

3.2.3 Lesotho

a) Legal Framework

The Constitution and Governance

Lesotho gained its independence as a British Protectorate in 1966, with the adoption of a new Constitution in 1993. There was a parliament for five years, which was followed by political turmoil resulting in the suspension of that Constitution in 1970. In 1986 the military took over the reigns of government, and instituted an Interim Constituent Assembly that then prepared another Constitution leading to new elections in 1993. A new parliament and a new democratic government were installed under this Constitution, which is being used to govern the country today. Another political uprising occurred following the 1998 general elections because the opposition expressed dissatisfaction with the outcome of the elections. This resulted in the intervention by SADC, and an Interim Political Authority was set up to prepare for fresh elections. It was during this period when the Constitution was amended to change the electoral system from “first-passed-the-post” or “winner-takes-all” to a mixture of this with proportional representation. There are now eighty seats in parliament comprising members elected from the constituencies, that being the first-passed-the-post. In addition there are forty seats for members from the proportional representation of the political parties that contested the elections. This makes a total of 120 parliamentary seats.

All these disturbances have impinged on the democratic rights (freedom of activity) of the citizens that are so well embedded within the Constitution. Citizens are now impeded from effective participation in development programmes. While Lesotho was regarded as one of the fastest growing economies in Africa in the late 1990s, it has regressed considerably. For example, Lesotho’s gross domestic product (GDP) averaged 8 percent between 1991 and 1996, but dropped to –4.6 percent in 1998 as a consequence of the political unrest in 1998. It grew to 1.3 percent in 1999, 2.7 in 2000 and was projected reach 4.3 percent in 2002 (Minister of Finance 2003).

The Constitution provides for a governance structure that has the Parliament, Executive and the Judiciary at the central level. It stipulates that local authorities shall be established by an act of Parliament in line with the Constitution. The structure of local government has four tiers – Community Council, Rural Council, Urban Council and Municipal Council. Elections, soon to be held (no date yet, arrangements advanced) will be conducted by the Independent Electoral Commission to ensure transparency, secret balloting, freedom and fairness. Up to now, previous elections stemming from the old structures now in transition have lacked these attributes. These did not allow for true democracy to take root to ensure that the public is fully engaged in decision-making in the affairs that would improve their quality of life.

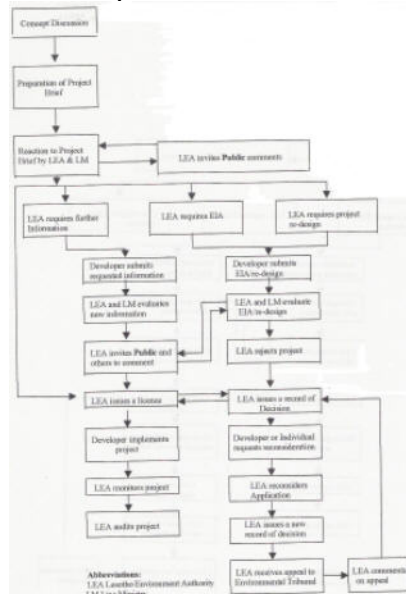
According to the Constitution, under the chapter on Principles of State Policy, clause 36 on Protection of Environment reads:

“Lesotho shall adopt policies designed to protect and enhance the natural and cultural 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.”

Environmental Legislation

The Environment Act No.15 of 2001 was passed by Parliament but has not yet been given commencement date in a gazette. The Act makes mention that the developer shall, for the first step, prepare a project brief (Figure 1) which should, among others (here showing only as far the people which are affected), state the number of people that will gain employment from the project. The Act then stipulates that once environmental studies have been carried out, the environmental impact statement shall be open for public inspection, and may be reviewed by any person. The responsible authority is then expected to review the environmental impact statement, and in so doing at its discretion shall:

Figure 1. Procedural Steps for Environment Impact Assessment in Lesotho



- Invite the public to make comments on the environmental impact statement in general;
- Invite those persons who are most likely to be affected by the proposed development;
- Require the holding of a public hearing for persons most likely to be affected by the proposed project or activity, only if deemed necessary;

To assist in the implementation of the Act, general guidelines for environmental impact assessment have been designed. In the first step of preparing a project brief, it is required that preliminary consultations are made with all the interested and affected parties. The guideline defines this as “individuals or groups concerned with an activity and its consequence”.

Interested and affected parties (I & AP). In Lesotho, these may be determined from established lists and groups networking in the area. In certain proposals there may not be clearly definable groups in which case the public may be notified through the media, but there must be caution in doing so. For instance, it is often said that though Lesotho has one of the highest literacy rates in Africa, and the fact that there a number of newspaper in the language (Sesotho) understood by the majority, the people nevertheless lack a culture of reading. So, advertisements in newspapers will not be sufficient. Most people do listen to radio; it may, therefore, be the best way of reaching a large number of “publics”. The methods for notifying rural and disadvantaged communities about proposals and opportunities for their public involvement need special consideration. The onus is on the developer to ensure that all interested and affected parties have been informed about the proposal and their input sought. It is recognised that notification does not mean seeking permission from the interested and affected parties, but that failure to involve them early may jeopardise the project’s implementation success later.

Publication of Project Brief (PB) or Environmental Impact Statement (EIS). Upon receipt of the project brief, the authority will (1) publish it in at least three newspapers circulating in the country, giving a summary of the contents of the brief; (2) provide copies of the summary to the communities; where the project will be situated or on which it will have significant impact, and such other information as may be deemed necessary for them to understand and make informed input; and (3) consult with those communities and consider their views and information. The project brief will be made available for public inspection and copying at a time and location determined by the authority.

Public Hearing: a democratic way to information. Depending on whether the authority deems it necessary, a public hearing to invite all interested and affected parties shall be held within the vicinity of the proposed project. The developer may decide, in any case, to hold a public meeting to enable the interested and affected parties to bring forward their opinions on the proposed project. People of Lesotho are used to these kinds of meetings in Lesotho, traditionally referred to as “*pitso's*”. Many consultations are carried this way; amongst the most important were the current 1993 Constitution of Lesotho and the Land Policy Review Commission of 2000.

The developer shall then inform the authority about the intention to hold a public hearing, place and venue, date and time, invited stakeholders and how the I & AP are to be invited. The developer shall further invite the authority and relevant line ministry to such a hearing. The developer is required to appoint a facilitator who shall compile all relevant questions and requests presented at the meeting and submit written conclusions.

A description of the intended public participation process shall be forwarded to the authority as part of the Project Brief.