



COMPARATIVE ANALYSIS OF HOUSING ACTS IN FIVE COUNTRIES: BOLIVIA (PLURINATIONAL STATE OF), BOTSWANA, ETHIOPIA, NIGERIA AND SOUTH AFRICA

URBAN LEGAL CASE STUDIES | VOLUME 13

UN HABITAT
FOR A BETTER URBAN FUTURE

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Comparative analysis of housing acts in five countries: Bolivia (Plurinational State of), Botswana, Ethiopia, Nigeria and South Africa

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Coordinators: Remy Sietchiping and Anne Amin

Principal Author: Lieutenant Chiu-Hing Chan (Institute of Advanced Legal Studies, University of London)

Contributors: Anne Amin, Maria Mousmouti (Institute of Advanced Legal Studies, University of London), Samuel Njuguna and Aminata Traore

Editing support: Vicky Quinlan

Layout and Design: Martin Achar

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CONTENTS

ACRONYMS	VIII
FIGURES.....	XI
ABOUT THE AUTHOR.....	1
BACKGROUND AND INTRODUCTION	3
AN OVERVIEW OF THE HOUSING LEGISLATIVE MECHANISM IN LESOTHO	4
SUMMARY OF THE COMPARATIVE ANALYSIS	6
CHAPTER I. INSTITUTIONAL FRAMEWORK AND FUNCTIONS OF HOUSING AUTHORITIES.....	11
CHAPTER II. DEFINITIONS OF ADEQUATE AND AFFORDABLE HOUSING	30
CHAPTER III. MECHANISMS TO MAKE LAND AVAILABLE FOR AFFORDABLE HOUSING	33
CHAPTER IV. MECHANISMS TO INCREASE THE SUPPLY OF ADEQUATE HOUSING BY GOVERNMENT, NON-GOVERNMENTAL ORGANIZATIONS, THE PRIVATE SECTOR AND COOPERATIVES.....	42
CHAPTER V. HOUSING PLANS AND HOUSING DELIVERY SCHEMES, HOUSING COOPERATIVES, INFORMAL SETTLEMENTS UPGRADING AND PLANNING STANDARDS.....	45
CHAPTER VI. CRITERIA TO SELECT BENEFICIARIES	48
CHAPTER VII. MEASURES TO REDUCE HOUSING COSTS	51
CHAPTER VIII. PROVISIONS CONCERNING THE MAINTENANCE, REPAIR, REHABILITATION AND IMPROVEMENT OF SOCIAL/AFFORDABLE HOUSING.....	53

CONTENTS

CHAPTER IX - RENTAL HOUSING PROVISIONS.....57

CHAPTER X – MECHANISMS TO FINANCE THE CONSTRUCTION OF AFFORDABLE HOUSING BY PUBLIC HOUSING COMPANIES, NGOS, PRIVATE SECTOR AND MEASURES TO FACILITATE AFFORDABILITY 64

CHAPTER XI – DISPUTE RESOLUTION.....72

RECOMMENDATIONS.....79

REFERENCES.....81

ACRONYMS

ADR	Alternative dispute resolution
BHC	Botswana Housing Corporation
BNG	Breaking New Ground Comprehensive Government, South Africa
DFI	Development finance institution
DHS	Department of Human Settlements, South Africa
EAAB	Estate Agency Affairs Board, South Africa
FHC	Federal Housing Corporation, Ethiopia
FONDESIF	Financial System and Support to Productivity, Bolivia
HDA	Housing Development Agency, South Africa
LDC	Land Development Corporation, Lesotho
LHLDC	Lesotho Housing and Land Development Corporation
MIH	Ministry of Infrastructure and Housing Development, Botswana
MUDC	Ministry of Urban Development and Construction, Ethiopia
NDoHS	National Department of Human Settlements, South Africa
NDP	National development plan
NHBRC	National Home Builders Registration Council, South Africa
NHFC	National Housing Finance Corporation, South Africa
NHF	National Housing Fund, Nigeria
PVS	Social and Solidarity Housing Programme, South Africa
SHI	Social Housing Institution, South Africa
SHRA	Social Housing Regulatory Authority, South Africa
TOR	Terms of reference

LIST OF FIGURES

Figure 1: Extract from Botswana’s Rent Control Act 1977 showing the Assessment of Controlled Rent.	35
Figure 2: Extract from Bolivia’s Supreme Decree no 1842.....	66
Figure 3: Extract from Botswana’s Acquisition of Property Act 1955.....	73

ABOUT THE AUTHOR

Chiu-Hing Chan is an admitted Australian solicitor in the Australian High Court and the Queensland Supreme Court, with seven years of experience as an appointed JP Legal Member on the Queensland Civil & Administrative Tribunal, hearing and resolving minor civil disputes including residential tenancy, consumer protection, contractual disputes and motor vehicle accidents. He is currently an appointed Member of the Queensland Parole Board with five years of experience determining the parole applications of prisoners. He is also currently a Staff Policy Officer with the Department of Defence, Australian Navy Cadets, with the rank of lieutenant, responsible for writing national based policies and conducting national audits for the past three years. Prior, he was an inquiry officer for three years conducting professional misconduct investigations.

Chiu-Hing has a Bachelor of Law and International Relations, a Postgraduate Diploma in Legal Practice and a Postgraduate Diploma in Teaching and Learning. In 2020, he completed a triple Master of Law degree with the University of London (LLM) in Drafting Legislations, Regulations and Policies; University of Newcastle (LLM) in Dispute Resolution; and University of Wollongong (LLM) in Criminal Practice. Prior to this, he was an Associate Teaching Fellow with the University of Queensland for three years at the Confucius Institute.



La Paz Hills, Bolivia by Alex Proimos source: Flickr

BACKGROUND AND INTRODUCTION

The Ministry of Housing of Lesotho requested UN-Habitat for technical support to develop a new housing act to implement their 2018 National Housing Policy. UN-Habitat's Policy, Legislation and Governance Section used its long-standing partnership with the Institute of Advanced Legal Studies at the University of London to develop this comparative analysis of housing acts. The aim is to assist the Government of Lesotho to address the increased demand for urban housing, improve residents' quality of life, enhance services accessibility, and improve mobility and security of tenure, while recognizing the environmental impact of climate change.

This comparative analysis report provides an insight into available housing legislative models that are already in use in Bolivia (the Plurinational State of), Botswana, Ethiopia, Nigeria and South Africa. These are countries with similar socioeconomic backgrounds, land availability and environmental constraints and challenges.

With a comparative analysis of housing legislation, recommendations can then be proposed on the best model available that could be entirely adopted or modified by the Lesotho Government to suit its country's needs and local context.

The following terms of reference were developed based on a primary review of various housing acts and which would best serve the legislative needs of Lesotho:

1. Institutional framework and functions of housing authorities.
2. Definitions of adequate and affordable housing.
3. Mechanisms to make land available for affordable housing (e.g., inventory of lands, identification of sites for social housing, priorities in the acquisition of lands, modes of land acquisition, expropriation of idle lands, disposition of lands for social housing, valuation of lands for social housing, limitations on the disposition of lands for social housing, planned and serviced land, increased property tax or charges for idle lands, land assembly, among others).
4. Mechanisms to increase the supply of adequate affordable housing by government, non-government organizations, private sector, cooperatives (e.g., public social housing and rental housing, non-government organization-owned/managed housing, private sector housing developed with incentives).
5. Housing plans and housing delivery schemes, housing co-operatives, informal settlements upgrading, planning standards.
6. Criteria to select beneficiaries.
7. Measures to reduce housing costs (e.g., building materials, low-cost technologies and flexible administrative and planning requirements).
8. Provisions concerning the maintenance, repair, rehabilitation and improvement of social/affordable housing.
9. Rental housing provisions (rent control, lease

agreements, security of tenure, landlord and tenant relations, among others).

10. Mechanisms to finance the construction of affordable housing by public housing companies, NGOs, private sector, measures to facilitate housing affordability (e.g., national housing funds, measures to increase access to formal housing finance, micro-finance lending, housing allowances and rental subsidies, grants, covered bonds, loans, loan insurance, guarantee and protection, community mortgage programme).

11. Dispute resolution.

The first finding from the legislative research in the countries selected for comparative analyses is that none of them have a single housing legislation that contains all the provisions outlined in the terms of reference. Instead, each item in the terms of reference generally has its own legislative instrument and to address each item, all current primary, secondary and subsidiary legislation for each country studied were examined in relation to the following issues: land use and control, planning and design, building regulation, housing institutional frameworks, housing financial loans and subsidies, transfers and stamp duty and dispute-resolution processes. No repealed legislation was examined or taken into consideration for this study.

An overview of the housing legislative mechanism in Lesotho

There are eight principal legislative instruments identified as being critical to social housing development in Lesotho and which regulate the Government's social housing development agency, land use and acquisition, dispute-

resolution processes and housing financial loans. These are the following: the Lesotho Constitution, 1993; the Lesotho Housing and Land Development Corporation Order No 122, 1988; the Land Act 2010; the Land Administration Authority Act 2010; the Town and Country Planning Act 1980; the Building Control Act 1995; the Environment Act 2008 and the Financial Services Act No 3 of 2012.

Article 34 of the Lesotho Constitution, 1993 specifies that "Lesotho shall adopt policies which encourage its citizens to acquire property, including land houses....and shall take such other economic measures as the State shall consider affordable". Social housing development is a responsibility predominately under the Ministry of Local Government and Chieftainship Affairs, with the ministry's objective being poverty reduction, service delivery and enhancing the quality of life.¹ In 1988, the ministry (then known as the Ministry of the Interior, Chieftainship Affairs and Rural Development) merged two government housing development bodies (Lower Income Housing Company and the Lesotho Housing Corporation) into the Lesotho Housing and Land Development Corporation under Order No 122, 1988.² The corporation, which reports to the Ministry of Local Government and Chieftainship Affairs, is focused on housing delivery to all, unlike the previous two housing bodies that solely focused on a particular socioeconomic class. The Lesotho Housing and Land Development Corporation is a government established corporation that reports to the ministry and its responsibility is to:

- a. implement an array of schemes including self-help housing, sites and services, land

¹ Government of Lesotho, "Ministry of Local Government and Chieftainship Affairs". <https://www.gov.ls/directory/ministry-of-local-government-and-chieftainship-affairs/>

² Lesotho Housing and Land Development Corporation. "About Lesotho Housing." <https://lesothohousing.org.ls/#>.

development and cooperating housing that are all self-financing;

- b. assist private individuals to develop land and deliver housing;
- c. engage in the development and management of rental housing schemes where it is deemed to be in the economic interest of the corporation to manage the property;
- d. assist in the mobilization of capital to the shelter sector by emphasizing its activities efficiency and cost recovery programmes to ensure a good return on investment;
- e. develop a long-term capital programme that will ensure the corporation's sustained financial viability and ability to remain a vital participant of the shelter sector in Lesotho;
- f. consult with other government ministries to devise uniform procedures for effective collaboration throughout Lesotho.

Taking into consideration the Lesotho Constitution (and its seven amendments),³ the Government has the power to arbitrarily acquire land under Article 17 for specified reasons listed under Article 17(1)(a). Pursuant to Article 17(1)(c), the person whose land has been acquired must be compensated and, under Article 17(2), she or he has the right to access the High Court to challenge the legality of the acquisition and the compensation amount. The High Court has a division – the Land Court and the District Land Courts which are tasked with resolving land disputes under Part XII of the Land Act 2010. Based on Article 129(1), the High Court decisions can be appealed to the Court of Appeal. The King also has the power, under Article 108,

to allocate land, grant interests and rights over the land and revoke or restrict those rights in accordance with the constitution and regulating laws. The King's power is reiterated in Part II of the Land Act 2010.⁴ Parliament has the power to create the laws to regulate land allocation under Article 109 of the Constitution. This was implemented in the form of the Land Act 2010 and the Land Administration Authority Act 2010.

The Land Act 2010 was enacted to consolidate the Land Act 1979 amendments and related laws. It also introduced reforms in land administration and land tenure security to promote efficient land use.⁵ For rural land, section 14 establishes an allocating authority in each local government with the responsibility for allocating rural land. An allottee of residential land in a rural area requires an application to the allocating authority.⁶ Under section 25(1), an allocating authority is established for urban land while section 26 contains the provisions over the allocation of available urban land. The Land Act also outlines leasing rights, including those for residential purposes, which cannot exceed 90 years,⁷ as well as lessee's and lessor's rights and obligations. The legislation also outlines land compulsory acquisition processes under Part VIII and IX, including compensation under Part X. The Land Administration Authority Act 2010 establishes the Land Administration Authority and its board, whose function includes granting consents for land transactions⁸ and issuing leases to land.⁹

⁴ Land Act 2010 (Lesotho). www.ilo.org/dyn/natlex/natlex4.detail?p_lang=&p_isn=91508&p_country=LSO&p_count=127#:~:text=The%20Land%20Act%202010%20proposes,an%20economic%20asset%20in%20Lesotho.

⁵ Centre for Affordable Housing Finance Africa, "Housing Finance in Lesotho". <https://housingfinanceafrica.org/countries/lesotho/>.

⁶ Land Act 2010, Section 16.

⁷ *Ibid.*, s32(1)(a)(i).

⁸ Land Administration Authority Act 2010 (Lesotho). [https://lesotholii.org/ls/legislation/num-act/2010/9, s5\(2\)\(a\)\(ii\)](https://lesotholii.org/ls/legislation/num-act/2010/9, s5(2)(a)(ii)).

⁹ *Ibid.*, s5(2)(a)(iv).

³ constituteproject.org, Lesotho's Constitution of 1993 with Amendments through 2018. www.constituteproject.org/constitution/Lesotho_2018.pdf?lang=en.

The Town and Country Planning Act 1980¹⁰ regulates urban planning by regulating the development of land, establishing planning boards and declaring planning areas. While planning falls under the Ministry of Local Government and Chieftainship Affairs, development control is delegated to councils and the physical planning is a shared responsibility with the Ministry of Environment according to the Environment Act, 2008.

Local governments are responsible for approving all building construction design and standards under the Building Control Act 1995. The country's building regulations under the Building Control Act is decided by a board¹¹ comprising of representatives from different government departments¹² that are responsible for reviewing building standards and ensuring building materials and construction techniques are compliant with the Act.¹³ The board reports to the Ministry of Public Works and Transportation.

The Central Bank of Lesotho is responsible for regulating all financial institutions in Lesotho, under the Financial Institutions Act 2012. Under section 28(6),¹⁴ there are no limits placed on financial institutions providing loans to the Government. Under section 72(2)(h), the Central Bank has the power to provide written notices to licensed institutions specifying the interest rate. However, for individuals (non-institutions) who are moneylenders, the Money Lenders Order 1989¹⁵ regulates these lending activities and it is specified under section 6 that interest

rates cannot exceed 25 per cent per annum, which would otherwise be considered harsh and unconscionable. If the money lending contract does not specify an interest rate, the Order's Schedule at section 3 specifies that the interest rate will be 12 per cent per annum.

Summary of the comparative analysis

After extensive research into the housing legislation and regulatory framework for Bolivia (Plurinational State of), Botswana, Ethiopia, Nigeria and South Africa, none of the countries has a single, stand-alone housing legislative instrument that contains mechanisms and provisions covering all aspects of the terms of reference, namely land acquisition, affordable housing construction, housing plans and delivery schemes, criteria for beneficiaries, provisions for repair and maintenance of housing, rental provision, measures to reduce housing costs, financing mechanisms and dispute-resolution processes. Based on research, it is evident that the mechanisms specified in the terms of reference are generally divided between different specialized legislative instruments as these instruments are regulated by different departments and authorities. As an example, land acquisition for housing provision would generally fall within a "land use" or "land control" legislation with the responsibility for implementation assigned to a land or agricultural minister, while financial provisions would fall in a legislative framework to be implemented by the Central Bank, the Treasury, or the Finance Ministry. For legal simplicity, it is possible to have a singular housing legislation encompassing several provisions covered in the terms of reference if they are administered by the same authority.

¹⁰ Town and Country Planning Act 1980 (Lesotho). <http://extwprlegs1.fao.org/docs/pdf/les128642.pdf>.

¹¹ Building Control Act 1995 Lesotho, s9.

¹² Ibid, s3.

¹³ Ibid, s5.

¹⁴ Financial Institutions Act 2012 (Lesotho). [https://lesotholii.org/ls/legislation/num-act/3, s28\(6\)](https://lesotholii.org/ls/legislation/num-act/3, s28(6)).

¹⁵ Money Lenders Order 1989 (Lesotho). https://lesotholii.org/ls/legislation/act/1989/25/money_orders_act_no25_1989_pdf_15099.pdf.

All study countries have a dedicated ministry responsible for urban planning, public works, and housing, including an autonomous housing corporation or agency that is responsible for implementing housing policies, creating housing schemes and working with state or local government and stakeholders to oversee the design and construction of housing. Given that the housing responsibility in Lesotho is currently under the Ministry of Local Government and Chieftainship Affairs, it is recommended for consideration that the Ministry of Interior, Chieftainship Affairs and Rural Development and the Ministry of Housing and Public Works could be merged into one ministry. This ministry could carry out functions of urban planning, housing development, public works, building regulations and transport under one umbrella, which could promote more efficient and effective communication, planning and project implementation with all the essential services required for housing and urban development under one roof. Alternatively, a dedicated taskforce or committee consisting of members from the Ministry of Interior, Chieftainship Affairs and Rural Development and the Ministry of Housing and Public Works could be established to coordinate housing and infrastructure development.

The comparative analysis also revealed that, with the exception of South Africa, no country has a definition of “adequate” housing. However, the legislative framework of the Plurinational State of Bolivia does provide a definition of “affordable” housing which is based on the property value of the respective house and unit / apartment / property intended for purchase. The use of property value to define “affordable” housing could be considered for use in a legislative framework.

The legislative framework regulating land use in Nigeria and the Plurinational State of Bolivia are compacted in each country into one principal legislative instrument, however, land laws in Ethiopia are divided between two legislative instruments, while Botswana has three laws. Analysis of the legislative mechanisms to compulsorily acquire land to construct housing has demonstrated that negotiation attempts with the landowner are a pre-requirement in the Plurinational State of Bolivia and Botswana, before permitting the Government to exercise its land acquisition power. Ethiopia and Nigeria do not require such action before exercising their land acquisition powers. The underlying “purpose” for acquisition varied in each country, with the Plurinational State of Bolivia having a restrictive justification approach, while Ethiopia and Nigeria have broader contexts to acquire land. The framework in Botswana has an evenly balanced approach. It should be noted that all selected countries’ legislative frameworks recognize that individuals denied possession or use of the land because of the government’s acquisition should be fairly compensated in accordance with the land’s value, including any improvements made to it.

Legislative mechanisms to increase housing are generally in the form of:

- A. A dedicated autonomous government housing corporation or agency that is responsible for implementing government housing policies and plans, creating housing schemes, designing and constructing houses in collaboration with other levels of government, businesses and not-for-profit sectors.
- B. Finance-related legislation that creates a tax on a class of people and industries that is

specifically meant to generate funds to pay for the construction of houses, along with any improvements and repairs to existing dwellings.

- C. Property legislative provisions that provide the government with broader compulsory acquisition powers.

Mechanisms to impose taxation on specifically funded social housing constructions and the broadening of land acquisition powers could be an infringement of individuals' rights and have an impact on the economy, thus requiring careful consideration by any government wishing to adopt these particular legislative frameworks. This report also identified several legislative mechanisms that assist low-income individuals to have the financial means to purchase a house or unit apartment. Some of these are:

- Property legislative provisions that exempt stamp duty on a dwelling which is being used as a home by the purchaser.
- Finance legislative provisions that regulate bank's interest rates on loans to allow greater accessibility by prospective low-income home purchasers through less restrictive lending criteria and significantly lower interest rates based on the house value.
- Legislative provisions that require the respective housing corporation or agency not to make profit from its activities, thereby requiring houses and unit apartments to be sold or leased below the market price.

While heavy regulation of the banking industry's interest rates may be contrary to the free market economy in Lesotho, the legislative provision to exempt stamp duty for individuals intending to use the house as a home and provision to restrict

a government housing corporation from making profit from its activities could be considered worthy of adopting as a legislative amendment in several of that country's laws. An amendment to the Stamp Duty Act 1972 (Lesotho) and Lesotho Housing and Land Development Order 122, 1988 will need to be made respectively to best accommodate these proposals.

An analysis of the selected countries' legislative frameworks surrounding building regulations, rental laws and dispute-resolution processes found legislative provisions that may be worthy of consideration for adoption by Lesotho. In the Plurinational State of Bolivia, the objective of the housing agency's legislative framework is to promote technologies that could save building construction materials and building construction time, water and energy, which could contribute to reducing social housing construction costs.

It is also pointed out in this report that Lesotho currently does not have a legislated rental law instrument, which would clearly articulate the rights and obligations of landlords and tenants and outline the dispute-resolution process, in particular disputes over rent increases. Having analysed existing rental instruments from the selected countries, it is recommended that Lesotho considers introducing rental law legislation that adopts provisions of the Rent Control Act 1977 and the Rent Control Regulations 1978 of Botswana; these have a well-balanced approach towards landlord and tenant's rights and establish a Rental Control Tribunal to resolve disputes of rental increase. Consideration should also be made of the State of Lagos' Tenancy Law 2011 in Nigeria, specifically its rental dispute-resolution process that requires parties to participate in an alternative dispute resolution process, such as mediation, before proceeding to the court. The use of alternative

dispute resolution processes reduces the courts' burden to resolve rental disputes and are a low-cost solution.

In relation to general dispute resolution processes over land acquisition, building regulations and development approvals, this report demonstrates that Nigeria has the fairest and least bureaucratic processes compared to other countries analysed.

Complainants in Nigeria can refer disputes to the High Court rather than have their complaint arbitrarily decided by a departmental board or minister whose decisions are final and which raises impartiality concerns. This approach seems to apply to Lesotho already.



Loxton, South Africa by Juanita Swart source : Unsplash

CHAPTER I.

INSTITUTIONAL FRAMEWORK AND FUNCTIONS OF HOUSING AUTHORITIES

Case study country	Institutional framework	Functions
Bolivia (Plurinational State of)	<p>The Constitution of the Plurinational State of Bolivia,¹⁶ Article 19, stipulates that all levels of government are responsible for promoting the development of housing for social benefit, using adequate financing systems, based on principles of solidarity and equity. The development of housing is to be directed “preferentially to families with scarce resources, to disadvantaged groups and to the rural areas”.</p> <p>The general policy of housing is the responsibility of the national Government,¹⁷ however the issue of housing and public housing is a shared responsibility between the national Government and the respective State Governments.¹⁸ Local governments have the exclusive responsibility over urban development and urban settlement¹⁹ and similarly, rural native autonomous regions are responsible for housing and town planning in their jurisdictions.²⁰</p>	<p>Ministry of Public Works, Services and Housing. The ministry’s objective are the following:²¹</p> <ul style="list-style-type: none">a) Propose urban planning and housing policies within the framework of a national development plan.b) Propose comprehensive habitat, urban development and housing plans and programmes with the priority being the social interest of the poor and the general population.c) Propose and implement basic minimum standards for urban planning and the construction of houses and apartments which would promote employment and improve the quality of life.d) Promote the community’s access to the housing finance programme.

¹⁶ Constitute Project, Bolivia (Plurinational State of)’s Constitution of 2009. www.constituteproject.org/constitution/Bolivia_2009.pdf.

¹⁷ Ibid., Article 298(ii)(36).

¹⁸ Ibid., Article 299(ii)(15).

¹⁹ Ibid., Article 302(29).

²⁰ Ibid., Article 304(i)(16).

²¹ Supreme Decree No 28631. www.lexivox.org/norms/BO-DS-28631.xhtml. Chapter X.

In 2010, the Legislative Assembly passed the Framework Law on Autonomies and Decentralisation Law 2010,²² and Article 82 states that the municipal government (local government) is responsible for setting basic services policy surrounding habitat and housing, and developing and implementing housing construction programmes and projects in accordance with approved national policies and technical standards of the State Government.

In regions with an Indigenous peasant government, these governments have power over housing and urban development policies in accordance with their cultural practices and policies as defined by the national Government.²³ The Indigenous peasant government is also responsible for housing construction programmes and projects in accordance with national government-approved policies and technical standards. The national Government is obligated to provide technical support to assist the local government with achieving the housing programmes. The local government is responsible for the design, approval and implementation of urban development regimes in its jurisdiction, and for the formulation, approval and implementation of urban settlement policies in its area.²⁴

Chapter X of the Supreme Decree No 28631 (2006) outlines the ministry structure and function of the Ministry of Public Works, Services and Housing.

e) Facilitate actions for the construction of housing with investments from the private and public sectors.

f) Promote dispute-resolution processes between residential landlords and tenants.

The Vice-Ministry of Housing reports to the ministry and it is responsible for the ministry's housing objectives. The national housing agency – Agencia Estatal De Vivienda, reports to the vice ministry.

Agencia Estatal De Vivienda (National Housing Agency)

The purpose of the housing agency is to design and implement all national housing and habitat programmes and projects countrywide and those working in conjunction with autonomous territorial entities.²⁵

The National Housing Agency was established as a decentralized public institution with autonomy surrounding the organization's legal requirements, administration, finances and management.²⁶ While it has autonomy, the agency is under the control of the Ministry of Public Works, Services and Housing. Furthermore, the agency does not have a board of directors,²⁷ thus it is not a state-operated corporation. The agency's responsibilities are:²⁸

a) To promote the design and implementation of comprehensive housing and habitable programmes, considering the environment, customs and cultural diversity of the population.

b) To implement state social housing programmes on its own account or through specialized entities.

²² The Plurinational Legislative Assembly, Framework Law on Autonomies and Decentralisation (2010).

²³ Ibid., Article 82(iii).

²⁴ Ibid., Article 84(V).

²⁵ Plurinational Legislative Assembly, National Housing Agency Supreme Decree no 986, 2011. www.lexivox.org/norms/BO-DS-N986.html, article 4.

²⁶ Ibid., Article 1.

²⁷ Ibid., Article 2(ii).

²⁸ Ibid., Article 8.

The National Housing Agency Supreme Decree no 986 (2011) establishes the National Housing Agency and stipulates its functions through secondary legislation.

c) To promote and use innovative technology in the construction of social housing.

d) To attend to the population's needs for housing and habitat in areas affected by national disasters and in an emergency, in partnership with autonomous territorial entities or on its own accord.

e) To ensure there is no duplication of beneficiaries.

f) To follow instructions from the executive branch relating to social housing programmes and projects.

Under Article 3 of Supreme Decree no 2299, the housing agency has the power to issue contracts for work, construction material and consulting services aimed at designing and implementing state housing and habitat programmes nationally and those working in partnership with autonomous territorial entities. However, contracts will still need to be approved by the Vice-Ministry of Housing.

Case study country	Institutional framework	Functions
Botswana	<p>The Ministry of Infrastructure and Housing Development was established in October 2016 following reforms to the government ministerial portfolios.²⁹ Section 50(4) of the Botswana Constitution³⁰ allows the President to assign a minister to a ministerial portfolio created for the business of the Government of Botswana. However, there can only be a maximum of 18 ministerial offices as stipulated under the Ministerial Offices (Maximum Number) Act 1967. There are legislative frameworks for the corporation and boards that the Ministry of Infrastructure and Housing Development manages.</p> <p>The Ministry of Infrastructure and Housing Development institution is divided into two arms – infrastructure and housing development. The infrastructure arm is managed by the Department of Projects and Infrastructure Planning, while the housing development arm is undertaken by the Department of Housing.</p> <p>The Department of Housing manages the government-established Botswana Housing Corporation, the Town and Country Planning Board, and the Building Regulations Board.</p> <p>The Botswana Housing Corporation was established by an Act of Parliament – Botswana Housing Corporation Act 1971 as a government statutory corporation.</p>	<p>Ministry of Infrastructure and Housing Development.</p> <p>Under section 4 of the Building Control Act³¹, the minister is empowered to set building regulations, which include the construction of buildings, provision of lighting and ventilations and ascertaining the dimensions of rooms, height of buildings, sanitary conditions, water supply, non-electronic fittings, sewers and drains, inspection of work and testing of drains and sewers, and taking of sample building material by the local authority for testing.</p> <p>However, the authority to approve or reject individual building plans lies with the local authorities.³²</p> <p>Department of Projects and Infrastructure Planning</p> <p>a) Confirming availability of funds, land and services such as water, sewers, electricity, access roads.</p> <p>b) ascertaining land suitability (environmental impact assessment or environment management plan, topographical and geotechnical surveys).</p>

²⁹ Republic of Botswana, “Ministry of Infrastructure and Housing Development”. www.gov.bw/ministries/ministry-infrastructure-and-housing-development-mih.

³⁰ Constituteproject.org, Botswana’s Constitution of 1966 with Amendments through 2005. www.constituteproject.org/constitution/Botswana_2005.pdf?lang=en.

³¹ Housing Finance Africa, Building Control Act 1962 (Botswana). https://housingfinanceafrica.org/app/uploads/Botswana-Building-Control-Act.pdf_s4.

The Town and Country Planning Act 1977 outlines planning specifications and considerations, establishes the Town and Country Planning Board that determines development applications and outlines the application and approval processes of the board. The Act also outlines the process for the minister to prepare development plans for the National Assembly's approval and the minister's role in the decision-making and appeals process.

However, where housing development is proposed on "tribal land", approval and potential transfer of land to the housing authority is required to be sought from the respective tribal land board. There are 12 tribal land boards established under the Tribal Land Act 2018 and these manage tribal land in Botswana. The 12 boards report to the Ministry of Land Management, Water and Sanitation.

The Ministry of Infrastructure and Housing Development also manages the Building Regulations Board, which is established under the Building Control Act 1962. This Act gives power to the minister to establish building regulations and power to local authorities to determine applications under the Act. It also underlines the decision-making process when determining an application and the appeals process.

Department of Housing

The department has the following responsibilities:

- a) To facilitate the formulation and implementation of national housing policies and programmes.
- b) To facilitate provision of habitable basic shelter.
- c) To manage and maintain housing accommodation for central government employees.
- d) To conduct housing needs assessment to determine the demand for housing in Botswana.

Botswana Housing Corporation

Under section 14 of the Botswana Housing Corporation Act 1971,³³ the Botswana Housing Corporation is responsible for:

- a) The provision of housing, office and other building needs of the Government and local authorities.
- b) Undertaking and carrying out building schemes in Botswana.
- c) Managing land, houses, classes of houses and housing estates and other buildings transferred by the Government to be entrusted under the corporation.
- d) Surveying and assessing needs for housing and other buildings in Botswana.

³² Ibid., s5.

³³ Black Hall Publishing, Botswana Housing Corporation Act 1971 (Botswana). <https://botswanalaws.com/alphabetical-list-of-statutes/botswana-housing-corporation>.

- e) Construction and managing housing estates.
- f) Devising and undertaking programmes and housing schemes.
- g) Selling houses or other buildings.
- h) Purchasing, holding or selling any land held by the corporation.
- i) Lending money for the construction of houses or buildings.
- j) Compulsory acquisition of land after the approval of the President.³⁴

The Botswana Housing Corporation Board is also established under the Act and consists of up to 10 members who, in the opinion of the appointing minister, “have knowledge and experience likely to contribute to the successful direction” and operation of the Botswana Housing Corporation.

Town and Country Planning Board

Under section 5 of the Town and Country Planning Act,³⁵ the board is mandated to determine applications for permission to develop land and to advise the minister of the matter.

Tribal Land Board

Under section 4 of the Tribal Land Act,³⁶ the board is vested with the responsibility of all land in each tribal area and entrusted for the benefit and advantage of the citizens of Botswana for the purpose of promoting economic and social development. The board’s function is stipulated under section 5 of the Act to grant right to use land, cancel any land rights granted, impose restrictions on the use of the land, authorize any change of land user and authorize transfer of tribal land.

³⁴ Ibid., s20.

³⁵ Black Hall Publishing, Town and Country Planning Act 1977 (Botswana). <https://botswanalaws.com/alphabetical-list-of-statutes/town-and-country-planning>.

³⁶ Black Hall Publishing, Tribal Land Act 2018 (Botswana). <https://botswanalaws.com/principal-legislation/tribal-land-act-on-notice>.

Under section 7, the 11 board members are appointed by the relevant minister for a three-year period and they are eligible for reappointment. Three of the members are ex-officio members – a Kgosi or Moemela Kogsi (a tribal leader or a sub-tribal authority), a member representing the Ministry of Trade and a member representing the Ministry of Agriculture. There is no professional qualification requirement for the other eight members of the board. However, to be eligible for board appointment, section 8 of the Act stipulates that a person is disqualified from appointment if they have been declared insolvent or bankrupt, have been imprisoned, or they hold political or public office.

Building Regulations Board

Established under section 3 of the Building Control Act 1962, the board consists of six members appointed by the relevant minister. The legislation does not stipulate any professional qualifications required for appointment, except for the secretary of the board who can be a member of the public service. The boards' function is to hear grievances from parties whose proposed work under building regulations was rejected by the local authority, to which the party is seeking to appeal the decision.

Case study country	Institutional framework	Functions
Ethiopia	<p>The Ministry of Urban Development and Construction was established in 2015 under section 9(14) of the Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No 916/2015.³⁷ The Ministry of Construction was also established under the proclamation.³⁸</p> <p>The Federal Housing Corporation was established under Regulation no 398/2017³⁹ by the Council of Ministers under Article 5 of the Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation 916/2015 and Article 47(1) of the Public Enterprises Proclamation No 25/1992.</p>	<p>Ministry of Urban Development and Construction</p> <p>Functions of the ministry include:⁴⁰</p> <ul style="list-style-type: none"> a) To establish and implement integrated national urban systems by preparing national spatial plans and assist regional governments with capacity building. b) To conduct studies into urbanization and set criteria and roles for urban centres. c) To provide coordinated support for the development of urban centres and the surrounding areas. d) To provide capacity building support to urban centres to improve service delivery and ensure developmental good governance. e) To work in collaboration with regional states to undertake studies into integration of urban and rural development activities and implement any approved plans. f) To maintain city administrations' accountability to the federal Government. g) To undertake studies into citizens' acquisition of residential houses compatible with their own income. h) To undertake studies for the integration of urban development with the aim of poverty reduction. i) To ensure food security and job creation in urban areas.

³⁷ Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation 916/2015 (Ethiopia). <https://chilot.me/wp-content/uploads/2017/04/proclamation-no-916-2015-definition-of-powers-and-duties-of-the-executive-organs.pdf>.

³⁸ Ibid., s9(15).

³⁹ Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, Federal Housing Corporation Establishment Council of Ministers Regulation No 398/2017 (Ethiopia). https://chilot.files.wordpress.com/2017/11/398_2017-federal-housing-corporation-establishment-council-of-ministers.pdf.

⁴⁰ Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation 916/2015 (Ethiopia, s26).

- j) To provide support and monitor urbanization plans.
- k) To develop strategy for the creation of new townships.
- l) To undertake studies into the creation of an institution at federal and regional levels that will be responsible to acquire, develop and supply urban land through a transparent and accountable process.
- m) To provide support to ensure the supply of developed urban land in accordance with the demand.
- n) To establish a cadastre and land property market system that is transparent and accountable to enhance a free market economy.
- o) To ensure integrated urban infrastructure provision and service delivery are implemented.
- p) To undertake studies and implement integrated and efficient urban mobility and support.
- q) To establish standards and implement the standards for urban beautification and greenery development.
- r) To undertake study and deliver a financial system for the improvement of urban development, including the sourcing of urban development funding.
- s) To manage houses owned by the federal Government.

Under section 38(13), the Agency for Government Houses and the Federal Urban Real Property Registration and Information Agency reports to the Ministry of Urban Development and Housing.

Ministry of Construction

The ministry has the following functions:

- a) To prepare designs and contracts and supervise building constructions financed by the federal Government.
- b) To undertake research to improve the types and qualities of local construction materials.

Federal Housing Corporation

The corporation's functions include to:⁴¹

- a) construct, issue contract, lease, sell or purchase houses for different services;
- b) administer and lease federal government-owned houses;
- c) carry out necessary maintenance and repairs to preserve and protect government-owned houses;
- d) ensure government-owned houses are legally registered and protected;
- e) devise modern management systems which enable effective administration of federal Government houses;
- f) prevent illegal activity against government-owned houses;
- g) construct and lease out houses for government officials and employees in accordance with government direction and budget.
- h) research and implement rental rate of houses under its control;
- i) undertake studies on valuation of government houses that are nominated for sale;
- j) subject to the Government's decision, the corporation will transfer houses and possessions which are not convenient for administration, re-development and have little rental incomes;
- k) pay compensation to former owners of houses that have been compulsorily acquired;
- l) upon the Government's approval, the corporation will conduct and implement research relating to housing administration and development;
- m) supply construction materials by manufacturing or through procurement for housing construction or repair.

The Corporation is not subject to liability beyond the assets it is responsible for.⁴²

⁴¹ Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation 916/2015 (Ethiopia, s26.

⁴² Ibid, s7

Case study country	Institutional framework	Functions
Nigeria	<p>The State has a duty to create policy to ensure suitable and adequate shelter for all citizens pursuant to section 16(2) of the Constitution of Nigeria.</p> <p>Under the Ministers' Statutory Powers and Duties (Miscellaneous Provisions) Act 1958, the President, under section 2 of the Act, can transfer to a minister any powers and duties under law.</p> <p>The Nigerian Housing Authority (Federal Ministry of Works and Housing) was established by Decree 40 of 1973, but it is currently legislated by the <i>Federal Housing Authority Act 1973</i>. This law was further modified by Decree No 25 of 1988 to partially commercialise the Authority. A performance agreement was entered into by the Authority with the government, with an aim to reduce the Authority's financial dependence on the government by introducing performance targets, budget appraisals, award contracts within certain financial limits, determine rents, rates</p>	<p>Federal Ministry of Works and Housing</p> <p>The ministry oversees the Land and Housing Department and the Urban and Regional Development Departments. The Federal Housing Authority, which exists as a government-established corporation with perpetual secession and a common seal, reports to the Land and Housing Department. Similarly, the National Urban and Regional Planning Commission also reports to the ministry.</p> <p>Land and Housing Department</p> <p>The department has the following statutory responsibilities:</p> <ul style="list-style-type: none"> a) administration and management of federal Government lands and properties; b) valuation of property; c) acquisition of land and payment of compensation on behalf the Government; d) registration of titles; e) formulation and implementation of land policies and undertaking land reform; f) representing the department on government bodies, such as the Federal Government Staff Housing Loans Board, Federal Mortgage Bank of Nigeria, and in matters relating to land administration, housing finance mortgage; g) promoting the development of a robust primary and secondary mortgage finance industry in Nigeria in partnership with the private sector relating to the National Housing Fund;

and charges, and greater autonomy with its operation and internal administrative process.⁴³

Under the Nigerian Urban and Regional Planning Act 1992,⁴⁴ the federal Government has the responsibility under section 2 to:

- a) formulate national policies for urban and regional planning and development;
- b) prepare and implement the National Physical Development Plan and regional plans approved by the minister;
- c) formulate urban and regional planning standards for Nigeria.
- d) promote co-operation with state and local governments in preparation and implementation of urban and regional plans.
- e) supervise and monitor the implementation of urban and regional planning.
- f) development control over federal lands.

h) granting temporary occupational licences on government land;

i) providing collaboration with foreign development partners on land and housing development, housing finance/mortgage and land administration reform.

Urban and Regional Development Department

This department undertakes the following statutory duties:

- a) creates national urban and regional development policy;
- b) prepares a national building code;
- c) monitors and controls developments on government lands;
- d) implements urban renewal and slum upgrading programmes;
- e) conducts urban information system studies across all cities in Nigeria.
- f) standardises urban traffic and transport planning and management;
- g) collaborates with external organizations.

Federal Housing Authority

The authority is established under section 1 of the Federal Housing Authority Act 1973, with the authority's function being the following:⁴⁵

- a) prepare and submit to the Government the proposals for national housing programmes;

⁴³ Federal Housing Authority, 'Who We Are'. www.fha.gov.ng/who-we-are.

⁴⁴ Policy and Legal Advocacy Centre, Nigerian Urban and Regional Planning Act 1992 (Nigeria). <https://lawsofnigeria.placng.org/view2.php?sn=394>.

⁴⁵ Policy and Legal Advocacy Centre, Federal Housing Authority Act 2004 (Nigeria) <https://lawsofnigeria.placng.org/view2.php?sn=172,s3>

The legislation also sets out the responsibilities of the State and local government. Under section 3, the State Government is responsible for the formulation of state policy for urban and regional planning within the national policies, preparation and implementation of regional and urban plans within the State, promotion and conducting of research in urban and regional planning and the provision of technical assistance to local government on plans preparation and implementation. Under section 4, the local government is responsible for preparing and implementing town plans, rural area plans, a local plan, a subject plan, and control of development within local government control land (except land own by the federal or State Government).

The Act under section 5 establishes the National Urban and Regional Planning Commission, the State Urban and Regional Planning Board, and the local planning authority.

b) make recommendations to the Government on urban and regional planning, electricity, transport, sewerage, and water supply relating to approved housing programmes;

c) implement government-approved housing programmes.

The authority's powers are to:⁴⁶

a) acquire, hold and manage property;

b) acquire, construct and maintain dwelling houses, schools, communal and commercial buildings and other structures;

c) enter into contracts for the construction, maintenance, management or repair of any property;

d) purchase or otherwise acquire any assets, business, or other property under the Act.

e) sell, let, lease or otherwise dispose of any property vested in the authority.

The Federal Housing Authority's function was further expanded under the 2012 National Housing Policy to include:

a) develop and manage real estate on a commercial basis across the country;

b) provide sites and services for all income groups with a focus on the no-income and low-income groups. These two groups are funded by the federal Government and other sources;

c) provide no-income and low-income cooperative, rental and rural housing across Nigeria from funds provided by the Government and other sources;

⁴⁶ Ibid., s4.

The Land Use Act 1978⁴⁷ states that the governor of each State is responsible for all the land in the urban areas of their State, except those owned by the federal Government. The responsibility includes the allocation of land in all urban areas to individuals and organizations for residential, agricultural, commercial and other purposes. The local government is responsible for all the land in the State that is not in urban areas, with the same allocation responsibility.

- d) implement housing programmes in the public interest that have been approved by the Government;
- e) use offshore funding for housing development.

There is an appointed board by the relevant minister under section 2 of the Act comprising of 13 members (chair, representative from the Ministry of Works and Housing, general manager of the Housing Authority and 10 other board members).

National Urban and Regional Planning Commission

Established under section 5 of the Nigerian Urban and Regional Planning Act 1992, the commission's function under section 7 of the Act is to:

- a) formulate national policies for urban and regional planning;
- b) initiate, prepare and implement the national physical development plan, regional and subject plans;
- c) establish and maintain urban and regional planning standards;
- d) conduct research into urban and regional planning;
- e) promote co-ordination among State and local governments over the preparation and implementation of urban and regional plans;
- f) provide technical and financial assistance to States in the preparation and implementation of the physical development plans.

Development Control Department

Established under section 27 of the Nigerian Urban and Regional Planning Act 1992, the department is responsible for matters relating to development control, such as determining whether to grant, amend or reject development permits, and the implementation of physical development plans. There are development control departments established under the legislation at the federal, state and local government level to oversee its function on the lands the respective government's control.

⁴⁷ Policy and Legal Advocacy Centre, Land Use Act 1978 (Nigeria). <https://lawsofnigeria.placng.org/view2.php?sn=228>.

Case study country	Institutional framework	Functions
South Africa	<p>The National Department of Human Settlements draws its core mandate and responsibilities from Section 26 of the Constitution of South Africa of 1996 and Section 3 of the Housing Act 107 of 1997,⁴⁸ which defines the functions of provincial governments with respect to housing development.⁴⁹ Section 26 of the Constitution affirms that:</p> <ol style="list-style-type: none"> 1. Everyone has the right to have access to adequate housing. 2. The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right. 3. No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions. 	<p>National Housing Finance Corporation</p> <p>The corporation was established in 1996 by the National Department of Human Settlements as a development finance institution, with the primary objective being to expand and deepen access to the development and financing of sustainable human settlements in low- to middle-income households⁵⁰ through the provision of affordable housing finance.⁵¹ The responsibilities of the National Housing Finance Corporation are to⁵²</p> <ol style="list-style-type: none"> a) expand housing finance activities, through the effective provision of housing finance solutions, thus enabling low-to-middle income households to have the choice of renting, owning or incrementally building, thereby meeting their housing needs; b) facilitate increased and sustained lending by financial institutions to the lower end of the housing market; c) mobilize funding into the human settlements space on a sustainable basis, in partnership with the broadest range of institutions; d) conduct the business activities of the corporation in an ethical manner that ensures the continued economic sustainability of the corporation, while promoting lasting social, ethical and environmental development; e) stimulate the low-to-middle income housing sector, by providing robust, relevant and timely research and market analysis to practitioners and housing customers.

⁴⁸ Government of South Africa, Human Settlements. www.gov.za/about-sa/humansettlements.

⁴⁹ Government of South Africa, Housing Act 107 of 1997. http://thehda.co.za/pdf/uploads/multimedia/Housing_Act_107_of_1997.pdf.

⁵⁰ National Housing Finance Corporation, "National Housing Finance Corporation – Strategic Plan 2014/15 – 2018/19". https://static.pmg.org.za/NHFC_Strat_Plan_-2019_2020.pdf.

⁵¹ National Housing Finance Corporation, "About Us". www.nhfc.co.za/about-us/.

⁵² National Housing Finance Corporation, "National Housing Finance Corporation – Strategic Plan 2014/15 – 2018/19". https://static.pmg.org.za/NHFC_Strat_Plan_-2019_2020.pdf.

The mandates of the Department of Human Settlements should be read alongside the policies and Chapter 8 of the National Development Plan, which highlights the need to address deep-rooted spatial patterns that exacerbate economic inefficiencies and social inequities.

National Home Builders Registration Council

The council is a regulatory body of the home building industry that draws its mandate from the Housing Consumer Protection Measures Act 95 of 1998, the Housing Consumer Protection Measures Amendment Act 17 of 2007, and the Housing Act 107 of 1997.⁵³ The responsibilities of the council are to⁵⁴

- a) represent the interests of housing consumers by providing warranty protection against defects in new homes;
- b) regulate the home building industry;
- c) provide protection to housing consumers in respect of the failure of home builders to comply with their obligations in terms of this Act;
- d) establish and promote ethical and technical standards in the home building industry;
- e) improve structural quality in the interests of housing consumers and the home building industry;
- f) promote housing consumer rights and to provide housing consumer information;
- g) communicate with and assist home builders to register in terms of this Act;
- h) assist home builders, through training and inspection, to achieve and to maintain satisfactory technical standards of home building.

Estate Agency Affairs Board

The board was established in 1976 under the Agency Affairs Act of 1976. Its responsibilities are to:⁵⁵

- a) regulate, maintain and promote the standard of conduct of estate agents having due regard to the public interest;

⁵³ National Home Builders Registration Council. "Legal Framework".

⁵⁴ National Home Builders Registration Council. "Mandate"

⁵⁵ Estate Agency Affairs Board. "Strategic Objectives"

- b) issue Fidelity Fund Certificates to qualifying applicants;
- c) prescribe the standard of training of estate agents;
- d) investigate complaints against estate agents and institute disciplinary proceedings against offending estate agents where required;
- e) manage and control the Estate Agents Fidelity Fund.

Housing Development Agency

The Housing Development Agency was established under the Housing Development Agency Act No. 23 of 2008. It functions as a national public entity with its executive powers vested in the minister.⁵⁶ The agency's responsibilities are to⁵⁷

- a) identify, acquire, hold, develop and release state, communal and privately owned land for residential and community purposes and for the creation of sustainable human settlements;
- b) manage housing development services for the purposes of the creation of sustainable human settlements;
- c) ensure and monitor that there is centrally coordinated planning and budgeting of all infrastructure required for housing development;
- d) monitor the provision of all infrastructure required for housing development.

Social Housing Regulatory Authority

Its responsibilities are to:⁵⁸

- a) promote the development and awareness of social housing by providing an enabling environment for the growth and development of the social housing sector;
- b) provide advice and support to the Department of Human Settlements in its development of policy for the social housing sector and facilitate national social housing programmes;

⁵⁶ Housing Development Agency Act of 2008.

⁵⁷ Housing Development Agency Act of 2008.

⁵⁸ National Government of South Africa, "Social Housing Regulatory Authority". <https://nationalgovernment.co.za/units/view/281/social-housing-regulatory-authority-shra>.

- c) provide best-practice information and research on the status of the social housing sector;
- d) support provincial governments with the approval of project applications by social housing institutions; aid, when requested, with the process of the designation of restructuring zones;
- e) enter into agreements with provincial governments and the National Housing Finance Corporation to ensure the coordinated exercise of powers.

COMPARATIVE ANALYSIS

A ministry dedicated to housing and urban development

All the countries in this study have a dedicated housing ministry that is integrated with the overall responsibility for urban planning and housing policy development, and has the power to compulsorily acquire land and construct infrastructure such as roads, sewerage and water supply. A government-established housing corporation, functioning as a business enterprise and reporting to the ministry, is responsible for implementing the government housing policy by working with state and local government stakeholders, non-government and business partners. These housing corporations all have a common responsibility in designing the proposed dwellings, managing the construction and the sale, and leasing of the dwellings. There is a recognition that housing should be integrated at the very least with public works under one ministerial umbrella to facilitate better planning, construction and to manage water supply, sewage and electricity, and that roads are linked to the proposed housing construction projects. If the supporting mechanisms related to housing development are spread across different ministries, this could create layers of bureaucracy, which unnecessarily slows progress and risks deterring investment.

Currently, the responsibility for housing in Lesotho falls within the Ministry of Interior, Chieftainship Affairs and Rural Development, with the ministry's objectives being poverty reduction, service delivery and enhancing the quality of life; the practical power of responsibility over urban planning and construction of housing is with the Lesotho Housing and Land Development Corporation. However, the ministry does not have responsibility over urban infrastructure support and building regulations; these are responsibilities under the Ministry of Public Works and Transportation. It is recommended for consideration that the Ministry of Interior, Chieftainship Affairs and Rural Development and the Ministry of Housing and Public Works is merged into one ministry to carry out functions of urban planning, housing development, public works, building regulations and transport under one umbrella, which could promote more efficient and effective communication, planning and project implementation, with all the essential services required for housing and urban development under one roof. Alternatively, a dedicated taskforce or committee consisting of members from the Ministry of Interior, Chieftainship Affairs and Rural Development and the Ministry of Housing and Public Works could be established to coordinate housing and infrastructure development.



Lagos, Nigeria by Namnso Ukpanah Photo source : Unsplash

CHAPTER II.

DEFINITIONS OF ADEQUATE AND AFFORDABLE HOUSING

Case study country	Adequate	Affordable
Bolivia (Plurinational State of)	There are no definitions in any relevant legislation relating to housing	There are no definitions in any relevant legislation relating to housing. However, there is a definition for “social interest housing” under the Financial Services Law 2013 ⁵⁹ – defined as “low-income housing, which shall be understood to be the only non-commercial dwelling intended for lower-income households, whose commercial value or the final cost for its construction including the value of the land, does not exceed 400,000 bolivianos (Bs) (US\$58,181.32) for unit apartment and Bs 460,000 (\$66,908.52) for houses.
Botswana	There are no definitions in any relevant legislation relating to housing	There are no definitions in any relevant legislation relating to housing
Ethiopia	There are no definitions in any relevant legislation relating to housing	There are no definitions in any relevant legislation relating to housing
Nigeria	There are no definitions in any relevant legislation relating to housing	“Affordable prices” for housing is mentioned under section 2(a) of the National Housing Fund Act 1992 as an aim and objective of the legislation, ⁶⁰ however, there is no definition of “affordable”.
South Africa	Adequate housing is defined in the Housing Act of 1997, the 2004 Breaking New Ground Comprehensive Government Policy and the National Housing Code of 2009.	“Economically, fiscally, socially and financially affordable and sustainable” housing is mentioned under Part 1 section 1(c)ii of the Housing Act 107 of 1997. The Social Housing Regulatory Authority defines social housing as a rental accommodation for people who earn between 1,500 rand (R) (\$97) and R15,000 (\$979) per month and thus do not

⁵⁹ Andrea Mariah Urcullo Pereira, Luis Valda Yanguas (2021). “Bolivia: Lending & Secured Finance Laws and Regulations 2021”. <https://iclg.com/practice-areas/lending-and-secured-finance-laws-and-regulations/bolivia>.

⁶⁰ Policy and Legal Advocacy Centre, National Housing Fund Act 1992 (Nigeria) <https://lawsofnigeria.placng.org/laws/N45.pdf>, s2(a).

<p>The NHC stipulates that the minimum size of houses as 40 m² of floor area with⁶¹</p> <ul style="list-style-type: none"> a) two bedrooms b) a separate bathroom with toilet, a shower and hand a basin. c) a combined living area and kitchen space with a wash basin. d) a ready board electrical installation, where electricity supply is available. 	<p>qualify for a housing bond or Breaking New Ground.⁶²</p> <p>The Department of Human Settlements established benchmarks for identifying informal settlements under the Housing Code, which are based on the following characteristics: “(a) illegality and informality, (b) inappropriate locations, (c) restricted public and private sector investment, (d) poverty and vulnerability, and (e) social stress”.⁶³ As a result, any settlement that has the characteristics mentioned above can be classified as an informal settlement under the 2009 National Housing Code.⁶⁴</p>
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COMPARATIVE ANALYSIS

Of the five researched countries, only South Africa’s legislation has a definition of adequate housing. The Plurinational State of Bolivia has a clear definition of “affordable” by designating that the house must be for a designated class of low-income earners with a specified value threshold for a house with land, and unit apartment. By outlining a criterion to include a class of people with an accompanying financial threshold, this could be considered and adopted in the Lesotho housing legislative framework. At the same time, Lesotho is one of the countries that has ratified the International Covenant on Economic, Social and Cultural Rights (1976) which recognizes the right to adequate housing as part of an adequate

standard of living. The United Nations Committee on Economic, Social and Cultural Rights defines adequate housing as one that meets security of land tenure; affordability; availability of services, material and infrastructure; accessibility; location; cultural adequacy; and habitability.⁶⁵ In relation to affordability, the international standard is mainly from a financial perspective, ensuring that total housing costs do not exceed 30 per cent of total household income, the reasoning being that personal or household financial costs associated with housing should not compromise the attainment and satisfaction of basic needs. The Lesotho Government could consider adopting such definitions in its housing legislative framework to meet their national and international obligations. Other sections in this report will complement this framework to ensure that they are implemented in practice.

⁶¹ South African Human Rights Commission, “The Right to Adequate Housing Factsheet”. www.sahrc.org.za/home/21/files/Fact%20Sheet%20on%20the%20right%20to%20adequate%20housing.pdf.

⁶² Social Housing Regulatory Authority, “Social Housing Regulatory Authority Beneficiaries”. www.jhc.co.za/sites/default/files/newsarticle/files/202006/shra_brochure_for_beneficiaries_1_0.pdf.

⁶³ Department of Human Settlements (2012) Human Settlements Annual Report 2011- 2012. See also, The National Housing Code 2009.

⁶⁴ Ibid.

⁶⁵ The United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, E/1992/23.



CHAPTER III.

MECHANISMS TO MAKE LAND AVAILABLE FOR AFFORDABLE HOUSING

(For example, an inventory of lands, identification of sites for socialized housing, priorities in the acquisition of lands, modes of land acquisition, expropriation of idle lands, disposition of lands for socialized housing, valuation of lands for socialized housing, limitations on the disposition of lands for socialized housing, planned and serviced land, increased property tax or charges for idle lands, land assembly).

BOLIVIA (PLURINATIONAL STATE OF)

Constitutional requirement on land use

Under Article 396(i) of the Constitution of the Plurinational State of Bolivia, the national Government is responsible for regulating the land market to prevent the amassing of property and dividing land into smaller properties. Private ownership of land cannot exceed 5,000 ha and if land ownership exceeds the size threshold, the Government can compulsorily acquire the excess land.⁶⁶ Article 397 stipulate that foreigners cannot acquire land title. The local government has the power to compulsorily acquire land for public utility and necessity,⁶⁷ and this power is often used to acquire private land that is not being used to fulfil a social or economic purpose.⁶⁸ Similarly, the Government can also compulsorily acquire any land for the people⁶⁹ that does not fulfil a social or economic purpose, or expropriate land for necessity and public utility

⁶⁶ Constitute Project, Bolivia (Plurinational State of)'s Constitution of 2009 (Bolivia) <https://www.constituteproject.org/constitution/Bolivia_2009.pdf> accessed 28 July 2021, Article 400.

⁶⁷ Ibid., Article 302(22).

⁶⁸ Ibid., Article 397(i).

⁶⁹ Ibid., Article 401(i).

after payment of “fair indemnification”.⁷⁰ There is no definition under the legislation of what constitutes “fair indemnification”.

Land restriction for housing construction

Under Article 3(g) of Supreme Decree 986, the National Housing Authority is required to preserve areas of agricultural production and safeguard food sovereignty,⁷¹ thereby preventing land from being used for housing construction.

BOTSWANA

The use of land, including the sale, transfer and compulsory acquisition of land to construct houses, is laid out in three principal legislations – the Land Control Act 1975,⁷² Tribal Land Act 2018⁷³ and the Acquisition of Property Act 1955.⁷⁴ The original purpose of the land and type of ownership of the land as well as the acquisition entity and the method of acquisition will dictate which particular legislation is relevant.

Sale or transfer of agricultural land

Under the Land Control Act 1975, the definition of agricultural land is any land that is not tribal land or land within a township. Dealing in agricultural

⁷⁰ Ibid., Article 401(ii).

⁷¹ The National Housing Agency Supreme Decree no 986 (2011), Article 3(b).

⁷² Black Hall Publishing, Land Control Act 1975 (Botswana). <https://botswanalaws.com/alphabetical-list-of-statutes/land-control>.

⁷³ Black Hall Publishing, Tribal Land Act 1970 (Botswana). <https://botswanalaws.com/principal-legislation/tribal-land-acton-notice>.

⁷⁴ Black Hall Publishing, Acquisition of Property Act 1955 (Botswana). <https://botswanalaws.com/alphabetical-list-of-statutes/acquisition-of-property>.

land requires the minister's approval for any sale or transfer,⁷⁵ subdivision of the land and the sale or transfer of the land that is owned by a company. Any share in land ownership by a non-citizen of Botswana also requires the minister's approval. The proposed transaction must be advertised for at least 90 days in the Gazette and at least one Botswana newspaper. The minister must make the decision whether to approve or reject the sale or transfer within 30 days, with the decision having taken into consideration the impact on the economic development, maintenance or improvement of the husbandry of the land and any public objections. The application ought to be refused if the land is unlikely to be farmed well or developed adequately as agricultural land.

The legislation has no appeals process against the minister's decision; however the Land Tribunal can hear such disputes.⁷⁶

Use and acquisition of tribal land

Land belonging to tribes is managed by land boards that are established under section 3 of the Tribal Land Act 2018. The land boards can operate as a body corporate⁷⁷ which can enter into contracts and be liable to legal action. The body corporate's function⁷⁸ is to grant and cancel the rights to use the land, impose restrictions on land use, authorize change of user and transfer of tribal land and to formulate policies in consultation with the district council.⁷⁹ It should be noted that land grants cannot be granted to non-citizens.⁸⁰

If the Botswana President determines that land

⁷⁵ Land Control Act 1975, s3(1)(a).

⁷⁶ Black Hall Publishing, Land Tribunal Act 2014 (Botswana). <https://botswanalaws.com/alphabetical-list-of-statutes/land-tribunal>, s7.

⁷⁷ Tribal Land Act 2018, s5(2)(a).

⁷⁸ *Ibid.*, s13.

⁷⁹ *Ibid.*, s11.

⁸⁰ *Ibid.*, s20.

managed by the land board should be acquired by the State in the public's interest, the President can give notice to the board and the district council to request that the land be granted to the State.⁸¹ However, if the land board declines, or is unable to decide or impose reasonable conditions for the grant of the land, the minister can establish an inquiry by a commission that reports to the minister, and the minister can issue direction to the land board after the inquiry is completed, regardless of the commission's findings. If the land board still refuses to grant the land, the minister can grant the land on behalf of the board.⁸²

If the land is given to the State, any occupier of the land that was previously granted use of the land by the board will be removed and compensated.⁸³ If there are disputes over the compensation amount, the party can lodge a dispute application with the Land Tribunal.⁸⁴

Acquisition of land by the Botswana Housing Corporation

Under section 28(1) of the Botswana Housing Corporation Act, the corporation, with the approval of the President, can compulsorily purchase land, interest and rights for the purpose of providing housing or other building schemes that are in the national interest.⁸⁵ The President must be satisfied that notice to acquire the land has been given to every party that has an interest and right over the land and it is in the interests of

⁸¹ *Ibid.*, s32.

⁸² *Ibid.*, s32(4).

⁸³ *Ibid.*, s32.

⁸⁴ *Ibid.*, s40.

⁸⁵ Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation 916/2015 (Ethiopia) < <https://chilot.me/wp-content/uploads/2017/04/proclamation-no-916-2015-definition-of-powers-and-duties-of-the-executive-organs.pdf> > accessed 27 July 2021, s28(2).

the corporation. However, the President cannot approve the proposed land acquisition unless satisfied that the corporation is unable to acquire the land on reasonable terms by agreement with the landowner, or if it is not in the interests of the corporation to acquire the land. The process to compulsorily acquire the land will be made under the Acquisition of Property Act 1955, where the President has the power to acquire the property under section 3 of the Act for “town and country planning or land settlement....in order to secure the development or utilization of that or other property for a purpose beneficial to the community”.

ETHIOPIA

The Ministry of Urban Development and Construction is responsible for the supply and development of land through land acquisition⁸⁶ and to ensure the “supply of developed urban land” meets the market demand.⁸⁷

All rural and urban lands are solely owned by the State (Ethiopian Government) and are deemed as common property of the people under Article 40(3) of the Ethiopian Constitution. Section 5(1) of the Urban Lands Lease Holding Proclamation 721/2011 stipulates that the sale and exchange of land is forbidden, thereby preventing private land ownership. The Government can also compulsorily acquire private property for public purposes under Article 40(8) of the Constitution, with the property owner compensated in accordance with the property’s value. While the land is owned by the federal Government, under Article 40(7) the Constitution recognizes that citizens have rights over the house they build and the improvements that have been made to the land. However, if the citizen’s right to occupy the land or the house has expired

⁸⁶ Ibid, s26(1).

⁸⁷ Ibid., s26(m).

or been removed, the Government is required to compensate the citizen. It should be noted, while the land is owned by the Government, the house that occupies the land can be privately owned, including the right to own a unit in an apartment.⁸⁸

Given that land is exclusively owned by the Government, Section 4 of the Urban Lands Lease Holding Proclamation 721/2011⁸⁹ stipulates that the interest of the public to access urban land will be given priority “to ensure rapid urban development” for the benefit of its citizens and sustainability of the country’s development. The State and local government can allocate urban land to construct public residential housing programmes and government-approved housing constructed by approved occupants.⁹⁰

Acquiring rural land for housing development will be difficult, given section 5(4) of the Rural Land Administration and Land Use Proclamation 456/2005⁹¹ stipulates that farmers occupying the land have priority over governmental and non-governmental organization’s development objectives for the rural land. To compound development opportunities of rural land, there is no time limit on the right of farmers, semi-pastoralist and pastoralists’ use of rural land.⁹² Only the Government has the power to evict rural

⁸⁸ Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, Condominium Proclamation 370/2003 (Ethiopia). <https://housingfinanceafrica.org/app/uploads/Ethiopia-Condominium-Proclamation.pdf>, s8.

⁸⁹ Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, Urban Lands Lease Holding Proclamation 721/2011 (Ethiopia). www.lawethiopia.com/images/federal_proclamation/proclamations_by_number/721.pdf.

⁹⁰ Ibid., s121.

⁹¹ Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, Rural Land Administration and Use Proclamation 456/2005 (Ethiopia). [https://www.fao.org/faolex/results/details/en/c/LEX-FAOC095459/#:~:text=Use%20Proclamation%20\(No.-,456%2F2005\),and%20development%20of%20natural%20resources.](https://www.fao.org/faolex/results/details/en/c/LEX-FAOC095459/#:~:text=Use%20Proclamation%20(No.-,456%2F2005),and%20development%20of%20natural%20resources.)

⁹² Ibid., s7.

land users if the land is required to be used for public use, in exchange for compensation to the evicted user.⁹³

NIGERIA

Compulsory acquisition of land under the Constitution

Section 44 of the Constitution of Nigeria 1999 stipulates that land compulsorily acquired requires prompt payment of compensation⁹⁴ and the party claiming compensation has the right to access the court or tribunal to determine the legality of the acquisition and the amount of compensation.⁹⁵

Allocation and management of land

Under section 1 of the Land Use Act 1978, all land in urban areas is under the control and management of the governor in each State, while all other land is under the control of local government under the advice of a Land Use and Allocation Committee. The governor has the power to grant occupancy rights on land, demand rental for use of the land and impose penalties for breach of rental conditions and grant easements.⁹⁶ Land controlled by the local government enables the local government to grant customary occupancy rights of land or agricultural use.⁹⁷ The governor in each State is responsible for designating the areas in their State as urban areas and publishing the notification in the State's Gazette.⁹⁸ Occupants on the land have the right to make improvements.⁹⁹ However,

the governor has the power to revoke rights of occupancy and customary rights of occupancy if there is overriding public interest,¹⁰⁰ such as the requirement of the land by the national, state or local government.¹⁰¹ Compensation is payable to the land holder or occupier on revocation of right of occupancy by the Government.¹⁰²

In each State, the Act establishes an advisory body known as the Land Use and Allocation Committee,¹⁰³ which is responsible for advising the governor on the management of the land, resettlement of individuals that have their occupancy right on the land revoked and the monetary compensation amount. Similarly, the Committee is also responsible for advising local government. Membership on the committee comprises of at least three people, two people with qualifications as estate surveyors or land officers with at least five years of experience and the third person being a lawyer.

SOUTH AFRICA

The Spatial Planning and Land Use Management Act No. 16 of 2013 provides a framework for spatial planning and land-use management in South Africa.¹⁰⁴ The Expropriation Act (Act 63 of 1975) regulates the expropriation of land and property for public use. The three main elements of the country's comprehensive land reform programme – namely, restitution, redistribution and tenure reform – are included in the White Paper on Land Reform. The Provision of Land and Assistance Amendment Act 58 of 2008 gives legal effect to the acquisition of land as it stipulates that the minister may use money

⁹³ Ibid., s7(3).

⁹⁴ Constitution of the Federal Republic of Nigeria 1999.

Constitution of the Federal Republic of Nigeria (nigeria-law.org), s44(1)(a).

⁹⁵ Ibid., s44(1)(b).

⁹⁶ Land Use Act 1978, s5.

⁹⁷ Ibid., s6.

⁹⁸ Ibid., s3.

⁹⁹ Ibid., s15.

¹⁰⁰ Ibid., s28.

¹⁰¹ Ibid., s28(b) and s28(3)(a).

¹⁰² Ibid., s29.

¹⁰³ Ibid., s2.

¹⁰⁴ Government of South Africa, "Land Reform". www.gov.za/issues/land-reform.

appropriated by Parliament for the purpose of this Act to¹⁰⁵

- a) acquire property; and
- b) on such conditions as he or she may determine —
 - i. make available State land administered or controlled by him or her or made available to him or her;
 - ii. maintain, plan, develop or improve property or cause such maintenance, planning, development or improvement to be conducted by a person or body with whom or which he or she has concluded a written agreement for that purpose;
 - iii. provide financial assistance by way of an advance, subsidy, grant or otherwise to any person for the acquisition, maintenance, planning, development, or improvement of property and for capacity building, skills development, training and empowerment.

Social housing institutions can lease or purchase land below market value for purposes of developing social housing projects from their local municipality. The details of the land acquisition, whether by means of lease or purchase, should be stipulated in a Land Availability Agreement between the municipality and the social housing institution. The Land Availability Agreement should include the intended purchase or lease price and conditions of lease or purchase, the intended transfer date or date of occupation for lease, and a description of the land, including of

¹⁰⁵ Government of South Africa, "No. 58 of 2008: Provision of Land and Assistance Amendment Act, 2008". www.gov.za/sites/default/files/gcis_document/201409/3178821.pdf.



South African houses. Photo by dorombach via Flickr

the roles and responsibilities of the contracting parties.¹⁰⁶

Timelines for the acquisition of land depends on the size and extent of the social housing project. The general process is as follows: the social housing institution should, within the available restructuring zones in its municipal area, identify suitable land required for the project envisioned. The land must be suitable for medium- to high-density social housing development. Parallel to this process, the social housing institution should carry out a market and social survey to determine the housing needs and target groups. The suitability of the intended project must be assessed and must match the housing needs. It should also comply with the development vision of the local municipality as indicated in its planning instruments (integrated development plan and spatial development plan).¹⁰⁷ Should the social and market survey reveal a need for social housing, including a relevant target group, and if the land forms part of a restructuring zone, the social housing institution should initiate communication with the local municipality in order to sign a Land Availability Agreement.¹⁰⁸ The signing and implementation of a valid agreement concludes the land acquisition process¹⁰⁹ and there are no clear timelines for the duration of the process. The process is subject to the approval and review of the municipal council. It is important to note that land acquisition procedures, whether lease or purchase, must

¹⁰⁶ Social Housing Regulatory Authority, "Social Housing Institutions Operations Manual Social Housing Regulatory Authority Johannesburg". <http://test.shra.org.za/resource-centre/toolkits/operational-manual>.

¹⁰⁷ Department of Human Settlements (2017). Background to Restructuring Zones Department of Human Settlements, Pretoria, 5.

¹⁰⁸ Social Housing Regulatory Authority, "Social Housing Institutions Operations Manual Social Housing Regulatory Authority Johannesburg". <http://test.shra.org.za/resource-centre/toolkits/operational-manual>.

¹⁰⁹ Ibid.

also comply with local government financial and procurement procedures for tenders and partnership agreements as stipulated in the Local Government: Municipal Finance Management Act 56 of 2003.¹¹⁰

COMPARATIVE ANALYSIS

The Land Use Act 1978 of Nigeria, which legislates land use and acquisition, mirrors the Land Act 2010 in Lesotho in purpose, function and power. Both countries' legislative framework is compact compared to that of Botswana, where land use and acquisition is divided between three different legislations: the Land Control Act 1975, Tribal Land Act 1970, and Acquisition of Property Act 1955. Similarly, land laws in Ethiopia are divided between two legislative frameworks based on whether the land had been designated urban or rural land under the Urban Lands Lease Holding Proclamation, and the Rural Land Administration and Land Use Proclamation. The land legislative framework in the Plurinational State of Bolivia is predominately enshrined in the country's Constitution, with the land acquisition process having the most restrictive criteria amongst the selected countries. The country's land acquisition process to construct affordable housing only has three requirements; that the land is not being used to fulfil a social or economic purpose,¹¹¹ that the land is not designated as agricultural land which otherwise needs to be preserved to safeguard food security,¹¹² and fair compensation is provided to the individuals affected by the compulsory acquisition.¹¹³ In South Africa, the land acquisition process also guarantees compensation for owners of the

¹¹⁰ Chapter 11 of the Local Government: Municipal Finance Management Act 56 of 2003.

¹¹¹ Constitute Project, Bolivia (Plurinational State of)'s Constitution of 2009 (Bolivia) <https://www.constituteproject.org/constitution/Bolivia_2009.pdf, Article 397(i).

¹¹² Ibid, Article 3(g).

¹¹³ Ibid, Article 401(ii).

affected land or other persons whose rights may be affected.¹¹⁴ Similarly, Lesotho has a restrictive land acquisition process requiring the Government to negotiate with the landowner first, and if this fails to reach an agreement only then could the Government exercise its acquisition power. Even then, there needs to be justification that the compulsory acquisition is for a public purpose¹¹⁵ or public interest¹¹⁶ with fair compensation being provided.¹¹⁷ There is no clear-cut definition of what constitutes fair compensation, but legislation in Botswana has defined this implicitly by requiring that government agencies should consider, in their compensation package, the market value of property, any increases in reasonable expenses incidental to change of residence or place of business, anticipated increases in value of land from the public development and damages accrued because of the acquisition that affects other such property.

It should be noted that none of the legislation in the study countries have stipulated a timeframe for the process of compulsory acquisition (from notice of acquisition to receipt of compensation). There is also no legislative provision requiring valuation of property subject to compulsory acquisition. Botswana is considered to have a balanced approach by allowing land acquisition specifically for town and country planning or land settlement purposes,¹¹⁸ or purposes that are for community benefit,¹¹⁹ providing fair compensation is given to the affected party¹²⁰ and the power to acquire the land is only exercised by the President. However, land

acquisition through the Botswana Housing Corporation is restrictive under the corporation's legislative framework, and the President cannot approve the proposed land acquisition unless satisfied that the corporation is unable to acquire the land on reasonable terms by agreement with the landowner.¹²¹ Similarly, if the Government wants to acquire tribal land for public purposes, this can be rejected by the respective land board responsible for administering the tribal land, which would then require a somewhat symbolic inquiry by a commission appointed by the responsible minister to compile a report on the matter. The responsible minister will have the final decision on whether to override the land board's decision, and politically the minister would logically exercise their power in favour of the President. Ethiopia has the least restrictive land acquisition criteria, given that private land ownership is illegal and all land is common property belonging to the people of Ethiopia.¹²² Where there is privately owned land, the Government can compulsorily acquire it for "public purposes", as long as the property owner is compensated according to the property's value.¹²³

The definition of "public purpose" includes "ensure rapid urban development" for the benefit of its citizens and suitability of development in urban areas of Ethiopia.¹²⁴ Similarly, Nigeria has broad land acquisition powers that are enshrined in its Constitution with the acquisition criteria being to provide fair compensation to the person affected.¹²⁵ It is recommended in this report that Lesotho reforms its restrictive

¹¹⁴ Land Reform (Labour Tenants) Act No. 3 of 1996.

¹¹⁵ Lesotho Land Act, 2010, s50

¹¹⁶ *Ibid.*, s51

¹¹⁷ *Ibid.*, Part X

¹¹⁸ Botswana Acquisition of Property Act, 1955, s3(a)

¹¹⁹ *Ibid.*, s3(b)

¹²⁰ *Ibid.*, s3

¹²¹ *Ibid.*, s28

¹²² Refworld. Constitution of the Federal Democratic Republic of Ethiopia, 1995 (Ethiopia) www.refworld.org/docid/3ae6b5a84.html, Article 40(3).

¹²³ *Ibid.*, Article 40(8).

¹²⁴ Constitution of Ethiopia, 1994, s4.

¹²⁵ Constitution of Nigeria, 1999, s44.

land acquisition process that requires the Government to negotiate with the landowner first and, if failing to reach an agreement, only then could the Government exercise its acquisition power. A balanced approach that mirrors the situation in Botswana could be considered that allows land acquisition specifically for town and country planning or land settlement purposes, or purposes that are for community benefit. The system also requires that the affected party receives “fair compensation” with the criteria for assessment outlined in the legislation (market value of property, any increases in reasonable expenses incidental to change of residence or place of business, anticipated increases in value of land from the public development, damages accrued because of the acquisition that affects other such property). Additionally, having the compulsory acquisition power exercised by one authority is prudent to avoid overlaps in roles and responsibilities.



Jikwoyi, Abuja, Nigeria. Photo by Ovinuchi Ejiokoro - Unsplash

CHAPTER IV.

MECHANISMS TO INCREASE THE SUPPLY OF ADEQUATE HOUSING BY GOVERNMENT, NON-GOVERNMENTAL ORGANIZATIONS, THE PRIVATE SECTOR AND COOPERATIVES

(For example, public social housing and rental housing, NGO-owned/managed, private sector developed with incentives).

BOLIVIA (PLURINATIONAL STATE OF)

The general policy of housing is the responsibility of the national Government under the Constitution of the Plurinational State of Bolivia,¹²⁶ however the issue of housing and public housing is a shared responsibility between the national Government and the respective State Governments.¹²⁷ Local governments have exclusive responsibility over urban development and urban settlement¹²⁸ and similarly, rural indigenous autonomous regions are responsible for housing and town planning in their jurisdiction.¹²⁹ While there are overlapping responsibilities with the delivery of housing between national, state and local government authorities, where local governments have the ability to undertake housing projects, the national Government will focus on housing policy.

Under Article 5 of Supreme Decree 986, the Vice-Ministry of Housing and Urban Planning is responsible for periodically drawing up a multi-year plan for the "reduction of housing deficit" in each local region, with the participation of public and private bodies, taking into consideration equity criteria, attention to lower-income groups, women who are head of the household and the benefit of the population with their own land.

¹²⁶ Constitution of the Plurinational State of Bolivia, Article 298(ii) (36).

¹²⁷ *Ibid.*, Article 299(ii)(15).

¹²⁸ *Ibid.*, Article 302(29).

¹²⁹ *Ibid.*, Article 304(i)(16).

BOTSWANA

The Botswana Housing Corporation was established by legislation to implement the country's housing programme.¹³⁰ The corporation is able to purchase land and compulsorily acquire land with the approval of the President.¹³¹ It can borrow money¹³² and work in collaboration with other companies and foreign entities to construct houses,¹³³ which houses are then either sold or leased.¹³⁴ There are also other legislative means to acquire land through tribal land to increase land available to construct houses, as discussed in Chapter III of this report.

ETHIOPIA

The Ministry of Urban Development and Construction is responsible for conducting studies of and planning housing development and affordability.¹³⁵ The Federal Housing Corporation is responsible for implementing urban and housing programmes, acquiring land, constructing housing and the management/sale/leasing of houses in the corporation's possession.

Under Ethiopian Building Proclamation

¹³⁰ Botswana Housing Corporation Act 1971 (Botswana) <<https://botswanalaws.com/alphabetical-list-of-statutes/botswana-housing-corporation>> accessed 26 July 2021, s14.

¹³¹ *Ibid.*, s28.

¹³² *Ibid.*, s21.

¹³³ *Ibid.*, s15 and s16.

¹³⁴ *Ibid.*, s14(2)(g).

¹³⁵ Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation 916/2015, s26.

624/2009,¹³⁶ a legislation that regulates construction and modification of buildings, construction regulation is only applicable in urban areas with more than 10,000 houses and public buildings.¹³⁷ Where construction relates to an area with less than 10,000 houses, it is subject to respective regional statutes to determine whether the construction regulation is applicable.¹³⁸ In a situation where the construction regulation is applicable, applicants wanting to construct a house must submit an application and plans to the Ministry of Urban Development and Construction before construction commences.¹³⁹ If approved, a construction permit will be issued and the applicant must, within five years, complete the construction before the permit expires¹⁴⁰ However, contrary to the stipulated construction permit's timeframe of 5 years, under section 23(2) of the Urban Lands Lease Holding Proclamation, small construction projects must be completed within 24 months, medium construction projects within 36 months and large construction projects within 48 months. The size of the construction projects that would determine the construction timeframe is determined by the respective local government.

NIGERIA

The Federal Housing Authority under section 4 of the Federal Housing Authority Act enables the Authority to operate as a corporation, including suing and being sued, acquiring land, entering into contracts for the construction, maintenance and management of its properties, sell property and borrow money for the Authority's operation that is less than 200,000 (\$485.00) without the

¹³⁶ Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, Ethiopian Building Proclamation 624/2009 (Ethiopia), <https://housingfinanceafrica.org/app/uploads/Ethiopia-Building-Proclamation-624-2009.pdf>.

¹³⁷ Ibid., s3.

¹³⁸ Ibid., s3(b).

¹³⁹ Ibid., s4 and s5.

¹⁴⁰ Ibid., s10(2).

President's prior approval.

SOUTH AFRICA

The National Housing Finance Corporation was established with the objective of increasing access to the development and financing of sustainable human settlements in low-to-middle income households through the provision of affordable housing finance. It facilitates lending by financial institutions, mobilizes funding of human settlements and stimulates the low-to-middle income housing sector. The country's Social Housing Regulatory Authority was established in 2010 by the Minister of Human Settlements as per the Social Housing Act No. 16 of 2008.¹⁴¹ The authority is responsible for the provision of quality housing for the lower-to-middle income housing market by creating an enabling environment for the development of the social housing sector.

COMPARATIVE ANALYSIS

While all selected countries have a dedicated government housing corporation or agency that is responsible for working with national and local governments to design and construct social housing, Plurinational State of Bolivia, South Africa and Nigeria have financial mechanisms to increase the supply of housing (discussed in Chapter X), whereas Ethiopia has favourable land laws and all land is legally owned by the Government which enables affordable housing construction without significant challenges in relation to property rights (discussed in Chapter III).

¹⁴¹ Social Housing Regulatory Authority. Legislative Mandate.



Pedro, Somolu, Lagos, Nigeria by Omotayo Kofowarola source: Unsplash

CHAPTER V.

HOUSING PLANS AND HOUSING DELIVERY SCHEMES, HOUSING COOPERATIVES, INFORMAL SETTLEMENTS UPGRADING AND PLANNING STANDARDS

BOLIVIA (PLURINATIONAL STATE OF)

The Constitution of the Plurinational State of Bolivia states that all levels of government are responsible for social housing,¹⁴² thereby causing significant overlapping responsibilities in social housing planning. The Ministry of Public Works, Services and Housing is responsible for creating urban planning and housing policies,¹⁴³ however the Indigenous People have power over housing and urban development policies in accordance with their cultural practices¹⁴⁴ and are responsible for housing and town planning in their territory.¹⁴⁵ The local government is responsible for basic services policy surrounding habitat and housing and developing and implementing housing construction programmes and projects.¹⁴⁶ The local government also has exclusive responsibility for urban development and urban settlement.¹⁴⁷

BOTSWANA

The Department of Housing is responsible for formulating national housing policies and programmes, while the Botswana Housing Corporation is responsible for creating and implementing housing delivery schemes.¹⁴⁸ All housing development applications are required to go through the Town and Country Planning

Board for approval,¹⁴⁹ and comply with any building regulations set under the Building Control Act 1962.

ETHIOPIA

The Ministry of Urban Development and Construction is responsible for developing urban planning,¹⁵⁰ while housing delivery schemes are the responsibility of the Federal Housing Corporation.¹⁵¹ Building construction standards are regulated by the Ethiopian Building Proclamation 624/2009, legislation that regulates construction and modification to buildings. The construction regulation is only applicable in urban areas with more than 10,000 houses and public buildings (section 3). Where construction relates to an area with less than 10,000 houses, it is up to the respective regional states to determine whether the construction regulation is applicable (section 3((b))). Specific building standards are outlined from section 30 to section 46 of the Proclamation, which sets safety standards required in the building for sewerage and water connection and requiring elevators for any buildings higher than 20 metres.

NIGERIA

The Urban and Regional Development Department has the responsibility of formulating national policies for urban and regional policies

¹⁴² Constitution of the Plurinational State of Bolivia, Article 19.

¹⁴³ Supreme Decree No 28631 (2006), Chapter X.

¹⁴⁴ *Ibid*, Article 82(ii).

¹⁴⁵ Constitution of the Plurinational State of Bolivia, Article 304(i) (16).

¹⁴⁶ *Ibid*, Article 82.

¹⁴⁷ *Ibid*, Article 302(29).

¹⁴⁸ Botswana Housing Corporation Act 1971 (Botswana) <<https://botswanalaws.com/alphabetical-list-of-statutes/botswana-housing-corporation>> accessed 26 July 2021, s14(2)(f).

¹⁴⁹ *Ibid*, s5 7.

¹⁵⁰ Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation 916/2015, s26.

¹⁵¹ Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, Federal Housing Corporation Establishment, s5.

and development, including the urban renewal and slum upgrading, and preparing a National Building Code.¹⁵² However, the urban and regional plans are predominately the responsibility of the National Urban and Regional Planning Commission under section 5 of the Nigerian Urban and Regional Planning Act 1992. The commission is required to work with state and local government to create and implement national planning standards, urban and regional plans, including the national physical development plan, which will enable more land to be zoned for residential development with accompanying infrastructure to support the proposed residential community. The implementation of the national physical development plan is within the responsibility of the Development Control Department,¹⁵³ a body that exists on the federal State and Local government level to oversee its function on the lands under the respective governments' control. The Federal Housing Corporation is responsible for creating and implementing all housing schemes.¹⁵⁴

SOUTH AFRICA

Established under the Housing Development Agency Act No. 23 of 2008, the Housing Development Agency identifies, acquires and develops state and privately-owned land for human settlement. The agency is also responsible for the provision of project delivery services in the form of capacity-building, planning and project management.¹⁵⁵

COMPARATIVE ANALYSIS

There are commonalities amongst the selected

¹⁵² Nigeria Urban and Regional Planning Act 1992, s2.

¹⁵³ Ibid, s27.

¹⁵⁴ Nigeria Federal Housing Authority Act 1973, s3.

¹⁵⁵ Housing Development Agency, What we do. Retrieved from <<http://thehda.co.za/about/what-we-do>.

countries in that an autonomous housing entity is responsible for the implementation of government housing policies, establishing housing schemes and constructing housing. These housing entities report directly to a ministry, which is responsible for establishing housing and urban policies and has significant influence over the national urban plans. The building standards however are often created by a ministry or department that is separate from the ministry responsible for housing and urban planning.



Mountains landscapes in Bolivia. Itiplano by Galyna Andriushko source: Envato elements

CHAPTER VI.

HOUSING PLANS AND HOUSING DELIVERY SCHEMES, HOUSING COOPERATIVES, INFORMAL SETTLEMENTS UPGRADING AND PLANNING STANDARDS

BOLIVIA (PLURINATIONAL STATE OF)

Financial access to “social interest housing” under the Financial Services Law 2013 is defined as “low-income housing that requires applicants to be lower-income households, and the cost for the housing construction, including the value of the land, does not exceed Bs400,000 (\$58,181.32) for unit apartment and Bs460,000 (\$66,908.52) for a house.’

BOTSWANA

There is no evidence of any legislation that outlines the criteria to select beneficiaries of housing.

ETHIOPIA

There is no evidence of any legislation that outlines the criteria to select beneficiaries of housing.

NIGERIA

National Housing Fund (NHF)

For an individual to access loans under the National Housing Fund, the individual must:¹⁵⁶

- have completed a National Housing Fund registration form either as an employer (NHF 1) or employee (NHF 2)
- be deducted monthly contributions remitted to the Federal Mortgage Bank of Nigeria, with a minimum of six months contributions made

¹⁵⁶ Centre for Affordable Housing Finance in Africa, ‘Housing Finance in Nigeria’, <https://housingfinanceafrica.org/countries/nigeria/>.

- have a passbook updated by an employer
- provide a yearly statement of cumulative contributions, including accrued interest
- apply through any accredited primary mortgage bank
- provide satisfactory evidence of regular income

SOUTH AFRICA

Qualifying individuals for government-subsidized housing must be¹⁵⁷

- A South African citizen.
- Contractually capable
- Married or habitually cohabiting with a partner
- Single and have financial dependants
- Earn less than R3,500.01 per month per household.
- A first-time government subsidy recipient
- A first-time homeowner
- Single military veterans without financial dependants

COMPARATIVE ANALYSIS

There are no legislative-based criteria from the selected countries of the class of beneficiaries eligible for social housing, however there are

¹⁵⁷ Government of South Africa, ‘FAQ’, www.dhs.gov.za/content/faq.

legislative frameworks in Nigeria and the Plurinational State of Bolivia relating to financial loans that outline the class of beneficiaries who can access financial support to purchase a house. The criteria for government-subsidized housing in South Africa is that individuals are South African citizens, earn below a certain threshold and be a first-time government subsidy recipient, among others. In Nigeria, the criteria are based on the individual contribution to the National Housing Fund and financial income stability, while in the Plurinational State of Bolivia, financial support requires the individual to be from a lower-income household and that the intended purchase price of the house does not exceed a particular value threshold. The Lesotho housing legislative framework could follow the approach in the Plurinational State of Bolivia, that focuses on low-income groups and includes a financial threshold on the purchase price of the house. However, a clear categorization of low-income groups would be necessary which could be based on household income and other factors, and the system could be made broader to prioritize or allocate quotas for social housing to other vulnerable groups such as women, young people, elderly people, people with disabilities, widowed persons and war veterans, among others.



Afar, Ethiopia by Manissa Bortlik source : Unsplash

CHAPTER VII.

MEASURES TO REDUCE HOUSING COSTS

(For example, building materials, low-cost technologies and flexible administrative and planning requirements).

BOLIVIA (PLURINATIONAL STATE OF)

Under Article 3(d) of Supreme Decree 986, the National Housing Agency is required to promote technologies that generate savings to building construction materials and building construction time, water and energy. Other housing cost reductions include financial access to low interest rate loans (discussed in Chapter X).

BOTSWANA

Under section 20(2) of the Botswana Housing Corporation Act, the corporation cannot profit from its activities, thereby requiring its houses are either sold or leased for an amount lower than the commercial market value to allow greater accessibility and affordability. There is no evidence of other legislative measures to reduce housing costs.

ETHIOPIA

There are no legislative frameworks identified that specifically aim to reduce housing costs.

NIGERIA

The National Housing Fund is a legislative financial housing support framework that is accessible to reduce housing purchase costs for individuals (discussed in Chapter X).

SOUTH AFRICA

The Housing Act of 1997 stipulates that national, provincial and local governments must ensure that housing development is socially and financially affordable.¹⁵⁸

COMPARATIVE ANALYSIS

Beyond the legislated financial measures to assist home buyers (discussed in Chapter X), the legislative framework of Botswana forbids its housing corporation from profiting from the sale or lease of the houses, thereby selling or leasing them below the commercial market price to assist directly the reduction of housing costs. The Botswana legislative provision is worthy of consideration and could be adopted as a legislative amendment to the Lesotho Housing and Land Development Corporation Order No 122, 1988.

¹⁵⁸ Housing Act of 1997. http://thehda.co.za/pdf/uploads/multimedia/Housing_Act_107_of_1997.pdf , Section 1(c)(ii).



Botswana by Franklin Pi source: flickr

CHAPTER VIII.

PROVISIONS CONCERNING THE MAINTENANCE, REPAIR, REHABILITATION AND IMPROVEMENT OF SOCIAL/ AFFORDABLE HOUSING

BOLIVIA (PLURINATIONAL STATE OF)

Under Article 3(d) of Supreme Decree 986, the National Housing Agency is required to promote technologies that generate savings to building construction materials and building construction time, water and energy.

BOTSWANA

Building regulations

Under the Botswana Building Control Act 1962,¹⁵⁹ any construction or works on a building are required to abide by the building regulations set under the legislation. The building regulations under section 4 of the Act include any construction of buildings and the materials used, the lighting, ventilation and dimensions of rooms for humans to live in, the height of buildings, sanitary connection and drainage, ash pits connected to buildings, wells and tanks for water supply for human consumption, stoves and fittings in the buildings that are not electric for the purpose of preventing a fire, drains and sewers. Under section 5 of the Act, the local government is responsible for approving or rejecting proposed work.

If any work is completed which the building regulation is applicable to, but does not conform to the regulation standards, the local authority can give notice for the building owner to either pull down or remove the work within 30 days of having received the notice under section 8.

¹⁵⁹ Housing Finance Africa, Building Control Act 1962 (Botswana), <https://housingfinanceafrica.org/app/uploads/Botswana-Building-Control-Act.pdf>.

However, the minister can relax the enforcement of building regulations for particular works, in consultation with the local authority and the Building Regulations Board,¹⁶⁰ if the regulation is unreasonable in those circumstances. Similarly, the local authority can also relax the building regulation where it is impractical in particular cases, after consulting with the Building Regulations Board.¹⁶¹

ETHIOPIA

Rights under the Constitution

Article 40(7) of the Constitution of Ethiopian stipulates that citizens have the right to the land they have built a house on and the permanent improvements they have made to the land. Where the citizen's right to the land is either removed or expires, the citizen is to be compensated to include the improvements made.

Approval for improvements on houses

Under the Ethiopian Building Proclamation 624/2009,¹⁶² legislation that regulates construction and modification to buildings is only applicable in urban areas with more than 10,000 houses and to public buildings.¹⁶³ Where construction relates to an area with less than 10,000 houses, it is up to the respective regional states to determine whether the construction

¹⁶⁰ *Ibid.*, s9(1).

¹⁶¹ *Ibid.*, s9(2).

¹⁶² Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, Ethiopian Building Proclamation 624/2009 (Ethiopia), <https://housingfinanceafrica.org/app/uploads/Ethiopia-Building-Proclamation-624-2009.pdf>.

¹⁶³ *Ibid.*, s3.

regulation is applicable.¹⁶⁴ Under section 25, a building officer is required to give permission for any improvement or alteration to the house. If major alteration, extension, repairs, or demolition work is required, the applicant will need to submit plans to the building officer for approval at the Ministry of Urban Development and Construction.

Maintenance and repairs on an apartment

Under section 28 of the Ethiopia Condominium Proclamation, a reserve fund is required to be established for each apartment building to conduct repairs and maintenance where necessary. Each unit owner is required to financially contribute to the fund, which is administered by a unit owners' association consisting of all the unit owners of the building. The fund can technically be used (subject to the unit owners' association) if a unit owner fails to conduct repairs on their unit, which is a cost for the unit owner. However, if any damage to the unit is caused by an accident, it is the responsibility of the unit owner's association to fund the repair.¹⁶⁵

NIGERIA

National Housing Fund

An aim and objective of the fund under section 2(b) of the NHF Act 1992 is to provide loans for the purpose of improving residential houses. A mortgage institution that is licensed under the Mortgage Institutions Act is responsible for providing loans to those wanting to renovate their house.¹⁶⁶

Improvements for land occupancy and customary occupancy

Under section 15 of the Land Use Act 1978, individuals granted occupancy rights on the land in urban areas will have the right to make improvements on the land, subject to the prior consent of the governor.

SOUTH AFRICA

Housing legislation in South Africa does not include any provisions concerning the maintenance repair, rehabilitation and improvement of social affordable housing. However, the national housing strategy caters to maintenance operations in South Africa. Although the owners may be reluctant to maintain their buildings due to little income from the investment, the State regulates the process:

- Stabilizing the housing environment. This approach intends to significantly impact the cost-efficiency of state housing expenditure and the amount of private sector investment mobilized while also striving to build a stable and adequate public environment to make life easier for lower-income housing residents.¹⁶⁷
- Securing funding for maintenance. This strategy is to encourage owners to save to contribute to maintenance and improvements to their housing and, most crucially, to build credit to finance future housing maintenance.¹⁶⁸

¹⁶⁴ Ibid., s3(b).

¹⁶⁵ Ibid, s27(1).

¹⁶⁶ Policy and Legal Advocacy Centre, National Housing Fund Act 1992 (Nigeria), <https://lawsofnigeria.placng.org/laws/N45.pdf>, s14(2).

¹⁶⁷ Government of South Africa, Department of Human Settlements, "National Housing Policy and Subsidy Programs", Framework for the national housing policy: <http://policyresearch.limpopo.gov.za/bitstream/handle/123456789/1084/National%2520Housing%2520Policy%2520and%2520Subsidy%2520Programmes.pdf?sequence=1>.

¹⁶⁸ Ibid.

- Supporting the Enhanced People's Housing Process: This approach aims to assist communities in setting up a range of support mechanisms for institutional, technical, and logistical housing, all aimed to enable them to access a minimum standard of maintenance, rehabilitation, and social/affordable housing improvement.¹⁶⁹

COMPARATIVE ANALYSIS

The Building Control Act 1995 on Lesotho, which establishes the country's building regulations and building authority, mirrors the Building Control Act 1962 of Botswana in terms of its legislative purpose, function and power. The Building Proclamation in Ethiopia, which also regulates construction and modification of buildings, is only applicable in urban areas with more than 10,000 houses, while building regulations in rural area and urban area with less than 10,000 houses are set by regional state authorities. There are no recommendations made for consideration in respect of the Building Control Act 1995 of Lesotho, however this report notes that in the Plurinational State of Bolivia, the Housing Agency aims to promote technologies that generate savings to building construction materials and building construction time, water and energy. In Lesotho, the Housing and Land Development Corporation legislative framework does not have such a legislative provision. It may be worth considering the amendment of the Housing and Land Development Corporation Order No 122, 1988, in Lesotho to include such provision that could proactively assist the housing corporation's future aim of constructing more affordable social housing.

¹⁶⁹ Ibid.



Suburban tract housing in Nigeria by Kris Ericke source: flickr

CHAPTER IX.

RENTAL HOUSING PROVISIONS

(For example rent control, lease agreements, security of tenure and landlord and tenant relationships).

BOLIVIA (PLURINATIONAL STATE OF)

Under Article 141(c) of the Financial Services Law 2013, the eviction process of tenants is not applicable when the financial service repossesses the dwelling because the landlord had defaulted on their financial obligation. The legislation under Article 145(i) further prohibits assets to be assigned as collateral when it is under a financial leasing contract such as a rental arrangement with a tenant. Under Article 1602 of the Bolivian Commercial Code (Decree Law no 14379),¹⁷⁰ if a tenant of a dwelling becomes bankrupt, the rental lease cannot be terminated.

BOTSWANA

Rent control

Rental law is governed by the Rent Control Act 1977 and the Rent Control Regulations 1978. It should be noted there is no definition of “rent” in the legislation.

A landlord can increase rent for a premises under section 11 of the Act if either there are increases in the rates payable for the premises, the cost of water, power, sewerage or other public service for the premises, the amount payable to the premises’ caretaker or security, or the cost of insurance. However, for the rent increase to occur, the landlord is required to provide the tenant with a one month’s notice in writing.

A landlord or tenant can lodge an application to

the Rent Control Tribunal, under section 5 of the Rent Control Act, to have the annual rent amount payable for a premises be ascertained and certified by the tribunal. This process promotes fairness to both the landlord and tenant that the rent amount payable is reasonable. Under section 6 of the Act, the tribunal is required to consider all oral and written evidence and documents as part of its investigation, including the information provided in the Act’s Schedule under section 6(9) (see figure I).

¹⁷⁰ Bolivia Commercial Code Law no 14379, 1977. <https://wipolex.wipo.int/en/text/189040>.

SCHEDULE

ASSESSMENT OF CONTROLLED RENT

section 6(9))

For the purposes of assessing and certifying the controlled rent of premises to which this Act applies, the Tribunal shall allow the following in ascertaining the annual

rent-

(a) a return of four per cent above the Bank of Botswana minimum advances rate applicable at the time of investigation on the market value of the premises;

(b) the amount of any rates paid on the premises if paid by the landlord;

(c) an amount, not exceeding two and a half per cent of the value of the premises, in respect of maintenance, repairs and depreciation, together with an amount of seven and a half per cent of the value of any plant or machinery supplied not forming part of the building;

(d) if paid by the landlord, the amount paid in respect of water, power, sewerage or other public service in respect of the premises;

(e) if paid by the landlord, the amount paid to clean, caretake or provide security services in respect of the premises;

(f) such sums as the Tribunal may consider reasonable for the use of any furniture, fittings or equipment in the premises and any other services not specified in paragraphs (d) and (e);

(g) the cost of any insurance on the premises paid by the landlord;

(h) an amount equal to five per cent of the total of the sums allowed in paragraphs (a) to (g) inclusive, or one per cent of the value of the premises, whichever is the lesser, for collection and management charges; and

(i) the value of any structural alterations or other improvement effected to the premises by agreement between the landlord and the tenant:

Provided that where the premises occupied by the tenant are only a part of larger premises and the landlord's costs in respect of paragraphs (a) to (i) inclusive are related to the whole of the premises, then the amount to be allowed shall be a pro rata proportion of the whole costs.

Figure 1: Extract from the Rent Control Act 1977 of Botswana

If the landlord and tenant agree on a rent that is less than the controlled rent amount set for the premises, the agreed amount is allowable under section 10 of the Act.

Houses leased by the Botswana Housing Corporation

The Botswana Housing Corporation Board under section 10I of the Botswana Housing Corporation Act, determines the assessment of any rents payable for houses and buildings owned by the corporation.

ETHIOPIA

Rental law is stipulated under the Urban Lands Lease Holding Proclamation 721/2011, which, under section 3, applies to all urban centres and urban land in Ethiopia. Since private land ownership, sale and exchange is illegal, with all land owned by the Government, lease of the land is the primary method of occupancy in the country. The proclamation has provisions that recognize the principles of a lease under section 4, which stipulates that:

- the right to use of urban land by lease shall be permitted to realize the common interest and development of the people
- the offer of lease tender and land delivery system shall adhere to the principles of transparency and accountability and thereby prevent corrupt practices and abuses to ensure impartiality in the process
- the tender shall reflect the prevailing transaction value of land
- the urban land delivery system shall give priority to the interests of the public and urban centres to ensure rapid urban development and equitable benefits of

citizens and thereby ensure the sustainability of the country's development

For prospective tenants to secure tenancy over the land, there is a tender process, outlined under section 11 of the Urban Lands Lease Holding Proclamation 721/2011, which requires an advertisement be placed, being a “bidding” document intended to call for prospective bidders of the land. If there are less than three bidders participating in the first round of the tender bidding process, the bidding is cancelled. The highest bidder would become the tenant of the land after payment of the bid price, payment of a down payment not less than 10 per cent of the total lease amount of the urban land,¹⁷¹ and signing the lease contract.¹⁷² The lease period of the land varies depending on the land’s purpose. There is a 99-year lease period for residential housing and 15-year lease for urban agricultural land.¹⁷³ If the lease period expires, the lease could be renewed, however if renewal of the lease is denied there is no compensation available for the tenant.

Rent price on the urban land lease is calculated by the values of the urban centre’s conditions and in accordance with the respective method of each local government.¹⁷⁴ The prices are updated at least every two years.

Rent provisions for unit apartments

The rental process for unit apartments is stipulated under section 22 of the Ethiopia Condominium Proclamation:

- the owner of a unit who leases or renews the lease of a unit shall notify the unit owners’

¹⁷¹ Ethiopia, Urban Lands Lease Holding Proclamation 721/2011, s20(2).

¹⁷² Ibid., s16.

¹⁷³ Ibid., a18.

¹⁷⁴ Ibid., s14.

association of the contract thereto and shall provide a copy of the contract of lease or renewal

- the owner of a unit shall notify the unit owners' association of the termination of the contract of lease and provide the relevant document that evidences the termination
- the owner of a unit who leases a unit shall provide the lessee with a copy of the declaration and description, by-laws and rules of the condominium

While the unit owner's obligations are clear under the proclamation, there is no legislation that outlines the tenant's rights and obligations in a rental arrangement.

NIGERIA

Residential leases

Leases are regulated by tenancy laws in each State in the country. There are no national tenancy laws. For example, in the State of Lagos, there is no distinction between business and residential lease laws.

Pursuant to the State of Lagos' Tenancy Law 2011,¹⁷⁵ rent is defined under section 47 as:

"Rent" includes any consideration or money paid or agreed to be paid or value or a right given or agreed to be given or part of any crop rendered or any equivalent given in kind or in labour, in consideration of which a landlord has permitted any person to use and occupy any land, premises or other corporeal hereditament, and the use of common areas, but does not include any charge for services or facilities provided in addition for

¹⁷⁵ Tenancy Law 2011 (Lagos State of Nigeria), <https://lagosministryofjustice.org/wp-content/themes/moj/documents/Tenancy-Law-2011.pdf>.

the occupation of the premises.

Tenants are protected under section 4(1)(2) from landlords by making it unlawful for a tenant to pay rent in excess of one year's rent and it is unlawful for tenants to be made to pay six months of rent for a monthly tenancy. As part of the rental agreement, the tenant is also required to pay a security deposit to cover any damage and repairs to the premises¹⁷⁶ and for services and facilities for the premises¹⁷⁷ and service charges for common areas on the premises.¹⁷⁸

Occupation of land granted by the governor

Under section 16 of the Land Use Act, when the State governor is determining the fixed rent amount or amount of the revised rent, he or she is required to:

- a) take into consideration the rent previously fixed in respect of any other land in the immediate neighbourhood and have regard to all the circumstances of the case;
- b) not take into consideration any value due to capital expended upon the land by the same or any previous occupier during his term or terms of occupancy, or any increase in the value of the land the rental of which is under consideration, due to the employment of such capital.

However, the governor can, under section 17 of the Act, grant the occupancy rent free if the governor thinks fit¹⁷⁹ or at a reduced rent if it is in the public's interest.¹⁸⁰

If the governor wants to recover rent payable for occupancy on the land, application will need to be made to the Magistrates' Court under section

¹⁷⁶ *Ibid.*, s10(a).

¹⁷⁷ *Ibid.*, s10(b).

¹⁷⁸ *Ibid.*, s10(c).

¹⁷⁹ *Ibid.*, s17(2).

¹⁸⁰ *Ibid.*, s17(1).

42(1). For rent recovery relating to customary right of occupancy, local government will need to make an application to the customary court or any court of equal jurisdiction.¹⁸¹

SOUTH AFRICA

Under the Rental Housing Act, enacted in 1999, which came into force on 1 August 2000, the content of a lease agreement must comply with existing regulations (sometimes referred to as a rental agreement or a lease).¹⁸² Significantly, the Rental Housing Act of 1999 repealed rent control which had been effective since 1976.¹⁸³ The document also offers information on each party's rights and obligations in a landlord-tenant relationship, as well as a description of lease cancellations and terminations. It is specified in the Act that landlords and tenants must treat each other with respect. If a landlord or tenant commits an "unfair practice"¹⁸⁴ they would be in breach of contract. Although not every province has a Rental Housing Tribunal, the Rental Housing Tribunal in Gauteng is responsible for enforcing both the Rental Housing Act and the Gauteng Unfair Practices Regulations.

COMPARATIVE ANALYSIS

Lesotho lacks a legislative framework that regulates rental housing. Based on the selected countries, Botswana has rental legislation (Rent Control Act 1977 and Rent Control Regulations 1978) that regulates the rights and obligations of landlords and tenants, and outlines the process to allow a rental increase. A review of rental laws across various African countries conducted by "Landlord and Tenant Law in Ethiopia compared

to Africa" found the rental legislative framework in Botswana to be well balanced between the rights of landlords and tenants.¹⁸⁵

In Nigeria, the rental legislative framework is legislated by respective States and it is pro-landlord. An analysis of the State of Lagos Tenancy Law 2011 provides evidence that legislative provision favours landlords by giving them legal rights to require tenants to pay up to six months' rent for a monthly tenancy. The legislation also allows a landlord to require the tenant to pay a security deposit to cover any damage and repairs to the premises. On the other hand, in South Africa, the Rental Housing Act of 1999 has a balanced approach as it regulates the rights and obligations of the landlord-tenant relationship as well as the terms of the lease agreement, including issues to do with unfair practice by either party. Also, in the Plurinational State of Bolivia, the legislative provision under the Financial Services Law heavily protects tenants from eviction if the landlord defaults on their loan repayment and it also prohibits dwellings that have been leased to tenants from being used as collateral to obtain loans. It should be noted that the Plurinational State of Bolivia does not have a dedicated legislative framework on rental law, as it is regulated under the Bolivian Commercial Code with other commercial agreement issues. The "Landlord and Tenant Law in Ethiopia compared to Africa" found the rental law in Ethiopia to be as well balanced as those in Botswana, noting that private land ownership in Ethiopia is illegal and land belongs to and is leased from the Government under the Urban Lands Lease Holding Proclamation 721/2011. This report found Ethiopia has a well-established unit apartment (condominium) rental legislative

¹⁸¹ Ibid., s42(2).

¹⁸² Ibid.

¹⁸³ Global Property Guide, 'South Africa: Pro-landlord law', www.globalpropertyguide.com/Africa/South-Africa/Landlord-and-Tenant.

¹⁸⁴ Ibid.

¹⁸⁵ Global Property Guide, 'Landlord and Tenant Law in Ethiopia compared to Africa', www.globalpropertyguide.com/Africa/Ethiopia/landlord-tenant-law.

framework under the Ethiopia Condominium Proclamation, which outlines the legal rights and obligations of both the landlord and tenant, and establishes a “unit owner association” that looks after the maintenance of the apartment and the pool of financial contributions from unit owners towards repairs.

As most low-income families and individuals in Lesotho would require to rent a dwelling and purchasing a house may be outside their economic means, this report recommends that Lesotho considers introducing a rental legislative framework that clearly outlines the rights and obligations of landlords and tenants similar to that of Botswana, and includes a dispute-resolution processes over issues such as the increase of rent through a rent control tribunal that mirrors that of Botswana with decisions appealable in the High Court. In addition, to promote security of tenure and protect the tenant from forced evictions, the approach of the Plurinational State of Bolivian could be adopted. This prohibits dwellings that have been leased to tenants from being used as collateral to obtain loans and forbids the landlord from evicting the tenant if the landlord defaults on loan repayments. Also, given that available urban land for development is limited, with the possibility that unit apartments would be constructed to resolving housing problems, it is also recommended that Lesotho considers the framework outlined in the Condominium Proclamation of Ethiopia, which requires unit owners to establish an association for the purpose of maintaining the upkeep of the apartments.



Highway and new construction in Addis Ababa, Ethiopia by wolter | source: Envrø elements

CHAPTER X.

MECHANISMS TO FINANCE THE CONSTRUCTION OF AFFORDABLE HOUSING BY PUBLIC HOUSING COMPANIES, NON-GOVERNMENT ORGANIZATIONS AND THE PRIVATE SECTOR, AND MEASURES TO FACILITATE AFFORDABILITY



This chapter assesses national housing funds, measures to increase access to formal housing finance, micro-finance lending, housing allowances and rental subsidies, grants, covered bonds, loans, loan insurance, guarantee and protection, community mortgage programmes.

BOLIVIA (THE PLURINATIONAL STATE)

Authorization for government transfer of money through the Central Bank of Bolivia

Chapter V of the Law of the Central Bank of Bolivia Law 1995 stipulates that the bank functions as a government financial agent, responsible for carrying out the Government's operations through the National Treasury. Under Law no 614¹⁸⁶ passed by the Bolivian National Assembly, the Executive Branch of the Government is authorized to transfer money for housing¹⁸⁷ and the Ministry of Public Works, Services and Housing is authorized to transfer money to beneficiaries for the payment of labour for the construction of social housing and the acquisition of state, communal or private land for the construction of social housing.¹⁸⁸ The ministry can also transfer funds for the

improvement of social housing either directly or for the payment of labour.

Recognition of the different types of financial services

Article 151 of the Financial Services Law 2013 lists the different types of financial institutions under three distinct categories of state financial entities (such as public bank and public financial development entity), private financial intermediation (such as private development Bank, SME bank, Development Financial Institutions and Housing Finance Entity) and complementary financial services companies such as financial leasing companies. All these financial entities are regulated under Article 15(ii) of the legislation and fall within the regulatory power of the Financial System Supervision Authority (Article 151(ii)).

Social function requirement for financial services

Under the Financial Services Law 2013, the Legislative Assembly set a legislative requirement that all financial services under Article 4(i) must fulfil the social function of contributing to help the general population to reach an adequate standard of living, eliminate poverty and eliminate social and economic exclusion of the population. The social responsibility of the financial system is further reinforced under Article 7, that the purpose of the financial system

¹⁸⁶ The Plurinational Legislative Assembly, General Budget Law no 614, 2015 (Bolivia), https://translate.googleusercontent.com/translate_c?hl=en&sl=es&tl=en&prev=search&u=https://www.bcb.gob.bo/webdocs/normativa/2014%2520-%2520LEY%25200614%2520-%2520Aparueba%2520el%2520PGE%25202015.pdf&usg=ALkJrhIMpQJNzXvwpthlZLCtbHi9QgsnAA

¹⁸⁷ *Ibid.*, Article 13(i).

¹⁸⁸ *Ibid.*, Article 13(v).

is to “support the productive activities of the country and the growth of the national economy with social equity”.

A legislative mechanism to ensure that financial services participate in a social function to eliminate poverty is the requirement that respective financial services’ interest rates must not exceed the annual interest rate set by the Central Bank of Bolivia (Article 63(ii) and (iii)), and the stipulation of client or user’s rights of financial services under Article 74. The legislation recognizes that financial service consumers’ have rights to access services with equitable treatment, without discrimination of age, gender, race, religion or cultural identity (Article 74(i)(a)), to receive quality financial services of the amount and opportunity appropriate to the consumer’s economic interest (Article 74(i)(b) and receive good care and dignified treatment from financial institutions (Article 74(i)(c)). While Article 74 effectively obligates all financial services to serve and provide needs to all consumers who require it, the degree of financial service support to consumers is not specified under the legislation, however Article 112 specifies that the Government, through a “supreme decree” (subsidiary legislation) will outline the degree of guaranteed financial services accessible for citizens, considering the consumer’s circumstances in their localities such as basic services and transportation. The legislation also protects all low-income consumers who fall behind with their mortgage repayment and those whose home has been seized by the courts for auction, by stating that the respective financial service cannot seek any further financial recuperation beyond the proceeds from the auction, even if the amount recovered is less than the credit given (Article 82)(i)).

Financial services are required under Article 115(i) to allocate a percentage of their profits to fulfil a social function defined by a supreme decree (subsidiary legislation), which does not include financing communal entities (Article 115(ii)).

Under Article 4(i) of the Supreme Decree no 1842, banks are required to maintain a minimum of 60 per cent of their loans portfolio for low-income housing, while housing finance entities and small and medium enterprise¹⁸⁹ banks are required to maintain a minimum of 50 per cent of their loan portfolio for social housing. Housing finance leasing operations must have 25 per cent of their loans portfolio comprising social interest housing. Loans for housing improvements also constitute a loan for social or low-income housing under Article 6.

Under Article 113 of the Financial Services Law 2013, the Financial System Supervisory Authority is responsible for auditing and collecting information from all financial services with respect to “provision of financial services aimed at the lower-income population” (Article 113(ii)(c)) as well providing attention to financial services in geographic areas with lower population density and less economic and social development, especially in rural areas (Article 113(d)). If a financial service fails to adhere to consumer’s right under Article 74, the Financial System Supervisory Authority has the power to suspend the financial service’s licence under Article 75. The regulatory authority also has the power to restrict financial services’ distribution of dividends or surpluses to their shareholders under Article 425(ii) to reinvest the profits “for reasons of strengthening equity and accompanying the growth of the economy”.

¹⁸⁹ Small and medium-sized enterprises (SMEs) are non-subsidiary, independent firms which employ fewer than a given number of employees. This number varies across countries

Interest rate for housing loans

Interest rates are set by the Central Bank of Bolivia under Article 54(j) of the Central Bank of Bolivia Law 1670.¹⁹⁰ Under Supreme Decree no 1842¹⁹¹ (establishment of system of active

interest rates for financing), Article 3(i) stipulates that the maximum annual interest rate housing loans are as shown in figure II:

Given the definition of “social interest housing” under the Financial Services Law 2013 – defined

COMMERCIAL VALUE HOUSING OF SOCIAL INTEREST	MAXIMUM RATE OF ANNUAL INTEREST
Equal to or less than UFV255,000	5.5%
From UFV255.001 to UFV380.000	6.0%
From UFV380.001 to UFV460.000	6.5%

Figure 2: Extract from Supreme Decree no 1842 of the Plurinational State of Bolivia

as “low-income housing, including the value of the land, does not exceed Bs400,000 (\$58,181.32) for a unit apartment and Bs460,000 (\$66,908.52) for houses”, individuals with low-income housing would only require paying a maximum of 6.5 per cent annual interest rate for their home loan.

Employee financial contribution

The National housing Agency is funded through four avenues as outlined in Article 11 of Supreme Decree 986:

- resources from the collection of 2 per cent of the public and private employer contribution for housing;
- own resources;
- internal financing, which does not involve resources from the General Treasury of the Nation;
- resources obtained from cooperation, donations, bequests or borrowings.

The 2 per cent financial contribution by public and private employers was established under the Fund for the Development of the Financial System and Support to Productivity before the programme was replaced in 2006 and the financial contribution system moved to the Social and Solidarity Housing Programme legislative framework (Article 3, Supreme Decree no 28794). While the Social and Solidarity Housing Programme ended in 2013, its objective, including the 2 per cent financial contribution, was absorbed into the National Housing Agency’s function. The financial contribution’s mechanism requires employers to take 2 per cent from the salary of employees to pay into a social fund, which is used to fund government housing construction and the construction of schools and hospitals.¹⁹²

¹⁹⁰ The Honorable National Congress, Law of the Central Bank of Bolivia Law no1670, 1995 (Bolivia)

¹⁹¹ Establishment of a system of active interest rates for

financing Supreme Decree no 1842 (Bolivia)

¹⁹² Andrea Mariah Urcullo Pereira, Luis Valda Yanguas, ‘Bolivia: Lending & Secured Finance Laws and Regulations 2021’ (7 April 2021) EICLG.com. <https://iclg.com/practice-areas/lending-and-secured-finance-laws-and-regulations/bolivia>.

BOTSWANA

Loans and advances – Bank of Botswana

Under section 38 of the Bank of Botswana Act,¹⁹³ this bank can only grant loans and advances to account holders (s38(3), if there are assets, securities or guarantees issued by government, staple commodities, and documents of titles. The bank also has the power to set the interest rates for loans made (s39) and with the approval of the minister, the bank can set the interest rate for all financial institutions under section 41 of the Act, which must be published in the Gazette and institutions must be advised by written notice.

Loans and housing financing under the Botswana Housing Corporation

Under section 10(1)(e) of the Botswana Housing Corporation, the board is responsible for setting the “rate of interests, charges and conditions in respect of loans made by the Corporation for the construction of houses”. The board is also responsible for determining the “rates of interest, charges and conditions that may be specified in agreements entered into by the Corporation in respect of houses or other buildings sold by it upon terms of deferred payment” (section 10(d).

Exemptions from payment of transfer duty

Under section 2(1) of the Transfer Duty Act 1891, all individuals who purchase property that is freehold, held by the Government, transferred, or held as a customary land grant are required to pay transfer duty. Under section 4, the duty is calculated based on whichever is the highest of either the purchase price of the property or the value of the property. Section 4 stipulates

that transfer duty is calculated to be 5 per cent for citizens and 30 per cent for non-citizens. However, from section 20(t) to section 20(w) of the Act, exemptions from transfer duty payment is granted for citizens if the property is to be used as their home. Transfer duty is also reduced for citizens depending on the value of the property purchased.

ETHIOPIA

Interest rates on loans

Pursuant to section 20(4) of the Urban Lands Lease Holding Proclamation, interest rates on loans are set by the Commercial Bank of Ethiopia. In 2019, the Bank (Amendment) Proclamation 1159/2019 introduced section 58 to the Banking Business Proclamation 592/2008, legislation that regulates the banking industry in Ethiopia and permits the bank to issue directives and additional conditions of licensing and requirements to establish “interest free” banking. An interest-free bank would essentially conduct interest-free banking business. This banking opportunity creates an avenue for individuals to access zero interest loans to cover rental housing, unit apartment purchase or lease land to reside on.

For microfinancing institutions, under section 3(1) of the Micro-Financing Business Proclamation 626/2009, microfinancing is only allowed to provide loans to rural and urban farmers wanting to use the loan for farming activities and to rural and urban entrepreneurs. The proclamation does not extend to loans for housing or improvements to housing.

¹⁹³ Black Hall Publishing, Bank of Botswana Act 1997 (Botswana). <https://botswanalaws.com/alphabetical-list-of-statutes/bank-of-botswana>.

NIGERIA

National Housing Fund

The National Housing Fund's aim and objective is outlined under section 2 of the National Housing Fund Act to mobilize funds for the provision of affordable residential houses for Nigerians, with the objective of providing housing loans of up to 90 per cent of the cost of housing, fixed interest at 6 per cent per annum, long period loan repayment of up to 30 years, contributions can serve as additional old age security, enabling loans of up to 15million Naira (\$36,357.74), refunds with 2 per cent interest on retirement, the loan repayment being on a par with to an average month's rent.¹⁹⁴

Under section 16(1) of the National Housing Fund Act 1992, loans under the National Housing Fund are legally required to be lower than commercial rates in Nigeria, with each loan subject to a fixed interest for the loan's duration (s16(2)), while banks are not to charge more than 1 per cent above its borrowing rate. Any loans will require a mortgage over the house as security for the fund (s15). This, in effect, benefits loan holders and applicants who must spend less on loan repayments and have the ability to repay the loan earlier compared to loans from non-National Housing Fund sources.

The Federal Mortgage Bank of Nigeria, under section 1(e) of the Federal Mortgage Bank of Nigeria Act 1993, is mandated to "collect, manage and administer the National Housing Fund in accordance with the National Housing Fund Act 1992".

¹⁹⁴ Centre for Affordable Housing Finance in Africa, "Housing Finance in Nigeria". <https://housingfinanceafrica.org/countries/nigeria/>.

The funding source outlined in the Act requires:

- a) the country's commercial and merchant banks to invest 10 per cent of their loans and advances portfolio in the National Housing Fund;
- b) require insurance companies to invest 20 per cent of non-life and 40 per cent life funds in the housing sector, with 50 per cent of these funds channelled to directly fund the National Housing Fund;
- c) mandatory contribution of 2.5% of monthly income of Nigerians earning more than N3,000 per annum (\$7.29);
- d) financial contributions by the Government.

Under section 13 of the Federal Mortgage Bank of Nigeria Act 1993, the bank has the power to borrow money from any source it sees fit, including foreign loans if the borrowing does not exceed its share capital. If the proposed borrowing amount exceeds the bank's share capital, this will require the minister's approval.

Section 5 of the Mortgage Institutions Act provides mortgage institutions with the power to grant loans to an individual to purchase or construct a house¹⁹⁵ or grant a loan to any person for the improvement or extension of a house.¹⁹⁶ The interest rate on these loans is determined by the Federal Mortgage Bank.¹⁹⁷ Loans can also be secured by banks and other financial institutions which are regulated under the Banks and Other Financial Institutions Act 1991.¹⁹⁸

In 2018, the Nigerian National Assembly passed

¹⁹⁵ Policy and Legal Advocacy Centre, Mortgage Institutions Act (Nigeria). [https://lawsofnigeria.placng.org/view2.php?sn=258,s5\(1\)\(a\)](https://lawsofnigeria.placng.org/view2.php?sn=258,s5(1)(a)).

¹⁹⁶ Ibid, s5(b).

¹⁹⁷ Ibid, s5(2).

¹⁹⁸ Policy and Legal Advocacy Centre, Banks and Other Financial Institutions Act (Nigeria). <https://lawsofnigeria.placng.org/view2.php?sn=45>.

a new National Housing Fund Bill to repeal the 1992 legislation, however the President refused to give consent for it to become an Act on the grounds that the Bill will increase the tax burden on the poor, increase contributions from banks through an increase in tax and impose taxation on both locally produced and imported cement which would be passed on to prospective homeowners. In 2019, the National Assembly amended the Bill, however it is yet to be passed into law, thus the 1992 National Housing Fund Act remains active.¹⁹⁹

SOUTH AFRICA

In South Africa, the primary housing Acts (i.e. the Housing Act 107 of 1999; the Social Housing Act 16 of 2008; the Rental Housing Act 1999; and Prevention of Illegal Eviction from and Unlawful Occupation of Land Act No. 19 of 1998) have not included financing mechanisms for the construction of affordable housing through the commonly used microhousing loans. Nevertheless, significant progress has been made in resolving issues relating to the provision of finance to construct affordable housing. In recent years, a market for microhousing loans has developed, which in collaboration with employers, have three essential functions:²⁰⁰

- they endure most of the burden and cost of loan origination
- they take salary deductions and pay the monthly instalments directly to lenders
- they arrange for employees' pension or provident fund benefits to be committed

¹⁹⁹ Oladimeji Sarumi (2020). "Nigeria: Assent-Denial on the National Housing Fund Bill – A Good Call by the President" (23 January 2020) TNP. Assent-Denial On The National Housing Fund Bill – A Good Call By The President - Finance and Banking - Nigeria (mondaq.com).

²⁰⁰ The Micro-Finance Regulatory Council Website and South African Reserve Bank Quarterly Report, August 2004.

to the banks as collateral for the loans

The originating expenses are meagre and the losses are negligible. One downside is that few prospective borrowers have a pension or other benefits worth over R5,000 (\$326). Therefore, the average loan under the scheme is R10,000 (\$653). Another downside is that, because interest rates and instalments are variable, borrowers discovered that deductions were bigger than anticipated – which many could not afford – and were deducted from their earnings as the interest rate rose. Despite this, banks have almost R3 billion (\$19.5 billion) in these loans on their records. Some microlenders have also been active in this industry, lending more than R3 billion (\$19.5 billion).²⁰¹ Overall, microhousing loans provide housing finance to an additional 20 per cent of the previously unhoused.

COMPARATIVE ANALYSIS

Botswana's stamp duty exemption for individuals who purchase a house primarily as a home is accessible to all individuals without any socioeconomic discrimination and is the fairest, least discriminative and least invasive financial housing support system that does not require introducing mandatory taxation on businesses and individuals, and it does not overly regulate the banking industry compared to the other selected countries. The stamp duty exemption can be easily adopted in Lesotho by amending the Stamp Duty Act 1972 (Lesotho) with limited expenses and regulatory oversight, and limited impact its free market economy. The housing support system in South Africa provides microhousing loans for low-income households to expand the acquisition or expansion of low-income housing. To date, microhousing loans are supported by the National Housing Finance Corporation and the Rural Housing Loan Fund.

²⁰¹ Ibid.

These government institutions provide debt capital to microfinance institutions. Housing finance in South Africa is unsecured and requires no collateral. Loan eligibility criteria are stringent, as lending targets individuals who are regularly salaried people and formally employed. If Lesotho were to consider a similar lending scheme, it needs to increase consumer financial literacy and take measures to serve self-employed and informally employed individuals.²⁰² In Nigeria and the Plurinational State of Bolivia, the financial support housing system requires levelling taxation on all working citizens and businesses, which had caused businesses to raise prices for goods and services in order to recoup the mandatory financial contribution towards social housing. Nigeria in particular also experienced a backlash from some business sectors towards the housing tax due to the financial hardship that it imposes on financially struggling industries, such as real estate businesses. The Plurinational State of Bolivia had not experienced any significant backlash against the mandatory housing tax contribution. This could be explained by the country's political and economic system reform towards socialism and a focus on social causes such as social housing construction and unemployment by nationalizing key industries and enshrining its social reform agenda in its new Constitution. If Lesotho were to consider a mandatory tax on financing social housing, it needs to consider the class of individuals and businesses who will be taxed and the economic consequences on those who are taxed, including the wider impact the taxation will have on the country's economy and political establishment.

The Plurinational State of Bolivia and, more so, Ethiopia have introduced banking regulations

with the aim of assisting low-income families and individuals to attain financial loans to purchase a house. The Plurinational State of Bolivia has a strong interventionist approach towards its banking industry, requiring banks to assist all individuals who require the bank's assistance, introducing legislative provisions that protect homeowners who have defaulted on their loan repayment and protecting tenants living in dwellings that had been defaulted in loan repayment. The country also sets different interest rates in accordance with the house value that individuals seek bank loans to purchase, in order to better assist low-income earners with low interest rates. While the banking regulations in the Plurinational State of Bolivia are aligned with a socialist economy and system of government, they have enabled a significant number of low-income families to attain financial loans necessary to purchase their own home. Ethiopia has taken a far less interventionist approach in its banking industry, by legislating to permit its Central Bank to create and regulate a banking industry that is "interest free". Little is known about the success of the "interest free" banking industry. If Lesotho were to consider introducing legislative frameworks that impose banking regulations to assist low-income earners better financially, Lesotho needs to consider the impact the proposed banking regulations will have on a free-market economy and the regulatory authority of the Central Bank of Lesotho.

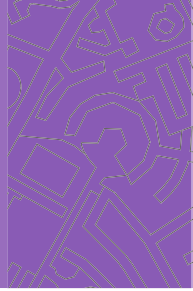
²⁰² Centre for Affordable Housing Finance in Africa, Housing Microfinance in South Africa: An Update. https://housingfinanceafrica.org/app/uploads/HMF-Update_Kihato.pdf .



Maseru, Lesotho by Iatenda Mapigoti source - Unsplash

CHAPTER XI.

DISPUTE RESOLUTION



BOLIVIA (THE PLURINATIONAL STATE OF)

The Ago-Environmental Court under Article 189 of the Constitution is responsible to hear and resolve complaints over the legality of compulsory acquisition of private land by the Government²⁰³ along with compensation claims and distribution of land claims against the State.²⁰⁴

Pursuant to Article 189, the duties of the Ago-Environmental Court are to:

- a. resolve appeals of cessation and nullity in actions involving agrarian real estate, forestry, environmental, water, rights of use and enjoyment of natural renewable, hydraulic and forest resources, and biodiversity; and resolve complaints involving practices that endanger the ecological system and the conservation of species or animals;
- b. hear and resolve, as the sole instance, the complaints of nullity and cancellation of titles;
- c. hear and resolve, as the sole instance, the cases brought against the State resulting from contracts, negotiations, authorizations, licences, distribution and redistribution of rights of exploitation of natural renewable resources, and other acts and administrative resolutions.

An appeal against the decisions of the Ago-Environment Court can be made to the Pluri-National Constitutional Court.²⁰⁵

²⁰³ Constitution the Plurinational State of Bolivia, Article 189(2).

²⁰⁴ *Ibid.*, Article 189(3).

²⁰⁵ *Ibid.*, Article 202(7).

BOTSWANA

Resolving land and planning disputes

The Land Tribunal was established under section 3 of the Land Tribunal Act 2014 with jurisdiction under section 7 to hear and determine land disputes and appeals and review decisions of a public body concerning land. The appeals also included decisions from any of the 12 Tribal Land Boards made under section 40 of the Tribal Land Act 1970. The tribunal is also tasked to hear and resolve disputes arising from the Physical Planning Committees of District Councils and disputes from decisions arising from the Town and Country Planning Act. The tribunal can either uphold the decision of a public body²⁰⁶ or reject the decision or amend it.²⁰⁷ Appointed tribunal members are required to be a qualified attorney (lawyers).²⁰⁸

Dispute over compulsory acquisition of land

If a party disputes the legality of the President's compulsory acquisition of land under the Acquisition of Property Act 1955, the party can apply to the High Court to resolve the dispute.²⁰⁹ However, if the party is disputing the compensation amount, the dispute will be settled by a Board of Assessment²¹⁰ that consists of an individual nominated by the Chief Justice, a member appointed by the President and a representative of the disputing party. The board is required to consider section 16 of the Act when determining the compensation amount.

²⁰⁶ Botswana Land Tribunal Act 2014, s7(4)(a).

²⁰⁷ *Ibid.*, s7(4)(b).

²⁰⁸ *Ibid.*, s20.

²⁰⁹ Botswana Property Act 1955, s9

²¹⁰ *Ibid.*, s11

16. Matters to be considered in determining compensation

(1) In determining the amount of compensation to be given for property acquired or to be acquired under this Act, a Board shall assess what is adequate compensation therefor, and for such purpose shall have regard to-

- (a) the market value of the property at the date of service of the notice of acquisition under section 5;
- (b) any increase in the value of any other property of any person interested likely to accrue from the use to which the property acquired will be put;
- (c) the damage, if any, sustained by any person interested, by reason of the severing of any land from any other land of such person;
- (d) the damage, if any, sustained by any person interested, by reason of the acquisition injuriously affecting any other property of such person: and
- (e) the reasonable expenses, if any, incidental to any change of residence or place of business of any person interested which is necessary in consequence of the acquisition:

Provided that the Board shall not have regard to-

- (i) the fact that the acquisition is compulsory;
- (ii) the degree of urgency which has led to the acquisition;
- (iii) any disinclination of any person interested to part with the property to be acquired;
- (iv) any damage sustained by any person interested which, if caused by a private person, would not be a good cause of action;
- (v) any increase in the value of the property to be acquired which is likely to accrue from the use to which it will be put when acquired; or
- (vi) any outlay on additions or improvements to the property to be acquired, which has been incurred after the date of service of the notice of acquisition

under section 5 unless such additions or improvements were in the opinion of the Board necessary.

(2) If the market value of the property has been increased by means of any improvements made within one year immediately preceding the service of the notice of acquisition under section 5, such increase shall be disregarded unless it is proved that the improvement was made bona fide and not in contemplation of such property being compulsorily acquired under the provisions of this Act.

Figure 3: Extract from the Acquisition of Property Act 1955 of Botswana

The board's decision on compensation is final,²¹¹ however any party that disagrees with the board's decision can appeal to the High Court within 30 days of the decision.

Disputes over tribal land use

Disputes arising from a decision made by the Land Board surrounding the use of tribal land under the Tribal Land Act 1970, can be appealed to the minister under section 14 of the Act within four months of being notified of the board's decision.

Development approvals

If the Town and Country Planning Board approves a development application, but the minister disagrees with the board's decision, within 14 days of the board's decision the minister can overturn this decision with written reasons under section 12 of the Town and Country Planning Act 1977. The minister's decision is final and cannot be challenged in any court.²¹²

If a party disagrees with the board's decision, it can lodge an appeal with the minister,²¹³ and the minister can either allow, dismiss, or vary the board's decision. The minister's decision is final, and the court cannot challenge the minister's decision.

Building approvals and rejections disputes

Disputes arising from local authority decisions such as approval or rejection of building permits under section 5 of the Building Control Act 1962 and removal of works that do not comply with the building regulations²¹⁴ can be appealed against with the Building Regulations Board under section 6 of the Act. Appeals can also include

²¹¹ Ibid, s20

²¹² Ibid, s12(3).

²¹³ Ibid., s15.

²¹⁴ Ibid, s8.

any decisions made by a local authority to pull down or remove building work made by a party that is contrary to the building regulations,²¹⁵ however appeals must be made within 30 days of the party being given notice by the local authority. The board's decision is final,²¹⁶ however the minister can grant exemptions of the building regulations in special cases if the building regulation is deemed unreasonable,²¹⁷ after consultation with the local authority and the board.

Rent disputes

If there is a dispute on the adjustment of rent payable between the landlord and tenant (including if a party believing the adjustment of rent is unjust), an application can be lodged by either party under section 6 of the Rent Control Act 1977²¹⁸ to the Rent Control Tribunal, that was established under section 4 of the Act to investigate disputes of rent adjustment and decide on a fair annual rental amount. The tribunal, under section 4 of the Act, consists of a chair, who is a qualified lawyer and two other members, who are all appointed by the minister.

If a party disagrees with the tribunal's decision, an appeal can be lodged within 14 days with the High Court,²¹⁹ and the court's decision will be final.²²⁰

ETHIOPIA

Construction Application disputes

If a construction application is rejected under the Ethiopia Building Proclamation 624/2009, the

²¹⁵ Ibid., s8.

²¹⁶ Ibid., s6.

²¹⁷ Ibid., s9.

²¹⁸ Black Hall Publishing, Rent Control Act 1977 (Botswana). <https://botswanalaws.com/alphabetical-list-of-statutes/rent-control#Ch4309s4>.

²¹⁹ Ibid., s7.

²²⁰ Ibid., s7(6).

applicant can lodge a complaint with the Board of Appeal under section 13 of the Proclamation. The board's decision is final. It should be noted that the proclamation does not specify the appointment process of the board, the number of persons constituting the board, or outlining the board members qualifications. The proclamation only states that "board members with the relevant qualification to enable them to decide cases in accordance with this Proclamation" (section 13(1)).

Compulsory acquisition

There is no evidence of any appeals process against the legality of an apartment that is compulsorily acquired for public interest under section 35 of the Ethiopia Condominium Proclamation. While compensation is stipulated under section 36 of the Proclamation, there is a dispute-resolution process if an aggrieved party disagrees with the monetary amount offered.

Dispute of order to vacate property

Under section 27 of the Urban Lands Lease Holding Proclamation, if an occupant receives a government "clearing order" to vacate the property, an occupant who objects to the order must submit their grievances to the local government within 15 days to review and respond to the grievances in writing (section 28). If the occupant is dissatisfied with the review's decision, an appeal could be lodged under section 29 with the Appellate Tribunal within 30 days of having received the reviewed decision. An Appellate Tribunal is established under section 30 in each local government region and is accountable to the respective local government to hear and decide land clearing appeals and compensation disputes. In the proclamation, there is no stipulation as to the tribunal's membership composition and

qualification requirements.

For rural land, disputes over the rights of the land user are resolved through discussion and agreement between the disputed parties. If the dispute fails to be resolved, it is decided by an arbitral body elected by the parties to decide the outcome in accordance with rural land administration laws of the region (section 12, Rural Land Administration and Land Use Proclamation 456/2005).

NIGERIA

Dispute over urban and regional plans

After drafting the National Physical Development Plan, the National Urban and Regional Planning Commission is required to allow public response, including any objections to the plan and any suggestion of alteration and amendment to the plan according to section 15 of the Nigerian Urban and Regional Planning Act. The commission is required to acknowledge any written statement of objections and it should also prepare a summary of the objects and comments before reviewing whether the draft plan should be revised.²²¹ The final approval of the plan is made by the legislative body, where it can be approved wholly, partly or be referred back to the commission for amendment.²²²

Disputes arising from development permit

The Urban and Regional Planning Tribunal, established under section 86 of the Nigerian Urban and Regional Planning Act 1992, is mandated to hear and resolve development permit disputes arising under the legislation. The tribunal comprises of a chair who is a registered town planner with 15 years post-qualification experience, an architect, a legal practitioner

²²¹ Nigeria Urban and Regional Planning Act, 1992, s16.

²²² Ibid, s19.

knowledgeable in planning law, an engineer and a land surveyor.²²³

Under section 38 of the Act, a developer or holder of a development permit, can appeal to the Planning Tribunal against the Development Control Department's decision to amend or alter the condition of the development permit within 28 days of having received notice from the planning authority.

Under section 40(1) of the Act, a developer or holder of a development permit can appeal against the local planning authority's decision to revoke the development permit to the minister or commissioner. If the developer is dissatisfied with the minister or commissioner's decision, the developer or holder of the development permit can appeal to the Planning Tribunal within 28 days of having received notice of the decision.

If a developer or permit holder is dissatisfied with the compensation payable arising from the revoking of a development permit, the dispute may be referred to the Planning Tribunal.²²⁴ Appeals against the Planning Tribunal's decision can be made in the High Court.²²⁵

Dispute concerning compensation after occupancy on land is revoked

If the governor revokes a party's right of occupancy under section 28 of the Land Use Act, the party needs to be compensated.²²⁶ However, if there is a dispute concerning the amount being compensated, the dispute should be referred to the Land Use and Allocation Committee.²²⁷

The Nigerian High Court has jurisdiction to resolve any dispute over the statutory right of

²²³ Ibid., s87.

²²⁴ Ibid., s45.

²²⁵ Ibid., s46.

²²⁶ Nigeria Land Use Act, 1978 s29.

²²⁷ Ibid., s30.

occupancy granted by the governor and any compensation payable for improvements on the land under the Act.²²⁸ However, land disputes over customary occupancy granted by the local government are resolved by a customary court.

Rental dispute (State of Lagos)

The court under section 2(1) of the Tenancy Law 2011 has jurisdiction to hear tenancy disputes in the High Court and the Magistrate's Court, depending on the rental value within the monetary limit of each jurisdiction. If the parties can access alternative dispute resolution facilities and processes, section 2(3) of the Act specifies that these processes are still within the court's jurisdiction. The court would actively promote alternative dispute resolution processes under section 32 of the Act as a means of resolving tenancy disputes.

If the court is required to resolve disputes over "unreasonable" rent increases, it is required under section 37(2) to undertake a comparative analysis of local rent in a similar locality, collect evidence from witnesses and any other special circumstance to consider.

SOUTH AFRICA

Chapter 4 of the Rental Housing Act of 1999 establishes a Rental Housing Tribunal. The tribunal must carry out the duties imposed on it by this Article and must do everything possible to ensure that the chapter's objectives are met. Any tenant or landlord or group of tenants or landlords or interest group may, in the prescribed manner, lodge a complaint with the tribunal concerning an unfair practice. When a complaint is filed with the tribunal, and it appears that there is a dispute over a topic that may constitute an unfair practice, the tribunal must:

²²⁸ Ibid., s39.

- A. “list particulars of the dwelling to which the complaint refers in the register referred to in subsection;
- B. through its staff conduct such preliminary investigations as may be necessary to determine whether the complaint relates to a dispute in respect of a matter which may constitute an unfair practice;
- C. where the tribunal is of the view that there is a dispute contemplated in paragraph (b) and that such dispute may be resolved through mediation, appoint a mediator, which may be a member of the tribunal, a member of staff or any person deemed fit and proper by the tribunal, with a view to resolving the dispute;
- D. where the tribunal is of the view that the dispute is of such a nature that it cannot be resolved through mediation or where a mediator contemplated in paragraph (c) has issued a certificate to the effect that the parties are unable to resolve the dispute through mediation, conduct a hearing and, subject to this section, make such a ruling as it may consider just and fair in the circumstances.”

Currently, only three of the nine provinces have established housing tribunals, namely, Gauteng, North-West Province, and the Western Cape. Rental Housing Tribunals give court rulings with the same power as those of a Magistrate’s Court and use the same procedures as a Labour Court. The tribunal has 30 days to help the affected parties reach resolution. If a party is unsatisfied with the outcome of the tribunal then they may take the case to the High Court.²²⁹

²²⁹ Global Property Guide, ‘South Africa : Pro-landlord law’. www.globalpropertyguide.com/Africa/South-Africa/Landlord-and-Tenant.

COMPARATIVE ANALYSIS

In Lesotho, the dispute resolution process for the compulsory acquisition of land is straight forward, by enabling complainants to directly access the Land Court, a division of the High Court.²³⁰ This direct access to the courts to resolve the legality of the land acquisition and monetary amount of compensation is similar to those in the study countries.

For disputes concerning the Government of Lesotho allocated lease of residential property, the dispute resolution mechanism is clear in that any dispute arising would be resolved by the Land Court,²³¹ and it mirrors the dispute resolution processes in Nigeria and Ethiopia, however Lesotho has no legislated process to resolve private rental disputes, including disputes over rental increases.

Of the countries analysed, Botswana, Nigeria, and South Africa have a clearly established tenancy laws and underlining dispute-resolution processes, depending on the monetary amount. The process in Nigeria refers tenancy disputes to an alternative dispute resolution process of mediation before being lodged to a court of law. This form of dispute resolution is a recognized low-cost process that reduces the burden on the courts to hear minor claims.²³²

In Botswana, a Rental Control Tribunal resolves disputes on the adjustment of rent payable between the landlord and tenant, with the option to appeal to the High Court. It is recommended that the Lesotho Government considers a legislative framework that outlines private tenancy law and

²³⁰ Land Act 2010, Part XII.

²³¹ Land Act 2010, s37(9).

²³² Chief Justice Bathurst, The Role of the Courts in the Changing Dispute Resolution Landscape (2012) Volume 35(3) UNSW Law Journal, 870-888, 870. www.unswlawjournal.unsw.edu.au/wp-content/uploads/2017/09/35-3-7.pdf.

dispute resolution processes with the inclusion of alternative dispute resolution processes to maintain a cost efficient and effective process.

In South Africa, the Rental Housing Tribunal is responsible for assisting in the resolution of complaints through alternative dispute resolution processes such as arbitration and mediation. The tribunal also offers advice on matters related to rentals and residential leases as well as the provision of consumer education to inform people on their rights and duties as parties in the rental space.²³³

In Lesotho and Nigeria, the town planning, development approval and building regulation dispute resolution processes are by far the fairest by allowing the complainant access to the High Court to challenge the determining authority's decision. In Botswana, planning disputes are referred to a Land Tribunal, and development and building approval disputes are referred to the relevant minister with their decision being final, which can raise concerns over the processes' independence and impartiality.

²³³ University of the Witwatersrand, 'A Landlord's Guide to Rental Housing in South Africa'. www.wits.ac.za/media/wits-university/faculties-and-schools/-engineering-and-the-built-environment/research-entities/cubes/documents/A%20Landlords%20Guide%20to%20Rental%20Housing.pdf .

RECOMMENDATIONS

Based on the comparative analysis conducted, the following recommendations can act as a roadmap for reform of existing legislation as well as pointers on the factors to include into the new Lesotho housing regulatory framework to aid the implementation of the 2018 National Housing Policy:

1. Merging the Ministry of Interior, Chieftainship Affairs and Rural Development and the Ministry of Housing and Public Works into one ministry to carry out all urban development functions which could promote more efficient and effective communication, planning and project implementation with all the essential services under one roof. Alternatively, a dedicated taskforce or committee consisting of members from the Ministry of Interior, Chieftainship Affairs and Rural Development and the Ministry of Housing and Public Works could be established to coordinate on urban development.
2. Outlining a definition of adequate and affordable housing in the housing legislative framework. The definition of “adequate housing” could mirror the approach in the Plurinational State of Bolivia, which specifies a criterion to include a class of people with an accompanying financial threshold on the purchase value of the housing unit. Moreover, the definition of adequate housing could draw on the approach of South Africa, which specifies the minimum size of a house as well as the basic amenities. Lesotho, as a party to the International Covenant on Economic, Social and Cultural Rights (1976), could also recognize the definition stipulated by the United Nations Committee on Economic, Social and Cultural Rights, as one that meets
3. Reforming current land acquisition practice to introduce a balanced approach that mirrors the system in Botswana that allows land acquisition specifically for town and country planning or land settlement purposes, or purposes that are for community benefit. The system also requires that the affected party receives a “fair compensation” with the criteria for assessment outlined in the legislation (market value of property, any increases in reasonable expenses incidental to change of residence or place of business, anticipated increases in value of land from the public development, damages accrued because of the acquisition that affect other such property). Additionally, having the compulsory acquisition power exercised by one authority is prudent to avoid overlaps in roles and responsibilities.
4. Adopting the approach of the Plurinational State of Bolivia on the selection of beneficiaries that focuses on low-income groups and a financial threshold of the purchase price of the house. However, a clear categorization of the low-income groups will be necessary which could be based on household income and other factors, and the system could be made broader to prioritize or allocate quotas for social housing to other vulnerable groups such as women, young people, elderly people, people with disabilities, widowed people and war veterans, among others. South Africa

provides a list of criteria for qualifying individuals, including maximum income and citizenship status. Such an approach can complement the model of the Plurinational State of Bolivia by clarifying what constitutes an eligible household. Again, efforts should be taken to prioritize the inclusion of individuals from marginalized groups such as women and people with disabilities.

5. Making a legislative amendment to the Lesotho Housing and Land Development Order 122, 1988 that a function of the Lesotho Housing and Land Development Corporation is to promote technologies that could generate savings on building construction materials and building construction time, water and energy.
6. Launching a legislative amendment to the Lesotho Housing and Land Development Order 122, 1988 to forbid Lesotho Housing and Land Development Corporation from making profits from its activities, thereby requiring houses and unit apartments to be sold or leased below the commercial market price.
7. Initiating a legislative amendment to the Stamp Duty Act 1972 to exempt stamp duty for individuals who have purchased a house as a home to reside in.
8. Establishing a mandatory tax towards financing social housing that mirrors that of the Plurinational State of Bolivia, but with careful consideration of the class of individuals and businesses who will be taxed and the economic consequences for those who are taxed, including the wider impact the taxation will have on the country's economy and political establishment. Drawing from the model in South Africa, establish a mechanism

to provide microhousing loans for low-to-middle income households to expand the acquisition and/or expansion of low-income housing.

9. Introducing legislative frameworks that impose banking regulations to better financially assist low-income earners that is like the approach in the Plurinational State of Bolivia and Ethiopia. However, the Lesotho Government needs to consider the impact the proposed banking regulation will have on a free-market economy and the regulatory authority of its Central Bank.
10. Introducing rental regulations with consideration of adopting provisions similar to Botswana's Rent Control Act 1977 and the Rent Control Regulations 1978 that have a well-balanced approach towards landlord and tenants' rights and establishing a Rental Control Tribunal to resolve disputes of rental increase. Consideration should also be made of the State of Lagos Tenancy Law 2011 of Nigeria, specifically its rental dispute resolution process that requires parties to participate in an alternative dispute resolution process, such as mediation, before proceeding to the court. To promote security of tenure and protect the tenant from forced evictions, the approach in the Plurinational State of Bolivia could be adopted that prohibits dwellings that have been leased to tenants from being used as collateral to obtain loans, as well as forbidding the landlord from evicting the tenant if the landlord defaults on loan repayment. As more housing will be needed and Lesotho will gradually shift to providing unit apartments, it can also consider the framework in Ethiopia that requires unit owners to establish an association for the purpose of maintaining the upkeep of the apartments.

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COMPARATIVE ANALYSIS OF HOUSING ACTS IN FIVE COUNTRIES: BOLIVIA (PLURINATIONAL STATE OF), BOTSWANA, ETHIOPIA, NIGERIA AND SOUTH AFRICA

UN-Habitat provides technical assistance and advisory services to member states in legal reform processes to bring about social and economic transformation and enhance effective service delivery for sustainable urban development. Benchmarking case studies and comparative analysis are key aspects of the UN-Habitat methodology for legal and governance reform. UN-Habitat and the Institute of Advanced Legal Studies at the University of London, UK developed this comparative analysis of housing laws to assist the Government of Lesotho to address the increased demand for urban housing, improve residents' quality of life, enhance services accessibility, and improve mobility and security of tenure, while recognizing the environmental impact of climate change.

This comparative analysis report provides an insight into available housing legislative models that are already in use in Bolivia (the Plurinational State of), Botswana, Ethiopia, Nigeria and South Africa. These are countries with similar socioeconomic backgrounds, land availability and environmental constraints and challenges. With a comparative analysis of housing legislation, recommendations have been proposed on the best model available that could be entirely adopted or modified by the Lesotho Government to suit its country's needs and local context.

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UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME

P.O. Box 30030, GPO Nairobi 00100 Kenya

Tel: +254-20-7623120

Fax: +254-20-76234266/7 (Central office)

infohabitat@un-habitat.org

www.unhabitat.org

