



**Workstream  
Final Report**

**Support to Policy Harmonisation  
in Integrated Catchment Management**

**Workstream 4  
Final Report on Decentralisation**



**renoka**

*We are a river*



**Support to Policy Harmonisation Lesotho**  
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The contents of this report are the sole responsibility of the authors and do not necessarily reflect the views of GIZ or other stakeholders.

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## List of abbreviations and acronyms

AG	Attorney General	LEWA	Lesotho Electricity and Water Authority
APA	Annual Performance Assessment	LG	Local Government
BoS	The Lesotho Bureau of Statistics	LGA	Local Government Act
CC	Community Council	LHDA	Lesotho Highlands Development Authority
CCF	Community Conservation Fund	LHWP	Lesotho Highlands Water Project
CCSAP	SADC Climate Change Strategy and Action Plan	LLWDS	Lesotho Lowlands Water Development Scheme
CMJC	Catchment Management Joint Committee	LMDA	Lesotho Millennium Development Agency
CMP	Catchment Management Plan	LNDC	Lesotho National Development Corporation
CoW	DWA Water Commission	LoCAL	Local Climate Adaptive Living Facility
CPU	(Sub-)Catchment Planning and Implementation Unit	LWSP	Lesotho Water and Sanitation Policy 2007
CRS	Catholic Relief Services	MAFS	Ministry of Agriculture and Food Security
DA	Development Authority	MCS	Minimum Conditions
DA	District Administrator	MEM	Ministry of Energy and Meteorology
DC	District Council	MFRSC	Ministry of Forestry, Range and Soil Conservation
DC	District Coordinator	MoF	Ministry of Finance
DCS	District Council Secretary	MoL	Ministry of Labour
DDP	Deepening Decentralization Program	MoLGCA	Ministry of Local Government and Chieftainship Affairs
DEAP	District Environmental Action Plan	MTEC	Ministry of Trade, Environment, and Culture
DF	District Fund	NDP	National Development Plan
DRWS	Department of Rural Water Supply	NEAP	National Environmental Action Plan
DS	District Secretaries	NGO	Non-Governmental Organisation
DWA	Ministry of Water: Department of Water Affairs	NRM	Natural Resource Management
EIA	Environmental Impact Assessment	NSDP	National Strategic Development Plan
EIIF	Ecological Infrastructure Investment Framework	ODA	Official Development Assistance
EU	European Union	ORASECOM	Orange-Senqu Basin Commission
FAO	Food and Agriculture Organization	PBCRGs	Performance-Based Climate Resilience Grants
FD	Fiscal Decentralization	PEFA	Public Expenditure and Financial Accountability
GEF	Global Environment Facility	PES	Payments for Ecosystems
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit	ROLL	Regeneration of Livelihoods and Landscapes
GOL	Government of Lesotho	RRMA	Range Resources Management Act
GW	Ground water	SADC	Southern Africa Development Community
GWP-SA	Global Water Partnership-South Africa	SDGs	Sustainable Development Goals
HR	Human Resources	SEA	Strategic Environmental Assessment
ICM	Integrated Catchment Management	SGP	Small Grants Program
ICU	ICM Coordination Unit	SLM	Sustainable Land Management
IEC	Information, Education and Communication	SNP	Sehlabathebe National Park
IFAD	International Fund for Agricultural Development	UNDP	United Nations Development Programme
IPSAS	International Public Sector Accounting Standards	WAMPP	Wool and Mohair Promotion Project
IWRM	Integrated Water Resources Management	WASCO	Water and Sewerage Company
WE	Water Efficiency	WCWSS	Western Cape Water Supply System
LAA	Land Administration Authority Act 2010	WS	Workstream
LCN	Lesotho Council of NGOs	WUC	Water User Certificate
LEC	Lesotho Electricity Company		

# 1 Introduction

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## 1.1 Background and objectives

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It is elaborated within the legislative and policy framework of Lesotho that “integrated catchment management” (ICM) involves a holistic approach to sustainable land and water planning and management which adopts a catchment perspective, in contrast to a traditional piecemeal approach that artificially separates the management of land, water and other natural resources. Lesotho’s 2016 Long-Term Strategy for Water and Sanitation Sector describes ICM as:

‘The integrated planning for sustainable development and management of land, water and natural resources in the catchment areas for the rivers in Lesotho. The aim is economic development and improved livelihood by sustainable management of water resources and land.’<sup>1</sup>

Workstreams 4 contributes to the key local level activities 1.3 and 1.5, which are:

1.3 Development of a regulatory framework for the use of land and water resources:

- Study of local-level regulations of land and water use (incl. Review of user rights and obligations, formal and informal).

1.5 Support community councils to pass by-laws:

- Study options to enable community councils for local level ICM implementation by enacting local-level regulation (by-laws).

## 1.2 Methodology and activities

### 1.2.1 Instruments assessment tools

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A mapping matrix tool was developed to screen a number of legal and policy documents or instruments related to integrated catchment management. The workstream team identified a total of sixty six of these to work on. The matrix table sought to arrange the selected policies and pieces of legislation in connection with a range of criteria against which the effectiveness of the current ICM local-level regulatory framework in Lesotho would be assessed. It followed, though not word for word, the key assessment criteria outlined in the Inception Report. It provided indicators on which of the instruments could pass to the next stage assessment. In so doing some of them were eliminated as of no relevance to the regulatory framework for the use of land and water resources.

The main question was whether a particular legislative or policy instrument applied to or covered any, some or all the key elements of the ICM. An outline of these elements is reproduced below:

- Sustainable soil management and erosion control;
- Sustainable water utilisation, management and pollution control;
- Maintenance of aquatic and related ecosystems, ecosystem services and biodiversity;
- Sustainable range management (for livestock rearing and crop production);
- Wetlands management and restoration;
- Water resources development and infrastructure operation;
- Sustainable planning of human settlements; and
- Governance reform in pursuit of all of the above.

If a particular measure, that is, legislative or policy instrument addressed one or more of the above elements, it was certainly relevant and, therefore, it was analysed. Ideally, the column titled ‘scope’ on the matrix table would

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<sup>1</sup> Long-Term Strategy for the Water and Sanitation Sector (2016), at 15. The Long-Term Strategy lists the establishment of “catchment management” first among the Key Focus Areas (KFAs) set out therein.

require one to list specific ICM elements governed by the selected instrument, but for the purpose of avoiding wordiness, just showed the relevant sections or clauses if any; if none was to write a dash “-“. See an assessment of one the instruments as a sample in Annex 1.

Following the screening exercise twelve legal instruments and thirty two others were carried forward into the next step of assessment. A review matrix tool was applied with each instrument assessed individually against the key criteria:

- Effectiveness;
- Holistic / Cross-sectoral;
- Proportionality;
- Currency;
- Consistency;
- Participatory (ensuring equitable participation).

See Annex 2 for an instrument assessed using this tool.

### 1.2.2 Stakeholder consultations

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At the central government level, virtual meeting discussions were held with departments in a number of ministries and a development assistance agency. A guiding questionnaire, common to all workstreams was adopted and used to trigger discussions (Annex 3). The following stakeholders were engaged:

- Department of Range Resources Management;
- Ministry of Local Government and Chieftainship Affairs;
- Ministry of Agriculture and Food Security;
- Ministry of Forestry, Range and Soil Conservation;
- Ministry of Tourism, Environment and Culture; and
- United Nations Development Programme – Small Grants Programme.

Guiding questionnaires for discussions was developed and agreed on within the ICM programme (Annex 3) for consultations within the ICM catchment areas.

It had been agreed that selection of sites for visits be in the ICM catchment areas, where there already was a hype of ICM activities. Criteria for selection was based on agro-ecological zones, namely the mountains, foothills, and lowlands. Senqu Valley was excluded because of limited resources. Areas selected were: Khubelu (Mokhotlong district for mountains), Makhalaneng (Maseru district for foothills), and Likhethla (Mafeteng district for lowlands).

Although plans were to visit the sites, virtual meetings were eventually held by phone with these selected individuals:

a. Makhalaneng catchment (Maseru) - District Council Secretary, Council Secretary, two

Councillors, Principal Chief of Ha Maama, Range Management Officer (Regional),  
Soil and Water Conservation Officer (Regional), Forestry Officer (Regional),

Councillor, Area Chief, and Wool and Mohair Promotion Project officer. These were out of 17 that had been identified.

b. Khubelu catchment (Mokhotlong) – District Council Secretary and Community Council Secretary from the list 13 potential interviewees.

The full lists were not explored for more information collection because there was no new information coming forth, even so in the case of the differences in agro-ecological zones.

### 1.2.3 Stakeholder information analysis

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During the discussions with stakeholders, a record of proceedings was prepared from each session. All the information was entered into a Stakeholder Matrix Interview Analysis that was broken into Thematic Area, Analyst Overview and Preliminary Recommendations under each thematic area (see sample in Annex 4).

### 1.3 Problems encountered and risks

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The major challenge encountered was the restriction on travel to conduct physical meetings with the stakeholders. It became more pronounced in the case of district consultations. Since it had been planned to start with Khubelu ICM Catchment Area (Mokhotlong) consultations, the ICM Catchment Manager did a lot preparatory groundwork. A cross section of stakeholders at the district and community levels had been identified and contacted to convene to discussion at a local accommodation facility. Although approval by GIZ was expected with two weeks of the submission of application, it only came after four weeks. ICM Catchment Manager, having been engaged so much in making sure the meeting would be successful, was disheartened by the cancellation. Later, it became difficult, understandably so, when one on one discussions by phone were to be arranged. It took a bit more time. Stakeholders in remote areas were not accessible by phone.

### 1.4 Links to other workstreams and operationalisation within workstreams

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All the five workstreams were interlinked by cross-sectional participation of ICM Programme Team Members in each. There were members of Workstream 4 who were also in Workstreams 1, 2, 3 and 5. This helped to facilitate the flow of information across all the streams. There was a special relationship between workstream 4 and 5 because of financing mechanism such as livestock trespass and impoundment fines and village water fees. Community Councils are confronted by the major challenge of channelling all revenue accrued at local level to central government's consolidated funds. This deprived them of the incentives. Stream leaders bi-weekly meeting played an important role in facilitating coordination between the workstreams.

The overarching analytical framework, matrix tools for mapping/screening and reviewing legal and other instruments, as well as the stakeholder matrix interview analysis were developed within the respective workstreams and shared for use across the board.

## 2 Review and analysis of Lesotho’s Local Regulatory Framework for Land and Water Use

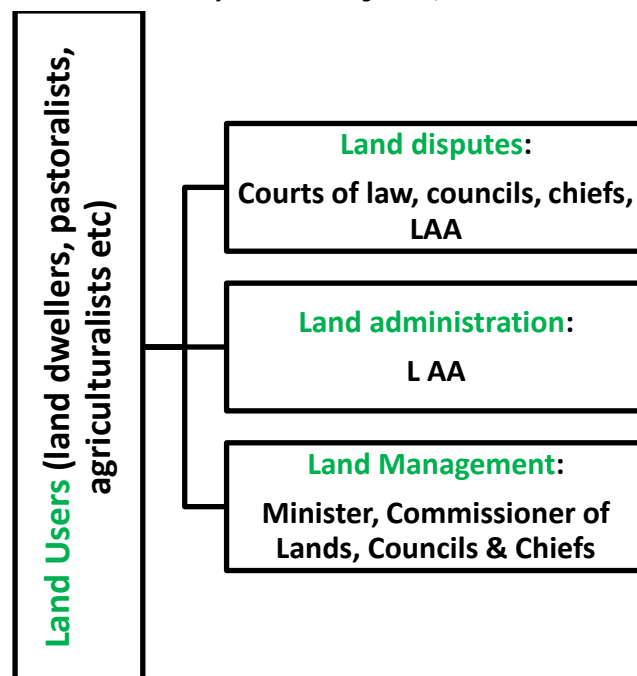
This part of the Report provides a review of Lesotho’s local regulatory framework for land and water use. The review begins with broad outline of Lesotho’s policy and legal framework for land use; followed by a comprehensive review of each policy and legal instrument that is geared to or has the effect of regulating the use of land at the local level. Each policy and legislative instrument is reviewed against set criteria: effectiveness, cross sectoral, proportionality, currency, consistency and inclusiveness. Then will follow the dissection and depiction of the local land regulatory framework taking account of the national regulatory framework for land use with the main objective of ascertaining possible and/or available options for local authorities, particularly Community Councils, to manage catchments within their respective jurisdictions by, inter alia, enacting bylaws.

An analysis of water use regulatory framework will follow afterwards and it will take the same approach. The penultimate section will outline the findings or observations. Lastly, there will be a section on recommended possible viable interventions.

### 2.1 Regulatory Framework for Land Use

In Lesotho, land is defined broadly to include “land covered with water; all things, natural or man-made, growing on land; and buildings or other structures permanently affixed or attached to land.”<sup>2</sup> Perhaps it is important to point out at this stage that Lesotho’s legal system does not recognise absolute land ownership; rather there exists a communal right to all the land in Lesotho otherwise known as a residual ownership by the nation as opposed to individual ownership. For this reason, all rights in land may be classified into the rights of administration and the rights of use. With specific reference to the rights of administration, the *Land Act* read with the supporting legislation<sup>3</sup> separates land use regulation into land management, land administration, and land disputes resolution and it also establishes responsible authorities accordingly. <sup>4</sup>The figure below roughly depicts the current framework:

Figure 1: Current Framework for Land Management, Administration and Dispute Resolution



<sup>2</sup> See section 2 of the Land Act of 2010

<sup>3</sup> See section 2 of the Land Act of 2010

<sup>4</sup> For a more information about this framework see a detailed analysis of the Constitution, Land Act, Land Administration Act and other related pieces of legislation below.



Land management encompasses formulation of policies and enactment of laws that govern land allocations, use and development; allocation of land through a multifaceted process that involves land use planning, community participation, granting of rights and interests in or over allocated land; control over land use and development through mechanisms such as building permits and subdivisions; and acquisition, expropriation or revocation of allocated land. Land administration is primarily concerned with the establishment and maintenance of the country's cadastre and deeds registration. Land disputes resolution includes adjudication and alternative dispute resolution. Land could be used for residential purposes, agricultural purposes, commercial purposes etc.

As shown in Figure 1 above, while the law clearly separates functional aspects of land regulation into land management, land administration, and land disputes resolution, in general, the institutional responsibilities under each theme (land management, land administration or land disputes resolution) overlap somewhat. For example, some institutions responsible for land management are also responsible for land disputes resolution and vice versa. Such overlaps will be dissected in this Report. It is important to note, however, that, by and large, the roles of the institutions/authorities involved in land regulation, as described, including the prescribed processes and procedures are satisfactorily defined and distinguishable.

Figure 1 depicts the current regulatory framework for land management, land administration and land dispute. Besides that framework, there are several other pieces of legislation, which regulate specific land uses (as opposed to land use holistically) and provide for specific rights and interests in and over land. For instance, the Land Husbandry Act regulates agricultural activities or practices on any land allocated and/or used for agricultural purposes; the Forestry Act regulates the use of land allocated and/or declared for forestry; the Environment Act regulates the protection of the environment including the conservation of natural resources; the Building Control Act regulates land development etc. A full list of legislation applicable to land use is provided below. Each of these pieces of legislation tailor made to specific land use is administered by significantly different authorities. So, the regulatory framework for land use in Lesotho is much more complex than the picture depicted by Figure 1.

In the long distant past, the regulatory framework for land use was quite simple and straightforward. Palmer and Poulter described the traditional land tenure system briefly thus:

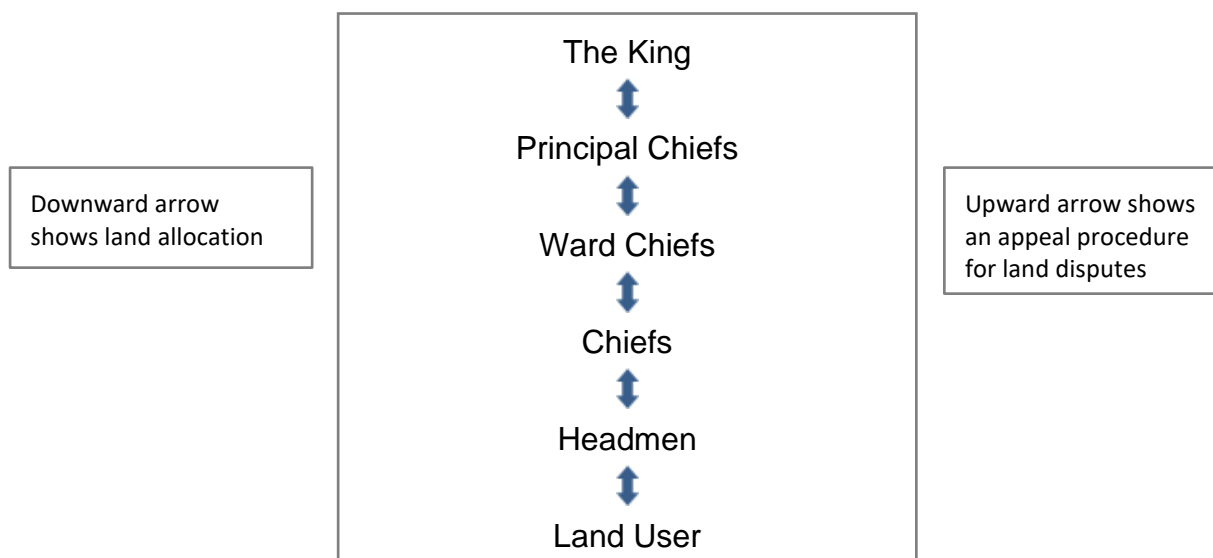
Rights of administration are held in the first instance by the King and are exercised through the Principal Chiefs, Ward Chiefs, Chiefs, and Headmen. They involve the right to allocate or distribute land to a subordinate authority and eventually to an individual subject, the right of reversion when the land falls vacant whether as a result of death or deprivation, and the duty to supervise the activities of those lower in the hierarchy including the hearing of appeals against the wrongful exercise of subordinate powers.<sup>5</sup>

Based on the foregoing description, the traditional land use regulatory framework can be illustrated as follows:

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<sup>5</sup> Palmer V. and Poulter S., *The Legal System of Lesotho*, Michie Co Law Publishers, Charlottesville, Virginia, USA, 1972 at page 173

Figure 2: Traditional Institutional Framework for Land Management and Dispute Resolution



The above figure indicates that, in the past, powers for land management and land dispute resolution were exercised by the same authority. Furthermore, in the distant past, land administration did not exist.<sup>6</sup> The traditional institutional framework for land management and dispute resolution still exist. However, the institution of chieftainship had been deprived of decision-making powers with time mainly as a result of democratisation.

In a nutshell, Lesotho has a dual land use regulatory framework consisting of parallel traditional and democratic institutions. These institutions have been established by the following legislation, which also govern their respective mandates and the requisite processes:

### 2.1.1 The Constitution

- Lesotho Constitution of 1993 as amended

### 2.1.2 Parent legislation / Acts

- Local Government Act of 1997 as amended
- Land Act of 2010 as amended
- Land Administration Authority Act of 2010 as amended
- Land Husbandry Act of 1969 as amended
- Environment Act of 2008
- National Advisory Planning Board Act of 1995 as amended
- National Heritage Resources Act of 2012
- National Planning Board Act of 1995
- Town and Country Planning Act of 1980 as amended
- Land Survey Act of 1980 as amended
- Building Control Act of 1995
- Chieftainship Act of 1968 as amended
- Forestry Act of 1998
- Managed Resources Areas Order of 1993
- Mines and Minerals Act of 2005 as amended

<sup>6</sup> Deeds Registry Act was enacted in 1967, but it did not introduce a complete land administration system.

- Historical Monuments, Relics, Fauna and Flora Act of 1967 as amended
- The Weeds Eradication Act, of 1969

### 2.1.3 Delegated legislation

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- Local Government Regulations of 2005
- Local Government (Transfer of Functions) Regulations of 2015
- Land Regulations of 2011 as amended
- Land Survey Regulations of 1982 as amended
- Systematic Land Regularisation Regulations of 2010
- Building Control (Building Operations and Building Design and Construction) Regulations of 1999
- Range Management and Grazing Control Regulations of 1980 as amended

### 2.1.4 The Constitution of Lesotho as amended<sup>7</sup>

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The Constitution does not explicitly address ICM, but it embodies some provisions which have a direct bearing on at least some key elements and objectives of ICM. In particular, Chapter IX reaffirms the principle that all land in Lesotho belongs to Basotho. It also mandates Parliament to enact laws on land management, land administration and land dispute resolution. Further, section 36 provides that “Lesotho shall adopt policies designed to protect and enhance the natural ... environment of Lesotho for the benefit of both present and future generations and shall endeavour to assure to all citizens a sound and safe environment adequate for their health and well-being.” In addition, section 106 obligates Parliament to establish local authorities in order to enable rural and urban communities to determine their affairs and to develop themselves. This section reaffirms the principle of subsidiarity and requires that the mode of decentralisation in Lesotho shall be devolution. It is thus central to the ICM objectives.

Prior to 2011, section 1.5(2) of the Constitution obligated the National Planning Board, as it then was, to “prepare plans for the economic development of Lesotho, including in particular the development, conservation and use of land and other natural resources.” Though not explicitly requiring that the plans should take a holistic approach to the development, conservation and use of natural resources, that provision could be read to mean exactly that by implication. However, it was repealed by the Sixth Amendment.

### 2.1.5 Local Government Act of 1997 as amended and being amended<sup>8</sup>

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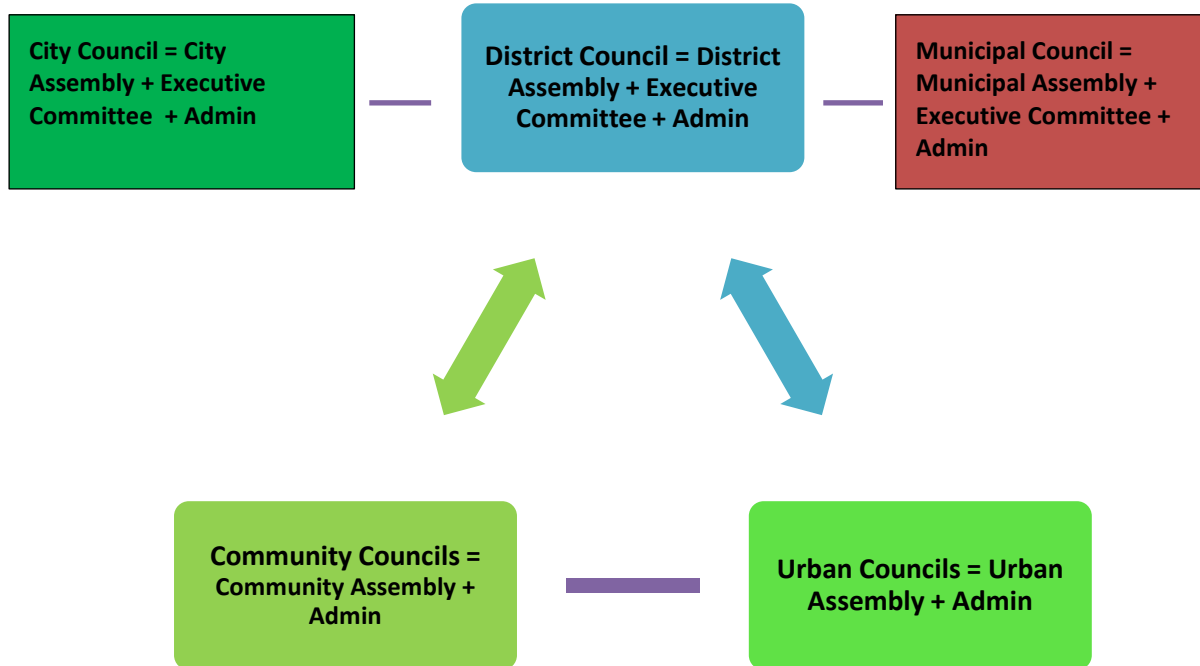
Insofar as it is relevant to the regulation of land and water use, the Local Government Act provides for the establishment of local governments in the designated rural areas, urban areas, districts, municipalities and, as proposed in the Bill, cities. The structure of local governments proposed in the Bill read with the National Decentralisation Policy is as follows:

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<sup>7</sup> The Constitution of Lesotho of 1993; The First Amendment to the Constitution of 1996; The Second Amendment to the Constitution of 1997; The Third Amendment to the Constitution of 1998; The Fourth Amendment to the Constitution of 2001; The Fifth Amendment to the Constitution of 2004; The Sixth Amendment to the Constitution of 2011; The Seventh Amendment to the Constitution of 2011.

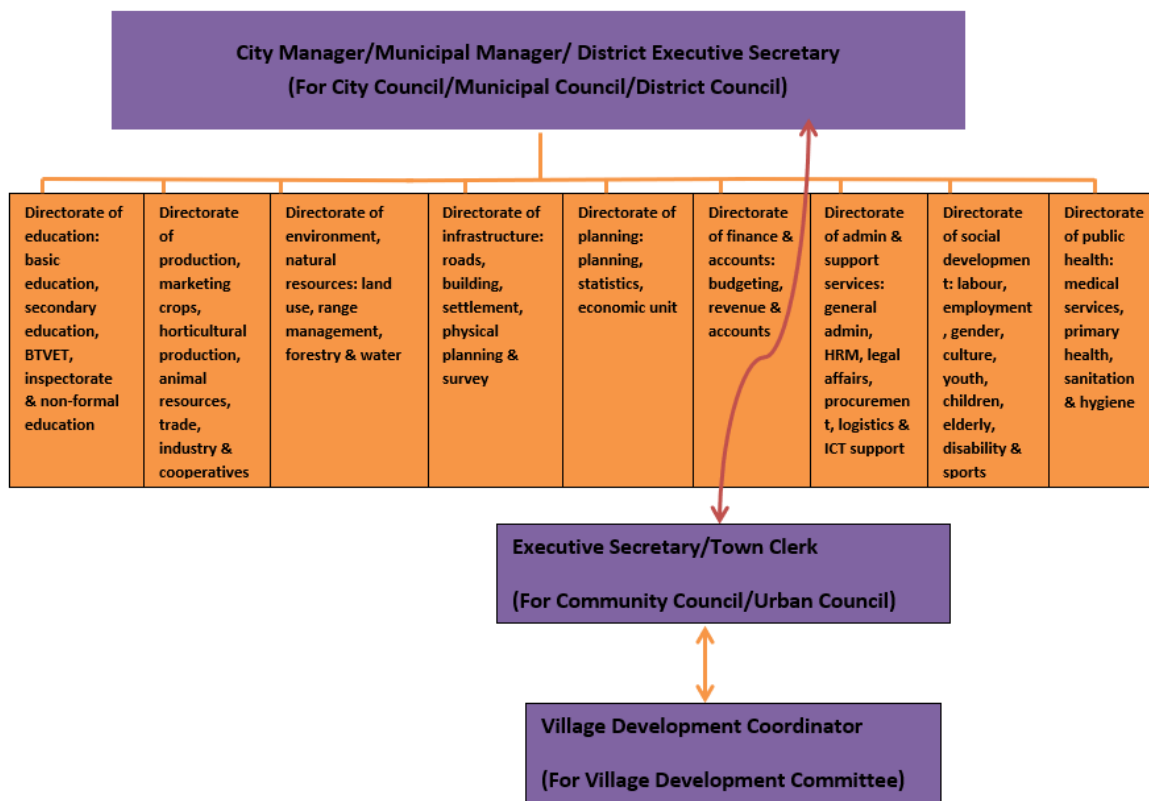
<sup>8</sup> Local Government Act No. 6 of 1997; Local Government (Amendment) Act No.5 of 2004; Local Government (Amendment) Act No.5 of 2010; Local Government (Amendment) Act No.6 of 2010; and Local Government (Amendment) Act No.5 of 2011; Local Government (Amendment) Bill of 2020

Figure 3: Future Structure of Local Governments



As shown in Figure 3 above, a local council at the level of municipality, district or city is comprised of three separate and independent arms: legislative, executive and administrative arms. Further, at the district level, a local government has a two-tier structure: the first tier comprises a District Council and the second tier comprises Community Councils on par with Urban Councils. Community Councils and Urban Councils do not have the executive arm. As outlined fully in the National Decentralisation Policy and partially in the Bill, the administrative arm of a local council will be structured as follows:

Figure 4: Proposed Local Governments' Administrative Structure

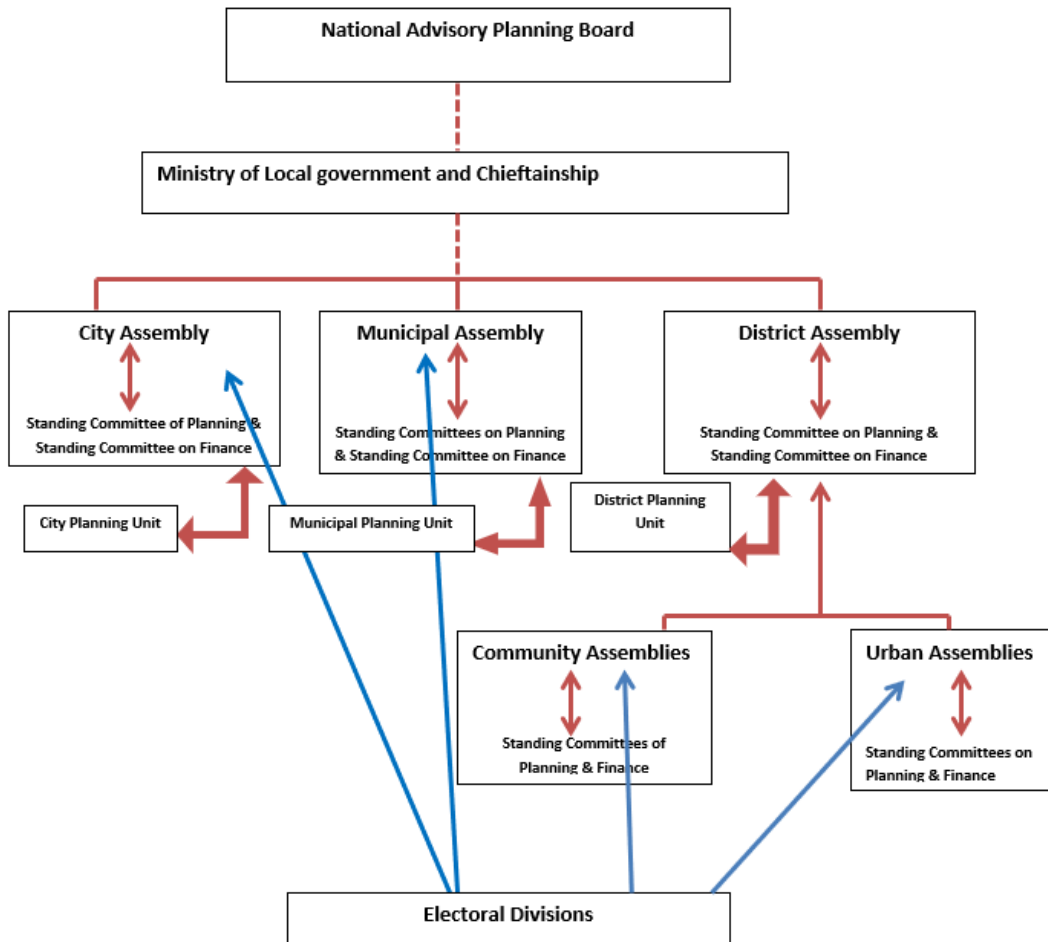


There is no doubt that the future administrative structure of local governments will be conducive to ICM. The Directorates will be able to collectively deliver on all ICM elements and objectives. There will be a Directorate focusing on land and water use administration; another Directorate focusing on planning and survey; another Directorate focusing on financing aspects; another Directorate dealing with rights aspects of ICM etc. It is also clear from these structures that the Central Government intends to devolve, at least to some extent, ICM to local governments.<sup>9</sup> The contemplated devolution will progress as follows: Line Ministries will transfer specific functions accompanied by resources to local governments. Local governments will then have some autonomy over the transferred functions, but the Line Ministries will play supervisory responsibilities regarding the performance of such functions at the local level. Supervision will be controlled in the sense that it will be through national policies, plans and strategies. The law also creates both vertical and horizontal coordination mechanisms.

Besides the structures and transfer of functions, the Bill provides for a comprehensive development planning process and structures responsible for formulating and implementing development plans. The proposed development planning framework is as follows:

<sup>9</sup> Section 7 of the Bill

Figure 5: Institutional Arrangement for Future Development Planning



The Bill proposes a bottom-up framework for development planning in terms of which rural and urban communities will prioritise development projects based on their needs; and the priorities will then be considered, integrated and adopted at the Council level. Community and Urban Assemblies adopt development plans. City, Municipal and District Councils adopt Integrated Development Plans. Some of the development projects may relate to the regulation of specific catchment areas, but a development plan, let alone an integrated development plan, is more than that; it is a composite of several different themes so to speak and its lifecycle is five years. Once an Integrated Development Plan is adopted, the Executive Committee is required to annually formulate Implementation Plans to be executed by the administration.

The foregoing local government framework is based on the Local Government Bill, which is currently being considered by the Parliament. Until it is enacted into law and become effective, the following framework will remain in place:

Figure 6: The Current Structure of Local Councils

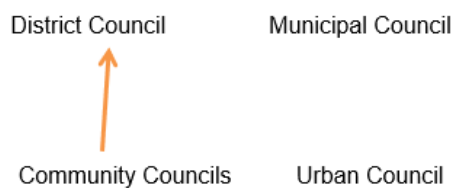
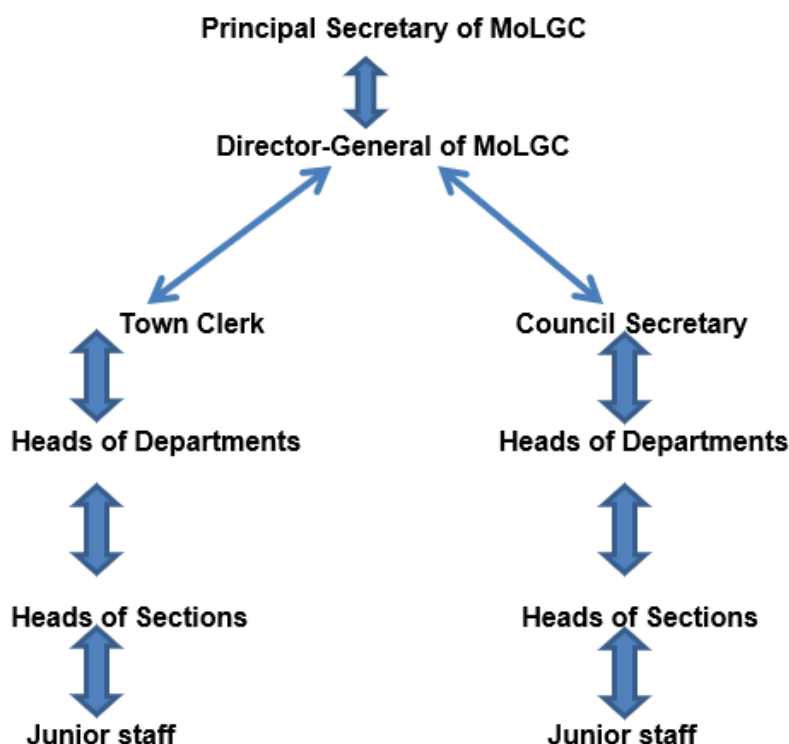


Figure 7: Current Administrative Structure



As shown in Figure 6 above, the apex of a decision-making process in the district is a District Council. An Urban Council, though equivalent to Community Council in terms of status, is not under a District Council. Further, a Municipal Council is on a par with a District Council, but it does not have a second tier. A District Council is a body composed of councillors who represent Community Councils within a district including two chiefs. An Urban Council is the lowest level of government within an urban area and a Community Council is the lowest level of government within a rural area. A Community Council or Urban Council is constituted by councillors who are directly elected at electoral divisions plus two chiefs. The most important decisions such as development planning and budgeting are taken at the District Council following the suggestions from the local communities, which are channelled through Community Councils.

Under the current structure, local administration does not appear, at least from the legal provision, to be vertically structured from the community level to the district or municipality level. Rather, each Council has a secretary known as a Town Clerk for a Municipal or Urban Council or as a Council Secretary for a District or Community Council.<sup>10</sup> This Secretary or Clerk, as the case may be, is the Chief Executive Officer of the Council and all other officers in that Council are subordinate to him or her.<sup>11</sup> Below the office of the Secretary or Clerk are the Departments, which may also be subdivided into Sections.<sup>12</sup> These Departments or Sections are managed by their respective Heads.<sup>13</sup> So, the chain of command is vertical within the Council and apparently horizontal between the Councils within a given district or municipality. Chief Executive Officers are individually and directly answerable to the Director-General who is part of the administration at the central government level.<sup>14</sup> The Director-General is answerable to the Principal Secretary of the Ministry of Local Government, and Chieftainship.<sup>15</sup> The relationships between Council Secretaries are not legally clarified and the law does not state whether or not the District Council Secretary is senior to other Council Secretaries. They are legally regarded as Chief Executive Officers, which creates the impression that they are of equal status. But the situation could be different on the ground.

<sup>10</sup> Section 34 as amended by section 17 of the Local Government (Amendment) Act of 2004

<sup>11</sup> Ibid

<sup>12</sup> Clause 2 and Part ii of the Local Government Service Regulations LN 85 of 2008

<sup>13</sup> Ibid

<sup>14</sup> section 39 as amended by section 16 of the Local Government (Amendment) Act of 2010

<sup>15</sup> Ibid

The law as it is now provides for the establishment of District Planning Units<sup>16</sup> and District Development Coordinating Committees.<sup>17</sup> The District Planning Unit is comprised of public officers who provide planning services or any other service for their respective ministries. The District Development Coordinating Committee is made up of the specified number of elected Councillors, the District Administrator, a representative of the District Planning Unit, District Environment Officer and other public officers selected by the Minister to represent their ministries. Coordination of planning activities undertaken by line ministries and local authorities takes place within the District Development Coordinating Committees.

### 2.1.6 Land Act of 2010 as amended including the Land Regulations<sup>18</sup>

The *Land Act* reaffirms the principle that all land in Lesotho belongs to the Basotho nation as a whole.<sup>19</sup> So, the *Land Act* prohibits private ownership of the land. It also prescribes mechanisms through which the Government, individuals, companies, partnerships, cooperatives, foreign entities etc. may acquire limited exclusive rights over the use of land in Lesotho. In the first instance, the limited rights over the use of land must be granted through allocation by the allocating authority following the prescribed procedure and in accordance with the substantive requirements.<sup>20</sup> The decision to allocate a parcel of land to a particular person is made by a local council within which the parcel of land to be allocated is situated, but the council is required to consult the chief responsible for that area.<sup>21</sup> All in all, the power to allocate land vests in the local authorities and not the central Government. But in doing so, the local councils must strictly adhere to the substantive and procedural requirements set in the *Land Act* and the *Land Regulations*. So, there is no real option for making bylaws regarding land allocation.

In broad terms, land allocation vests in the allottee or lessee an exclusive control over the use of the allocated land; he or she is entitled to occupy and/or use the allocated land and/or allow others to do so. However, the land user's rights are limited in a number of different ways: Firstly, the allottee or lessee is required to use the allocated parcel of land strictly for the purpose it was allocated.<sup>22</sup> The land can be allocated for residential, commercial, industrial and agricultural purposes. The most relevant permissible use of land to the elements of ICM is agriculture. This includes the use of land as arable, pasture, grazing, orchard, forestry or forestations.<sup>23</sup> It is worth noting that people other than the allottee or lessee may enjoy various informal rights over the use of land allocated for agricultural purposes, for instance, to graze cattle there during the winter without the necessity for the allottee's permission.<sup>24</sup>

The right to use the allocated land may also be restricted by the conditions laid down in the certificate of allocation.<sup>25</sup> Thirdly, land user's rights are subject to overriding interests such as the water rights; flora or fauna naturally occurring or present on the land; and lawfully constructed or erected aqueducts, canals, weirs, and dams.<sup>26</sup> In this regard, the *Land Act* separates land use regulation from water use regulation. This is an important consideration for ICM. But this does not mean that land use rights and water use rights are mutually exclusive. It simply means that land allocation does not include water use permission or licence. Another important consideration for ICM is the fact that an application for lease in respect of agricultural land cannot be granted unless there is proof that the relevant parcel of land has not been previously abused by the allottee through overgrazing and/or refusal or failure to combat soil erosion; and if it is an arable land, the allottee has never previously failed to cultivate it for at least three consecutive years.<sup>27</sup> Furthermore, the lease for agricultural land is granted subject to the statutory conditions, which obligate the lessee to prevent overgrazing, combat soil erosion,

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<sup>16</sup> Section 28 of the Local Government Act No. 6 of 1997

<sup>17</sup> Section 78 of the Local Government Act No. 6 of 1997

<sup>18</sup> Land Act No. 8 of 2010; Land (Amendment) Act No.16 of 2012; Land (Amendment) Act No.9 of 2014; Land Regulations LN No. 21 of 2011; Land (Amendment) Regulations LN No. 11 of 2013; and Systematic Land Regularisation Regulations LN No. 103 of 2010

<sup>19</sup> See section 4 of the Land Act

<sup>20</sup> See sections 6 – 8 of the Land Act

<sup>21</sup> See sections 8, 14 and 25 of the Land Act

<sup>22</sup> See section 15 of the Land Act

<sup>23</sup> See section 2 of the Land Act

<sup>24</sup> See Palmer and Poulter *The Legal System of Lesotho (supra)* at page 175

<sup>25</sup> See section 15 of the Land Act

<sup>26</sup> See section 5 of the Land Act

<sup>27</sup> See regulation 12 of the Land Regulations



adopt land husbandry practices and use and cultivate arable land.<sup>28</sup> Failure to adhere to these conditions may lead to the revocation of the lease.<sup>29</sup> It is therefore clear that the Land Act establishes a link between land tenure, soil conservation and land use. Lastly, an allocated land may be expropriated for public purposes such as water conservation by means of watersheds, water catchment areas, reservoirs; and land conservation through afforestation and soil erosion prevention.<sup>30</sup>

### 2.1.7 Land Administration Authority Act of 2010 as amended<sup>31</sup>

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This Act establishes the Land Administration Authority (LAA) as an agency of the central Government charged with land administration. It defines land administration as “a system related to land deeds registration, land valuation for land administration purposes, granting of land administration consents and related matters.”<sup>32</sup> The two main functions of the LAA are, firstly, the establishment and maintenance of the cadastre. This cadastre provides information on how much land is available in Lesotho and where it is regardless of whether it is occupied or not. Secondly, the LAA is responsible for land deeds registration and the issuance of secure titles. So, a lease is issued by the LAA in line with an allocation made by the responsible local authority and deeds such as transfers, mortgages and subleases are registered by the LAA. In short, the relevance of the LAA and its functions to the ICM is really about access to the information regarding how much land there is, where it is, and who holds rights in such land.

### 2.1.8 Land Survey Act as amended<sup>33</sup>

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This Act governs specific land management aspect, namely, land mapping and surveying. It provides for the licensing and professional conduct of land surveyors and empowers the Minister responsible for land to make regulations regarding land mapping and survey. The *Land Survey Regulations* enacted pursuant to this Act, give the Chief Surveyor authority to issue directives to the land surveyors on how to conduct surveys, keep records and prepare physical plans. The office of the Chief Surveyor is under the Commissioner of Lands in the Ministry of Local Government and Chieftainship.

### 2.1.9 National Planning Board Act

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This Act gives effect to section 105 of the Constitution by establishing a body responsible for advising the Minister responsible for development planning on, *inter alia*, the integration of district development plans into the nation development plans and for preparing guidelines on development planning. Members of this Board include representatives of the local authorities.

## 2.2 Regulatory Framework for Water Use

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Water resources are “sources of water useful or potentially useful to humans”.<sup>34</sup> Just like the land, water sources belong to all Basotho, but the use of these resources is regulated or controlled. In other words, there are legal rules which, on the one hand, establish the rights of use including interests in or over the use of water resources, set the contours of or limits to such rights and interests, prescribe the requisite processes for acquiring and/or losing such rights and interests, and establish the requisite processes for the enforcement of such rights. On the other hand, the applicable legal rules establish institutions or authorities with mandates to make laws, policies, plans and strategies regarding the use of water resources; overseeing the implementation and actually implementing the relevant laws, policies, plans and strategies; and enforcing the rights of use.

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<sup>28</sup> See regulation 25 of the Land Regulations

<sup>29</sup> See section 37 of the Land Act

<sup>30</sup> See section 50 of the Land Act

<sup>31</sup> Land Administration Authority Act No. 9 of 2010; Land Administration Authority (Amendment) Act No.17 of 2012; Land Administration Authority (Amendment) Act No. 8 of 2016

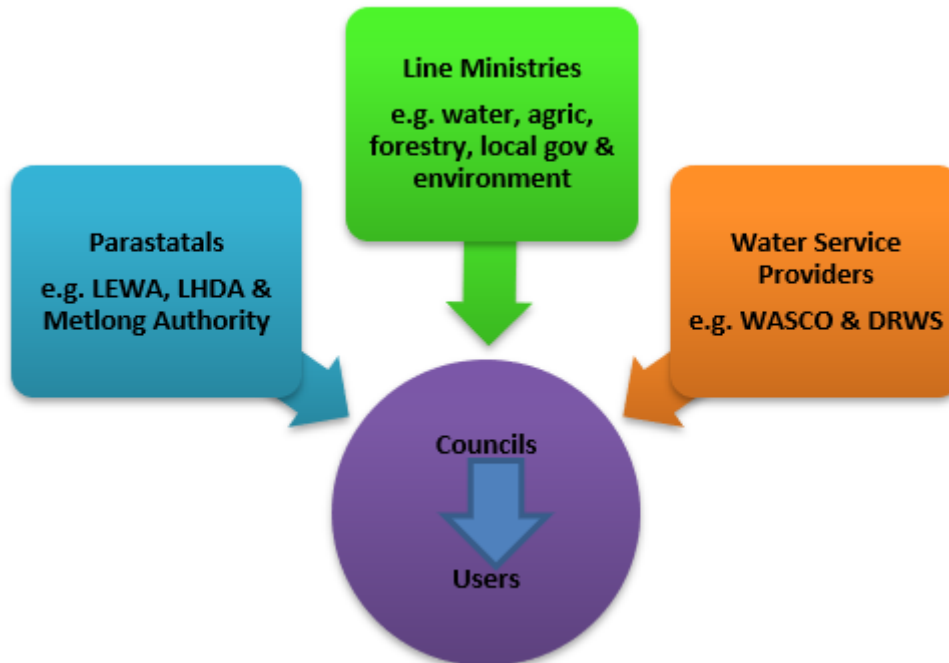
<sup>32</sup> See section of the Land Administration Authority Act

<sup>33</sup> Land Survey Act No.14 of 1980; Land Survey (Amendment) Act No.15 of 2012; Land Survey Regulations LN No.50 of 1982

<sup>34</sup> See section 2 of the Water Act of 2008

Unlike a regulatory framework for land use, the current regulatory framework for water use or water resources use in Lesotho is predominantly central government. In other words, the central government directly and indirectly through parastatals and agencies controls the use of water and water resources in Lesotho. The local authorities have a residual control, which is not even clearly delineated, over the use of water including water resources. The over picture for the current water regulatory framework can be depicted as shown below:

Figure 8: Current Water Use Regulatory Framework



As shown in Figure 8 above, water is used at the local level within council areas categorised as municipality, urban areas and rural areas. The Line Ministries have varying levels of control over the use of water, but the Ministry of Water has general oversight of all water uses and waterworks in the country. In general, Ministries initiate and are the custodians of all national legislation that govern the use of water within council areas. Furthermore, Ministries make policies, plans and strategies regarding the control of water use and the provision of water. Lastly, Ministries are also charged with supervision, coordination and implementation of water-related legislation, policy, plans and strategies under their respective custodianship.

Parastatals or corporations are the central government agencies established by statute with specific and limited mandates. For instance, the Lesotho Electricity and Water Authority (LEWA) sets standards relating to quality and safety of both water and equipment used in providing water; enacts rules and by-laws governing, amongst others, the collection, treatment and provision of water; reviews and sets tariffs, rates and charges regarding the use of water; responsible for water and sewage service provision licencing and for facilitating efforts to expand rural water and sewerage services. The Lesotho Highland Development Authority (LHDA) and Metolong Authority have been established to take charge of the development and management of water resources including environmental protection in areas respectively designated for the Lesotho Highlands Water Project and Metolong Dam and Water Supply Programme. The Ministry of Water through the Department of Rural Water Supply (DRWS) is mainly responsible for the supply of water in the rural areas including sanitation service delivery. The Water and Sewerage Company (WASCO) is a Government company licensed to provide water and sewage services mainly in the urban centres. In terms of the *Water Act*, local Councils are responsible for the management of designated catchment areas and the provision of water and sanitation services in the rural areas.<sup>35</sup>

<sup>35</sup> See sections 15, 16 & 17(2) of the Water Act

## 2.3 Findings

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- 1 The current legal system, by and large, separates land use regulation from water use regulation at the national level and it does not establish clear linkages between the responsible authorities and/or their mandates.
- 2 While the *Land Act* is the primary legislation for land use regulation and the *Water Act* is the primary legislation for water use regulation, there are numerous other pieces of legislation including policies with a direct bearing on catchment management. These instruments were enacted or formulated in different contexts and each of them is geared to address some but all not elements of integrated catchment management. So, the current framework for integrated catchment management is fragmented.
- 3 The *Land Act* does not clearly provide room for land management by means of bylaws.
- 4 Land allocation falls within the authority of the local councils and in exercising this authority the local councils are empowered to take into considerations incidences of overgrazing, refusal or failure to combat soil erosion and past land husbandry practices. Therefore, the *Land Act* draws a link between land tenure, soil conservation and land use.
- 5 An allocated land may be expropriated for public purposes such as water conservation by means of watersheds, water catchment areas, reservoirs; and land conservation through afforestation and soil erosion prevention. This is another area where the *Land Act* links land allocation with some elements of ICM.
- 6 The *Water Act* provides that local Councils shall be responsible for the management of designated catchment areas and the provision of water and sanitation services in the rural areas. However, these provisions do not sufficiently elaborate the authority of local councils over the designated catchment areas.
- 7 The *National Decentralisation Policy* and the *Local Government (Amendment) Bill* propose the creation of political and administrative structures which will potentially enable a decentralised model of integrated catchment management, but these instruments must be aligned with pieces of legislation including policies and strategies on land use and water use regulation.

## 2.4 Recommendations

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- 1 It would seem that it is practically impossible to enact comprehensive and standalone ICM legislation. Therefore, the existing legislation and policies must be aligned by repealing inconsistent and outdated provisions and incorporating cooperative and coordination mechanisms or techniques into the applicable legislation to address overlaps and duplication.
- 2 Amongst the techniques worth considering for aligning the existing legislation are cooperative agreements, joint committees, devolution based on subsidiarity, exemptions, expropriation etc.
- 3 In the meantime, a mechanism provided for in the current Local Government Act could be used. That mechanism entails the transfer of functions to local councils by means of regulations and when the councils have functions relating to catchment management they will have an option to enact bylaws on the subject and enforce compliance at the local level. The current regulations transfer some functions with some aspects of catchment management, but that may not be enough. The process of transferring functions through regulations is not as complex as amending the existing legislation.

## 2.5 Summary of findings from legal and other instruments

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### General Findings

The following provides a brief summary of the key findings for legislative reforms, updates to policies and strategies, and technical guidance necessary to Implement ICM at the community level.

### **Legislative Reform**

Enabling regulations of the Acts in most instances have not been promulgated.

Several sectoral ministries have not responded to the call for decentralisation to local authorities. Transfer of functions regulations only refer to ministries related health, land, social development, energy, forestry (inclusive of land management, water conservation and range resources management).

Many old laws need to be updated, and in some instances new laws have become difficult to enact. Lack of enforcement of laws has become a serious concern, especially due to inadequate capacity of local authorities. In many cases, penalties for enforcement of laws by the courts are outdated and therefore ineffective. There is a need to enhance stronger synergy between Chiefs and Councils because some laws empower the traditional authorities (e.g., impoundment of livestock caught trespassing in *leboella*).

### **Policy and Strategies Update**

In order to implement local level ICM, decentralization reforms are required in order to fast track the shifting of roles, responsibilities and mandates to the local level.

Monies collected by the Councils get deposited into government's central Consolidated Fund, and therefore inaccessible for their needs.

Lesotho being the tower of water resources in southern Africa, wetlands' current challenges are identified and discussed in some detail. However, other issues such as the legislation, policy and financing seem not to be well taken care of.

### **Technical Guidance**

There is inadequacy of guidelines for local authorities to be empowered to implement policies and laws to take sufficient actions (e.g., Environment Act 2008).

In most instances, there is no transfer of ownership of some resources (e.g., forests) to local councils to manage and accrue income to meet community development needs.

Report addressing harmonization of legislation through cooperative governance approaches contains no analysis or specific recommendations regarding the local regulatory framework.

The role of local authorities in transboundary activities is not well considered.

## 2.6 Matrix of findings from legal and other instruments

Policy, Act, Regulation	Findings
Land Act of 2010 as amended, Land (Amendment) Act No.16 of 2012; Land (Amendment) Act No.9 of 2014; Land Regulations LN No. 21 of 2011; Land (Amendment) Regulations LN No. 11 of 2013; and Systematic Land Regularisation Regulations LN No. 103 of 2010	S.2 defines ‘land’ broadly to include land covered with water, all natural or man-made things growing on land and buildings or other structures permanently affixed or attached to land. But the scope of the Act is constrictive in that it focuses mainly on allocation, expropriation and administration of land including the transfer and disposal of land titles. Council is the allocating authority; so, the decision to allocate land is taken at the lowest level of authority. Further, if land is allocated for agricultural purposes, the Ministry of Agriculture is involved and factors that must be considered include prevention of soil erosion, economic viability of the proposed agricultural activity, the requisite environmental safeguards and sound land husbandry practices. There are land courts and established procedures for the enforcement of rights and obligations. The main problem is that all land use fees, and other monies collected under the Land Act regulations are paid into the Consolidated Fund which is established on the national level under Section 110 of the Lesotho Constitution. As a result, the funds do not necessarily flow to the Community Councils resulting in unfunded mandates and no incentives to collect fees.
Land Administration Authority Act of 2010 as amended, Land Administration Authority (Amendment) Act No.17 of 2012; Land Administration Authority (Amendment) Act No. 8 of 2016	It contributes towards integrated management by ensuring systematic approach to land deeds registration, cadastral surveying and land valuation. The scope of this Act is restricted to land administration in general. The regulations have not yet been enacted.
Land Husbandry Act of 1969 as amended cum Range Management and Grazing Control Regulations of 1980 as amended	To control and improve, in respect of agricultural land, the use of land, soil conservation, water resources, irrigation and certain agricultural practices, and to provide for incidental or connected matters. Matters related to decentralization are not incorporated, and therefore need to be. New legislation should empower local authorities in line with Local Government Act 1997, strengthened in Local Government Bill 2020. Enforceability entrusted with the Chiefs through Range Management and Grazing Control Regulations of 1980. Updates are encapsulated in Range Resources Management Policy of 2014 with development of new legislation initiated, Draft Soil and Water Conservation Policy (work in progress), Water Act 2008, Water and Sanitation Policy, National Wetland Conservation Strategy, Integrated Water Resources Strategy.
Water Act of 2008	The preamble does neither explicitly address the integrated nature of IWRM, nor of ICM. This is however mentioned in S. 3. S. 3 provides for an integrated approach – but from a water perspective, as the main objective is water conservation. Decentralisation is not mentioned, and therefore needs to be. Sec 2 regarding “regulated activities” it refers to the “Lesotho Electricity and Water Resources Act of 2008”. This Act does not exist. Only an electricity authority of 2002, amended 2006 and 2011 exists.

Environment Act of 2008	<p>Section 59: Local authorities have been given the power to take sufficient actions, e.g., Areas at risk of environmental degradation: 59 (6) empower local authorities to take re-medial actions based on guidelines. It remains to be seen whether guidelines have been developed, which poses as a gap. Local authorities need to make their own guidelines.</p> <p>Since only re-forestation/afforestation of degraded land is mentioned, it falls short of being holistic. Other interventions must be introduced – revegetation, agricultural practices, range management, soil conservation measures. The intervention must integrate multiple use principle by allowing afforested/reforested areas allow grazing under strict control measures under the aegis of the local authority.</p> <p>Section 94 deals with conventions and treaties at the national level. Local authorities will need to be empowered at transboundary levels with the neighbouring state. Example should be drawn from Maloti/Drakensberg Transfrontier Conservation Area between Lesotho and South Africa. Natural resources management plans were prepared, and draft community council bylaws developed from them. Councils should, therefore, be empowered to take care of locally generated programmes as opposed to central government-driven programmes.</p>
Town and Country Planning Act of 1980 as amended	<p>No specific reflections of ICM. It does however set out the compulsory requirement for development plans (urban and rural) by the Development Planning Authority. Section 5;6;7. This principal act requires updating and consolidation with provisions Buildings Control Order (1991) &amp; Building Codes (1989). Section 17 could be updated to strengthen and incorporated penalties for ICM.</p>
Building Control Act of 1995	<p>The Buildings Control Act highlights that the Minister has power to appoint a local authority or government department to be a building authority.</p> <p>Part II, Section 11 – makes accommodation for the Minister to devolve power to local authorities to become building authorities (enabling making of bylaws etc. as seen fit). Local authorities within their remit of powers could use this principal legislation as impetus for establishing building bylaws – example: could highlight specifications in keeping with climate change adaptation / other ICM provisions e.g., water use efficiency; climate sensitive design standards etc.</p> <p>Part II, Section 25 regulates environmental Impacts Including wetland encroachment and construction Impacts.</p> <p>No direct provisions and links to Key ICM Elements are outdated and therefore deserve to be updated.</p>
Forestry Act of 1998	<p>The Act replaces the law relating to the planting and preservation of forests and to provide for the regulation and control of dealings in forest produce and the sustained management of forests and forest reserves. Forests and indigenous forests in Lesotho are to obtain the maximum benefits in the form of forest production, environmental conservation and other economic uses that can be sustained over time.</p> <p>Local authorities have been considered to partake in forest development.</p> <p>The Act should be better aligned with decentralisation.</p> <p>Gender, youth, and climate change issues are not addressed.</p> <p>Institutional aspects are not well addressed and attention.</p>

	<p>International, regional, and transboundary are not taken into account.</p> <p>There is a need for updating the Act, and clearly define the role of local authorities, as entailed in Local Government (Transfer of Functions) Regulations of 2015.</p> <p>Note section 20: As from the effective date of continuation under section 11 or declaration under section 12, a forest reserve shall be managed, maintained and controlled by the Chief Forestry Officer in accordance with this Act. This should be revised in favour of community councils.</p> <p>The Forestry Act is reportedly under review or revision, but this could not be confirmed during Assessment Phase 1. Additional stakeholder consultation will be conducted in Assessment Phase 2 to confirm status.</p>
Model Rural Areas (Grazing, Pounds, Trespasses) Bylaw 1963 – Government Notice No. 24 of 1963	<p>The bylaw plays a crucial role in impoundment of livestock that may be found stray or trespassing on <i>leboella</i> or cropland, and so causing damage. This may impact on socio-economic development and institutionalization objectives of the ICM. Damage of vegetation (especially grass) in grazing areas has negative impact on climate change because landscape has already been badly denuded leaving land bare. Gender and human rights issues are not explicit but may be implied in that it is applicable irrespective of gender.</p> <p>The bylaws must be updated in line with contemporary socio-economic, climatic and institutional situations. It was passed during pre-independence period when the Chief played a major administrative role, whereas local councils are now in place. There must be synergy and harmonisation between Chiefs’ role and that of local councils.</p>
Maseru City Council By-laws of 2020 (codification)	<p>The bylaws do address some key ICM elements and objectives. The decision-making is also at the lowest level and in line with the decentralisation process in the country. However, the scope is limited as it does not draw from other legislation relevant to ICM e.g., Water Act.</p>
National Decentralisation Policy of 2014	<p>The main objective of this policy is to reaffirm and strengthen Lesotho’s commitment to devolution as a mode of decentralisation. It outlines strategic actions that will be taken to ensure that functions that can be best performed at the local level are transferred to local governments. In other words, it is deep-rooted in the principle of subsidiarity. Such actions include policy and legal reforms.</p> <p>The policy does not create ICM regime, but it contributes significantly to its practicability. It dictates that functions must be transferred with resources coupled with capacity building amongst other things.</p> <p>The only part that requires special consideration is fiscal decentralisation.</p>
Local Government Bill of 2020	<p>The Bill does not list Council’s functions but provides for the transfer of functions with resources from line ministries to councils. It also provides comprehensive procedure for participatory integrated planning.</p>
National Environment Policy for Lesotho of 1998	<p>Section 2.1: Goal is to protect and conserve the environment with a view of achieving sustainable development in Lesotho.</p> <p>ICM and decentralization poorly addressed (refer to note above) Section 4.15 “Water resources management” accedes to development of integrated, coordinated, effective and efficient approaches to conservation and wise use of water resources. Similarly, section 4.14 “Afforestation and re-vegetation” alludes to the fact that water, catchment management, agriculture, rangeland management and forestry development are all interrelated and require a collaborative approach by all sectors involved. Linkages of these elements to</p>

	<p>decentralization are missing. Perhaps this is due to the broad nature of the Environment Policy which is meant to address all environmental matters regardless of their source of origin.</p> <p>The Policy must be reformed to reflect ICM. The Policy makes no mention of decentralised functions pertaining to environmental management. There is need, therefore, to re-view it.</p>
National Forestry Policy of 2008	<p>Sections 3.3.3.2 &amp; 3.3.3.3 provide an entry point for decentralization as they focus on building capacity of stakeholders, including local government structures on forestry development, including establishing mechanisms for the legal ownership of forests and forest resources at community level. It also encourages the need to adapt existing legal instruments to enhance access and benefit sharing on forest products. The issues discussed above strongly imply that management of forest resources will improve when ownership is legally transferred to appropriate levels of decision making, thereby creating an enabling environment for ICM implementation in Lesotho.</p> <p>Furthermore, section 4.2 which is by far the most important, identifies Key stakeholders in forestry sector. It recognizes Ministry of Local Government and Chieftainship Affairs (MoLGCA) as a key stakeholder and, the importance of decentralizing services in forestry development and the role played by local authorities in the implementation of the policy.</p> <p>Section 3.3.1.7 “Protecting forests from all kinds of destructive agents” recommends the revision of the 1998 Forestry Act and to ensure its effective implementation.</p> <p>This is a crucial step that can support ICM implementation in the future. The legislative revision would then take care of associated decentralization issues.</p>
Food Security Policy of 2005	<p>Section 3.3 “promotion of support services and infrastructure” focusing on provision of agricultural extension services targeting rural households, involving MAFS and MoLGCA to ensure effective inter-ministerial collaboration at the lowest level. The Policy recognizes that this process shall be achieved aided by the on-going decentralization process. Moving a level higher, Section 4.3 of the Policy enumerates a host of District level stake-holders and finally Section 4.4 sub-district level stakeholders who are responsible for co-ordination of ICM related food security issues as this level.</p> <p>The Food Security Action Plan (2007 – 2017) that has been used to implement the Policy needs to be reviewed and updated to address current agricultural sector challenges and address the linkages to ICM principles as they relate to environmentally sustainable agricultural practices.</p>
Range Resources Management Policy of 2014	<p>The goal of the policy is to attain sustainable development and management of range-land resources for an enhanced biodiversity, optimum productivity and improved livelihoods of the people of Lesotho. There is no need to update the Policy as it has only been in place for six years and takes into account the role of local councils well.</p> <p>In Local Government (Transfer of Functions) Regulations, 2015, Range Resource Utilisation entrenches local Councils with responsibility:</p> <ul style="list-style-type: none"> <li>Promotion of community-based natural resources management;</li> <li>Adjudication of cattle post;</li> <li>Management and protection of wetland areas.</li> </ul>



<p>Lesotho Water and Sanitation Policy of 2007 (2007 LWSP)</p>	<p>The Policy provides good high-level policy statements; key objectives and proposed strategies, the strongest focus / context is provided for; ‘Policy Statement 1: Water Resources Management and Policy Statement 2: Water Supply and Sanitation Services’. This is then followed by ‘Policy Statement 3: Water and Environment’ which has a strong water service link – the link on effluent discharge is apparent which then further substantiates the focus on water service management. Page 2 – 9.</p> <p>Strategies highlighted under Policy Statement 1: ‘Water Resource Management’ are key to ICM. The ICM directed strategies will need to be considered carefully under the remit of local regulatory frameworks as the question arises as to where the function will be held in the interim and long-term planning. The roles of the Catchment Management Joint Committees (CMJC) is thought to have a key focus on co-ordination. Therefore, council bylaws can provide them with legal context to implement the strategies outlined in the 2007 LWSP (the SA case-study – specific to CMA functions, is an added level of insight that could be useful when looking at the above strategies and how to plan for them through the drafting of local regulatory bylaws).</p> <p>Strategies highlighted under Policy Statement 2: Water Supply and Sanitation Services are key to ICM. The strategies highlighted have a strong drive towards funding mechanisms. See annex and refer to stream 5 review context – provides insight for challenges and requirements for relevant bylaws.</p> <p>Whilst good context is noted in the policy, review / updating could be useful.</p>
<p>National Biodiversity Strategy and Action Plan of 2000</p>	<p>Goal 4: Expand Lesotho’s Capacity to Conserve and Manage Biodiversity.</p> <p>Guiding Principle 12: To implement the goals and objectives for conservation and sustainable integration into sectoral planning efforts (e.g., Agriculture, Forestry, Wildlife, Fisheries, Industry, Education, Health, etc.).</p> <p>All the ICM Objectives have been addressed. These are Socio-economic development, Gender issues, Climate change and Institutionalisation.</p> <p>Under objective 4.1: Action is to “Review existing and draft additional policies for increasing human and institutional capacity to conserve biodiversity.</p> <p>Action 4.3: Strengthen law enforcement agencies by direct involvement communities and through their local institutions.</p>
<p>Integrated Water Resources Management</p>	<p>The strategy does cover elements of ICM and interrelated objectives. The strategy has captured all-important ICM aspects and seems to be in line with international practice.</p> <p>It is sufficiently flexible for the implementation of practically enforceable measures for successful ICM.</p> <p>The objectives and scope of application for the strategy are in line with international and the current thinking in terms of effective water resources management. In fact, ICM is one of the recommendations of the strategy.</p>
<p>Draft Soil and Water Conservation Policy</p>	<p>The strategy focuses on technical measures for soil and water conservation and management. The measures are integrated as they relate to land and water use. ICM objectives are listed in some detail. Regarding decentralization, the strategy aims in a general manner at maximizing community involvement in sustainable use of soil and water resources, through engagement of community soil and water conservation committees. Neither the policy areas 1-6, nor the guiding principles mention the local communities as players nor decentralisation in general.</p>

	Its recommendations are relevant for practical ICM implementation, as the measures are technical by nature and need to be implemented via local level regulations or by-laws. They will need consideration when studying options to support CCs to enact by-laws.
National Wetlands Conservation Strategy	The strategy adequately addresses decentralization. It does however, neither detail any decentralization procedure, neither any strategy to actively promote decentralization. The strategy summarizes key ICM objectives, and its guiding principles reflect ICM objectives as well. It is not supported by specific implementing regulations
Formal and Informal Institutions in the wetlands of the highlands of Lesotho	The report focuses mainly on wetlands and rangelands management. The document does propose a new organisational structure and mandates for all role players. This includes local government and other decision makers particularly at the lowest level. Community based organisations, NGO's and local authorities play a role in ICM.  It is not clear as to the extent to which the measure may contribute to the implementation of ICM. The measure mentions a proposed framework, without going into details as to how they will be implemented.  Current challenges are identified and discussed in some detail. However, other issues such as the legislation, policy and financing seem to be lacking.
Report on National Legal Framework on Decentralisation of 2015 by Ramohapi Shale and Jaap de Visser	This report outlines close to 50 pieces of legislation that bear upon decentralisation in Lesotho. Most of the legislative instruments outlined in this report coincide with the list of legal instruments that have been identified as relevant to ICM in stream 4. It is very relevant.
Issue Paper for the Reform of Lesotho Local Government Act of 1997 prepared in 2015 by Jaap de Visser and Ramohapi Shale	This paper examines several issues arising from the National Decentralisation Policy with specific reference to the legislative reforms necessitated by this policy. It, amongst other things, highlights issues relating to the authority of local governments with regards to local policy formulation and implementation vis-à-vis the implementation of sectoral policies and laws at the local level. It is very relevant.
White Paper: Review of Water Legislation	This is viewed as more of 'review / study report' with a key focus on gaps; challenges and areas for potential improvement, specific to the principal 'Water Act 2008'. It builds a 'business case' almost encouraging / motivating for the reform of the Water Act 2008 based on a perspective of sector needs. It provides good technical/process and institutional insight in context of the Water Sector and may provide further context for the in-depth review of 'Water Act 2008'.
Integrated Catchment Management. Final Reports containing Volumes A, B and C. June 2016	Page 17 -22 ff, the report describes roles and functions of the 4 types of Councils and refers to the applicable laws. On page 24 and 25, the report contains notes concerning: Decentralization and local leadership. It lists in detail what practical constraints and deficits are. There is no study of local level regulations. The WA and the LGA are quoted but not analysed or commented. The study has a strong focus on institutional and capacity strengthening. However, all the highly detailed findings regarding practical bottlenecks, interviews conducted, materials collected, could be useful input to the drafting of local level regulations or by-laws. When studying options to support CCs to draft by-laws, these findings will need to be considered.

Draft SLM Model; Sustainable land Management project 2011	<p>Section 3.3: The objective of this assignment is to develop a participatory and replicable model and techniques that will successfully overcome institutional and governance barriers to sustainable land management.</p> <p>The SLM Model needs to be updated and operationalised. Managed Resource Area model for developing bylaws should be made more realistic. It is beyond the capacity of local councils to implement.</p>
ORASECOM Lesotho Action Plan 2014	<p>Regulatory Insight: Chapter 4 – Page 24-28 of relevance. The Action Plan was reviewed as it was deemed relevant for informing the context of local bylaws. Community councils are meant to work together with ‘Catchment Management Joint Committees’ (CMJC) as reflected in the Long-term Water and Sanitation Strategy (LWSS 2016) and drafting of key bylaws may be required to aid core function implementation. The Lesotho strategic action plan provides valuable local insight as it unpacks the 4 major environmental concerns specific to Lesotho’s context.</p> <p>It provides stakeholder insight as to what the critical issues are on the ground. It is this local level insight that will inform which areas of ICM at National and Local level require strengthening to address long-term ICM concerns.</p> <p>Analysis from the report, presented on Land Degradation and Water Quality Issues – highlights urgent areas requiring practical and enforceable regulation. Land Use and Water Use therefore are areas for flagged for specific focus; detailed unpacking and review with possibility for urgent reform.</p> <p>The detail of the ‘Action Plan Measures’ could also be a good springboard, streamlining opportune areas for by-law drafting case studies at a later point.</p> <p>National Framework of Lesotho &amp; International Governance– covered in section 2.1 &amp; 2.2 – Page 14 of the LAP document and provides useful insight. This section highlights pertinent legislative instruments that are key to addressing the critical concerns noted in Lesotho’s IWRM. Table 3 – Page 15 refers “Local Government Community councils have the legal authority to manage natural resources in Lesotho and to draft resource management regulations that can become community council by-laws. They also prepare natural resources management (NRM) plans that can be built into community council development plans.”</p> <p>Context of the report is current and needs no updating.</p>
Revised SADC Protocol on Shared Watercourses	<p>Article 4 (2) Protection of ecosystems, pollution prevention, policy harmonisation and protection and preservation of the aquatic ecosystem. Institutional framework presented in article 5. However national level institutional arrangements are not prescribed.</p> <p>It is broad enough to allow some flexibility for the implementation of practically enforce-able measures for successful ICM in Lesotho.</p> <p>The protocol is very much relevant as it embodies the latest thinking with regards to cooperation of stakeholders in water resources management.</p>

## 3 Findings and recommendations

### Policy and Legal: Environment and Wetlands

**Finding 1:** There are conflicting interventions on the protection and management of wetlands. These are found in the Environment Act 2008, Water act 2008 and Draft Range Resources Management Bill programmes on the ground.

One of the most classical areas of conflict between the various ministries in executing what is perceived as being within the purview of their mandates, in the protection of wetlands. The issue of wetland protection and management is covered to some extent in the Water Act of 2008, Environment Act of 2008, the Local Government Act of 1996, in the Range Resources Management Bill amongst others. The specific laws and relevant sections are:

#### Water Act 2008:

“wetland” means land which is transitional between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is periodically covered with shallow water, and which land in normal circumstances supports or would support vegetation typically adapted to life in saturated soil.

15 (2) A local authority shall be responsible for the management of catchment areas in its area of jurisdiction.

(3) A local authority has the following functions:

(a) elaboration of catchment management plans for the protection and use of water resources in the catchment area, which shall be in line with the water and sanitation strategy and plans developed by the Commissioner.

18 (1) A Minister may in consultation with the Minister responsible for land, declare, by notice in the gazette, certain wetland areas as protected and prohibit entry into or use unless authorized.

#### Environment Act 2008:

“wetland” means an area permanently or seasonally flooded by water where plants and animals have become adapted.

61. (1) The Director shall, in consultation with the relevant line Ministry issue guidelines and prescribe measures for protection of riverbanks, rivers, wetlands, lakes and lakeshores.

62. (1) The Minister may by notice in the Gazette publish general or specific orders, or standards for the management of rivers, riverbanks, lakes, lakeshores or wetlands.

#### Draft Range Resources Management Bill:

“wetland area” means a sub-catchment in which an important wetland is located.

Minister shall declare by Gazette:

4 (c) specific wetland and catchment areas as protected areas and regulate entry and access to the resources.

8, 10 and 12: Functions of Chief and Local Authority and rangeland user group (e.g., grazing association) respectively:

- protect, in their areas of jurisdiction, selected rangeland sites and wetland areas identified by the Ministry in consultation with other relevant stakeholders;

Based on the interactions with the relevant stakeholders, there is general recognition by Ministries regarding the importance of wetlands. However, there are overlaps and grey areas that contribute to poor wetlands management in the country. Without very high levels of cooperation and coordination, it could result in management being poorly implemented and managed.

Ministry of Water (MoW), Ministry of Forestry and Land Reclamation (MFLR), Ministry of Environment (MTEC) as well as Ministry of Local Government are key stakeholders in wetlands management.

The Environment Act 2008 provides for the appointment of representatives of youth & women into the National Environment Council (NEC), to represent the interests & needs of women & youth. The NEC is an apex decision-making body proposed by the environmental legislation. However, the major challenge is that the NEC does not exist in practice. One of the functions of the NEC is to harmonise policies & plans across sectors, ensuring the integration of environmental management issues. This presents opportunities for building an enabling policy environment for implementation of ICM in Lesotho.

**Recommendations 1.a):** Strengthen the governance on wetlands to create an enabling environment for their protection and sustainability.

**Recommendations 1.b):** The National Environment Council should be duly constituted as provided for in the Environment Act 2008, and activated.

**Finding 2:** The Ministry of Forestry, Range and Soil Conservation is ready to transfer resources to the districts. Budget was to be transferred to the district sub-accountancies for disbursement and use. There are resource centres with staff and other resources. However, discussions with local authorities revealed that this has been put in abeyance. MFRSC puts the blame on the onset of the Covid-19 pandemic in 2020. It was uncertain when this move will be reactivated.

Preparation for the Draft Range Resources Management Bill 2021 was an advanced stage, likely to be completed in August 2021.

The Draft Range Resources Management Bill will, for the first time, replace chiefs with councils in line with the Local Government Act 1997, and the Local Government Bill 2016 (submitted to Parliament) which will relegate responsibilities on grazing control to councils.

Key points are as follows:

- Define Integrated Catchment Management. Integrated Catchment Management (ICM) is identified as a primary objective of the draft Bill; however, ICM and its related principles require further elaboration and clarification, e.g., through a definition or statement of 'ICM principles'. A suggested definition is provided in the comments below.
- Expand definition of protected areas. In several places, the draft Bill refers to protection of wetland and riparian areas. This objective should be revised to address all aspects of range-related ecosystems or activities that impact upon sustainable soil and water resources management. An ecosystem approach may be more effective than focusing on any one habitat type.
- Harmonise draft Bill with authorities of other Ministries and other relevant legislation. The draft Bill makes few references to the responsibilities or authorities of other Ministries or Departments in managing rangelands or protecting sensitive areas. Similarly, the draft Bill does not refer to other relevant legislation for instance for defining "protected area."
- Define authority of the Minister within objective of the Bill. The powers and authorities vested to the Minister of Forestry appear to be overly broad and to confer unlimited discretion upon the Minister. These authorities, such as those to delineate grazing lands and protected areas, should reference specific criteria for these areas in line with the objectives of the Bill (including ICM objectives).
- Clarify or better delineate authorities. The delineation of authority between the Minister, the Council, the chiefs, and the Grazing Associations remains unclear.
- Provide legal basis for subsidiary regulation or guidelines. The draft Bill provides language establishing the legal basis for implementing subsidiary regulations or technical annexes to the Act. This legal basis must be more precise, listing the purposes and scopes of needed implementing regulations, i.e., one regulation on permitting.
- Provide detail on permitting, fees, and funding. The draft Bill defines various permits and fees, but currently fails to provide additional detail on these. It is also noted that Chapter 2 of the Bill regarding funding of Range Resources Management is currently incomplete.

**Recommendation 2.a):** MFRSC should, in line with the Local Government (Transfer of Functions) Regulation of 2015, proceed with its implementation.

**Recommendation 2.b):** The ICM inputs to the Draft Range Resources Management Bill be accorded due consideration for incorporation to improve its quality.

**Finding 3:** There are competing land uses between the Ministry of Agriculture and Food Security and the Ministry of Health 's cannabis programme on one hand, and Ministry of Forestry, Range and Soil Conservation's fruit tree (pomology) production and distribution on the other. As a result local authorities and communities get prone to negative effects.

The Ministry of Agriculture's Department of Crops has a pomology section, with staff, that has historically been mandated with the production, management, sale and distribution of fruit trees to farmers. However, the Department of Forestry has also got engaged in the same activities. There have been confrontations and tensions between the two government institutions without have amicable resolution of the matter.

Similarly, the Ministry of Health has currently introduced production of cannabis for medicinal purposes, issuing permits to local and foreign investors. In many instances, prime agricultural land get taken up in large tracks of land, only to be subjected to construction of concrete slabs for erection of tunnels to plant cannabis.

**Recommendation 3:** Conflicts between the Ministry of Agriculture and those of Forestry, Range and Soil Conservation and of Health on pomology (fruit tree production) and cannabis production must be resolved.

**Finding 4:** Enforcement of the Weeds Eradication Act of 1969 has been abandoned for many years.

Lesotho's land tenure is communal system, where all livestock mingle with one another between farmers' flocks. It was common course, the past that from the village level each chief would make a call for specified days in which to eradicate all noxious weeds within their environs. According to the law, it is the chief and police officers empowered to enforce this provision. The main purpose is that Lesotho's economy has depended on wool and mohair production of export. The quality of these gets degraded easily soiled, and so reducing the price to the detriment of the farmers' income.

**Recommendation 4:** The Weeds Eradication Act of 1969 should be updated and new mechanisms for enforcement put in place.

**Finding 5:** The current framework for integrated catchment management is fragmented.

The current legal system for land and water use regulations, by and large, separates land use regulation from water use regulation at the national level, it does not establish clear linkages between responsible authorities and/or their mandates. While the Land Act is the primary legislation for land use regulation and the Water Act is the primary legislation for land use regulation, there are numerous other pieces of legislation including policies with a direct bearing on catchment management. Those instruments were enacted or formulated in different contexts and each of them is geared to address some but all elements of integrated catchment management.

**Recommendation 5:** The existing legislation and policies for land and water use must be aligned by repealing inconsistent and outdated provisions and incorporating cooperative and coordination mechanisms or techniques into the applicable legislation to address overlaps and duplication.

**Finding 6:** Functions of Council have been upgraded from the Local government Act 1997 through the Local Government (Transfer of Functions Regulations of 2015).

In the past, the functions of Councils were spelled out in Schedule 1 and 2 of the Local Government Act 1997. However, in 2015, the schedules were delegated by the Local Government (Amendment) Act of 2010, which introduced a system whereby functions were to be progressively transferred from the central government to local

councils through regulations. The regulations on the transfer of functions were enacted in 2015. So far, the functions transferred are as outlines below:

*Box 1: Functions of Councils as stated in the Local Government (Transfer of Functions) Regulations of 2015*

Those that relate to ICM are; water, sanitation and hygiene; pollution control; housing and building; land acquisition and compensation; land allocation; land disputes resolution; physical planning; land use planning; land surveying; forestry development and outreach; land management and waste management; and management of rangeland resources and utilization.

Government piloted decentralisation with six ministries through the Local Government (Transfer of Functions) Regulations 2015: Health, Local Government, Social Development, Energy, Forestry, Range and Soil Conservation; Water dropped out due to lack of readiness. Only MoLGCA and that of Public Works have affected decentralisation of their services on land allocations, physical planning and minor roads construction and maintenance respectively. However, it is only the political decision-making that Councils are able to make. Fiscal regulations are still controlled by central Government; fiscal decentralisation has been delayed due to the Covid-19 pandemic. The likely query by the Public Service Commission on transferring staff was overcome without any hurdles since Local Government Commission would deal with such matters.

**Recommendation 6:** The decentralisation pilot project through the Local Government (Transfer of Functions) Regulations be enforced by the relevant institutions stated therein.

**Finding 7:** Draft Council bylaws have not been passed because of conflicts encountered with the other principal laws of ministries that had not yet decentralized. The Local Government Bill is meant to address this dilemma.

*Box 2: An example of bylaws not enacted: Mateanong and Moremoholo (Mokhotlong)*

Bylaws to provide for the conservation, preservation and protection and management of the environment and natural resources within the jurisdiction of Mateanong and Moremoholo Community Councils and for matters incidental thereto. These bylaws are enacted pursuant to section 42 of the Local Government Act No. 6 of 1997, as amended.

**Community Councils' Environmental Protection and Management Bylaws 2007**

**Recommendation 7:** Enactment of the Local Government Bill, now in Parliament, should be prioritised without delay.

**Finding 8:** The Water Act does contain many ICM objectives and is of medium relevance to decentralization. Decentralization is poorly addressed. Section 42 of the Water Act is the legal basis for implementing regulations and is too general and hence insufficient.

The preamble does neither explicitly address the integrated nature of Integrated Water Resources Management, nor of Integrated Catchment Management. This is, however, mentioned in S. 3. that provides for an integrated approach – but from a water perspective, as the main objective is water conservation. However, decentralization is not mentioned.

Decentralization is not mentioned in the main principles and objectives under Section 3.

The Section on “water management institutions” does not mention the local level. It only mentions national or international level, and decentralization of enforcement is not mentioned.

S. 16 empowers a local authority to manage catchments within its area of jurisdiction. It lists functions of this local authority that are water resource related only. This is highly relevant for decentralization and should be expanded to cover ICM and not only water.

S. 16 includes ICM principles in the “Catchment management plan”. These are not supported by subsidiary legislation, i.e., detailed regulations, or by-laws. There are no enabling provisions in the act to this end. S. 42 on the making of regulations is also not sufficient in this regard.

S. 20 requires permitting for all water uses. With a view to meaningful decentralization, permitting needs to be dealt with as decentralized and local as technically feasible and appropriate. Best regional SADC practice would be to have permits being processed and approved by a RBA, CMJC, or other local to regional level authority.

The issue of permitting is highly relevant for decentralisation as it is at the heart of regional responsibilities. The matter of charging cannot be separated from the above permitting issues, as all these forms of use must be subject to levies, tariffs, and fees. These must also be regulated in a detailed permitting and charging regulation with schedules on different forms of use, different users, varying quantities, respective pricing etc. This must be based on a decentralized approach with clear responsibilities of the local authorities as opposed to the national government, at central level. Locally generated revenue should stay local as far as appropriate.

**Recommendation 8:** Permits need to be dealt with by authorities with in-depth insights into local matters. On the other hand, charges such as fees, levies, tariffs are fundamental to fund decentralization in general, and in decentralization of ICM in particular.

**Finding 9:** There is a constraint of lack of resources and training in terms of the relevant laws Councils are expected to enforce.

Interviewees that dealt with councils at district level were consistent if saying that all laws at their disposals were only in English, and not in Sesotho for their better understanding. However, the Range Management and Grazing Control regulations of 1980, as amended have been printed in both English and Sesotho. The District Council Secretaries and Legal Officers assist Councillors in interpretation of the laws. All of them indicated that there was no training at all, some went through orientation on assumption of their duties following council elections.

All copies of the available laws were kept in the council offices.

**Recommendation 9:** Laws enforced by Councils should be translated into Sesotho and made readily accessible.



## 4 Proposed actions

	Proposed Action	Recommendation to which Action relates	Priority	Timeline (Years)	Main Actors
<b>Institutional Reforms</b>					
1	Create and enhance corporate governance instruments for wetlands management between key stakeholders. These may include Memoranda of Agreements/ Understanding on wetlands management, rehabilitation and monitoring	Strengthen the governance on wetlands to create an enabling environment for their protection and sustainability.	1	3	MoW, MoE, Range Resources Management, Soil and Water Conservation
2	Remove impediments to implementation of ICM caused by extreme compartmentalisation of institutions.	Promulgate ICM law in order to bring all conflicting programmes under one umbrella of the Environment Act 2008.	1	5	MTEC, MoW, MFRSC, MAFS, MoLGCA, Cabinet, Parliamentary Council
3	Programme of action for National Environment Council should be prepared.	The National Environment Council should be duly constituted as provided for in the Environment Act 2008 and activated.	1	1	MTEC, Cabinet
4	Consultative dispute resolution forums be set up at high official level	Conflicts between the Ministry of Agriculture and those of Forestry, Range and Soil Conservation, and of Health on pomology (fruit tree production) and cannabis permitting for production and respectively, be resolved.	3	1	MAFS, MFRSC
<b>Legal Reforms</b>					
5	Implementation plan for transfer functions of MFRSC to districts be developed and put into action.	MFRSC should, in line with the Local Government (Transfer of Functions) Regulation of 2015, proceed with its implementation.	2	2	MFRSC, MoLGCA
6	Incorporate ICM recommendations into the Draft Range Resources Management Bill 2021.	The ICM inputs to the Draft Range Resources Management Bill be accorded due consideration for incorporation to improve its quality.	1	0.5	MFRSC, Parliamentary Council, Parliament

7	Review to update and enforce eradication of noxious weeds.	The Weeds Eradication Act of 1969 be updated and new mechanisms for enforcement put in place at local community	3	4	MAFS
8	<p>Harmonisation of legislation</p> <p>Address glaring overlaps on Ministerial functions and responsibilities on issues of environmental management</p> <p>Address inconsistencies in the fines specified in the above legislative instruments.</p> <p>Water Act 2008 Preamble should recognize need for integrated management approach for all aspects of water resources and Integrated Catchment management.</p> <p>The Preamble must be amended with subsidiarity: delegation of management functions to a regional or catchment level.</p> <p>And, equally, decentralization or principle of subsidiarity to be mentioned in the main principles and objectives under Section 3, Water Act 2008.</p> <p>The “water management institutions” should mention the local level, it only mentions national or international level.</p> <p>S. 15 (1) must contain criteria on how catchments are identified and designated.</p> <p>S. 16 on local level management competences to be expanded to ICM and not only to water.</p> <p>S. 16 on local level catchment management to be supported by subsidiary legislation, i.e., detailed regulations, or by-laws. These by-laws must be drafted.</p>	<p>Water Act of 2008, Environment Act of 2008, the Local Government Act of 1997, in the Range Resources Management Policy and Strategy of 2014, the Land Husbandry Act of 1969. Ultimately the relevant pieces of legislation need to be amended so that they are harmonized and cross-referenced to each other.</p> <p>Redefine roles and responsibilities of central government, local authorities as well as chiefs.</p>	1	2-3	MoW, MoE, Ministry of Agriculture, Range Resources Management, Local Government, Soil and Water Conservation

	<p>The Water Act to state clearly that Permitting is being processed and approved by an RBA or other local to regional level authority.</p> <p>Charges such as fees, levies, tariffs to be allocated to the local level by the WA.</p>				
9	<p>Develop policy on ecosystem payment.</p> <p>Enact law for enforcement of catchment user fees</p>	Introduction of user fees in the catchment should be introduced for paying a catchment management fee to fund the costs of this work.	2	3-5	Range Resources Management, Local Government, MoW
10	<p>Conduct needs assessment on the technical capabilities of the key stakeholders at national district and community levels</p>	Roll out the developed programme on responsibility, accountability and service delivery at district, and community and catchment levels.	1	2--3	MoW, MoE, Ministry of Agriculture, Range Management, Local Government, Soil and Water Management
	<p>Review and refine the roles, responsibilities, budgets, and feasible organizational arrangements for capacity building of stakeholders at all levels, with special attention directed at the decentralized level e.g., Chiefs, Community and District Councils, Grazing Associations, Integrated Catchment Management (ICM) institutions, and CBOs to protect and manage wetlands</p>		2	1-2	MoW, MoE, Ministry of Agriculture, Range Management, Local Government, Soil and Water Management

## Annexes

### Annex I: Mapping Matrix: Lesotho's Land and Water Use Regulatory Framework

Instrument	Scope (Key ICM elements)	Objective(s)	Administrative bodies & their mandates	Enforcement, reviews & appeals	Participation, capacity building & records	Priority 1-3 1=highest
Constitution	27,34, 36, 105, 109	106	105	—	20	2
Local Gov. Act	5 & 42	Long title	4, 5, 27, & 42	42(3) & 43	21	3
Local Gov. Reg. 2005	—	—	—	—	9, 12, & 14	3
Local Gov. Reg. 2015	First Schedule	2	2	—	—	2
Local Gov. Bill	7, Part IV & 59	Long Title	38, 54 & 55	59 & 56	29, Part IV, 55	3
National Plan. Board Act 1995	6	—	6	—	—	3
Land Act 2010	5, Parts IV, V, IX & XI	Long Title	12, Part IV & V	Part XII, 72, 83, 84, 85, 86 & 91	12, 23, 26, 27 & 29	2
Land Regulations 2011	6, 12, 13, 27, 28, 29 & 30		6, 7, 9 & 35	52	6, 7 & 37	2
Systematic Land Regularisation Regulations 2010	17	—	5 & 13	5, 8 & 16	4, 5, 8 & 16	3
Land Survey Act 1980	—	—	—	—	—	—
Land Survey Reg. 1982	—	—	—	—	—	—
Land Administration Act 2010	5 & 16	Long Title	4, 5, 6, 16, 18 & 19	5	5	3
National Decentralisation Policy 2014	1.2.7, 1.3.8, 3.3, 3.12 & 3.13	2.1 & 2.2	3.5	—	1.3.5, 1.3.7, 2.3 & 3.9,	2

## **Annex II: Assessment criteria to review national policy instruments relevant to implementation of ICM**

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### **Key elements of ICM:**

- a) Sustainable soil management and erosion control;
- b) Sustainable water utilisation, management and pollution control;
- c) Maintenance of aquatic and related ecosystems, ecosystem services and biodiversity;
- d) Sustainable range management (for livestock rearing and crop production);
- e) Wetlands management and restoration;
- f) Water resources development and infrastructure operation;
- g) Sustainable planning of human settlements; and
- h) Governance reform in pursuit of all of the above

### **Interrelated objectives:**

- a) Socio-economic development;
- b) Livelihoods and poverty alleviation;
- c) Improved affordable access to safe water and sanitation services;
- d) Sustainable support to commercial and subsistence agriculture;
- e) Climate change adaptation;
- f) Rights based approach including, in particular, gender equality;
- g) Policy and legislative harmonisation;
- h) Subsidiarity and decentralisation;
- i) Private sector & civil society involvement in the water sector and in related sectors;
- j) Raising awareness regarding ICM
- k) Meaningful stakeholder engagement; and
- l) Capacity-building, research and training.

### **Method**

#### **1. Review**

- a. Policy, strategy or plan, against the six key criteria, i.e., the extent to which the key elements of ICM and interrelated objectives are addressed
- b. Policy and strategy relating to the 8 key elements of ICM to assess the extent to which the aspects of ICM are addressed.

#### **2. Apply rating of alignment with the key criteria using Scale:**

- (1) Key criterion is not addressed at all
- (2) Key criterion is very poorly addressed
- (3) Uncertain/Unclear whether the criterion is addressed
- (4) Key criterion is addressed
- (5) Key criterion is very thoroughly addressed

#### **3. Justify rating by providing comments / justification of the gaps and weaknesses, strengths etc.**

**4. Please ensure that parent and subsidiary legislation are reviewed together.**

This would usually be an act and a regulation that has its legal basis in the act. A parent legislation may answer some questions through its subsidiary legislation. For example, Local Government Act does not expressly give local councils ICM related functions but empowers the Minister to gazette a list of functions. The regulations do cover some elements of ICM. So, when the two instruments are assessed together, a correct picture will emerge. Otherwise, one would arrive at a conclusion that the Act does not cover key elements of ICM, but the regulations do. The correct picture is that it does cover such elements through its subsidiary legislation. To this end you will need to identify acts and regulations that need to be grouped for review. The respective enactments of a group (consisting of the parent and the subsidiary legislation(s) needs to be named in the header of the below table that lists the enactments reviewed. In this case indicate in the comment column, using acronyms, to which enactments your comments relate (i.e., WA for water act and SWR for surface water quality standards regulation). In case parent and subsidiary legislation covers certain ICM elements, all relevant Articles/sections need to be commented. The legal basis in the parent legislation should be mentioned (i.e., Sect. 42 WA).

List the Policy, Strategy, Plan etc. Reviewed: **EXAMPLE: National Wetlands Conservation Strategy (no decentralization relevance = NDR)**

KEY CRITERIA	INDICATORS	LIKERT SCALE SCORE, 1-5 (5 being the highest level of agreement)	COMMENT / JUSTIFICATION (i.e., description of gap, weakness etc. identified)
1. Effectiveness	<p>a) Does the measure appropriately address key ICM elements &amp; objectives:</p> <ul style="list-style-type: none"> <li>- Breadth / sufficiency of mandate;</li> <li>- Substantive coverage / scope of application; and</li> <li>- Subsidiarity (decision-making at the lowest appropriate / practicable level of administration) having regard to the ongoing process of decentralisation in Lesotho.</li> </ul> <p>b) Does the measure create or contribute to a practicable ICM regime for Lesotho:</p> <ul style="list-style-type: none"> <li>- Sufficiently flexible;</li> <li>- Sustainably implementable;</li> <li>- Practically enforceable; and</li> <li>- Financially sustainable.</li> </ul>	<p>3</p> <p>The strategy contains ICM objectives.</p> <p>It mentions – in a general way- some decentralization objectives (SO 5).</p>	<p>(See also the review under Workstream 1)</p> <p>The guiding principles on page 10 reflect, inter alia, ICM objectives:</p> <p><u>Inter-linkage between community livelihoods and ecological integrity of wetlands, sustainable use of wetlands resources, empowerment and participation by all stakeholders in wetland conservation, and international cooperation in the conservation and management of shared wetlands resources.</u></p> <p>Strategic objective 3.1 aims at strengthening the capacities of institutions involved in management of the wetlands ecosystems <u>at all levels of governance.</u></p> <p>Strategic objective 4.1 requires good quality “information on the location, biotic and abiotic characteristics of the wetlands for <u>informed decision making at all levels.</u>”</p> <p>It aims at:</p>

		<ul style="list-style-type: none"> <li>• Developing a comprehensive wetlands’ inventory and database that show their distribution, conditions and uses.</li> <li>• Develop Information, Education and Communication (IEC) materials to capacitate stakeholders on wetlands ecosystems and their management.</li> <li>• Devise methods for improved access and decision-making support to information and data <u>by all relevant sectors and stakeholders</u> on wetlands areas.</li> </ul> <p><u>Strategic objective 5 (see below) encourages community participation and promotes decentralization.</u></p> <p>Strategic Objective 5 is the most relevant SO. It requires the development of innovative mechanisms that empower stakeholders to participate in the management of wetlands by:</p> <ul style="list-style-type: none"> <li>• Strengthening communication, collaboration, and public outreach programmes for <u>all stakeholders</u> on wetland ecosystems conservation and management.</li> </ul> <p>Strategies:</p> <ul style="list-style-type: none"> <li>• Advocating for collaboration and cooperation between institutions and stakeholders to share wetlands’ information <u>at community, district, national, regional, and international levels</u></li> </ul>
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<p>2. Holistic / Cross-sectoral</p>	<p>a) Does the measure link land and water use across the entire catchment area?</p> <p>b) Does the measure link social and economic development with protection of natural ecosystems:</p> <ul style="list-style-type: none"> <li>- Contribution to horizontal integration / fragmentation.</li> </ul> <p>c) Does the measure create or contribute to an integrated management framework;</p> <p>d) Does the measure link with the broader National Development Strategy / Planning Framework – across a mid- to long-term horizon:</p> <ul style="list-style-type: none"> <li>- Contribution to vertical integration / fragmentation.</li> </ul> <p>e) Do the measures cohere with global, regional commitments:</p> <ul style="list-style-type: none"> <li>- Contribution to vertical integration / fragmentation.</li> </ul> <p>f) Do the measures take account of any recent, current or impending significant infrastructure investments or commercial development need?</p>	<p>3</p>	<p>Strategic goal 4.2.1 requires protection of wetlands and promoting their sustainable use through integrated land and water resources management.</p> <p>Strategic objective 3.1 aims at strengthening the capacities of institutions involved in management of the wetland’s ecosystems at all levels of governance.</p> <p><u>Strategic objective 5 (see below) encourages community participation and promotes decentralization in a general manner.</u></p>
<p>3. Proportionality</p>	<p>a) Is the measures likely to achieve its legitimate aims;</p> <p>b) Is the measure cost-effective;</p> <p>c) Does the measure interfere to the least extent necessary with established interests, practices or policies;</p> <p>d) Does the measure involve an equitable and reasonable distribution of costs and benefits across all sectors?</p>	<p>The strategy contains no measures that are sufficiently specific to justify a rating</p>	<p>There seem no contradictions or conflicts with policies, plans, or acts.</p>

4. Currency	<p>a) Is the measure outdated:</p> <ul style="list-style-type: none"> <li>- Obsolete in objectives, scope of application or approach;</li> <li>- Requiring updating (e.g., regarding penalties); or</li> <li>- Requiring consolidation / codification (regarding amending measures).</li> </ul>	2	<p>It is from 2013.</p> <p>It is neither implemented by specific legislation on wetlands, nor on decentralization.</p>
5. Consistency	<p>a) Does the measure promote (at least some) elements and objectives of ICM;</p> <p>b) Does the measure run contrary to (certain) elements and objectives of ICM;</p> <p>c) Does the measures conflict with other national measures:</p> <ul style="list-style-type: none"> <li>- Conflicting / overlapping roles and mandates;</li> <li>- Gaps regarding key functions (e.g., enforcement); or</li> <li>- Ambiguities regarding scope of application.</li> </ul> <p>d) Does the measure take account of international and regional commitments, especially regarding transboundary basins:</p> <ul style="list-style-type: none"> <li>- Contribution to vertical integration / fragmentation.</li> </ul>	3	<p>The guiding principles contain several ICM elements and objectives.</p> <p>There are no measures that could conflict with other national measures because the strategy is too general in nature and contains no specific measures.</p> <p>The strategy advocates for collaboration and cooperation between institutions and stakeholders to share wetlands' information at community, district, national, regional, and international levels.</p>
6. Participatory (ensuring equitable participation)	<p>a) Does the measure raise awareness of (elements and objectives) of ICM;</p> <p>b) Does the measure promote transparency – by means of freedom of public / stakeholder access to relevant information;</p> <p>c) Does the measure promote public / stakeholder participation in decision-making –</p>	4	<p>Strategic objective 4.1 requires good quality “information on the location, biotic and abiotic characteristics of the wetlands for informed decision making at all levels.”</p> <p>It aims at:</p>

	<p>by means of appropriately structured and equitable consultation;</p> <p>d) Does the measure permit and facilitate reviewability – by means of a general right to review decisions made thereunder.</p>		<ul style="list-style-type: none"> <li>• Developing a comprehensive wetlands’ inventory and database that show their distribution, conditions and uses.</li> <li>• Develop Information, Education and Communication (IEC) materials to capacitate stakeholders on wetlands ecosystems and their management.</li> <li>• Devise methods for improved access and decision-making support to information and data by all relevant sectors and stakeholders on wetlands areas.</li> <li>• Develop and implement research programmes on wetlands conservation</li> </ul> <p>Strategic Objective 5 requires the development of innovative mechanisms that empower stakeholders to participate in the management of wetlands by:</p> <ul style="list-style-type: none"> <li>• Strengthening communication, collaboration, and public outreach programmes for all stakeholders on wetland ecosystems conservation and management.</li> </ul> <p>Strategies:</p> <ul style="list-style-type: none"> <li>• Advocating for <u>collaboration and cooperation between institutions and stakeholders to share wetlands’ information at community, district, national, regional, and international levels.</u></li> </ul> <p>Reviewability is not mentioned. This is due to the fact that the strategy is too general.</p>
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Please note that the above identified gaps or shortcomings relate to ICM. This does not always necessarily imply that the act fails to adequately address the relevant sector as such. This review takes an ICM decentralization perspective and mainly aims at identifying ICM related gaps and shortcomings.

Note: the matrix above is mainly relevant in its first line on subsidiarity as this Workstream 4 aims at decentralisation. Hence, most Articles are dealt with under line 1. However, short comments on other ICM relevant issues are made in all other lines.

The strategy adequately addresses decentralization. It does, however, neither detail any decentralization procedure, neither any strategy to actively promote decentralization.

The strategy summarizes key ICM objectives, and its guiding principles reflect ICM objectives as well.

It is not supported by specific implementing regulations.

## Annex III: Stakeholder Interview Guide

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### Introduction

The purpose of this interview guide is to support preliminary consultation on the extent to which policy and legislation provides support for the rollout of decentralisation process in Lesotho. This round of consultation focusses on two aspects:

- Section 1 – A review of what stakeholders see as the key policies and legislation for their work on decentralisation, and their experience in implementing the strategies and plans that focus on these instruments.
- Section 2 - Stakeholders' perceptions regarding the applicability and relevance of the policy and legislation and the extent to which it provides an enabling environment for implementing decentralisation in Lesotho.

These questions provide a framework for discussion and a guide on the range of issues to be explored. They are not intended as a checklist to necessarily be answered individually. We would also welcome any additional insights and information you are able to provide that might not be directly addressed in the set of questions.

1. What are the main legal framework(s) (national laws, policies, strategies and plans) relevant for your work?
  - a. Please list
    -
  - b. Please explain briefly how these laws, policies, strategies or plans are relevant for your work (at national, district, local level).
    -
  - c. Are the principles and requirements of national laws clearly reflected in the strategies and plans relevant for your work?
    -
  - d. Do the national laws, policies, strategies, and plans give you adequate legal and practical tools/ mechanisms to meet the requirements stemming from your activities/responsibilities?
    - i. If yes, please list which tools/ mechanisms are available?
    - ii. If no, please highlight what the gaps are?
    - iii. What institutional linkages between national level organisations exist to assist you in the fulfilment of your responsibilities?
    - iv. Are these linkages adequately established and functioning?

2. Overall, what are the main observations relating applicability and relevance of the national law, policies, strategies and plans, for example:

a. Effectiveness

- Do the measures appropriately address key elements and objectives for the decentralisation (sufficiency of mandate; scope of application; and practicable level of administration)
- Do the measures create or contribute to a practicable regime for the decentralisation in Lesotho (sufficiently flexible; sustainably implementable; Practically enforceable; and Financially sustainable)

b. Holistic / Cross-sectoral

- Do the measures link with the mandates of other ministries and departments (e.g., social and economic development, water affairs, environment affairs, etc.) and do the measures create or contribute to an integrated framework?
- Are there gaps regarding key functions (e.g., enforcement)?
- Are there any ambiguities regarding scope of application?

c. Proportionality

- Are the measures likely to achieve their legitimate aims;
- Are the measures cost-effective;
- Do the measures involve an equitable and reasonable distribution of costs and benefits across all sectors?

d. Currency

- Are the measures outdated or obsolete in objectives, scope of application or approach;
- Do they require updating (e.g., regarding penalties) or require consolidation / codification (regarding amending measures).

e. Consistency

- Do the measures promote (at least some) elements and objectives of decentralisation consistently with the strategies and plans of other Ministries and Departments ;
- Do the measures run contrary to (certain) elements and objectives of other Ministries or Departments;
- Do the measures conflict with other national measures:

f. Participatory (ensuring equitable participation)

- Do the measures seek to raise awareness of (elements and objectives) about decentralisation;
- Do the measures promote transparency – by means of freedom of public / stakeholder access to relevant information;
- Do the measures promote public / stakeholder participation in decision-making – by means of appropriately structured and equitable consultation;
- Do the measures permit and facilitate reviewability – by means of a general right to review decisions made thereunder.

g. Monitoring and evaluation

- Are procedure and processes for decentralisation being monitored and evaluated;
  - Is the effectiveness of the promotion of decentralisation at different levels (national, district, local) monitored and evaluated;
  - Are assessments being undertaken to inform improvements to adaptation policy, strategy and plans.
- h. Enabling environment
- Are legal, administrative, financial, technical and other resources adequately addressed in order to create an enabling environment for decentralisation
  - Is there a lack of finance or other resources, lack of skills/ capacity, or any other relevant challenges that you are aware of?

## Annex IV: Stakeholder Interview Analysis Matrix

Thematic area	Workstream # 4: Decentralisation
<b>Policy/Legal: Decentralization</b>	<p><b>Central Government Consultations</b></p> <p><b>Relevant Instruments</b></p> <ul style="list-style-type: none"> <li>○ The Ministry of Local Government and Chieftainship Affairs (MoLGCA) was established in 1994 to drive decentralization agenda (aligned to Constitution section 106), 1997, Act of Parliament Local Government. Act 1997 provides actual framework for local government issues in Lesotho. Act has been amended several times to address challenges met during its implementation.</li> <li>○ Local Government Regulations 2004 were developed.</li> <li>○ Local Government Service Act 2008 – addresses human resources issues in respect of personnel implementing local government issues, as amended.</li> <li>○ Local Government Elections Act 2004 (focuses on elections within Community Council issues etc.). Key services within Lesotho are clustered towards town centres in all districts; hence decentralisation wants to ensure that service delivery is taken closer to communities and that community needs and aspirations are taken into account during planning and implementation. Services were to be removed from the centres to the communities. Communities expected to have a hand on delivery of services.</li> <li>○ Local Government (Transfer of Functions) Act of 2015.</li> </ul> <ul style="list-style-type: none"> <li>▪ First Community Council elections were held in 2005 following protracted 1998 political instability – Directly voted into councils’ members; quota for women in Community Councils constitution and Chieftainship representation in councils. With time women representation started changing and model revised to include representation of women through 1/3 Proportional Representation from Electoral Divisions as well as the Chiefs.</li> <li>▪ Lessons learnt from first term of Councils: budget towards councils’ development programme was too little and some Councils could not implement any meaningful programmes (e.g., water maintenance and building roads). The system</li> </ul>



was revised to reduce Councils from 127 at the beginning to include Urban (11) Councils (64 Community Councils) and 10 District Councils.

- Functions of Councils are in Local Government Act 1997 Schedule 1 and 2. They depend on central government ministries and respective ministries need to unpack the human resources and budget issues so that it implements according to its unpacking. Local Government decentralised land allocation issues to Community Council level.
- In 2010/2011 Ministry of Works decentralised minor road construction and maintenance and issues to Community Councils level, together with Human Resources. Financial decentralization was not done due to lack of fiscal policy on that.
- 2012 first coalition government needed to identify challenges that existed in 2013. National Decentralizations Policy was established and approved by Cabinet in 2014. Government felt the need to know why has there has not been progress with regard to decentralization since 1997. A response was lack of understanding of decentralisation amongst ministries as well as communities. Task was then to define decentralization mode that Lesotho needed to follow – refer to the Constitution – decentralization agenda driven by people.
  - Devolution – driven by the people hence Government selected key ministries in basic services to devolve their functions and giving councils powers to decide on delivery of such services.
  - Another gap/challenge: MoLGCA was seen as trying to impose itself as a superpower by devolving other Ministries functions to it. However, this is not necessarily the case as ministries need to guide councils and build capacity of such councils and monitor their performance on implementing those functions.
- By-laws by councils on functions need to have been legally transferred to councils to do that at first. The Law governing that needed to be harmonised with Local Government laws. This is why Government started this with a few ministries (6) to pilot decentralisation through devolution, the seventh ministry was Mining as ministries were re-arranged post Ministry of Natural Resources dissolution into other ministries. MoLGCA, Health, Forestry, Energy, Mining, Water and Social Development plus Ministry of Works are all expected to have devolved. In 2014. Five ministries agreed to this but Ministries of Water and of Mining did not agree at first, but since ICM is a requirement, Ministry of Water sees the need to fast-track this. Ministry of Works decentralised human and other resources (office and transport).

- Fiscal decentralization framework started since 2019 (but MoLGCA lacks expertise here, hence the Ministry of Finance to come in an assist and co-chair with MoLGCA). At the beginning of 2020, covid delayed this process. Accountability, on use of resources, is key.
- Separation of powers at council level requires structures in place and Executive Majors need to be in place. Local Government Act 1997 has been reviewed and a new bill tabled is before Parliament to establish these new structures that will enable decentralization process.
- For ICM to develop by-laws: MoLGCA wants us to hold our horses so that MoLGCA leads this and identify what is needed (what kind of support is required by the Ministry) to allow this to happen, as by-laws are subsidiary legislation to Local Government Act, hence this process needs to be driven by the MoLGCA. If the Ministry of Water leads this, on whose functions would these be done because it has not yet devolved functions to MoLGCA?
- The issue of by-laws was clarified that it still needs to be finalised by MoLGCA and development partner, and that this will not be carried out in full by ICM Policy Harmonisation Programme. It was recalled that under the Maloti Drakensberg Transfrontier Project's (MDTP) natural resources management programme on Managed Resources Area (MRA), by-laws were drafted. But they have never been passed into law. Similarly, ICM programme under Lesotho Highlands Development Authority (LHDA) experienced the same problem. The sole reason was that these were drawn from the respective ministries without due devolution to councils, otherwise there will remain conflicts.
- LHDA did try to get into by-laws issues through their ICM project, but all these did not bear fruit because the functions of councils are governed by Schedules (1 and 2). Therefore, Ministries need to devolve first before by-laws can come in so that councils do that cognizant of the fact that they are acting within their limits of functions.
- It is a misconception that there is lack of capacity to develop by-laws. Rather, the challenge is that one cannot regulate a function of a sector one does not have jurisdiction on. Once functions have been devolved to councils, then the councils will do that. The by-laws attempted by councils in the past were governed by their schedules, but due to delineation of new councils. For example, Matsoku boundaries changed, then such by-laws fell off.

- It was further confirmed that previous by-laws would not be easy to implement as some functions were outside scope of local government functions and legal interpretations. For example, in respect of education, what is the mandate of councils there? This necessitated the new approach.
- If ICM Policy Harmonisation wants to collect information on development of by-laws, that might be putting the cart before the horse, hence MoLGCA advised against that. The actual drafting of by-laws should be done by legal officers of MoLGCA. Therefore, perhaps ICM can assist with training of legal officers in respect of the exercise to draft by-laws when the ministry comes to that stage. In addition, development of guidelines would be helpful so that legal officers and councils can, in future, be better empowered to do so.
- Draft by-laws were developed by Maseru City Council, but to implement these there are challenges (legal issues). It is only the land issues that have been delegated to councils by Local Government in which by-laws can be developed into operation.
- The Ministry of Water cannot rope in MoLGCA councils in by-laws development before it devolved its functions to councils. Only then can councils develop by-laws at their own time when all other issues are in place. MoLGCA expressed strong sentiments that, many a times, the issue of the need for Ministry of Water (MoW), as the ICM driver, to decentralise has been brought to the fore, but there is still no movement in this respect. Furthermore, MoW has the opportunity to decentralise while it has the resources under ICM Programme.

#### **District Consultations**

##### **Functions of Councils as in Local Government Act 1997 only:**

- Land allocation, water supply in villages, construction and maintenance of minor roads, natural resources/environmental protection, burial grounds, range management, marketplaces, mining (sand and quarries), waste management.
- Resources are insufficient for Councils to perform their functions.
- In terms of resources, Maseru City Council (MCC) is the only council that has personnel. There is Waste Management for Councils Fund disbursed from the Central Government that is so little, it lasts only for 5 to 6 months. That is why the

landscape is marred with debris (garbage) all over. There is no clear policy, including that of MCC. Ministries are holding onto their resources (personnel, budget, vehicles, equipment).

- Community Councils do not have personnel and vehicles of their own, unlike the MCC that has a full complement of staff, e.g., engineers, others in health, environment, etc. Maseru Community Councils (in Makhalaneng ICM Catchment) have an assistant physical planner, but in other Councils there may be no such planner. This is critical to planning minor road construction and layout for land allocation of plots in new settlement areas. The rest are clerical staff. Decentralisation is way behind as exemplified by lack of Councils' bank accounts; Fiscal Regulations are at Central Government level. Only political decentralised has occurred because political decisions are being made at community level. There are no by-laws, that would have been required, for example, for grazing control purposes. They rely on the Ministry of Forestry, Range, Soil and Water Conservation for receipts after collecting trespass fines. Department of Rural Water Supply is answerable to the Ministry of Water yet there are no staff expected to operational at village level.
- In allocating land, the Councils are expected to do so only on land that has been surveyed and layout of physical plans in place. But they do have their own surveyors, and rely on central Government personnel, though upon arrival the challenge is lack of funds to construct roads in the planned areas. It is expected that Councils should have well planned settlement areas where they can sell plots, but it does not happen. Their physical planners do not have equipment either.
- Laws enforced by Councils are: The Constitution, Government Act 1997 as amended, Land Act 2010, Range Management and Grazing Control Regulations 1980 as amended, Public Financial Management 2011, Treasury Regulations 2014, Public Procurement Regulations 2017 as amended in 2018, Local Government Service Act 2008, Local Government Regulations 2005, Local Government Service Regulations 2011, Land Regulations 2011, 2012, 2014, Chieftainship Act 1968.
- Challenges:
  - Laws are in English without Sesotho conversion, inclusive of the Constitution; access to them as well due to lack of sufficient funds to purchase them.

- Councillors have decision-making powers, but most of them have low educational levels which disables them from reading and understanding laws they enforce. However, there is the District Council Secretary and Legal Officer to advise them on the laws.
- There was only one induction conducted in 2017 (four years ago) when they assumed duty following elections; nothing for the newly elected after by-elections.
- Revenue collection goes to the central Government coffers, so much that they become unable to purchase even the smallest office items.
- Legislation enables Councils to develop their own by-laws based on the main laws (Land, Range, Water) by the ministries. It has taken over ten years by-laws that were prepared not being passed. The Minister was expected to approve and get them enacted. It is apparently due to conflicts with these main laws that by-laws could not be passed.
- There is an opportunity for Councils to perform well if decentralisation can be fully implemented. Currently, budget is still prepared at central Government, and it is an impediment to implementation at the grassroots level. Councils' priorities in enforcement of laws are those pertaining to water, mining (sand, quarries and diamonds) and range management as these would strengthen Councils. By-laws are needed in these. If decentralisation had occurred, external and internal donor funds would be dealt with directly with the Councils. Councillors are more in contact with the communities than even the Members of Parliament in the National Assembly and therefore exert more influence on development programmes.
- Some ministries like that of Agriculture and Food Security and of Forestry, Range, Soil and Water Conservation have placed their extension staff at a community level, though their budgets, plans and reports get submitted to their parent ministries. In essence, though funds are said to be transferred to the district sub-accountancies, control is still very much centralised. Interaction with Councils is limited to cooperation and coordination of their community activities.
- Councils do not have pound kraals of their own. These are under the control of Chiefs. On the occasion of impounding trespassing livestock, fines are collected by the Councillor, after deducting what has to be paid to range riders. Then the monies are taken to Council offices' appropriate officers who handle funds. Such officers then take the monies to the

district sub-accountancies (central Government depository). One of the Councils indicated that some Chiefs and subordinates longer give monies to the Councillors saying that such have been deposited with government, yet they have local needs like a road in villages and potable water in their areas. In other instances, Council offices get reluctant to collect the monies to sub-accountancy without proper records on receipts. Receipts supplied by the Department of Range Resources Management for trespass fines on rested range (leboella) run quite often.

- There exist Village Water Supply Committees that have bank accounts where funds are deposited for maintenance of pipes and ancillaries. A Councillor is a member in each committee.

#### **ANALYST OVERVIEW:**

Based on insights thus far, the following has been established:-

##### **Central Government Consultations**

- Local Councils have from the onset been allocated meagre budget that has not enabled them to perform their mandated functions effectively. However, Community Councils do not have their own budgets.
- Functions of Councils are spelled out in Schedules 1 and 2 of the Local Government Act 1997. Those that relate to ICM are: 1. Control of natural resources (e.g., sand, stones) and environmental protection (e.g., dongas (gullies), pollution). 2. Physical planning. 3. Land/site allocation. 4. Minor roads (also bridle paths). 5. Grazing control. 6 Water supply in villages (maintenance). 7. Promotion of economic development (e.g., attraction of investment). 8. Burial grounds. 9. Parks and gardens. 10. Control of building permits. 11. Fire. 12. Water resources. 13. Agriculture: services for improvement of agriculture. 14. Forestry: preservation, improving and control of designated forests in local authority areas.
- Government piloted decentarilsation with six ministries through the Local Government (Transfer of Functions) Act of 2015: Health, Local Government, Social Development, Energy and Forestry, Range and Soil Conservation; Water dropped out due to lack of readiness. Only MoLGCA and Ministry of Ministry of Public Works have effected decentarilsation of their services on land allocations, physical planning and minor road construction and maintenance respectively. However, it is only the political decision-making that Councils are able to make. Fiscal regulations are still controlled by central Government; fiscal decentralisation has been delayed due to the outbreak of Covid-19. The likely query by the Public Service Commission on transferring staff was overcome without any hurdles since Local Government Commission would deal with such matters.

- Draft Council by-laws have not been passed because of conflict encountered with the other principal laws of ministries that had not yet decentralised. The new Local Government Bill is meant to address this dilemma.
- While sentiments had been expressed about lack of capacity by Councils to implement programmes, the Ministry of Local Government counteracts that by saying it is because of resources being held back at central government level by ministries, instead of transferring them to the districts.

#### **District Consultations**

- Some Councillors cannot read and write, posing a huge challenge to perform their functions, although in some instances this is of late changing slowing for the better.
- Council lack personnel that would be commensurate with the tasks they are expected to perform on the basis of their local needs to enhance and meet the national economic development goals.

#### **Preliminary recommendations**

- All laws must be brought into synchrony with decentralisation in order to facilitate smooth implementation of the same. The major solution lies in the Local Government Bill 2016 that is now in Parliament and needs to be passed as speedily as possible. The piloting project through the Local Government (Transfer of Functions) Act of 2015 be implemented by all the ministries stated therein; Ministry of Water must also be roped in as soon as possible, especially in the light of implementation of the ICM Programme.
- Development of financial mechanisms deserves high prioritisation since without the ability of the Councils to strengthen revenues streams, decentralisation with remain a huge challenge. Budget constraints have been mentioned consistently.
- The central Government should take firm steps on decentralisation of functions such as financial, human and resources and all others.
- Since times are changing fast, the qualifications of Councillors should be reviewed upwards from illiteracy (by some) to at least a high school certificate to make them relatively more effective and efficient in their responsibilities. Many sectors have already followed this trend.
- Upon assumption of duty and on regular basis, Councillors must undergo orientation and training on the laws they are expected to enforce. Then they will be in a better position to see where there are needs to enact by-laws for the sake of efficiency and effectiveness.
- All laws must be translated from English to Sesotho to facilitate better comprehension of their provisions by Councillors.

- For decades, one after the other, decentralisation has been spoken about as the priority vehicle to fast-track economic development of Lesotho. However, there seems to have emerged, stumbling blocks that must be identified and removed speedily. An important legal instrument, which is the Local Government Bill, is now in Parliament and hopefully will get passed timeously.
- Once the new Local Government law gets enacted the following priority area must get by-laws of the councils passed: Land, Water, Agriculture and Range Resources Management.



## Annex V: District stakeholder consultations

### Review reports on the ground in selected councils about the implementation and enforcement situation and describe in enforcement overview

#### Background

The overall objective of the Integrated Catchment Management (ICM) programme is to “.. Facilitate **socio-economic development** and adaptation to **climate change** in Lesotho” to reach the specific objective of “ICM being **institutionalised** and under full implementation in Lesotho based on **gender equality** and climate change adaptation principles”. The ICM programme is being implemented from January 2020 to December 2023 as a multi-donor action. It was agreed between the Government of Lesotho and the EU Delegation to the Kingdom of Lesotho in the Financing Agreement signed in April 2019.

More specifically, the ICM Operational Plan for the first year of implementation in 2020 (ICM OP 2020) highlights that the ICM programme aims at supporting the Government of Lesotho (GOL) in its efforts to rehabilitate degraded watersheds across the country and to put in place prevention measures that will halt the further degradation of Lesotho’s catchment areas. The sustainable management of Lesotho’s catchments is of critical importance for water, energy, and food security not only in Lesotho itself but in the entire Orange-Senqu basin and Gauteng Province, Southern Africa’s economic centre.

Under the Policy Harmonisation programme there are five clusters as follows: i. National Policy Harmonisation, ii. Gender and Rights-based approach, iii. Climate sensitive policy framework, iv. **Decentralisation cluster** and v. Options for financing mechanism to implement local ICM plans.

The ICM policy makers need feedback from the general public and communities, as well as from related officials in a transparent manner regarding the decentralisation, implementation and law enforcement of legislation relating to ICM.

**Decentralisation Cluster:** These consultations are for a Study of Regulatory Framework on supporting and empowering Community Councils (CCs) ICM implementation. Consultations assess capacity development made through decentralisation with a view to enact by-laws at a later stage. The ICM policy makers need feedback from the general public and communities, as well as from related officials in a transparent manner regarding the experiences and challenges in the decentralisation process, implementation and law enforcement of legislation relating to ICM.

The objective of stakeholder consultations is, therefore, to assess the status of decentralisation and law enforcement situations from the perspective of local authorities that have responsibilities in ICM, and ICM enforcement and from the perspective of the other stakeholders (Community-based Organisations, technical ministries and project staff and judiciary at local level.

#### Guiding Instruments/Laws/Documents Studied

The policy and legal review looked at more than 40 enactments. This significant number of enactments does not allow for investigate implementation of each in detail. The enforcement situation must relate to ICM, i.e., land, water, rangeland, forest, wetlands management or protection. Hence the below **priority issues** were identified:

#### INSTRUMENTS FOR STAKEHOLDER CONSULTATIONS AT LOCAL LEVEL

2.1. Land Act of 2010 as amended, Land (Amendment) Act No.16 of 2012; Land (Amendment) Act No.9 of 2014; Land Regulations LN No. 21 of 2011; Land (Amendment) Regulations LN No. 11 of 2013; and Systematic Land Regularisation Regulations LN No. 103 of 2010: **Allocation of land as decentralised by Ministry of Local Government**

2.2 Land Husbandry Act of 1969 as amended with Range Management and Grazing Control Regulations of 1980 as amended; Range Resources Management Draft Bill 202, Model Rural Areas (Grazing, Pounds, Trespasses) Bylaw 1963 – Government Notice No. 24 of 1963: **Grazing control issues (enforcement of rotational grazing and carrying capacities, control of trespasses, impoundment and collection of fines.**

2.3. Water Act of 2008; Integrated Water Resources Management; White Paper: Review of Water Legislation: **Matters related to use of water, e.g., village water supply, boreholes.**

2.4. Environment Act of 2008; National Wetlands Conservation Strategy; Formal and Informal Institutions in the wetlands of the highlands of Lesotho: **Waste management, pollution, and protection of biodiversity for sustainable use.**

2.5. Forestry Act of 1998; National Forestry Policy 2008: **Management use and protection of woodlots and forest reserves.**

2.6. Local Government Act 1997; Local Government Bill of 2020; National Decentralisation Policy of 2014; Report on National Legal Framework on Decentralisation of 2015 by Ramohapi Shale and Jaap de Visser; Issues Paper for the Reform of Lesotho Local Government Act of 1997 prepared in 2015 by Jaap de Visser and Ramohapi Shale: **The status of decentralisation by key ICM related ministries and challenges thereof – Local Government, Water, Agriculture, Environment, Forestry, Range and Soil & Water Conservation.**

2.7. Laws of Lerotholi 1938 (Anti-erosion measures); Draft Soil and Water Conservation Policy: **Combating land degradation on cropland, rangelands and settlements.**

## Annex VI: The Role of Chiefs and Councils in Lesotho

“Chiefs historically served as “governors” of their communities with authority over all aspects of life, ranging from social welfare to judicial functions. Although their powers have ebbed and flowed, they have nonetheless been steadily eroded since the beginning of the colonial period and continuing into the present with the recent introduction of a decentralised system of government in Lesotho. Under the legislation governing this process (the Local Government Act of 1997), at least some of their powers and functions have been transferred to recently established local government structures. Since some of these powers are given to Chiefs by the (amended) Chieftainship Act (1968) and Land Act (1979), confusion has arisen as to the exact roles and functions of Chiefs in local governance vis-à-vis the roles of local government structures. Some of this confusion may be a deliberate form of resistance to the changes, but it is apparent that legislative clarity is required and that the roles and functions of all role-players need to be clearly defined and understood if development is to take place in a coordinated way. The role, functions and relevance of Chiefs in local governance is clearly articulated in the Ministry of Local Government and Chieftainship’s draft strategic plan for the period 2009 – 2013”.<sup>36,37</sup>

Following independence in 1966, the roles, functions and powers of Chiefs were revised by the Chieftainship Act (1968) as:

- To support, aid and maintain the King in his government of Lesotho.
- To serve the people.
- To promote their welfare and lawful interests.
- To maintain public safety and public order among his people.
- To exercise any other powers or functions given to him by law.
- To prevent crime and arrest (or cause to be arrested) anyone suspected of
- Contemplating committing a crime.
- To cause anyone in their area against whom there is a warrant of arrest or who
- can be arrested without a warrant to be arrested.
- To seize stolen property.

Chiefs are recognised by the Constitution of Lesotho (1993), although the Constitution only deals in detail with some of the powers and functions of Principal Chiefs leaving Chiefs’ powers and functions to ordinary legislation such as Chieftainship Act.<sup>38</sup>

Chiefs have other functions given to them by a variety of laws (including customary law) such as:

<sup>36</sup> Extract from Morgan, G., T. Wolfson, J. Tangney, N. Sello, M. Tsoele and P. Lerotholi. 2009. Chieftainship and Local Governance in Lesotho. Government of Lesotho (Study by GOPA under European Union funding), Maseru, Lesotho.

<sup>37</sup> Chiefs’ roles are, in the main, codified in the Chieftainship act 1968 and Laws of Lerotholi (Revised Edition) 2013.

There is a debate about chiefs’ role because as far as range management is concerned, for instance, councillors need to coordinate with a chief for certain functions. In setting aside leboella (resting a grazing area in a rotational grazing system), both the chief and councillor should agree. In some instances, the councillor is unable to reach the breadth and depth of his/her constituency. A chief will therefore, a lekhotla (traditional meeting mainly of men) to decide on the times and areas of leboella. Livestock found grazing in such areas must be impounded. It is the chief who must instruct range riders to impound the livestock. It is the chief who has an impoundment kraal to keep the impounded livestock until owners pay fines to release them. There is an overlap of responsibilities. The Local Government Act 1997 has empowered council over natural resources. Chiefs feel belittled by this law which and tend to bear a grudge and resist councillors’ role. Councillors’ role is not well defined, except to indicate their responsibility over grazing control and natural resources. This is a grey area that needs to be harmonised. This refers to chiefs below the level of the Principal Chief. At the PC’s level there is no such overlap. It is clearly spelled out in the Range Management and Grazing Control Regulation of 1980, as amended, that cattlepost grazing areas in the mountain areas are under their control. Boundaries are well defined.

<sup>38</sup> Section 103 of the Constitution entrenches the presence of chiefs, and also refers to their detailed functions in “Each Chief shall have such functions as are conferred on him by this Constitution or by or under any other law”. Their functions are spelled out Chieftainship Act of 1968.

- To be the custodians of Basotho culture and traditions.<sup>39</sup>
- To ensure that the poor, the sick, the disabled and the destitute (including widows and orphans) are provided for by setting aside land to be specifically cultivated for them by the rest of the village – known as *Tsimo Ea Lira*.<sup>40</sup>
- To keep custody of lost items including livestock and establish ownership under the Animal/Livestock Theft Act (2003).
- To enforce rule of law, including under the Criminal Procedure and Provision of Evidence Act (1981).
- To attest the registration of births, deaths and marriages of his subjects.<sup>41</sup>
- To serve as the first contact person in his area of jurisdiction.
- (And possibly) to allocate land under the Land Act (1979).<sup>42</sup> As will be seen in the discussion that follows, a great deal of uncertainty and disagreement exists as to whether Chiefs still have the role in land allocation given to them by the Land Act (1979) (as amended by various Orders during the period of military rule).

However, with the changing times, the Chieftainship Act of 1968 is being considered for review following studies undertaken to align it with the prevailing situation of new democratic dispensation.<sup>43</sup>

The Development Councils Order of 1991 created Village Development Councils to accelerate the socio-economic development of the country. Chiefs were the Chairpersons of these Councils, which existed side by side with the Land Allocating Committees established by the Land Act of 1979, until these Committees were abolished by the Land Amendment Act of 1992, which transferred the power to allocate land from the Land Allocating Committees to the Village Development Councils. Although the Development Councils Order of 1991 was amended in 1994 to elect their Chairperson (removing the automatic right of Chiefs as Chairperson), the Land Act was not amended to provide for an elected Chairperson.<sup>44</sup>

The present Land Act of 2010 defines “allocating authority” as Local Council or other agency empowered to allocate land under the Act. Section 14 of the Act indicates that power to allocate and revoke land shall be exercised by the local council<sup>45</sup> in consultation with the chief, the two institutions having jurisdiction in the area. This is the reason why chiefs have not been happy with the removal of their power from land allocations.<sup>46</sup>

Chiefs’ functions have been eroding away over time very much to their disgruntlement. According to Section 5 of the Local Government Act 1997, The First Schedule sets out the powers of all local authorities as follows:<sup>47</sup>

1. Control of natural resources (e.g. sand, stones) and environmental protection (e.g. dongas (*gullies*), pollution)\*<sup>48</sup>.
2. Public health (e.g. food inspection, refuse collection and disposal)\*.
3. Physical planning\*.
4. Land / site allocation\*.
5. Minor roads (also bridle-paths)\*.

<sup>39</sup> In practice, Chiefs are no longer only consulted on land allocation.

<sup>40</sup> These would have come from the customary law. But in practice it does it is no longer a prevailing practice.

<sup>41</sup> Codified in other law dealing with registration of births and deaths.

<sup>42</sup> The Land Act 2010 supersedes previous laws and prevails over them. There now exist Community Councils that replaced Village Development Committees.

<sup>43</sup> Chieftainship Act to be reviewed will rightly address many of the areas of uncertainty because of later laws that superseded it. Since the process has not started, we cannot ascertain what it will contain. Perhaps now that there is much visibility about ICM, there is a need to incorporate ICM elements.

<sup>44</sup> All previous laws have been superseded by Land Act 2010. It is the councils’ function to deal with land allocation matters. Chiefs do not maintain historical role as Chairperson any more.

<sup>45</sup> Local Councils refer to Community Councils, Town/Urban Council, and Municipal Council. As mentioned above, the Land Act prevails.

<sup>46</sup> Consensus prevails where there is harmonised working relationship between the Council and the Chief. Otherwise, councils have the upper legal hand.

<sup>47</sup> We can assume that chiefs were consulted when the Local Government Act 1997 assigned these roles to councils at the expense of the chiefs authority, because all laws get passed by Parliament after thorough consultations process. Besides, part of the Parliament, the Senate, vets all laws before enactment. The functions of councils are outlined in the main law. Regulations would help defining specific details on the “how”.

<sup>48</sup> Asterisk denotes relevance to ICM

6. Grazing control\*.
7. Water supply in villages (maintenance)\*.
8. Markets (provision and regulation)\*.
9. Promotion of economic development (e.g. attraction of investment)\*.
10. Streets and public places.
11. Burial grounds\*.
12. Parks and gardens\*.
13. Control of building permits\*.
14. Fire\*.
15. Education\*.
16. Recreation and culture\*.
17. Roads and traffic.<sup>49</sup>
18. Water resources\*.
19. Fencing.
20. Local administration of central regulations and licences.
21. Care of mothers, young children, the aged and integration of people with disabilities.
22. Laundries.
23. Omnibus terminals.
24. Mortuaries and burial of bodies of destitute persons and unclaimed bodies.
25. Public decency and offences against public order.
26. Agriculture: services for the improvement of agriculture\*.
27. Forestry: preservation, improving and control of designated forests in local authority areas\*.

In the Second Schedule of the Act, additional functions of Community Councils are set out as follows:

1. Control of natural resources (e.g. sand, stones) and environmental protection (e.g. dongas, pollution)\*.
2. Land/site allocation\*.
3. Minor roads (also bridle-paths)\*.
4. Grazing control\*.
5. Water supply in villages (maintenance)\*.
6. Markets (provision and regulation)\*.
7. Burial grounds\*.

Principal Chiefs' role as far as natural resources is concerned deals with cattlepost grazing areas. This has been a bone of contention because PCs were aggrieved by what looked like their function over cattlepost areas had been taken over by community councils.<sup>50</sup> This was brought about by new delineations of community council boundaries that extended into cattlepost areas.<sup>51</sup> The problem was heightened during discussions on the Draft Range Resources Management Bill. First, Principal Chiefs complained that their function had been usurped by the Minister because there was nothing that defined their role on cattlepost grazing areas<sup>52</sup>. Secondly, there was the issue of new delineation of council boundaries that extended into grazing areas, and thirdly, the Department of Range Resources

<sup>49</sup> In our consultations with the Ministry of Local Government it articulated well that local councils will have the capacity if and only when resources have been fully devolved to them, namely budget, staff, vehicles and decision-making (non-political). We were informed that rural roads construction and maintenance is answerable to respective district councils.

<sup>50</sup> In the Range Management and Grazing Control Regulations of 1980. These were originally in the Laws of Leretholi 1938. Legal definition: "cattlepost area" means an area reserved for winter and summer grazing in the Lesotho highlands as prescribed by relevant authorities". It is the Draft Range Resources Management Bill and preceding laws.

<sup>51</sup> Delineations extended into cattlepost areas during the new boundary merger to align the council constituencies with those of the general elections boundaries.

<sup>52</sup> Codified in the Range Management and Grazing Control Regulations of 1980.

Management carried out mapping of chiefs' areas under the financial support of the Wool and Mohair Promotion Project (WAMPP), funded by IFAD.<sup>53</sup> One or two Principal Chiefs were not satisfied with the exercise yet they had delegated their subordinates during the delineation field work. All the problems have been resolved to the satisfaction of all those concerned on these matters<sup>54</sup>.

Community councils have been empowered to perform functions that relate to ICM such as the administrative matters on grazing control, particularly outside the cattlepost areas. Since there are more village and other grazing areas that the councillors are required to deal with, the grazing areas should ideally be accorded the administration of grazing control. For instance, as enshrined in the Range Management and Grazing Control Regulations of 1980, it is the chief who can summon range riders to go and impound livestock seen trespassing on *leboella*<sup>55</sup>. The bigger picture of the need for harmonization of the roles of chiefs and that of councils need more work than can be dealt with here.

The Study by Morgan *et al.* referenced above provides an excellent starting point for further work. A clearer way forward would be to revise the Chieftainship Act of 1968 as it's very much outdated. New definitions of functions of chiefs should be better spelled out in line with emerging and contemporary governance issues.

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<sup>53</sup> In this instance, chiefs' areas referred to cattlepost areas that were being mapped under the Principal Chiefs jurisdictions. There are many cattlepost areas in the mountain summer grazing areas. There is what is called transhumance where livestock move seasonally between winter grazing areas around villages in the mountains, foothills and lowlands. It is more or less similar to the US, where livestock move seasonally to and from between Bureau of Land Management land and privately owned land.

<sup>54</sup> Director of Department of Range Resources Management. Personal Communication (29 September 2021). The conflict referred to under the Range Bill centred on cattlepost grazing areas, which the sole responsibility of Principal Chiefs. The new Range Bill defines their role.

<sup>55</sup> Leboella is defined in the Laws of Lerotholi (Revised Edition) 2013: "Leboella" means an area set aside for the propagation of grass, thatching grass, reed beds, tree planting or rotational grazing. I.e. it refers to rangeland areas rested from livestock grazing for a specified period to allow rejuvenation of grass.



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