Lesotho is entitled, whatever his race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status to fundamental human rights and freedoms'.[68] Article 17 (1) (a) (b) (c), Article 17 (2) (a) (b), Article 17 (3), and Article 17 (4) (a) (b) of the 2001 Constitution outlines the right to property which provides for protection of property both moveable and immovable.[69] Chapter 9 of the Constitution is specific to land. Article 107 places land in the hands of the Basotho people with Article 108 outlining that this land is held in trust by the Monarchy, giving all rights to the allocation of land concessions to the King; however allocation must remain within the parameters of Law. Although there is an expressed commitment to human rights and to some degree land in the country's Constitution, little else has evolved from this stated commitment. After independence an effort in land administration was carried out in formulating laws that would govern land, however since these laws would challenge customary land administration, they were opposed by traditional chiefs. Due to these challenged land laws have been written and appealed since the 1960's with numerous laws being created and overhauled.

> After independence in 1966 the Lesotho government passed two land laws-the Land (Procedure) Act 1967 and the Deeds Registry Act 1967. In 1973, two other laws were enacted-the Land Act 1973 and the Administration of Lands Act 1973. The former covered the whole country and was in operation until 1980, when the Land Act 1979 repealed it. Land Act 1979 was enacted to reform the Land Procedure Act of 1967(Act 24 of 1967), the Land Husbandry Act of 1969 (Act 22 of 1969), the Administration of Lands Act of 1973 (Act 16 of 1973) and Land Act of 1973 (Act 20 1973).[70]

[68] Constitution of the Kingdom of Lesotho, Chapter 2, Article 4 (1) of 2001
[69] Constitution of the Kingdom of Lesotho, Chapter 2, Article 17 (1) (a) (b) (c), of 2001; Constitution of the Kingdom of Lesotho Article 17 (2) (a) (b) of 2001; Constitution of the Democratic Republic of Congo Article 17 (3) of 2001; and Constitution of the Kingdom of Lesotho 17 (4) (a) (b) of 2001
[70] M M M Daemane (Note 54 above) 166

Aside from the laws created, development strategies have also been designed. Two predominant development strategies of the country is the National Strategic Development Programme 2012-2017 and Vision 2020. Neither document makes any reference to land tenure security as a means of poverty reduction; or economic development in terms of individual land tenure. However high population density and little availability of land is acknowledged. Land is referred to in terms of agricultural importance, simply stating that over half of the population has access to agricultural land and that the agricultural sector is struggling. The *Vision 2020* strategy outlined that there would be a strong democracy, a healthy economy, a healthy workforce, a well managed environment, and the country would achieve technological advancement. Again this document makes very general comments regarding the objectives for the country in terms of land. As far as biodiversity is concerned outside of stating that various environmental agreements have been signed there is no real commitment in terms of how land is managed in order to protect vulnerable biodiversity that is used by the majority who are dependent on natural resources. This is so severe that food security is threatened. Again one begins to sense a disconnection between the reality of land management in Lesotho and the laws that govern this land. Daemane goes further to say that slow land reform process,

> has led to current land tenure practices in rural, peri-urban and urban-area being detrimental to the achievement of food security in some respects. For instance, in the rural areas: women's access rights and widows' tenure security are inadequate; the sustainable land management provisions of the Land Husbandry Act 1969 are widely disregarded. Lesotho governments have never put in place regulations under the Land Husbandry Act 1969, which relate to the prevention of soil erosion and other harmful practices. The current tenure insecurity and poor administration of land in urban and peri-urban areas is hindering smooth implementation of initiatives for livelihoods and food security improvement.[71]

This statement clearly demonstrated how important it is to consider ESCR in land processes. It can be concluded that if poor tenure security and land administration processes are not considered in national development plans, given the already identified fundamental link between land, people and the environment in Lesotho then implementation of national development plans will fail. However, without proper policies and laws in place, failure of pro-poor or rights based land reform will fail anyway. Today we see this that

[71] M M M Daemane (See note 54 above) 166-167

confusion still exists in land policies and laws. If the paper refers to back to the Land Act 1979, the government of Lesotho replaced the 1979 Land Act with the Land Bill of 2009, which outlines that,

> Communal land tenure system remains untouched but that vested powers of land administration be transferred to local political councils and political ministers and no longer on chiefs. It provides for the grant of titles to land, conversion of such titles, how they are secured, administration of land, expropriation of land for public purposes, grant of servitudes, creation of land courts and settlement of land disputes, systematic regularization and adjudication and for other relevantly related land matters. While individual non-citizens may not have rights to land, presently foreign companies and partnerships with 20% local shareholding may have rights to land, according to this new 2009 Land Bill.[72]

The 2009 Land Bill demonstrates in this statement the confusion over land. While it states that communal land tenure systems remain, customary chiefs have no power. Titles are granted to citizens, this indicating that a statutory land system exists, however business interests are prioritized over people. The purpose for removing power from customary chiefs was due to corrupt land administration practices. Local chiefs would still attempt to manage land through backdating land documents.[73] However placing power in the hands of political leaders did not do much to curb corruption in land management. The 2009 Land Bill has been repealed and replaced by the Land Act No.8 of 2010 (also referred to as the Land Act of 2009). The Land Act of 2010 again states that land is held in trust by the King and that the Act takes legal preference over customary rights. Hence we see little change in current land laws.

3.2 Population growth and biodiversity loss in the DRC and Lesotho

3.2.1 Population Growth

The DRC

The DRC is found in the Great Lakes Region of East and Central Africa which is the most densely populated region in the world. In 2012 it was registered that the DRC had a measured population density of '28.0 people per square kilometer of land as of 2012, with an estimated growth rate of 2.7% between 2010-

[72] M M M Daemane (See note 54 above) 168
[73] M M M Daemane (See note 54 above) 168

2015'.[74] The World Bank specifies that the current population of the country is approximately '67.51 million people as measured in 2013'.[75] The country is also one of the largest in Africa with a total land mass of 2.34 million square kilometers. The 2011 UN Data statistic demonstrates that '67.9% of the country is covered in forest area'.[76] This means that only 32.1% of land is comprised of urban and rural areas. Almost half the population resides in rural areas.

Immediately one can see how conflicts may become possible given high competition for land. As has been discussed earlier in the paper, land conflict occurs between indigenous and migratory communities particularly where little land is available to meet agricultural and cultural needs. In much of the literature regarding population pressure on land great emphasis is also placed on the differences regarding access to land between migrant and indigenous groups. Indigenous status allows one access to land, whereas migratory status does not. This divide stems from Belgium occupation in the DRC which instituted divisions between societal groups based on occupation of land. The colonial regime instituted forced displacement for the purpose of labour. Vlassenroot and Huggins, quotes Tegera providing the example of the Luba community in the Kasai Province. 'The Luba community were uprooted and settled in areas inhabited by the Luala community in order to provide labour for the diamond mines. Clashes between the "local" Luala and the Luba led to the first internal civil war'.[77] As population sizes increase, conflict becomes more prevalent. Given the increase in population size, inequitable land distribution between land claimants, an increase in customary land grievances as well as land degradation and ecosystem loss during the 1980's in the Northern Kivu District - pressures increased as less land was both available and arable for farming. Huggins (2010) links the conflict to population size, stating that

> The dynamics of conflict in North Kivu for example have been linked to demographics – the relative population sizes of different ethnic communities in particular areas...Unable to maintain soil fertility through the use of fallow areas (due to the inadequate size of their landholdings) and unable to afford any means of agricultural intensification, smallholder farmers saw their yields diminishing and were unable to compensate by opening up new land due to the multiple constraints ... There is little published data on the number of intra-community land

[74] UN Data 'Democratic Republic of Congo' (January 2015) <https://data.un.org/CountryProfile.aspx?crName=Democratic%20Republic%20of%20the%20Congo>
[75] The World Bank 'Democratic Republic of Congo' <http://data.worldbank.org/en/country/drc>
[76] UN Data 'Democratic Republic of Congo' (January 2015) <https://data.un.org/CountryProfile.aspx?crName=Democratic%20Republic%20of%20the%20Congo>
[77] K Vlassenroot & C Huggins 'Land, Migration and Conflict in Eastern DRC' (2005) *ISS Africa* 115, 117

> disputes from this period ... but it seems reasonable to assume that the number of disputes increased along with demographic pressure.[78]

Where pressure increases and violence ensues, communities migrate across regions and borders creating further land pressures and population increases in neighbouring territories as has been referred to above regarding IDP's. Therefore in the DRC it can be said that policy constraints in land may persist going into the DRC's future land policy planning given the fact that those individuals who have benefited from land conflict work to contest the efforts made in land administration and reallocation of IDPs and refugees. 'The State continues to be part of the problem as much as part of the solution, and not just because of corruption, in the financial sense, but because of the fundamental ways in which state institutions are established and oriented, especially those responsible for decisions over land and natural resources'.[79] Given this statement, one must ask whether the State can be seen as an objective party to the land administration process and if not, what can be done to change this?

Lesotho

In comparison, the Kingdom of Lesotho has and still does face challenges that are more orientated around socio-economic pressures and health issues as opposed to conflict. The country has very little arable land, a small population, little conflict between indigenous and migrant communities and a more formal land administration system (although customary systems still exist). The predominant issues in Lesotho surround the fact that the country – much like the DRC – demonstrates a high population density. In fact it is the highest in Southern Africa. While the UN data depicts '67.6 people per square kilometers of land, as of 2012 statistics; with an annual average growth rate of 1.1% between 2010-2015'.[80] 'According to statistics in the National Strategic Development Plan, population expressed in terms of arable land, population density rises to 658 people per square kilometer.[81] The country is also challenged with socio-economic issues, the biggest being the low levels of productivity and a high adult 'HIV/AIDS prevalence rate of 23.1% with 360

[78] C Huggins (See note 42 above) 21-22
[79] Ibid 40
[80] UN Data 'Lesotho' (January 2015) <https://data.un.org/CountryProfile.aspx?crName=Lesotho>
[81] Government of the Kingdom of Lesotho 'National Strategic Development Plan 2012/2013 – 2016/2017' (January 2015) <http://www.gov.ls/documents/NSDP%20FINAL%20PRINT%20VERSION%2013%2001%202013[1].pdf>

000 people living with HIV'.[82] In addition, the country has minimal available arable land; with a land size of '30,355 squared kilometers'.[83] Lesotho only has '9.2% of land that is considered arable'.[84] Lesotho has a 'population of 2.074 million, of which 77.4% live in the rural areas'. [85] As a point to clarify, rural areas are not all found on arable land.

In terms of land policy, the country demonstrates a very poor track record of management and administration of land. One of the biggest obstacles experienced in land administration is the high population density – 'population pressure is forcing settlements in marginal areas resulting in overgrazing, severe soil erosion, and soil exhaustion as well as desertification'.[86] Urban sprawl is increasing with poorly developed peri-urban and urban areas that can accommodate an increasing number of people migrating from rural to urban areas. With land being the central and most valuable asset, the country still has some of the lowest socio-economic figures. According to the African Economic Outlook, Lesotho's 'unemployment rate is 25%, and 57% of the population living below the poverty line as of 2013, this higher than the 2012 statistic of 56.6%'.[87] If land is considered a means of poverty alleviation, it is crucial to investigate Lesotho's land tenure system as a means of improving the outlined statistics.

While customary chiefs may not hold the power over land as has been the case pre-independence, the customary format remains. Daemane explains the Land Act 1979 to be the primary legislative document governing land administration under customary law; where tenure is managed in accordance with customary principals.[88] The only significant difference is that land is held in trust by the King and administered through district land administration offices as opposed to the traditional chiefs. Prior to the Land Act 1979, customary systems replicated that of the rest of Africa where no individual owned land, but

[82] Avert 'HIV & AIDS in Lesotho' (January 2015) <http://www.avert.org/hiv-aids-lesotho.htm>
[83] USAID '118/119 Biodiversity and Tropical Forest Assessment for Lesotho' (July 2007) <http://www.fanrpan.org/documents/d00478/Lesotho_USAID_Jul2007.pdf >
[84] World Development Indicators 'Lesotho-Area-Arable Land' (January 2015) <http://knoema.com/atlas/Lesotho/topics/Land-Use/Area/Arable-land-percent-of-land-area>
[85] The World Bank ' Lesotho' (January 2015) <http://data.worldbank.org/country/lesotho>
[86] CIA World Fact Book 'Lesotho Geography' (January 2015) <https://www.cia.gov/library/publications/the-world-factbook/geos/lt.html>
[87] Edirisa Nseera & Alka Bhatia 'Lesotho' *African Economic Outlook* (29 August 2014) <http://www.africaneconomicoutlook.org/en/countries/southern-africa/lesotho/>
[88] M M M Daemane (See note 54 above) 166

had access to and use of land. This land was designated by a chief. While the customary system may have created the perception of meeting equitable land distribution and communal need, it was discovered that

> these social advantages were hardly evident; and under population pressure, the system was less egalitarian than was thought. A clandestine land market had developed and land hoarding and speculation were on the increase...Under heavy population pressure...subdivision or fragmentation occurred to further lessen the development potential of the land. This development stifled personal initiative and industry.[89]

The hoarding of land by customary chiefs and indiscriminate land allocation was a motivation for current land policy reform, 'the problem was recognized as far back as 1874'.[90] With a large number of people concentrated on small pieces of land, continued overgrazing and soil erosion rendered a large proportion of Lesotho's land unfit for agricultural purposes. The long-term consequence of poor land management in the face of overpopulation is that people cannot generate an adequate safety net in weathering poor economic circumstances, particularly where high poverty rates occur. This translates to poor social development statistics and in essence reduces investment into a region for economic development. As an example, Lesotho demonstrated poor progress in achieving its Millennium Development Goals (MDG's), in particular MDG1 Eradication of Extreme Poverty, MDG 4 Reduced Child Mortality, MDG 5 Improved Maternal Health, and MDG 6 Combating HIV, Malaria and TB. According to the Lesotho's MDG status report for 2013,

> 57% of people live below the poverty line, unemployment is at 25% and the proportion of people vulnerable to food insecurity is 39%. The child mortality rate for children under 5 is 117 out of 1 000, this above the baseline number of 113 per 1000. There are 1155 maternal deaths out of 100 000 which is more than double the baseline figure of 419. There is also a 23% HIV prevalence rate and 633 people per 100 000 are contracting TB.[91]

The significance of these figures relates to the fact that it is the people that are most connected to land and subsistence farming that falls within these statistics. HIV AIDS however still takes centre stage given the high prevalence rate. Scott Drimie writes

[89] ibid 165
[90] ibid 166
[91] Government of the Kingdom of Lesotho 'Lesotho Millennium Development Goals Status Report 2013' H Miller (ed) *United Nations* (2014) i, xv

> HIV/Aids is one of the largest challenges facing policy makers and practitioners involved in the land sector. It will impact on every aspect of management, planning and implementation of land policy for decades, as well as the social environment in which this occurs. The epidemic fundamentally changes all aspects of land policy as it affects both the people whom the policy and rural development are intended to benefit, and the people staffing the institutions that support the policy implementation. The impact is therefore in both directions.[92]

Given this statement, it can be deduced that the high HIV/AIDS prevalence demonstrates that the public health system is challenged in meeting population needs where an increasing population is concentrated in small remote rural areas for arable land; and urban centers are not adequately developed for mass influx of rural migrants. This has a knock on effect on the right to food as it creates barriers to food production and an inability to generate one's own means of subsistence. From a rural standpoint, if the research considers land use, 'HIV/AIDs-affected households who generally have less access to labour, have less capital to invest in agriculture and are less productive due to limited financial and human resources'.[93] From a land tenure perspective once again the rights of women and children are the most severely affected. Where patriarchal systems exist under customary systems, if a husband, brother or father dies of an HIV related illness, women are not only the main carriers of stigma even though they are protected in the constitution - they are in reality still challenged in retaining their land.

A study conducted in Lesotho by Mphale, M et. al. also quoted in Drimie identified that in the region of Ha Poli in the Katse Catchment and Matsatsaneng in Botha Bothe, where customary land tenure systems still exist; it was observed that, 'illness has impacted substantially on agricultural yields'.[94] Since agriculture still takes the form of subsistence farming, many agricultural practices have stopped, given the inability of households affected by HIV/AIDS to farm the land. The current land administration system under the Land Act 1979 outlines that 'land which lies fallow for more than two years in succession automatically reverts to

[92] S Drimie 'HIV/Aids and land: case studies from Kenya, Lesotho and South Africa' (2010) 20 *DSA* 647, 648
[93] Ibid 649-650
[94] Matšeliso Mphale, Emmanuel Rwambali, & Mokhantšo Makoae 'HIV/Aids and its impacts on land tenure and livelihoods in Lesotho' *FAO* (March 2002) <http://sarpn.org/documents/d0000161/P149_Lesotho_Report.pdf>

the allocating authority. This provision, which is encouraged in the land policy review report of 2001, is an attempt to enhance agricultural productivity through ensuring that all cropland is used by allottees'.[95]

This has motivated households affected by HIV/AIDs to adopt alternate methods such as sharecropping or livestock renting to retain some form of food security and land use. Such practices are not guaranteed and open vulnerable families up to corruption and loss of livestock as well as the loss of land itself. It becomes clear that population growth clearly plays a significant role in the relationship between land and achieving human rights – whether in the form of increasing pressures on already sensitive and conflict prone environments or whether on increasing pressure on regions that experience epidemics such as HIV AIDs and a poorly resourced economy.

3.2.2 Biodiversity Loss

The DRC

From a very simplistic perspective one can connect the lines between land biodiversity and people quite clearly. Land which is made up of various ecosystems retains certain richness in biodiversity that supports the health of the overall ecosystem; this in turn supplies people with their needs whether it is food, natural medicine, water, clean air or a means to generate income. It also supports industry where commercial practices are related to the timber, mineral mining, cash crop farming and oil extraction industries. These issues affect the loss of sensitive Biodiversity. The greatest phenomenon in the 20th century that impacted biodiversity loss like no other was intense industrialization of developed countries and a population explosion in developing countries. This resulted in both soil erosion and resource depletion due to industrial and agricultural practices which in essence creates further challenges for the poor. At the sixty-fifth session of the UN General Assembly, the Secretary General commented on the right to food, quoting IFAD[96] in stating that,

> "worldwide, 5 to 10 million hectares of agricultural land are being lost annually to severe degradation. In addition it would be difficult to expand the areas under cultivation to the degree required to accommodate the

[95] S Drimie (See note 82 above) 656

[96] International Fund for Agricultural Development 'Improving Access to Land and Tenure Security', EB 2008/94/R.2 (2008) 1,7

> growth of rural populations, since forests have a major role in storing carbon and deforestation is already a major contributor to greenhouse gas emissions".[97]

Land policy that outlines land management and administration along with land laws that support policy must be cognisant of the degree to which ecosystem health is affected by land use. Land policy has an effect on the quality of life experienced by people. Haines-Young (2009) say that, 'given the need to sustain ecosystems and the benefits that people derive from them, the biodiversity of a site, or of an area of land, may often place constraints on our choices about how it can be used'.[98] Africa's rural majority, as is well known in the literature, suffers the highest recorded affects of climate change given the dependency on land for agriculture. Therefore, loss of biodiversity means loss of human well-being. Through coordinated policy, conserving of biodiversity is possible which in essence recognizes the realization of human rights such as the right to food, health and housing, all of which require access and usage of land (and suitable land is only possible if there is a healthy ecosystem).

The ecosystem services that are sustained by biodiversity must therefore have the protected space to flourish. There are a number of Multilateral Environmental Agreements (MEAs) supported by the United Nations in an effort to protect biodiversity; the most significant of these are, the Convention on Wetlands of International Importance (Ramsar), the Convention on International Trade in Endangered Species (CITES, 1973), the Convention on the Conservation of Migratory Species of Wild Animals (CMS, 1979), and the Convention on the Conservation of Biological Diversity (CBD, 1992). Considering this, it becomes clear why it is important for both the DRC and Lesotho to consider biodiversity loss in their land policy priorities.

The DRC has one of the world's richest sources of biodiversity. The forest is the second largest tropical forest in the world, also known as the 'second lung' of the world (only smaller to that of the Amazon forest).

> The DRC's forests provide essential ecosystem services, such as watershed conservation, climate regulation and carbon sequestration. They are an important driver of atmospheric circulations, the exchange of energy and water between the forests and atmosphere influencing regional and global weather systems. In terms of

[97] Sixty-fifth session Item 69 (b) of the provisional agenda - Promotion and protection of human rights: human rights questions including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms The right to food Note by the Secretary-General A/65/281, para 6

[98] R Haines-Young, 'Land use and biodiversity relationships' 2009 *Land Use Policy* 178, 178

carbon storage, the DRC has by far and away the majority of the Congo Basin's carbon biomass estimated at 23,173 million tons with an estimated value of $1211 per ton.[99]

In order to begin to understand the depth of this biodiversity the research points to statistics that demonstrate the sheer size of the forest which 'spans 2 million square kilometers with an estimated 10,000 species of plants, 409 species of mammals, 1,117 species of birds and 400 species of fish—making it the 5th most biodiverse country on earth'.[100] The natural resource endowment plays a crucial role in economic development for the country. The forest itself also provides resources to the bushmeat trade and most predominantly the logging trade. However industry has put this forest in a very threatened position. USAID states that, 'the annual deforestation rate for the 1990—2000 period was estimated at 0.22% and the current rate is thought to be around 0.33% per year'.[101] This translates to approximately 6 600 square kilometers of forest cut down per year. The agriculture, mining and timber sectors are the largest in the country and place extreme pressure on the density of biodiversity.

With an uncontrolled and mismanaged approach to land use planning human well-being for rural communities is threatened, particularly forest dependent communities. Where activities such as mining, agriculture and logging can be argued as being means of economic development for the country, and so a source of poverty alleviation, what is not considered is the inverse relationship. Where new operations of commerce are opened, people flock, the poor seek employment opportunities and the wealthy seek exploitation opportunities. UNESCO has identified that the DRC has five World Heritage sites, all of which are on the endangered list due to extraction industries, poaching and conflict. Poor policy protecting land, land use and land management in fact enforces risks to poverty and endangerment of these sites. 'In order to address the weak application of laws, UNESCO continues to lobby the government...The major challenge confronted by the DRC's government is the absence of an integrated land-use plan'.[102]

[99] J R Seyler, D Thomas, N Mwanza & A Mpoyi 'USAID Democratic Republic of Congo: Biodiversity and Tropical Forestry Assessment (118/119)' (2010) xv, xvii
[100] ibid
[101] ibid
[102] Africa Biodiversity Collaborative Group 'ABCG Mining & Biodiversity in DRC Workshop Report' (19 December 2013) 13-14 < http://frameweb.org/adl/en-US/11036/file/1690/B.1%20WCS%20DRC%20Mining%20ABCG-Workshop_Report.pdf >

One of the biggest examples of such mismanagement of land can be found in the recent oil concessions identified in the Virunga National Park in the DRC. Virunga is Africa's oldest national park and is a UNESCO World Heritage Site; however 'some 85% of the park has been allocated as oil concessions'.[103] This allocation of land is also in direct conflict with the country's 2005 Constitution, where Article 53 of the 2005 Constitution states that, 'All persons have the right to a healthy environment and that is favourable to their development...The State ensures the protection of the environment and the health of the population'.[104] Such concessions will challenge the Constitution since both water and land resources will be compromised and may negatively impact neighbouring communities who depend on land and water supplies. In particular, Lake Edward, which supplies communities on both the Ugandan and DRC border, will be affected by contaminated run-off from mining processes. Although oil exploration has been put on hold, one may draw the conclusion that the DRC government has demonstrated through the wiliness to give up such vital protected areas that their land policies and land law is easily compromised; and that economic growth supersedes environmental protection and the protection of forest dependent communities.

The Kingdom of Lesotho

From the perspective of the Kingdom of Lesotho, once again we see an opposite. Where the DRC is resource rich, Lesotho is fairly resource poor. However biodiversity loss still plays a major role in term of land and the impact on human rights. Unlike the tropical nature of the DRC Lesotho is predominantly a mountainous country with a small forest area, spanning only 140 square kilometers. Lesotho has almost 400 species on the endangered species list. Population pressure, 'poor land tenure and management systems; and infertile soils have caused that people are being driven onto marginal agricultural lands and so-called protected areas, contributing to environmental degradation. Today we see that less than 1 percent of Lesotho's total land area is dedicated to the protection of natural habitat and biodiversity".[105]

Given the small availability of arable land, subsistence farming as a practice has delivered the biggest impact on biodiversity loss due to poor land use. An observation here is that farming currently serves as the

[103] Mike Scott 'Soco International's oil activity in world heritage park raises tricky questions for investors*' The Guardian* (4 March 2014) <http://www.theguardian.com/sustainable-business/soco-international-oil-exporation-drc-virunga-gorilla-park>
[104] Constitution of the Democratic Republic of Congo, Chapter 2, Article 53 of 2005
[105] USAID '118/119 Biodiversity and Tropical Forest Assessment for Lesotho' (July 2007) <http://www.fanrpan.org/documents/d00478/>

biggest contribution to achieving economic social and cultural rights. The majority of the population is made up of Basotho people who, prior to the countries formation, practiced crop and livestock farming in what is known as South Africa today. After Lesotho's formation, the Basotho people continued their agricultural practices; but they had to move to the more mountain regions of the sub continent to remain within what is today known as Lesotho. However, agricultural practices were and still have not adapted to the mountainous region and so with a growth in population, land scarcity is still a problem. USAID specifies that,

> Although the high HIV/AIDS prevalence prevents the total population from increasing rapidly, high anthropogenic pressure has become a driving force in ongoing land degradation problems, forcing people to settle on and exploit marginal lands. Without proper knowledge of soil conservation techniques, the land has quickly worsened, and today Lesotho is facing a severe threat of land degradation, erosion, deforestation and desertification. The issue of land tenure insecurity is exacerbating the problem.[106]

Given the fact that over 70% of people partake in agricultural activities, as mentioned earlier in the research, the environmental dependence makes the people of Lesotho vulnerable to environmental issues as mentioned by USAID. Because of the poor state of biodiversity, coupled with poor farming practices and poor land management, the country is forced to import almost 60% of its domestic food requirements. Thus far, the information presented has demonstrated a number of facts. Land management in the DRC and Lesotho remains poorly supported and uncoordinated. Given the disjointed nature of land laws and policies that do not provide a foundation for equitable land distribution or provide a mechanism to resolve land disputes generated from land competition. An elitist minority still exists when looking at land ownership, where it is clear that a majority of natural resources remains in the hands of a small group of people who more often than not is well connected to the State. Population growth has seen many areas become overpopulated, where people are moving into areas in which they can meet their subsistence needs thus creating further pressure on limited and often endangered biodiversity given the immense reliance on natural resources to meet food, health and housing needs.

[106] USAID '118/119 Biodiversity and Tropical Forest Assessment for Lesotho' (July 2007) <http://www.fanrpan.org/documents/d00478/>

We see how poor land policies and laws fail in mitigating pressure placed on land by a growing population since priority is given to land and natural resources being managed to the extent that they are used for economic purposes, with the perspective that a trickledown effect of developing land commercially will address poverty. This however has not been the experience. This therefore leads the paper into the discussion regarding land and the right to food, health and housing. From a human rights perspective, it is important to note that both the DRC and Lesotho have made binding commitments to delivering on ESCR obligations as both have ratified the International Covenant on Economic Social and Cultural Rights (ICESCR). The DRC ratified the ICESCR on 1 November 1976 and Lesotho on 9 September 1992 respectively. With these binding commitments in mind the research looks at the link between land and the right to food, health and housing in order to support the idea that land may be used to deliver on these obligations.

3.3. The Right to Food, Health and Housing

3.3.1 The Right to Food

From the onset the obvious connections can be made between land and the right to food given that land yields crops through which both subsistence and commercial needs are met. It can be argued that access to land may not be necessary to achieve the right to food since people may still achieve this right through access to food markets for example. However, it is observed in the literature that many Africans either do not have access to markets or do not have the means through which to purchase at markets given financial circumstances. Current statistics show that in the DRC for example '40 million people depend on subsistence farming for their livelihoods'.[107] In Lesotho almost 50% of the people rely on agricultural practices for their income. The Special Rapporteur on the Right to Food, Olivier De Schutter reported in 2010 that 'access to land and security of tenure are also essential for the ability of smallholders to achieve a decent standard of living'.[108] However with increasing populations and decreasing arable land, achieving a decent standard of living becomes challenging.

[107] New Agriculturalist 'Country Profile – Democratic Republic of Congo' (January 2009) <http://www.new-ag.info/en/country/profile.php?a=641>

[108] Report of the Special Rapporteur on the Right to Food for the 16th Session of the Human Rights Council, UN Doc A/HRC/16/49 (2010)

He goes further to state in point five of the report that 'ensuring the right to food requires the possibility either to feed oneself directly from productive land or other natural resources, or to purchase food'.[109] The right to food therefore imposes an obligation on the State to ensure that people not only have access to food but access to the resources required to produce food which includes equitable distribution of arable land. With the predominant focus of land policy discussions centering on customary and statutory land tenure, an interesting shift may occur in this discussion if the right to food is taken into account as a deciding factor. De Schutter references the 2008 World Development Report pointing to the fact that formal tenure systems may deny certain societal groups access to resources that allow for this right to be achieved.

> The protection of land-users' rights should not be limited to improving farmers' security of tenure; Fisher folk need access to fishing grounds and may be severely affected by the fencing-off of land that provides access to the sea or to rivers. Pastoralists need grazing grounds for the animals that they raise. For these groups, as well as those practicing itinerant forms of agriculture, the formalization of property rights and the establishment of land registries may be the problem, not the solution: it may cause them to be fenced off from the resources on which they depend, making them victims of the vast enclosure movement that may result from titling.[110]

From this it becomes clear then that land and food are far more intimately connected. Since the majority of Africans need land to ensure subsistence, it can be assumed that those that are directly dependent on land for their subsistence have little to no access to food markets or the means through which to purchase at such markets given challenges in exclusion or limited access to lands, unemployment and poor infrastructure in Africa. Therefore the right to food may suggest that there is relevance in arguing for a right to land whether this is attained through statutory or customary land tenure systems. Although De Schutter makes an argument for customary rights as being the best way of achieving the right to food. If one considers the right to housing, statutory land tenure becomes imperative since insecurity will still remain even if the State provides homes without a title to the land. Communities still live under the threat of these homes can be removed, particularly in times of civil or political unrest. Land that remains under State ownership or customary tenure systems presents a potential challenge in achieving secure housing,

[109] Report of the Special Rapporteur on the Right to Food for the 16th Session of the Human Rights Council, UN Doc A/HRC/16/49 (2010)
[110] World Bank 'World Development Report 2008' (2008) 139

particularly in geographic areas where instability and conflict continue and evictions remain a consistent threat such as in the DRC.

However security of tenure is not the only point to argue when discussing either the right to food or housing. The tumultuous history of African land policy consequently sees a continued unequal distribution of land which in essence fuels the argument for customary or statutory land rights to rectify inequalities. This unequal distribution gives rise to scenarios of unequal food security. Article 11, paragraph 2 (a), of the ICESCR outlines that the State has an obligation regarding, 'developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources'.[111] This therefore recognizes the fact that both tenure and distribution of land must be equitable allowing use of natural resources to ensure food security. This idea lends itself to the argument the paper presents where population growth and biodiversity loss may impact the State's ability to ensure equitable distribution to the degree to which each household attains enough land to achieve subsistence and has access to necessary natural resources. Hence, these systems must be considered in land policy development in order to achieve the right to food.

Article 11, paragraph 2 (a), of the ICESCR is further supported by the FAO's Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security. Guideline 8.1 of this document states that sustainable, non-discriminatory and secure access resources should be made available by the State in an effort to protect the livelihoods of people. These resources include land, water, forests, fisheries and livestock. Guideline 8.1 goes further to say that 'States should carry out land reforms and other policy reforms consistent with their human rights obligations and in accordance with the rule of law in order to secure efficient and equitable access to land and to strengthen pro-poor growth'.[112] The voluntary guidelines were adopted in 2004 by the States members of the FAO of the United Nations.

[111] International Covenant on Economic, Social and Cultural Rights (1976)

[112] FAO 'Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security Adopted by the 127th Session of the FAO Council November 2004 <http://www.fao.org/docrep/009/y7937e/Y7937E03.htm#ch2.8>

3.3.2 The Right to Housing

As with the right to food, the right to housing may be achieved without a right to land. This may be achieved through rental property for instance. However this requires a properly regulated rental system. In Africa however, as has been identified, proper regulation is a problem. The question of land security for housing settles on the issue of human insecurity. The threat of evictions, or forced removal of people from their homes in areas that are politically unstable is unfortunately commonplace on the Continent. The Special Rapporteur on Adequate Housing as a component of the right to an adequate standard of living, and on the right to non-discrimination, states in her 2012 report at the twenty-second session of the Human Rights Council that there is currently a global crisis in tenure security, particularly in the developing world. She goes further to say that,

> Access to secure housing and land is a prerequisite for human dignity and an adequate standard of living...displacement resulting from development, natural disasters and conflicts, land grabbing, and the growing number of urban dwellers living under insecure tenure arrangements worldwide are manifestations of the crisis.[113]

The Special Rapporteur's report quotes the Internal Displacement Monitoring Centre (IDMC) identifying that natural disasters and conflicts have seen 'over 26 million people internally displaced at the end of 2011 due to armed conflicts, violence or human rights violations, while nearly 15 million were displaced due to natural hazards'.[114] This statement again brings to focus the importance of considering population growth and biodiversity loss as an influencing factor in land and the right to housing. As populations increase and less arable land is available conflict will continue to erupt where people are fighting to secure their own subsistence and where unstable political situations result in minority groups taking land as a means of securing power. In addition, as biodiversity loss continues, natural disasters and drought will be on the increase.

[113] Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context for the 22nd Session of the Human Rights Council, UN Doc A/HRC/22/46 (2012)

[114] Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context for the 22nd Session of the Human Rights Council, UN Doc A/HRC/22/46 (2012)

From a tenure perspective, achieving the right to housing is heavily influenced by the privatization and commoditization of land. While statutory tenure supports the commoditization of land; land markets favour those who can afford land and so the security of tenure. Housing may be challenged for many rural and low-income communities that could face eviction from land sold for public or private interest. It is not only the rural low-income families that are affected by tenure insecurity and poor land policy. Landless people, residing in urban informal settlements represent a vast majority of populations in many African countries. At the end of the day the fact is that poor land policy that institutionalizes insecure tenure arrangements will in essence mitigate any efforts to achieve the right to housing. Without knowing that the house you live in is on land you own and that that land is not threatened by the possibility of being taken away due to conflict, a lack in resources or a growing population, there is no real security.

From a development perspective, no effort in providing adequate housing through projects initiated by NGO's or Government can be sustainable if there is not some form of land security. UN-Habitat specifies in Factsheet 21 on the Right to Housing, that the right to adequate housing contains both freedoms and entitlements. Freedoms include being protected against forced evictions, arbitrary interference and destruction of property and the right to freedom of choice in terms of where one resides or chooses to move to and from. The right to housing is clear in its entitlements in highlighting the fact that one is entitled to tenure which speaks to statutory land tenure, compensation for land and housing if lost, non-discriminatory access to adequate housing, and participation in the housing processes. What must however be made clear is that the right to housing does not mean that the State has an obligation to provide housing for the entire nation. Instead the right to housing is a 'mitigating' right that sees the State make efforts towards preventing barriers to housing. This may therefore suggest that access to adequate land supports achieving the right to housing. This access to land however must be available to all. For NGO's and government to achieve housing projects, a stable land policy must be in place to ensure people have secure land rights. From an international perspective, the right to housing is supported in a number of other international human rights treaties[115], however it is interesting to note that the right to housing is not explicitly mentioned in the African Charter on Human and People's Rights. Factsheet 21 does however outline that,

[115] The 1951 Convention Relating to the Status of Refugees (art. 21) • The International Labour Organization's 1962 Convention No. 117 concerning Basic Aims and Standards of Social Policy (art. 5 (2)) • The 1965 International Convention on the Elimination of All Forms of Racial Discrimination (art. 5 (*e*)(iii)) • The 1966 International Covenant on Civil and Political Rights (art. 17) • The 1979

> In the Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria (communication No. 155/96), the African Commission on Human and Peoples' Rights found that, Although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health,…, the right to property, and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health, and family life are adversely affected. It is thus noted that the combined effect of articles 14, 16 and 18 (1) reads into the Charter a right to shelter or housing.[116]

Having demonstrated the applicability of the right to housing, it can be concluded that the obligation of the State is to ultimately ensure that landlessness and homelessness is prevented, forced evictions are forbidden, discrimination does not occur from a racial, ethnic or gender perspective, and that vulnerable groups are protected. The State must achieve this through adequate policy, legislative actions. These obligations are reiterated in general comment No. 4 (1991) on the right to adequate housing.

3.3.3 The Right to Health

Factsheet 31 on the right to health, compiled by the Office of the High Commissioner for Human Rights (OHCHR) and the World Health Organisation (WHO) states that the right to health is commonly understood as being a project orientated initiative associated 'with access to health care and the building of hospitals'.[117] While this is not incorrect the factsheet states that it is not a comprehensive explanation. The right to health by definition holds a much wider scope to include all factors that contribute toward a healthy life. 'The Committee on Economic, Social and Cultural Rights, the body responsible for monitoring the ICESCR, calls these the 'underlying determinants of health'. They include: Safe drinking water and adequate sanitation; Safe food; Adequate nutrition and housing; Healthy working and environmental

---

Convention on the Elimination of All Forms of Discrimination against Women (arts. 14 (2) and 15 (2)) • The 1989 Convention on the Rights of the Child (arts. 16 (1) and 27 (3)) • The International Labour Organization's 1989 Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (arts. 14, 16 and 17) • The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art. 43 (1)(*d*)) • The 2006 Convention on the Rights of Persons with Disabilities (arts. 9 and 28)

[116] UNHABITAT 'The Right to Adequate Housing - Factsheet 21' *United Nations* (2009) 1, 12 <http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf>

[117] OHCHR.org 'The Right to Health – Factsheet 31' *United Nations* (2008) 1, 3 <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>

conditions; Health-related education and information; Gender equality'.[118] The full definition of the right to health therefore lends itself completely to the importance of a right to land given already mentioned dependencies on land for housing, sanitation, food, equality, and nutrition in Africa.

There is also an inverse relationship between land and health. According to the World Health Organisation, HIV AIDS, Tuberculosis (TB) and Malaria are the three highest killers in Africa. Food security is threatened as those who are reliant on subsistence farming for survival may not be able to farm due to illness. To illustrate the severity of the state of HIV and AIDS, Tuberculosis and Malaria, the WHO states under MDG 6A that, 'more than two thirds of new HIV infections are in sub-Saharan Africa...MDG 6C states that 3.2 billion people are at risk of contracting Malaria in 2013 and of these 584 000 are children under the age of five who have died from malaria in Africa. Tuberculosis is the biggest killer with a reported 9 million cases in 2013 of 1.1 million is HIV infected people'.[119] Factsheet 31 further supports the perspective that the right to health and land impact a wider spectrum of human rights when poorly coordinated through stating that,

> The importance given to the "underlying determinants of health", that is, the factors and conditions which protect and promote the right to health beyond health services, goods and facilities, shows that the right to health is dependent on, and contributes to, the realization of many other human rights. These include the rights to food, to water, to an adequate standard of living, to adequate housing, to freedom from discrimination, to privacy, to access to information, to participation, and the right to benefit from scientific progress and its applications.[120]

From this statement the paper assumes that since the larger majority of people in Africa are reliant on land to achieve a right to food and housing which translate into an adequate standard of living – land therefore becomes the central resource to achieving the right to health where health is defined by more than access to hospitals or clinics. Traditionally, many indigenous groups are also reliant on land to grow medicinal plants which form the predominant means of addressing health issues.

[118] OHCHR.org 'The Right to Health – Factsheet 31' *United Nations* (2008) 1, 5 <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>
[119] World Health Organisation 'MDG 6: Combat HIV/AIDS, malaria and other diseases' (December 2014), <http://www.who.int/topics/millennium_development_goals/diseases/en/>
[120] OHCHR.org 'The Right to Health – Factsheet 31' *United Nations* (2008) 1, 6 <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>

In summary

The information regarding the right to food, health and housing clearing indicates that it would be difficult to counter argue the idea that achieving ESCR for land dependent communities cannot happen without land policies that support human rights from a social and environmental perspective. Although land rights are not represented in international human rights law as an explicit right, this does not take away from the fact that land is certainly a crucial resource that allows for ESCR to be achieved given its direct link to achieve social, cultural and economic needs within communities. The research does not dispute the fact that there are other possible ways to meet ESCR's outside of purely owning or having access to land. However given current constraints in Africa, land remains the primary source for the achievement of food, housing and provides a means through which to access various forms of health care.

If one considers the facts that have been presented in this study, one can conclude that the inconsistent land policies of both the DRC and Lesotho have motivated conflict over land between a variety of societal groups. Due to the fact that policies are intended to stimulate economic activity, but to little for social justice between marginalized groups. The loopholes created in poorly coordinated land policy have allowed corruption in land management processes, cutting out large portions of local communities that may have otherwise seen economic benefits when included in land processes. In turn this has caused stagnant socio economic development in many regions of the Continent. While the research has observed an acknowledgment of the fact that population growth and biodiversity loss is seen as a problem, where reports regarding land tenure processes have confirmed this, information regarding these topics is still not included to any significant extent in land policy processes. There seems to be a mismatch between poverty reduction strategies and sustainable development processes. Where economic development is concerned policies may well line up, however economic development cannot happen in isolation of the social, political and environmental aspects related to land within Africa. It can be said that the required financial investment into these developmental areas is too high and so they are deliberately left out of planning process, this particularly when considering ESCR. Even though many countries ratify the conventions that create binding obligations, many countries claim to have the financial resources to invest in their ESCR obligations when looking at ESCR as independent activities.

Conclusion

Land policies of the DRC and Lesotho much like the rest of Africa demonstrate a clear focus on the utilization of land and natural resources as a way in which to assert State power. The fact that the State can both own and control land and all other natural resource endowments within its borders, choosing how, when and to who these resources are made available to emphasizes the idea that the direction land policy takes clearly indicates whether or not the State sees land as a means through which human rights and so poverty take priority or not. Although economic development seems to be at the centre of the African land debate, also bringing into play the argument around customary and statutory rights in order to achieve this development. One question's whether this is truly what the State is seeking if one considers such land control in conjunction with the outlined information on population growth and biodiversity loss.

From the information provided for both the cases studies one can draw the conclusion that while populations are certainly increasing and global natural biodiversity is decreasing, very little sustainable resource management is occurring whereby communities are provided the resources they need in order to secure their basic needs, particularly their housing, health and food security needs. Governments pay lip service to equality and rectifying the injustices and inequalities of the colonial period and beyond, however there is currently little evidence to support this. Is equitable land distribution possible if land policies do not consider the growing population in conjunction with the available land? The paper argues that if population growth and biodiversity loss is considered in land policy development, the State may be able to develop strategies that align to poverty reduction strategies and are able to meet their ESCR obligations.

If the State chooses to ignore the fact that both population growth and biodiversity loss should be key factors in land policy discussion in order to achieve ESCR obligation – and continues develop policy whose manifest functions are limited to commoditization of land, clear dysfunctions will occur, this is already seen. Competition for land has already seen conflicts occur as demonstrated in the information regarding the DRC and Lesotho where by continued landlessness, internally displaced people, food insecurity and violence will continue to be the experience of Africa's larger land dependent majority. From a statistics perspective population growth and biodiversity are done for country analysis purposes, it was not found in any clear way or in any of the

mainstream literature that this information has been related to land policy. From a human rights perspective, outside of women and indigenous groups, little reference is made to any other group that is reliant on land.

ESCR are barely referred to in land discussion creating the impression that the State has as yet not fully come to terms with the idea that land is a major resource to achieve their obligations. Could this perhaps be because current focus on land takes on a global stance whereby economic enrichment for the State is a priority? It is assumed that if the economy is doing well, the citizens do well. However if land-dependent people are not supported by land laws and policies that protect them, how will they benefit? This is somewhat concerning; particularly since almost two thirds of the world lives in poverty. Since the paper has been able to draw clear connections between the right to food, health and housing and land the argument is made that it does not have to be so. If one could argue purely from an economic standpoint, in many respects one can find successes in land policy development in Africa. However from a functionalist perspective one would argue for a wider range of considerations policy, must include to be successful in terms of meeting a wider array of needs for a bigger percentage of the population. This in essence allows for the State to grow a larger percentage of the population that can actively invest in land since their basic needs are met resulting in a more sustainable trajectory for the State's economic development plans.

The paper makes the suggestion that a rights-based land policy development path with focus on social and environmental information is further researched so as to motivate a shift in development across the Continent. If the State adopted a rights-based approach to land policy, one could assume that latent outcomes would have a knock on effect on how economic development policies and poverty reduction strategies are developed. In addition, equitable or shared land distribution may become more possible. Where there is simply not enough land to support the population without hurting the biodiversity that ensures natural resources are available, as is in the case of both Lesotho and the DRC, the paper makes suggestions for research to look at alternative forms of land ownership, motivating the State to widen its perspective on land to be future focused and not only focused on rectifying the past or holding onto valuable resources that will benefit the majority.

Bibliography

- **Constitutional Statutes**
  - Bakajika Land Law 1966
  - Constitution of the Democratic Republic of Congo, Preamble of 2005
  - Constitution of the Democratic Republic of Congo, Title 1, Article 9 of 2005
  - Constitution of the Democratic Republic of Congo, Title 2, Chapter 2, Article 34 of 2005
  - Constitution of the Democratic Republic of Congo, Chapter 2, Article 34 of 2005
  - Constitution of the Democratic Republic of Congo, Chapter 2, Article 53 of 2005
  - Constitution of the Kingdom of Lesotho, Chapter 2, Article 4 (1) of 2001
  - Constitution of the Kingdom of Lesotho, Chapter 2, Article 17 (1) (a) (b) (c), of 2001;
  - Constitution of the Kingdom of Lesotho Article 17 (2) (a) (b) of 200
  - Constitution of the Democratic Republic of Congo Article 17 (3) of 2001
  - Constitution of the Kingdom of Lesotho 17 (4) (a) (b) of 2001
  - Democratic Republic of Congo Agricultural Law, no. 11/022 of 24 December 2011
  - Democratic Republic of Congo Land Law 1973
  - Forest Code of 2002, Law 1 1/2002 dated 29 August 2002, Article 2
  - Forest Code of 2002, Law 1 1/2002 dated 29 August 2002, Article 44
  - Mining Code Law No. 007/2002 of 11 July 2002
  - The Kingdom of Lesotho Land Act 1979
  - The Kingdom of Lesotho Land Bill of 2009

- **Soft Law**
  - African Charter on Human and People's Rights, (1985)
  - International Covenant on Economic, Social and Cultural Rights, (1966)
  - Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, (2008)
  - Universal Declaration of Human Rights, (1948)
  - The 1951 Convention Relating to the Status of Refugees (art. 21)
  - The International Labour Organization's 1962 Convention No. 117 concerning Basic Aims and Standards of Social Policy (art. 5 (2))
  - The 1965 International Convention on the Elimination of All Forms of Racial Discrimination (art. 5 (*e*)(iii))
  - The 1966 International Covenant on Civil and Political Rights (art. 17)
  - The 1979 Convention on the Elimination of All Forms of Discrimination against Women (arts. 14 (2) and 15 (2))
  - The 1989 Convention on the Rights of the Child (arts. 16 (1) and 27 (3))
  - The International Labour Organization's 1989 Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (arts. 14, 16 and 17)

- The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art. 43 (1)(*d*))
- The 2006 Convention on the Rights of Persons with Disabilities (arts. 9 and 28)

- **Legal Commentaries**
  - **Seminal Books:**
    - HJ Steiner, P Alston, R Goodman '*International Human Rights in Context: Law, Politics, Morals'* 3 ed (2008)
    - J Bruce 'Do Indigenous Tenure Systems Constrain Agricultural Development?' in T.J. Basset & D.E. Crummey (eds) *Land in African Agrarian Systems* (1993) 35, 35–56.
    - L Cotula in L Cotula (ed). *Changes in "Customary" Land Tenure Systems in Africa* (2007) 5, 9-11
    - P Bardhan, S Bowles, & H Gintis. Forthcoming 'Wealth Inequality, Wealth Constraints, and Economic Performance' in A Atkinson and F Bourguignon (eds) *Handbook of Income Distribution* (1998) 541, 542-597
    - P Farmer '*Pathologies of Power: Health, Human Rights, and the new war on the poor*' 1 ed (2005)
    - P Gardner 'Historical Analysis' in V Jupp (ed) *The SAGE Dictionary of Social Research Methods* (2006) xi,134-135
    - PG Lauren '*The Evolution of International Human Rights: Visions Seen'* 2ed (2011)
    - R Lister *Poverty* 1 ed (2004) 14, 15
    - R Yin *Applications of Case Study Research* 3 ed (2012)
    - T Pogge '*World Poverty and Human Rights*' 2 ed (2008)
    - A Rosas, M Scheinin 'Implementation Mechanisms and Remedies' in A Eide, C Krause,and A Rosas (eds) *Social Economic and Cultural Rights* () 425 – 453
    - A Eide 'Economic Social and Cultural Rights: A Universal Challenge' In A Eide, C Krause and A Rosas Social (eds) '*Economic and Cultural Rights'*, (2001) 3-7

  - **Journal Articles:**
    - A Cheater 'The Ideology of "Communal" Land Tenure in Zimbabwe. Mythogenesis Enacted?' (1990) 60 *Africa* 188, 188–206.
    - A Chimhowu & P Woodhouse 'Customary vs Private Property Rights? Dynamics and Trajectories of Vernacular Land Markets in Sub-Saharan Africa' (2006) 6 *JAC* 346, 361-362
    - A Chimhowu & P Woodhouse 'Customary vs Private Property Rights? Dynamics and Trajectories of Vernacular Land Markets in Sub-Saharan Africa' (2006) 6 *JAC* 346, 346
    - A L George and A Bennett *Case Studies and Theory Development in the Social Sciences* (2005) 75
    - C Huggins, H Musahara, P M Kamungi, J S Oketch & K Vlassenroot 'Conflict in the Great Lakes Region – How is it linked with land and migration?' (2005) 96 *Natural Resources Perspectives* 1, 2

- C Huggins 'Land Power and Identify, Roots of Violent Conflict in the DRC' 2010 *International Alert* 1, 20
- C Toulmin & J Quan 'Evolving Land Rights in Africa' (2000) 10 *Development in Practice* 721, 722 - 723
- D Vázquez. & D Delaplace 'Public Policies from a Human Rights Perspective: A Developing Field' (2011) 8, *IntJHR* 6, 34
- E Neumayer 'Do International Human Rights Treaties Improve Respect for Human Rights?' (2005) 49 *JCR*, 925-953
- G Bowen 'Document Analysis as a Qualitative Research Method' (2009) 9 *QRJ* 27, 27-30
- J Beck 'Contested Land in the Eastern Democratic Republic of the Congo Anatomy of the Land-Related Intervention' (2012) 2 *IFHV Warking Paper* i|v, i|v
- K Deininger & H Binswanger 'The Evolution of the World Bank's Land Policy: Principles, Experience and Future Challenges' (1999), 14, *WBRO*, 247, 249
- K Deininger 'Land Policies for Growth and Poverty Reduction' (2003) *World Bank* vxii, xxi
- K Vlassenroot & C Huggins 'Land, Migration and Conflict in Eastern DRC' 2005 *ISS Africa* 115, 117
- L Turner 'Lesotho' in K Kleinbooi (ed) *Review of Land Reforms in South Africa, 2010* (2010) 2, 17-18
- M M M Daemane 'Problems of Land Tenure Systems in Lesotho Since Post-Independence: Challenging Perspectives for Sustainable Development in Land Administration and Management' (2012) 14 *JSDA* 164, 164
- P Pennings, H Keman & J Kleinnijenhuis 'Doing Research in Political Science' 2006, 3
- R Haines-Young, 'Land use and biodiversity relationships' 2009 *Land Use Policy* 178, 178
- R Palmer 'Struggling to Secure and Defend the Land Rights of the Poor in Africa' (2003) XIX *AJDS* 1, 6–21.
- R Prosterman & T Hanstad 'Land Reform in the Twenty-First Century: New Challenges, New Responses' (2005) 4 *SJSJ* 762, 764
- S Drimie 'HIV/Aids and land: case studies from Kenya, Lesotho and South Africa' (2010) 20 *DSA* 647, 648
- T A Benjaminsen, & C Lund 'Formalisation of Land and Water Rights in Africa: An Introduction' (2002) 14 *EJDR* 1, 1-10
- S Lieberson 'Small N's and Big Conclusions: An examination of the Reasoning in Comparative Studies Based on a Small Number of Cases' (1991) 70 Social Forces 307, 307
- T Murombo 'Securing Environmental, Economic, Social and Cultural Rights (EESCRS) in Southern Africa: Challenges and Opportunities' (2009) <http://ssrn.com/abtract=1554204>

- **Non Legal Commentaries**

- **NGO Reports**
- Africa Biodiversity Collaborative Group 'ABCG Mining & Biodiversity in DRC Workshop Report' (19 December 2013) 13-14 < http://frameweb.org/adl/en-US/11036/file/1690/B.1%20WCS%20DRC%20Mining%20ABCG-Workshop_Report.pdf >
- AUC-ECA-AfDB Consortium 'Framework and Guidelines on Land Policy in Africa, Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods' (2010) 1, 2
- Avert 'HIV & AIDS in Lesotho' (January 2015) <http://www.avert.org/hiv-aids-lesotho.htm>
- CIA World Fact Book 'Lesotho Geography' (January 2015) <https://www.cia.gov/library/publications/the-world-factbook/geos/lt.html>
- International Land Coalition 'Democratic Republic of Congo'*International Land Coalition* <http://www.landcoalition.org/en/base-country/democratic-republic-of-congo
- FAO 'Land Policy and Planning' *Food and Agriculture Organisation of the United Nations* (February 2015) <http://www.fao.org/nr/land/land-policy-and-planning/en/>
- FAO 'Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security Adopted by the 127th Session of the FAO Council November 2004 <http://www.fao.org/docrep/009/y7937e/Y7937E03.htm#ch2.8>
- IFAD 'Enabling poor rural people to overcome poverty in Lesotho' (2008) 1, 2
- International Fund for Agricultural Development 'Improving Access to Land and Tenure Security', EB 2008/94/R.2 (2008) 1,7
- J R Seyler, D Thomas, N Mwanza & A Mpoyi 'USAID Democratic Republic of Congo: Biodiversity and Tropical Forestry Assessment (118/119)' (2010) xv, xvii
- L Turner 'Lesotho' in K Kleinbooi (ed) *Review of Land Reforms in Southern Africa (*2010) 2, 17
- Matšeliso Mphale, Emmanuel Rwambali, & Mokhantšo Makoae 'HIV/Aids and its impacts on land tenure and livelihoods in Lesotho' *FAO* (March 2002) <http://sarpn.org/documents/d0000161/P149_Lesotho_Report.pdf
- OHCHR, 'Human Rights and Poverty Reduction, A Conceptual Framework' (2004) 1, 6
- UNHABITAT 'The Right to Adequate Housing - Factsheet 21' *United Nations* (2009) 1, 12 <http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf>
- OHCHR.org 'The Right to Health – Factsheet 31' *United Nations* (2008) 1, 3 <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>
- OHCHR.org 'The Right to Health – Factsheet 31' *United Nations* (2008) 1, 5 <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>
- OHCHR.org 'The Right to Health – Factsheet 31' *United Nations* (2008) 1, 6 <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>
- UNHCR 'Democratic Republic of Congo' *UNHCR Global Appeal 2015* (February 2015) <http://www.unhcr.org/pages/49e45c366.html>
- USAID '118/119 Biodiversity and Tropical Forest Assessment for Lesotho' (July 2007) <http://www.fanrpan.org/documents/d00478/>
- The World Bank ' Lesotho' (January 2015) <http://data.worldbank.org/country/lesotho>

- The World Bank 'World Development Report 2008' (2008) 139
- The World Health Organisation 'MDG 6: Combat HIV/AIDS, malaria and other diseases' (December 2014), <http://www.who.int/topics/millennium_development_goals/diseases/en/>
- The World Bank 'Democratic Republic of Congo' <http://data.worldbank.org/en/country/drc>
- USAID '118/119 Biodiversity and Tropical Forest Assessment for Lesotho' (July 2007) <http://www.fanrpan.org/documents/d00478/Lesotho_USAID_Jul2007.pdf
- World Development Indicators 'Lesotho-Area-Arable Land' (January 2015) <http://knoema.com/atlas/Lesotho/topics/Land-Use/Area/Arable-land-percent-of-land-area>
- UN Data 'Democratic Republic of Congo' (January 2015) <https://data.un.org/CountryProfile.aspx?crName=Democratic%20Republic%20of%20the%20Congo>
- UN Data 'Lesotho' (January 2015) <https://data.un.org/CountryProfile.aspx?crName=Lesotho>

- **Media Reports and Websites**
  - Edirisa Nseera & Alka Bhatia 'Lesotho' *African Economic Outlook* (29 August 2014) <http://www.africaneconomicoutlook.org/en/countries/southern-africa/lesotho/>
  - Mike Scott 'Soco International's oil activity in world heritage park raises tricky questions for investors' *The Guardian* (4 March 2014) <http://www.theguardian.com/sustainable-business/soco-international-oil-exporation-drc-virunga-gorilla-park>
  - Jonathan van Kempen & Nady Mayifuila 'The Democratic Republic of the Congo new agricultural law n° 11/022 of December 24, 2011 is currently being amended and supplemented' (2 April 2013) <http://www.cabemery.org/2013/04/02/the-democratic-republic-of-the-congo-new-agricultural-law-n-11022-of-december-24-2011-is-currently-being-amended-and-supplemented/#.VNttALQcQzo>
  - International Land Coalition 'Democratic Republic of Congo'*International Land Coalition* <http://www.landcoalition.org/en/base-country/democratic-republic-of-congo
  - New Agriculturalist 'Country Profile – Democratic Republic of Congo' (January 2009) <http://www.new-ag.info/en/country/profile.php?a=641>

- **Any other sources**
  - Devi Prasad Subedi 'Structural Functional Perspective in Sociology' *Academia.edu* (November 2010), <http://subedi.orgfree.com/docs/Structural_functionalism.pdf
  - Government of the Kingdom of Lesotho 'National Strategic Development Plan 2012/2013 – 2016/2017' (January 2015) <http://www.gov.ls/documents/NSDP%20FINAL%20PRINT%20VERSION%2013%2001%202013[1].pdf>
  - Government of the Kingdom of Lesotho 'Lesotho Millennium Development Goals Status Report 2013' H Miller (ed) *United Nations* (2014) i, xv
  - Integrated Labour Force Survey' (2008) 1, 104
  - Lesotho Bureau of Statistics '2008 Lesotho

- Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context for the 22nd Session of the Human Rights Council, UN Doc A/HRC/22/46 (2012)
- Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context for the 22nd Session of the Human Rights Council, UN Doc A/HRC/22/46 (2012)
- Report of the Special Rapporteur on the Right to Food for the 16th Session of the Human Rights Council, UN Doc A/HRC/16/49 (2010)
- Report of the Special Rapporteur on the Right to Food for the 16th Session of the Human Rights Council, UN Doc A/HRC/16/49 (2010)
- Sixty-fifth session Item 69 (b) of the provisional agenda - Promotion and protection of human rights:
- human rights questions including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms The right to food Note by the Secretary-General A/65/281, para 6