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**Final Report: Mainstreaming Land Sector Governance in the National Agriculture Investment Plan**

**Botswana**

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# Executive Summary

Land policy and governance determine productivity investment, efficiency of land use, distribution of benefits. The way in which land issues are addressed are critical for African development especially so in light of AU agenda 2025. In this report a review and assessment of all Botswana land –related policies will be conducted. In coordination with PEM Consult which is contracted by the GIZ CAADP Support Program which provides support to the country stakeholders with the National Agriculture Investment Plan (NAIP). The assessment will provide means of Land governance through which decisions are made about the access to land, its use, the manner in which these decisions are implemented and the ways that competing interest in Land are managed.

The country assessment is conducted in context of the Malabo Declaration to support the development of a successor (or 2nd generation) NAIP in Botswana. In June 2014, Heads of State and Government adopted a remarkable set of concrete agriculture goals to be attained by 2025. The Malabo Declaration on Accelerated Agricultural Growth and Transformation for Shared Prosperity and Improved Livelihoods is a set of new goals showing a more targeted approach to achieve the agricultural vision for the continent which is shared prosperity and improved livelihoods. Hence the objective of launching the NAIP Appraisal and Formulation processes in the Context of CAADP-Malabo Declaration. The NAIP being the center strategy document of the implementation of these goals, and in order to ensure that NAIP incorporates activities and investments for the Malabo commitments. The country assessment will fill in the gap not covered by the ReSAKKS studies essential on land policy/governance in Botswana. And the challenge to move from principles to implementation.

The centrality of land to national development efforts in Botswana cannot be overemphasized. Land as a resource, has the potential to play a primary role in indicators such as poverty reduction, environmental management, social reconstruction, enhancing economic opportunities for women, promoting conflict resolution, strengthening governance and driving agricultural modernization. The land question therefore critically examines the available land resources, the systems of evolved land governance for the sustainable use and management of these land resources and the role of the state in the use of policy instruments to regulate these traditional land governance systems in the national interest. This needs to be done in the context of changing social, economic and environmental conditions in the country. The realization of the potential of land in national development is however intricately linked to the nature of land governance practiced. The governance of land has an important bearing on the democratic process as a whole. It is the land governance context in Botswana that is next considered.

# 1.2 Terms of Reference

Loyd Sungirirai undertook the study in March to April 2019. Additional information and clarification of key points occurred between May and June 2019.

The methodology for the study visit involved working closely with the Department of Agricultural Research, Statistics and Policy Development and with officials at the Ministry of Lands and Housing. The team made a number of visits to the Department of Lands as well as to different departments of the Ministry for discussions with key officials, including those responsible for the management and administration of Lands.

The research involved conducting interviews and undertaking documentary research to collect qualitative information about land tenure management, this involved consultation with officials at the:

* Ministry of Agricultural Development and Food Security.
* Ministry of Lands and Housing.
* Department of Lands.
* Department of Land Boards Services and several land boards.
* Botswana Investment and Trade Centre.

A high-level analysis of the flow of information in land administration and management was undertaken. This included learning as much as possible about the strengths and weaknesses of the records control systems involved.

The relationships between Department of Lands and Land board services were assessed, and process flows were examined to obtain an indication on the quality of land administration and management.

As the study proceeded, it became apparent that while work had been undertaken on fully implementation of the new land tenure reforms, some issues were still limited in scope and implementation. There was, however, sufficient data to investigate key issues and to gain a good understanding of the land governance aspect of the management of state and tribal land in Botswana.

**Acknowledgements**

NELGA country expert is grateful to the Government of Botswana for so generously permitting this study to be conducted and for allowing its officials to participate freely. It would like to thank the many government officials who offered support and assistance. In particular, the NELGA would like to acknowledge the Director of the Department of Agricultural Research, Statistics and Policy Development, Mrs. Daphney Keboneilwe, who gave her support to the study and assisted in arranging many of the meetings with senior officials. Dr. Howard Sigwele, National Expert for Botswana, PEMconsult, Botswana. See *Appendix A* for a full list of the people consulted.

This case study represents a snapshot in time. The observations it contains were current as of April 2019. In other areas, new developments and improvements have taken place on a regular basis, and therefore, the report may have varying situations at present. Nevertheless, the findings in the report should provide useful background in understanding the challenges of land governance and mainstreaming the findings into the formulation of Botswana’s National Agriculture Investment Plan. The NELGA country expert made every effort to verify the information in the report. The officers interviewed did not always have the same views, and the aim was to present a balanced perspective.

# Background data and information

Botswana is a semi-arid, sparsely populated country and situated in Southern Africa with a surface area of about 582,000 km². As a landlocked country, it shares borders with South Africa, Namibia, Zambia and Zimbabwe. Due to its semi-arid conditions, the majority of Botswana’s population lives in the Eastern part of the country due to soil fertility and periodical rainfall that is able to sustain agricultural activities(Adams, Kalabamu, & White, 2003).Botswana was declared a protectorate in 1885 and the colonialists pursued policy of indirect rule that involved minimal interference in internal governance and customary law(Adams et al., 2003).

The population of Botswana grew rapidly from 1971 to 1981 at an annual growth rate of 4.6 percent (Statistics Botswana, 2017b). The annual inter-censual growth rate decreased from 4.6 percent during the 1971 and 1981 inter-censual period to 1.9 percent during the 2001-2011 periods (Statistics Botswana, 2017b). The proportion of urban population has increased quite rapidly from 42 per cent in 1990 to 64 per cent in 2011 (Statistics Botswana, 2011), resulting from a combination of population growth in urban areas, as well as area re-classification and migration.

At independence in 1966, Botswana was considered as having little economic prospects whilst the literacy stood at 25% per capita income that was around $80 then and life expectancy was at 48 years (Sebudubudu, Makepe, & Montsi, 2014). The country has however, been among the fastest-growing economies in Africa since 1966, and has achieved social, economic development and has become an urban society over two decades. The country is managed with the aid of a six year rolling plans known as National Development Plans (NDP), which set the government’s development strategy and priorities. The current development Plan therefore, is the 10th NDP (*National Development Plan 11 Volume 1 April 2017 – March 2023*, 2017).

On the contrary, and like other many developing nations, the country is facing many developmental challenges such as the high unemployment rate - at 18 percent in 2018 (highest among women and youths estimated at between 30 percent for women and 35 percent for youth respectively), significant pockets of poverty (20 percent) of households in 2018, a mineral dominated economy with limited diversification, a small and relatively less skilled work force and small industrial base and large volumes of imports with associated inflation (Department of Lands, 2018).

Further, the country has a relatively young population with associated challenges both in the delivery of tertiary education and subsequent skills profile to enable attainment of national development goals and provision of the broader development agenda (Department of Lands, 2018).

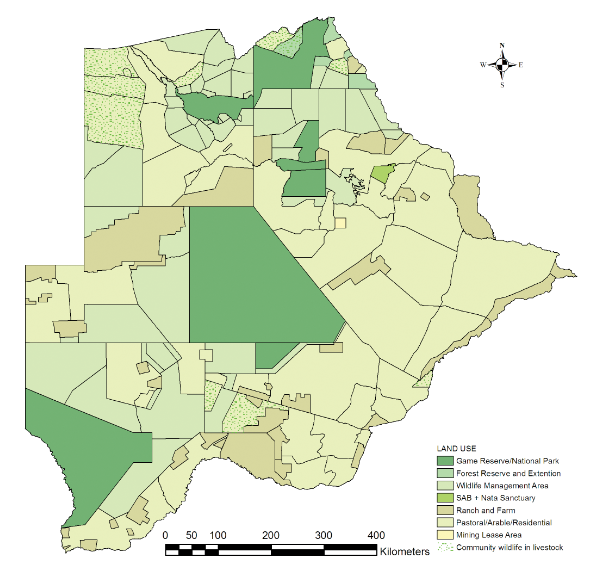
Gross Domestic Product (GDP) per capita was estimated 7,723.315 USD in Dec 2017 (Statistics Botswana, 2017a). Botswana’s income distribution however, is highly skewed, as shown by a Gini Coefficient of 0.61, signifying highly unequal income distribution; and high levels of rural poverty. According to AFDB, OECD & UNDP (2015) the population living below poverty accounted for 30.6 percent in 2002/03 and declined to 19.3 percent in 2009/10 while the population living under extreme poverty declined from 23.4 percent to 6.5 percent.

## 2.1 General data and information

Land governance comprises the rules, processes and organizations through which decisions are made about access to land and its use, the manner in which these decisions are implemented and the ways that competing interests in land are managed. In Botswana, this takes place within a state of diffusive legal pluralism. Approximately 63% of land is available for citizens, with the remaining 37% dedicated to game reserves, national parks and wildlife management areas. Land tenure is divided into:

* Freehold land (3%)
* State land (26%)
* Tribal land (71%).

State land, most importantly urban land, is administered according to the State Land Act (Chapter 32:01) by central government and local government councils. In urban areas, state land is allocated to citizens for residential purposes, as 99-year fixed-period state grants (FPSGs) which are registered in the Deeds Registry. For business or industrial purposes grants are for 50 years. In low-income housing areas, land used to be allocated to eligible households in terms of a certificate of rights (COR), but this form of tenure on state land has been discontinued in favor of the FPSG. State land is also occupied by the state as wildlife and forest reserves, research stations, roads, military purposes, large dams, etc. Decentralised land boards administer tribal land in terms of the *Tribal Land Act*. Tribal land is either held by the land board itself or by eligible applicants as customary grants or common law leases. Although a land board has the statutory right to refuse to allocate land, an application by government will normally be accommodated.



**Figure 1.** Land use zones in Botswana. Map of the two main land use zones: the Conservation Zones (green colours) consisting of protected areas and Wildlife Management Areas, and the Agricultural Zones (brown colours) consisting of communal grazing land, farms used mainly for livestock production and limited crop production, game ranches, and mining - and residential areas.doi:10.1371/journal.pone.0100202.g00

**Total Holdings, Total Area Planted and Harvested**

Table 2.1 below presents total land holdings and land area, total crop holdings and area planted, total holdings harvested and total area harvested in 2015 and 2017 agricultural seasons.

**Table 2.1 Total Holdings Area Planted and Harvested from 2015 – 2017**

|  |  |  |
| --- | --- | --- |
| **Indicators** | **2015** | **2017** |
| Land Holdings | 41,043 | 35,173 |
| Holdings: Planted | 30,150 | 33,399 |
| Total Land Area (Ha) | 204,965 | 135,315 |
| Total Area Planted | 123,251 | 126,821 |
| Total Area Harvested (Ha) | 32,641 | 92,942 |
| Fallow Land Area | 81,714 | 8,494 |
| Land Area not Planted | 39.9 | 6.3 |

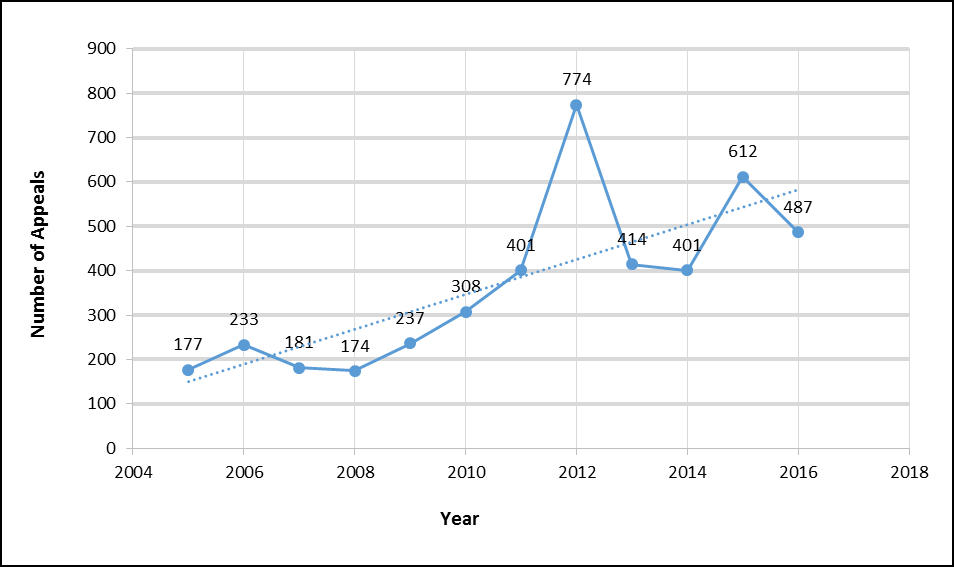
Source: *Statistics Botswana (2017)*

In 2017 annual agricultural survey, the number of farmers with land for planting showed a decrease from 41,043 in 2015 to 35,173 in 2017. However, area planted increased from 123,251 ha in 2015 to 126,821 ha in 2017. Also there is an increase in crop production indicators which was attributed to the good rainfall recorded during the 2016/17 cropping season.(*STATISTICS BOTSWANA ANNUAL AGRICULTURAL SURVEY REPORT 2017*, 2017)

## 2.2 Land Issues

More than five decades have passed since most African countries gained their Independence from European colonial powers but not much has been achieved in terms of realising a good number of the ideals of Independence (Kirubananthan, 2013). Yet by 2018 the land question is still highly contested and an emotive subject in much of Africa. It is ‘an example of historical injustices colliding with demands for contemporary fairness’ (Gibson 2009:135). However, Botswana remains scantily covered in the literature. This, if not critically examined, may lead to a wrong conclusion that the country has no contentious land issues (Isaacs & Thura Manatsha, 2015). Since the country’s Independence in 1966 the government of Botswana has instituted legislative and policy reforms aimed at resolving land conﬂicts, improving access to land and its management. However, some of these reforms have wittingly and unwittingly aided the grabbing of land from the poor by the elites and the state (Malope & Batisani, 2008).

**Registered Appeals with Land Tribunal from 2005 to 2016**



Source: Adapted from Kalabamu , (2018)

Since 2012 there have been intensiﬁed calls by communities in the peri-urban areas for the government to introduce land quotas when allocating plots in the tribal land. President Ian Khama publicly supported these calls when addressing *kgotla* meetings across the country (Botswana Daily News 12 April 2015 and Kayawe 14 April 2015). However, land quotas contradict the amended Tribal Land Act (TLA) and Botswana’s Constitution(Isaacs & Thura Manatsha, 2015).

There have also been continued mass evictions of squatters from informal settlements by the government (Molebatsi, 2004). The rising numbers of people on waiting lists for land allocation throughout the country and the rampant illegal selling of tribal land greatly worried the government (Isaacs & Thura Manatsha, 2015).

The 2015 land policy avers that land tenure debate should involve many stakeholders. It is vital that governments should ‘listen to and engage with different actors, and understand the diverse range of interests at stake, providing them with platform for discussion of policy option’ (European Task Force on Land Tenure 2004:18). Botswana’s land policy notes that there was ‘extensive nationwide consultation to reafﬁrm the validity of the proposed policy’ (Republic of Botswana 2015:2). The then ministers of Lands and Housing, Nonofho Molefhi (2008-2011) and Lebonamang Mokalake (2011-2014), toured Botswana holding kgotla meetings ‘consulting’ Batswana about the proposed land policy. These kgotla meetings were primarily to inform Batswana and not genuinely engage them. Immediately after the land policy was passed by parliament (in July 2015) the government received complaints from the Batswana that it claims to have consulted (Mkhutshwa December 2015).

During the kgotla meetings the issues discussed were the proposed land quota model, the demoralisingly long waiting lists, the illegal selling of tribal land, the protection of vulnerable groups (women, orphans, people living with disabilities and the remote area dwellers), and the poor service delivery by the land boards. In 2013, 2014 and 2015 parliamentarians argued that the land quota model was unconstitutional and thus rejected it(Isaacs & Thura Manatsha, 2015). This position narrowly focused on the interpretation of the law. In this way it somehow, ‘overlooked’ social justice and equitable resource distribution

# Land Governance Assessment

Good land governance is vital for economic development and is often characterized by open, participatory societies, with transparent and accountable systems of governance. Good governance therefore, requires a political system that provides opportunities for all its citizens (Land, Malatsi, & Lands, 2014). This may include: participation that ensures broad inputs in governance and development decision-making from all stakeholders; an effective system for the transfer of power and renewal of political leadership, competitive; free, fair and transparent elections; political, administrative and financial accountability; effective regulation, parliamentary oversight and auditing; transparency, predictability and availability of valid information about government decisions and performance, and public access to this information; ethical conduct of public affairs; effective public sector management with stable macroeconomic policy, effective resource mobilization and allocation systems; responsiveness to citizens(Kaunda , 2008).

In assessing the Land Policy of 2015 (Kalabamu, 2018) identifies some key reforms and are critiqued .Due to poor record-keeping, corruption and the demand for land especially in the urban areas, there has been an increase on the number of people on the waiting lists for land allocation in Botswana. For instance, in April 2015, the waiting list for Mogoditshane Sub Land Board stood at 143,000 and some of the applications applied as early as 1993 (Zorkin.N, Raphaka.T &Nilsson.K, 2017). In March 2016, the Minister of Lands and Housing informed parliament that countrywide, they were ‘1,062,158 applicants on the waiting list as maintained and published by various Land Boards and the Department of Lands (Zorkin.N, Raphaka.T &Nillson, 2017). The delays in land allocation is attributable to limited private sector involvement due to lack of basic infrastructure, shortage of funds for the provision of services to available land, increase in development costs, encroachment of agricultural land, lengthy of the acquisition process through the process of expropriation as well as land speculation (Adams et al., 2003).

Botswana’s 2015 Land Policy in Perspective notes that land has multiple values for Batswana and it is at the center of people’s identity (Republic of Botswana 2015). It acknowledges that these values have been rapidly changing since 1966. The policy claims to be a result of ‘extensive consultation’ (Republic of Botswana 2015:1) even though in Botswana the culture of genuine consultation is said to have long diminished (Makgala 2007). Botswana’s then ministers of Lands and Housing, Nonofho Molefhi (2008-2011) and Lebonamang Mokalake (2011 -2014), toured Botswana holding kgotla meetings ‘consulting’ Batswana about the proposed land policy. This paper contends that these kgotla meetings were primarily to inform Batswana and not genuinely engage them. Immediately after the land policy was passed by parliament (in July 2015) the government received complaints from the Batswana that it claims to have consulted (Mkhutshwa December 2015).

The land policy’s overall goal ‘is to protect and promote land rights of all land holders and promote sustainable human settlements’ (Republic of Botswana 2015:9). It lists the factors that may compromise this objective such as ‘market forces, gender [and] poverty’ but vows to address them (Republic of Botswana 2015:9).

**The 2015 land policy’s overall objectives are to:**

1. Protect and promote the land rights of all land holders;
2. Ensure that all eligible citizens have the opportunity to access and use the land;
3. Encourage citizens retention of rights to land;
4. Promote equity in access to land and natural resources;
5. Improve land management system on customary, state land and freehold land to make it predictable, transparent, reliable, consistent and timeous;
6. Establish an up-to-date, efﬁcient and accessible land information center;
7. Promote compatible and best use of land, and other land resources (Republic of Botswana 2015:9).

The policy also aims to approach land management holistically, taking into account sustainable development. Speciﬁcally, it says it will:

1. Guide all land operations for sustainable human settlements, land utilization and socio-economic development;
2. Promote access, equity, efﬁciency, land rights security and transparency in land management and administration; and.
3. Be responsive to emerging opportunities and dynamics of planning and development in the country.

The policy recognises the role that equitable access to land and its usage can play in addressing the socio-economic needs of all citizens. It guards this critical resource when it states that ‘Once secured, land rights need to be protected’ (Republic of Botswana 2015:11). It also recognises the link between the right to shelter and access to residential land. Shelter is an uncontested human right. The policy reafﬁrms that ‘(i) Every Motswana will be eligible for allocation of residential plot at an area of their choice’ (Republic of Botswana 2015:11). This is consistent with the TLA Section 10(1), the Constitution’s Sections 14(1) and 15(3),

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**Tribal/Customary Land**

The policy notes that customary land grants cannot be used to secure loans/funds in banks since they are not registered (Republic of Botswana 2015). Having only user rights limits one’s economic opportunities. Tribal land rights can be cancelled by the state anytime. ‘Adequate’ compensation is made only for the developments on the land. To ensure that customary land certiﬁcate holders have security, the policy indicates that ‘(i) Tribal land will be planned and surveyed before allocation to facilitate registration; and (ii) The certiﬁcate of customary grant will be registrable under the Deeds Registry Act, without the need to convert to common law land right’ (Republic of Botswana 2015:10). These will limit the repossession of land from the poor under the pretext of public interests. It will also transform many livelihoods as registered land could be used as collateral in ﬁnancial institutions.

De Soto (2000) argues that secure land tenure is one of the major ways of overcoming poverty since secure land can be used as collateral in banks. Land without security of tenure is dead capital (De Soto 2000). This paper argues that in Botswana secure land tenure would also address the illegal ‘selling’ of tribal land. The policy states that to facilitate land registration, the Ministry of Lands and Housing (MLH) will establish a land information center. ‘The land information systems will be integrated to provide inter-operability as per e-government programmes’ (Republic of Botswana 2015:21). This sounds progressive. The government must fast-track the conversion of tribal land grants into secure land rights for the beneﬁt of all.

**Access to residential land**

The policy underscores that access to residential land is directly linked to the right to shelter, hence the right of every citizen to be allocated land is reaffirmed (Republic of Botswana 2015). It outlaws multiple ownership of land in the same category (e.g. residential or arable land acquired directly from a land authority). Legally, those who beneﬁted before July 2015 cannot be required to surrender other portions of land they acquired under the same category. Many Batswana acquired multiple residential plots in one land board’s jurisdiction. It happened due to poor record-keeping, corruption and the demand for land in the black market, especially in the peri-urban areas (Republic of Botswana 2001).

The policy states that additional plots will be acquired ‘through the private market, inheritance or other legitimate channels’ (Republic of Botswana 2015:12).

The policy encourages Batswana to voluntarily return their land to the land boards should they fail to develop it within ﬁve years. Those who do so will be given priority when they are ready to develop or if the land is available (Republic of Botswana 2015:17). It is hoped that this will address speculation and illegal selling of land.

The policy states that in places where eligible applicants exceed the available plots, the land authority ‘will determine the appropriate method for allocation e.g. rafﬂe, ﬁrst come ﬁrst served, waiting list’ (Republic of Botswana 2015:12). The use of a rafﬂe caused upheaval in Tlokweng in 2012/13 after the Tlokweng Land Board had decided to use it to determine the allocation of 285 plots at Maratanang ward. The land board had received over 20,000 applications. Some 17 Batlokwa challenged this decision in court arguing that it disadvantaged them as they were initially promised plots by the Tlokweng Land Board on the basis of being the ‘locals’ (Botswana Daily News 7 March 2013 and Manatsha and Morapedi 2014). The case was ﬁnally settled out-of-court in November 2014. The High Court made an agreement of the two parties a court order, which stated that the Tlokweng Land Board will allocate plots to each of the 17 applicants provided they qualify in terms of the TLA (Mokwape 5 November 2014).

The waiting lists, if managed well, are a better option. The TLA (section 9(2)), however, empowers the land board ‘to do anything and enter into any transaction which in its opinion is calculated to facilitate the proper discharge of any function conferred or imposed upon it under this Act or any other law, or which is incidental or conducive thereto’ (Republic of Botswana 1994). Despite this, the report cautions that any method deemed ‘appropriate’ by any land board in allocating land should be subjected to rigour and scrutiny to avoid litigations and social unrest as happened in Tlokweng and Odi (Kalabamu,2016).

**The one spouse, one plot policy**

The land policy makes the controversial pronouncement that ‘Since only one spouse can apply for a plot, the surviving spouse must as of right inherit their land allocations’ (Republic of Botswana, 2015:15). This violates individual’s right to own land as stipulated in the TLA. The Constitution also grants citizens the right ‘to reside anywhere in the country’ (The Constitution of Botswana Section 14(1)). It is discriminatory for the land policy to deny Batswana the right to acquire ‘free’ land on the basis of marriage. This also fails to acknowledge that Botswana has a high rate of divorce cases. In 1994 there were only 394 divorce cases registered with the High Court in Lobatse. In 2011 and 2012 the ﬁgure stood at 2,089 (Echo 11 September 2015).

The land policy obligatorily and explicitly states that ‘Every Motswana will be eligible for allocation of residential plot’ (Republic of Botswana, 2015:11). Therefore, it is inconsistent that matrimony makes this unachievable. The policy also commits to promote ‘equity in access to land’(Republic of Botswana, 2015:9).The policy does not specify the type of marriage (in Botswana there is marriage in community of property, marriage out of community of property, traditional marriage and even polygamy).

**Access to arable land**

The policy stresses the vitality of arable farming as a ‘source of food, income and employment for many Batswana’ (Republic of Botswana 2015:13). It recognises the shortage of arable land and proposes that mechanisms will be devised to ensure that arable land is ‘used efﬁciently and effectively’ (Republic of Botswana 2015:13). In 1985 the Commission on Land Tenure stated that ‘many people in rural areas have no other means of earning a living except from the land’ (Republic of Botswana 1985:14). To ‘efﬁciently and effectively’ utilise arable land, the land policy proposes to limit ownership to one agricultural holding per eligible citizen. Subsequent plots will be allocated on certain conditions. Like with residential plots, ‘additional plots may be acquired through private market, inheritance’ or other legal means (Republic of Botswana 2015:13).

To this end, both the Deeds Registry Act and the Tribal Land Act were amended and approved by Parliament in July, 2017 In an attempt to scale-up utilization of agricultural land across the country, Government has proposed that arable fields within ISPAAD clusters be merged and realigned for ease of infrastructural development.

Considering the value of arable land (*masimo*) the government should stop repossessing it. Those who are unable to utilise their *masimo* should be encouraged to lease them. The government has been repossessing the unused masimo since 2010 (Isaacs & Thura Manatsha, 2015). The land policy further reemphasises the importance of scaling up integrated farming. It also notes that *masimo* found ‘on fertile land will be protected through zoning. Once zoned, change of land use will not be allowed’ (Republic of Botswana 2015:13). The TLA (section 17(1)) empowers the land board to ‘determine and deﬁne land use zones within the tribal area and may from time to time make amendments thereto’. Is the policy ﬁrmly pronouncing that once *masimo* have been zoned, the land boards cannot turn around and demand the same in the future for other developments? Many Batswana have lost their *masimo* due to village expansions (Isaacs & Thura Manatsha, 2015). Attaining food security should be at the core of the agricultural sector.

**Communal land**

The land policy still states that the ‘non-exclusivity of rights’ results in the mismanagement of communal land in Botswana (Republic of Botswana 2015:14). This needs proper contextualisation. It is unconvincing for the land policy to propose that the fencing of communal grazing areas will address the degradation (Republic of Botswana 2015). Instead, it could cause serious social problems as happened with the TGLP and the NPAD studied by Happy Fidzani (1998)(Bornegrim & Collin, 2010).

It is also ill-advised for the land policy to assume that a syndicate system will achieve equitable resource allocation (Republic of Botswana 2015). The land policy’s announcement that ‘Preference will be given to syndicates in areas where grazing resources are limited’ (Republic of Botswana 2015:14) is vague. What about non-syndicate members? The land policy overlooks the fact that ‘traditional right of a tribesman to a piece of land to plough, and to use the communal grazing lands ensures that every person may acquire the means to exist’ (Republic of Botswana 1985:3). The land policy must protect everyone.

**Communal grazing lands and dual grazing rights**

The land policy promises to ‘discourage the practice of dual grazing rights’ (Republic of Botswana 2015:14). This is progressive although it is unclear how it will be achieved. The policy states that the ‘Acquisition of an exclusive farm or ranch, through whatever means, will exclude the holder of the farm or ranch from competing for access to communal grazing land elsewhere in the country’ (Republic of Botswana 2015:14). This is hard to enforce from a legal, political, institutional and social perspective. Most cattle barons are the politically powerful and economically strong elite. In many instances, it has been hard for the land boards to deal with them fairly in cases whereby they contravene the law (Manatsha & Maharjan, 2010). When the TGLP and the NPAD were implemented, the objective was to control overgrazing in communal lands by giving cattle barons ‘exclusive rights’ (Fidzani 1998). But these cattle barons continue to freely graze in communal lands. How will the policy address this?

Why is the policy emphasizing the continuation of ‘exclusive grazing rights’? What is the value of this? The land policy unequivocally states that ownership of a farm/ranch, acquired ‘through whatever means’, will automatically exclude one from grazing in communal land (Republic of Botswana, 2015:14).But this exclusionary clause may also be interpreted as unconstitutional, especially by those who acquired their farms through the market. They may argue that the TLA still grants them rights, as citizens, to freely access the communal lands too.

**Commercial Agricultural Land**

This section discusses the interventions that the land policy proposes on the management of commercial agricultural land. The land policy provides for the repossession of the idle/disused and mismanaged commercial agricultural land (Republic of Botswana 2015). The on-going Land Administration Procedures Capacity and Systems will give the government the status of all the land across the country.

The land policy does not indicate the amount of idle land owned by absentee landlords. It also does not specify how it will address absentee landlordism, especially the land acquired during the colonial period by white settlers and colonial syndicates. If there was political will on the part of the ruling party’s government it could use the Acquisition of Property Act and the Constitution to acquire the land held by absentee landlords.

**Commercial, Industrial, Civic and Community Land**

The land policy rejects the allocation of ‘commercial, industrial and civic and community plots on the basis of waiting list as this hampers economic usage of land’ (Republic of Botswana, 2015). It contends that allocating this land using waiting list has ‘resulted in wide spread speculation on land’. To address this, the policy pronounces that ‘Access to land for investment will be through open competitive public tender’ (Republic of Botswana, 2015:12).

The policy states that the land under this category will be planned and surveyed prior to allocation. The policy underscores citizen empowerment, and states that local commercial centers will be created and preference ‘will be given to citizen consortia’ (Republic of Botswana 2015:12). Competitive tendering appears progressive, yet it runs the risk of alienating those who may not possess the technical expertise to develop tender documents which also come with costs. Based on the feasibility of business proposals, the paper suggests that commercial and industrial land can still be allocated without subjecting it to the strenuous tender process.

**Alienation of Land Rights**

The TLA and the policy on allocation of state land forbid the ‘alienation of undeveloped plots without the consent of Land Authority’(Republic of Botswana, 2015:16). The land policy aims to discourage the selling of undeveloped plots and speculation.

In the peri-urban areas many young people have sold their only residential plots with the hope to reapply or inherit from their parents. The policy’s announcement above (iii) will discourage this practice. However, the TLA does not mention one-man-one plot anywhere. The pronouncement (vi) above restricts those eligible to reapply for land in the ‘same locality’ after alienating their land rights. This undermines citizens’ ‘right to reside in any part of Botswana’ as stipulated in the The repossession of the undeveloped plots pronounced in (vi) above must seriously take into account extenuating circumstances such as unrelenting poverty and rife unemployment, especially amongst the youth Constitution (section 14(1).

**Cancellation of Land Rights**

The president and the land boards have the legal powers to repossess tribal and state land ‘for public purposes’ and ‘adequate compensation is paid’ (Republic of Botswana 2015:17). Nonetheless, in most instances, ‘public purposes’ are highly contested by the dispossessed. Consultations with the affected must be genuine and transparent. The repossession of *masimo* has left many landless. This is done for infrastructural development and villages’ expansion. The affected are unable to benefit from the government sponsored schemes (Manatsha 2011a). When cancelling land rights, the main concern is also ‘adequate compensation’. The government only compensates for the developments made on the land not for the land itself. Most Batswana lack ‘the wherewithal to substantially develop their land especially arable land’ (Manatsha 2011a), hence they get very low compensation. In November 2010 President Ian Khama stated that his ‘Government has revised compensation rates for acquisition of tribal land, which should encourage more plot holders to release their land’ (Republic of Botswana 2010b). The TLA (section 33(3)) states that anyone dissatisﬁed with the compensation can approach the courts of law (Republic of Botswana 1994). The poor and weak lack the knowledge and resources to take the court route. The cancellation of land rights must be fair.

**Land tenure systems and women** In Africa, women have been disadvantaged when it comes to land allocation. In most cases men own the land for residential, agricultural or commercial purposes. However, in some countries positive steps have been taken to address these inequities. According to Lawry et al. (2014), it is difficult to translate laws into practical improvements in women’s rights because implementation of the laws is problematic. In Botswana — at least in theory – everybody has access to land and people can apply for both residential and agricultural plots wherever they wish, as long as they are 18 years or older.

In terms of agricultural holdings by gender, women own 46 percent, representing 41 percent of the country’s total land area. Women also held the same amount of planted land holdings (46 percent) (Statistics Botswana, 2013). Thus, ownership of arable land by gender in Botswana is not as skewed as in other African countries. However, the same cannot be said of ownership of residential plots, owing to the patriarchal nature of Botswana society, where men are regarded as the head of family, and residential plots are likely to be held in their names. A similar pattern is expected for commercial farms and boreholes for livestock watering, as tending to livestock is predominately a male activity (Malope & Batisani, 2008).

The new land policy includes affirmative action for certain groups. However, the policy leaves out women (but not widows). The Tswana law of inheritance – especially the inheritance of boreholes for cattle farming – disadvantages women irrespective of whether they are widows. However, in one landmark case in which two sisters brought suit against their younger brother over the inheritance of their deceased parents’ homestead, the court settled in favor of the sisters, arguing that they too are entitled to their parents’ property. According to Tswana customary law, the youngest brother inherits the parents’ homestead when the parents die.

**Challenges Facing Land Administration in the Country**

The focal problem was identified as: Land administration processes and systems are not providing information and services that society needs.

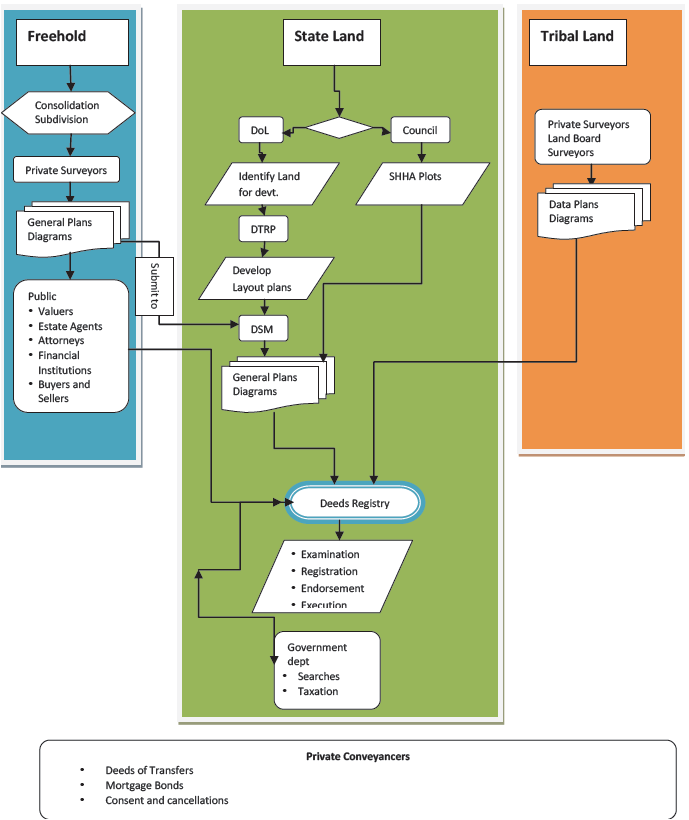
It was suggested that amongst the many problems, there was a lack of transparency and consistency in the operations, including unfair practices with respect to compensation for land acquired from owners for reallocation and corrupt and non-transparent procedures in the election of Land Board members from the field visits, the most common complaints from the public are that:

* Plot allocation takes too long The allocation process is complicated, and
* The process of land allocation is not transparent. Lack of information, pressure from those in power, fronting , etc., results in a situation where some opportunistic people have many plots of freely (or inexpensively) allocated tribal or state land, while some have none and are kept in waiting lists for decades.
* The population growth and urbanization has put great pressure on customary land close to urban centers.
* There is poor monitoring of development covenants for both tribal and state land.

It is government policy that if land is not used according to terms and conditions of the grant, it should be repossessed and re-allocated. This is a delicate task compounded by lack of proper records, cumbersome and expensive repossession procedures.

## 3.1 Legal and institutional framework:

**Figure 2: Land Tenure Recognition Process**



Source: Adapted Adams (2014)

**Table 3.1 Major Institutions Involved in Land Management and Administration**

|  |  |  |
| --- | --- | --- |
| **Level** | **Institutions** | **Major responsibilities** |
| **National Department of Lands** | National Department of Lands | Acquire, dispose and administers state land Supervise and co-ordinate all land administration matters Allocation of Fixed Period State Grants Valuation and leasing of property for and on behalf of the Government |
|  | Botswana Land Information System | Computerised storage of all data on state land |
|  | Department of Surveys and Mapping | Mapping and cadastral surveying Approval of survey diagrams and plans |
|  | Department of Town and Regional Planning | Preparing land subdivisions and layouts on state and tribal/customary land Advise local authorities and land boards on land use and development control matters |
|  | Town and Country Planning Board | Receive and consider applications for planning and developing land within gazetted planning areas. |
|  | Registrar of Deeds | Examination, execution and registration of interests in land and endorsements thereof |
|  | Land Tribunal | Hearing and determining appeals from land boards and against land board decisions. Enforcing decisions made by land boards |
| **Sub-national** | Self-help Housing Agencies (SHHA) (City, Municipal and Town Councils), Land boards | Administer and allocate state land under Certificate of Right (COR)  Develop and maintain inventory of COR leases Replaced chiefs, sub-chiefs and headmen in the administration and allocation of customary land rights Allocate and administer common law leases on customary land Develop and maintain inventory of customary land grants and leases. |
| **Local Village** | Development Committees | Identification of community development needs Identification of development projects Formulation of self-help projects |
|  | Land Adjudication Tribunal (defunct). | Arbitration of land disputes in COR areas. |

**Land Registration and Information**

Botswana has adopted a Deeds Registry System (operated under the Deeds Registry Act) for the purpose of recognizing land rights which had been formerly allocated to specific entities. The Deeds registry system presently caters for Freehold land as well as State Land tenure held land. This is mainly due to the fact that land held under these tenure types are surveyed to cadastral standards. As indicated earlier on, upon being allocated state land, the allottee is issued with a fixed period state grant title which is registrable at the Deeds Registry. The title is transferable to a third party, as long it has satisfied the development covenant as stipulated upon allocation.

The Land registration is a five day process at the Deeds Registry that can be summed up into the following steps:

* Lodgment and 1st examination
* 2nd examination – general exam and compliance with law.
* Registration – numbering, entries into registers and endorsement
* Execution – check if registration is done properly and sign deeds
* Sealing and dispersion of deeds (floating copies) other filed (deed)

This process is said to normally take a minimum five days to complete, although practitioners claim that the process is much longer than claimed. As stated earlier there are a number of key players and documents required to execute a deed and sign it off. The process and some identified key players are shown in Figure 3 above.

Tribal land which forms the bulk of land in the country is currently not formally registered at any central repository like the Deeds Registry. Copies of customary grant certificates issued by each respective land boards are kept by these said bodies. As most land in tribal areas is not surveyed to cadastral standard most of land is not registrable at the Deeds Registry hence such pieces of land are not mortgageable. Land within tribal areas can only be used as collateral when it has been surveyed and the customary grant converted to a common law lease which can then be registered at the Deeds Registry. A common law lease runs for a period of 99 years if the land is for zoned residential use and is held by a citizen. On the other hand if the land is zoned commercial or residential but the common law lease being held by a non-citizen or a company the lease period is for 50 years.

Properties held under Customary Grants cannot be used as collateral. In other words, banks and other credit institutions do not accept such properties as security for loans. There seems to be no explicit legal prohibition against it, but it is a consequence of the current requirements from the lender’s side regarding detailed geographical referencing of plots (a survey plan with an official Plot Number).

However, this does not mean that tribal land as such cannot be used as collateral in Botswana. A property on tribal land can be mortgaged – in the same way as the two other tenure types, i.e. State land and Freehold land – provided it is held under a Common Law Lease. This kind of right, which is time limited with a possibility of extension, may either be an original right from the time of allocation, or a result of a conversion from a Customary Grant. In both cases, it requires involvement by other authorities besides the Land Board in order to produce the necessary documentation. The Department of Surveys and Mapping has to assign an official Plot Number and approve the survey plan, which may be made by a private surveying company or a public surveyor, and the Deeds Registry has to register the lease. These extra documents and steps in the process are costly compared to the modest fee demanded by the Land Board for issuing a Customary Grant.

Today, few people in rural areas apply for Common Law Leases if they can get a Customary Grant instead. Even fewer convert their existing Customary Grants into Common Law Leases. This means that they cannot enjoy the full potential of the property market as their land is no good for mortgaging. Consequently, their chances to invest in a better future in the village, and to join the country’s social and economic growth, are limited. This aspect is an important driving force of the systematic adjudication and registration of tribal land. While trying to keep this task as simple as possible, by e.g. avoiding introduction of unnecessarily high measurement accuracies and too complex databases, the quality of the information needs to meet some minimum requirements. One of the aims is to create new Customary Grant Certificates, each carrying an official Plot Number and a basic survey plan, which can be accepted by the banks. Tenure regularization in Botswana has led to significant developments, especially of the new land policy, which, among others, aims at making customary tenure secure. Tribal land is planned and surveyed prior to allocation to make it registerable under the Deeds Registry Act without needing to convert to common law rights, as was previously the case (Republic of Botswana, 2015)

The government of Botswana has since 2009 embarked on the Land Administration Processes, Capacity and Systems (LAPCAS) which is aimed at ensuring that all land in the country is registrable (Malatsi & Finnström, 2011). The project is aimed principally at surveying tribal plot to cadastral standard in order to ensure that such plots could be registrable at the Deeds Registry.

In the context of the land registration, one of the mechanisms of the envisioned enhancements is the computerisation of the Deeds Registry. This computerisation will lead to improved transaction management, hence time management at the Deeds Registry (Tembo, Nkwae, & Kampamba, 2014). The current land registration process is ideally a five day process at the Deeds Registry, although the reality on the ground is different, as claimed by practitioners. The discrepancy is however noted by practitioners who assert that the process is unreasonably longer than claimed, as the red tape formality plagues the process (Tembo et al., 2014).

**Enforcement of Land Rights**

Towns in Botswana are established on state land hence all plots that are carved from the land are registrable at the Deeds Registry. An owner of a piece of land does hold title to the land in question. In rural areas most pieces of land are not formally registered but users of such pieces of land who have been formally allocated same by the land board would hold a customary grant certificate which authorizes them to remain on the land perpetually as long as they are utilizing for the purpose for which it was allocated. Land is allocated to the respective users based on a sketch plan which has approximate dimensions of the plot allocated.

Land falling within the tribal area which has been reserved for communal use is roughly demarcated using permanent features such as rivers or fences; for example the land which falls to north of the river is communal land. There were no exclusive usage rights in communal areas; land resources here are considered to be common property for the benefit of all group members.

**Expropriation**

Section 8 of the Constitution of Botswana does guarantee the property rights of any owner of property within the country. To this effect it indicates that ‘no property of any description shall be compulsorily taken possession of unless it is required for public purposes and that where such property is taken for public purposes prompt and adequate compensation shall be paid’.

To ensure that the above pledge is implemented, specific legislations have been enacted to for compulsory acquisition of land under each tenure type.

In those cases where tribal land is required for public use the Minister responsible for land matters is empowered under S.32 of the Tribal Land Act to serve notice on the occupant of same to vacate the land. Any person who is required to vacate land under the provisions of section 32(1) may be granted the right to use another piece of land, if available, and shall be entitled to adequate compensation from the State. The following are the items for which a person whose land has been expropriated is compensated;-

* The value of any standing crops taken over by the State;
* The value of any improvements effected to such land, including the value of any preparation or clearing of land for agricultural or other purposes;
* The costs of resettlement; and;
* The loss of right of use of such land (this come into effect if alternative land has been availed).
* The basis for determining the compensation due in respect of the improvements is market value or substantiated costs incurred.

In the case of state land or freehold land which is required for public use the President is empowered under Section 3 of the Acquisition of Property Act (CAP 32:10). The Minister responsible for land matter is delegated by the President under Section 5 of the said Act to serve notice of intention to acquire on the owner of the property which is required for public use. If the owner of the land is willing to have the land acquired by the state then the market value of same is independently determined and the owner is duly compensated. Only if the owner is not agreeable to the acquisition does it become necessary to serve an additional notice after a period of two months subsequent to the notice of intention to acquire the land which entitles the state to take possession of the land which is required for public use.

Subsequent to the state taking over the land/property a Board shall be constituted to assess adequate compensation to be paid to the expropriated person. In determining such compensation the Board shall have regard to the following issues:

* The market value of the property at the date of service of the notice of acquisition
* The reasonable expenses if any, incidental to any change of residence or place of business which become necessary as consequence to the acquisition
* The damage if any, caused by the reason of the acquisition injuriously affecting any other property of such a person.
* The damage in any resulting from severing the land from any other land belonging to the expropriated person.

**Equity and Non-Discrimination**

Access to land in Botswana is fairly equitable. As has been noted all adult citizens (male or female) are entitled to apply for tribal land at any place of their choice. The land is allocated free of charge to any successful applicant hence there is no barrier to accessing tribal land.

In the case of state land whilst every citizen is entitled to apply for the land, the limiting factor is that there is a price attached to each plot. Those without the financial means (normally the youth and to some extent women) to find themselves at a disadvantage.

Freehold land is accessed through the market. Only those with financial muscle can acquire freehold land. The price for such land is relatively high as it reflects the short supply of same. The land represents only 3% of the country’s land mass.

**Land Markets**

The different tenure types have varying land markets. Freehold land is virtually market driven as there are no restrictions on selling such land. The highest land values in the country are achieved under the said tenure type. The only restriction under this tenure type is when freehold agricultural land is being sold. In accordance with Land Control Act the seller has advertise the land for three consecutive months and at the end of the period has to seek permission from the Minister responsible for land matters if the highest bidder or only respondents to the advertisement are non-citizens. The Minister can only grant his permission to sell to a non-citizen if there is no citizen whose price matches the price being offered by a non-citizen.

State land is freely saleable as long as it has been fully developed in accordance with the stipulated development covenant which was specified upon its allocation. The land can be utilized as collateral to secure loans if necessary.

Whilst tribal land could be leased by the holder of the customary grant it cannot however be freely sold in the market. Tribal land is not for sale unless the customary grant has been converted into a common law lease and the land surveyed and registered at the Deeds Registry. In those cases where the holder of a customary grant wishes to sell his improvements, such a sale has to be sanctioned by the land board. The sale has to be to another citizen as the land board would need to transfer the land directly to the buyer of the improvements. It is clear from the foregoing that the market for tribal land is rather restricted.

## 3.2 Land use planning, management and taxation

Physical plans for developing land are a critical part of land use planning. The Town and Country Planning Act (CAP 32:09) makes “provision for the orderly and progressive development of land in both urban and rural areas and to preserve and improve the amenities thereof or grant permission to develop land and for other powers of control over the use of land…”(Republic of Botswana, 1980). Section 15 of the same act empowers the minister to declare areas of land in Botswana as planning areas, to which the provisions of the Act are applicable. According to the new Land Policy, the whole country will be declared a planning area, thus the provisions of the Town and Country Planning Act will be applicable to all land in Botswana.

In Botswana, local authorities are empowered through the Township’s Act (CAP 40:02) to raise revenue through charging property owner’s ad volrem taxes in-particular property rates. These are taxes that are levied in relation to the value of property which is located within the Local Authorities’ area of jurisdiction. The most common form of Ad Volrem tax in Botswana is property rates. Botswana has two cities namely Francistown and Gaborone and Six (6) townships; Sowa, Kasane, Jwaneng, Lobatse, Selebi-Phikwe and Ghanzi. Only four (4) townships have however, implemented property tax rates. According to Bond & Brown (2011), there are three main approaches to property taxation which are tax occupiers on; rental of property, tax capital value and value of the land only.

The first approach is rating and in English law it is tax on occupation and not on ownership. In Botswana, the Townships Act 40:02 suggests that a rate is a tax paid by property owners to the council for properties that fall within the boundaries of the council area and they are paid by property or plot owners in the town area whether developed or undeveloped. Rates are levied on ownership of property based on the capital value of land as well as improvements thereon.

There is however a general misconception that rates is linked to the services provided by the council as was seen in the case of Gaborone Phase 4 where residents vowed not to pay rates due to slow service delivery by the local council.

In Botswana, all classes of landed property are ratable (that is the ownership of such properties) with the exception of those listed under section 58 of the Town Council regulations of the Townships Act. Where there is no evidence of sales, the Valuer will be compelled to use other methods of valuation such as the cost or income approach. Regulation 56 of the town council regulations allows a valuation officer to seek from owner, occupier, or agent information that will enable the Valuer to make fair and reasonable assessment and the owner is therefore obliged to provide correct details of information.

Responsibility for land management lies with the Ministry of Lands and Housing. Most of the ministry’s responsibilities are performed through departments such as the Department of Town and Regional Planning, Department of Surveys and Mapping, Department of Lands and the deeds registry. Some responsibilities, however, have been devolved to local authorities (municipalities) to plan and undertake development control functions.

Other land use planning responsibilities have been delegated to decentralized central government agencies – the district administration headed by the district commissioner – to assist local authorities with the technical expertise for planning. The day-to-day management of the developing environment is the responsibility of local authorities while the Department of Town and Regional Planning is accountable for physical planning.

The 2015 land policy provides for the exemption of ‘ﬁrst time owners from VAT [Value added Tax] and transfer duty’ (Republic of Botswana 2015:16). The Bill on the exemption of ﬁrst time owners from VAT was endorsed by parliament in 2014 although it has not yet been implemented. The Transfer Duty (Amendment) Bill, 2018 which was published in the Government Gazette dated 2nd November 2018 and the Extension of transfer duty to included property on tribal land. The Bill announced a move to raise the transfer duty (tax) paid by non-citizens on property purchases from 5% to 30% and this still remains to be reviewed.

## 3.3 Management of public land

Government of Botswana according (Zorkin.N, Raphaka.T, 2017) recognizes that effective land management and land administration as a vital component for the social well-being and long term economic development of the country. It is believed that a public land affects the quality of life for hundreds of millions of people throughout the world(Loomis, 2002). Despite a strong focus on improving land management policies and practices, there are a number of challenges that may hinder the government's commitment to and attainment of quality land administration in Botswana which may include policy implementation through different legislation, processes and procedures (i.e., Freehold, State Land and Tribal Land) leading to non-standardization and harmonization of land administration processes.

Botswana government has moved towards public-sector reform and delegation of decision-making over public land assets. It is an important aspect as management of state and public land directly supports poverty alleviation, food sovereignty, protection of animals, human rights and peace and security.

Public land refers to all land which is in the control of state i.e. government owned land and public lands. State and public land management is a critical factor for ensuring good governance in the land administration of a country.

*Public Land Management Process*

Government of Botswana commitment to good land administration is in the process of implementing an integrated electronic Land Information System (“LIS”). When implemented, this LIS will address the country's needs in the short term, but will also have the capacity to grow as new land management policies and procedures are established in the future. World Bank (2017) further argues that the LIS will result in better harmonization, standardization and integration of reliable, cost effective and transparent land management processes in Botswana across the many government agencies involved with land management, and will improve the service delivery to the public. Governments manage land use through a variety of instruments. These include regulatory instruments such as legislation, regulations, permits, licenses, by-laws, and ordinances, and economic instruments such as subsidies, incentives, taxes, or grants. The following are descriptions of most used environmental policy tools.

Botswana regulations on land use are characterised by an overall framework law which mostly deals with the regulation of processes. Public land management has been categorized by many writers such as (Loomis, 2002) into the stated categories in Table3. 1 bellow

**Table3.1: The public land category under respective ministry**

|  |  |  |
| --- | --- | --- |
| **Sno.** | **Category** | **Ministry Responsible** |
| 1. | National parks and Wilderness (Safari) areas | Ministry of environment natural resources conservation and tourism |
| 2. | National Monuments, Heritage Sites and Museums | Ministry of environment natural resources conservation and tourism |
| 3. | National Recreation areas (parks) and open spaces | Ministry of Local Government and rural development |
| 4. | National Forest | Ministry of environment natural resources conservation and tourism |
| 5. | Grazing areas and Scenic Rivers | Ministry of Land Management, Water & Sanitation services |

The Town and Country Planning Act, which encompasses all sectors, is the principal policy instrument for achieving sustainable land-use planning. The Act gives municipalities the authority to draw up legally binding land-use plans that govern land use in each municipality. According to this Act, plans must be compiled for the use and protection of resources and for physical development, so that land use and building activity will be to the greatest possible benefit to the individual and the community.

The Act enables the identification of zones requiring special consideration, which may also be applied in the interest of wildlife conservation. The Act identifies and describes zones requiring special consideration for agriculture, animal husbandry, outdoor recreation and protected areas. This enables government agencies to stipulate guidelines that adequately safeguard particularly valuable land.

However, there is normally ambiguity in influential roles and responsibilities, a lack of accountability or procedure in the systems of distribution, appropriation, disposal or use of state and public land, and a lack of information on state resources (Zimmermann, 2008).

**Allocation of public Land**

Allocation is made through Fixed Period State Grant of 99 years in the case of residential and 50 years for business, civic and community uses. However, only citizens are eligible for allocation of residential land. Licenses of up to 5 years and leases of up to 25 years are also granted. Grants below 10 years are not registrable at the Deeds Registry. In the 2015 policy it was decided that State land and tribal land must not be converted to Freehold.

## 3.4 Public provision of land information

Land information is important to all stakeholders in the land market and absolutely vital to the development of vibrant land markets. Making land information available in a timely and user friendly manner to the public is a *sine qua non* to the effective and efficient utilization of land resources. The role of public land institutions in this regard cannot therefore be overemphasized.

Therefore, public perceptions of these institutions as sources of valuable information on land and that the information is available, up-to-date and accessible at an affordable cost would play key roles in the dissemination of land information and improve on land management and administration. The role of land registries in this regard is particularly important and relevant data on land registration is provided below.

Land management and land administration are two interrelated concepts and rely heavily on land information to deliver on service provisions. Broadly defined, land management is the process by which land resources are put to good effect. It entails all the activities associated with the sustainable management of land and natural resources. Land administration is an integral part of land management regarded as the “process of determining, recording and disseminating information about the ownership, value and use of land when implementing land management policies” (UNECEF, 1996).

The LAPCAS project started in 2009 as collaboration between the Ministry of Lands and Housing in Botswana and Lantmäteriet, the Swedish mapping, cadastral and land registration authority. This project started as a five- year project and it is still ongoing. To date, an estimated 880,000 of expected 900,000 plots have been surveyed, and details on ownership and land use also get confirmed in the process.

LAPCAS is an acronym based on the official name of the project, *Improvement of Land Administration Procedures, Capacity and Systems in Botswana*. The development objective is successful social and economic development of the nation, based on efficient, effective and transparent land administration. This indicates a holistic approach, which shows in the scope stretching over seven sub-projects (components):

1. Development of national standards for unique identifiers of land parcels and location addresses.

2. Improvement of land administration processes.

3. Computerization of the Deeds Register.

4. Systematic adjudication and registration of tribal (customary) land.

5. Improvement of IT operations and maintenance.

6. facilitated exchange and dissemination of information.

7. Building of capacity

Hence, the project is covering many crucial aspects of land governance, from management, administration, financial control and human resources to particular technical and legal issues. User needs, gender equality and transparency are main threads in all the work.

As for the land, adults are e.g. entitled to a free piece of rural land from the State upon request, but in reality this does not work in today’s society. In addition, many rural properties cannot be used as security for loans, which is an obstacle for development. A successful implementation of the LAPCAS project is a foundation for improving such matters, and, in the long run, the lives for the majority of the people living in rural areas.

LAPCAS’ components – Systematic adjudication and registration of tribal land – addresses this problem by improving the Land Boards’ record keeping and the basic information on who owns what and where and for what purpose. In short, the key factors are to involve the landowners and the local chiefs, as they are important stakeholders who rest on documents and knowledge missing at the Land Boards, and to keep the data capturing process simple regarding surveying etc.

The latest is that LAPCAS will be a permanent part of the Ministry of Lands and Housing to oversee the registration of all land and to continue to introduce further reforms.

## 3.5 Dispute resolution and conflict management:

Tribal land belongs to the State, although certificate holders have perpetual use rights to it. Even in instances where tribal land has been converted into common law leases, the land still belongs to the State and can be repossessed for developmental purposes through the use of the Acquisition of Property Act. During the implementation of TGLP and later NPAD, many people were displaced from their lands, and they were supposed to be compensated adequately. This did not happen as the State did not use the market value of the land. The new land policy, however, advocates for adequate compensation for land and developments made. Another instance where tribal (mainly agricultural) land has been repossessed is for the establishment of mines. The repossession of tribal land is more frequent in peri-urban and urban areas, where agricultural land is being repossessed to expand residential zones. The procedures for repossession may differ between land boards, but the principle followed is the same. The owners of the land parcels are compensated, with government determining the amount. Currently, rates are the same across the country, irrespective of the location and land values. For example, in the peri-urban areas of Gaborone, a land parcel measuring 25 by 35 meters has an open market value of BWP 100,0005 , which translates to more than BWP 1 million per hectare; the land board or government however offers BWP 8,000 per hectare for repossessed agricultural land in the same area. Thus, the compensation offered does not reflect the market value of the land parcel. There is understandably resistance to letting government repossess plots as a result, especially in peri-urban areas. Despite removing ambiguities in the Tribal Land Act, establishing the Land Tribunal and reinforcing the powers of Land Boards and partly because of these changes and internal population movements towards cities coupled by inadequate compensation offered by land boards, land related disputes have not only persisted but multiplied especially in peri-urban.

**Table 3.2 TYPES OF LAND CONFLICTS**

|  |  |  |  |
| --- | --- | --- | --- |
| **Dimension / level** | **Micro-social dimension (individual level)** | **Micro-social dimension (community level)** | **Macro-social dimension (national level)** |
| **Examples** | * Boundary conflicts between neighbours * Land/property inheritance conflicts * Multiple sales of private property * Individual occupation of private land * Illegal lease/sale of somebody else’s private land | * Boundary conflicts between tribes or villages * Illegal sale/lease of communal land/tribal land * Illegal allocation of state land by private individual * Group invasion of private land * Land use conflicts between farmers and pastoralists * Occasional illegal use of state land * Illegal use of one’s own land * Violent attacks on property | * Legal pluralism related disputes * Land grabbing * Illegal sale / lease /occupation of state land * Forced evictions by the central / local authorities * Disputes due to widespread disregard of regulations Expropriation without compensation * Acquisition and sale of private property supported by corrupt public agencies or courts |

For tribal land, Land Boards serve as an initial forum to hear disputes and complaints. The Tribal Land (Establishment of Land Tribunals) Order of 1995 provides for the establishment of tribunals to hear appeals of decisions made by the Land Board. The tribunal is a three-member team chaired by the president. The tribunal proceedings are open to the public, and parties may appear with or without separate representation. Parties can appeal the decision of the Land Tribunal to the High Court.

**The Land Tribunal**

The Land Tribunal was established after a determination was made by the Government of Botswana that land issues were on the rise because of a high demand for land, which was gradually becoming scarce. The land tribunal is a court of law whose mandate is adjudication on appeals against and enforcement of land boards’ decision on the use of tribal land. Furthermore, the land tribunal was established by an act of parliament (Tribal Land Act Cap 32:02). Under the Tribal land Act, the Land Tribunal can hear appeals from matters arising from the use of tribal land and its administration by officials.

**The High Court**

This is the court that lies between the Magistrate Court and the Court of Appeal. It was created as a superior court of record with, unlimited original jurisdiction to hear and determine any criminal and civil cases under any law. This means therefore, that the doors of the High Court are open for cases of all types, from family matters to land disputes and/or conflicts.

**The Court of Appeals**

The Court of Appeal is the apex Court, the highest and final court in the land. The Court is the final arbiter of all legal matters in Botswana. Currently, there are eight expatriate Judges of the Court of Appeal, drawn from different parts of the Commonwealth. This has enriched the court and brought diversity and dynamism in the court.

**Alternative Dispute Resolution Centre of Botswana**

The Alternative Dispute Resolution Centre of Botswana provides alternative dispute resolution services such as mediation for legal, commercial, civil, political, domestic issues and land related matters. ADR is a mediation process that allows parties to a dispute find a quick solution with the assistance of a neutral third party, without going through the costly and lengthy court process. The Alternative Dispute Resolution Centre of Botswana strives to ensure justice is dispensed timeously and fairly. Cases of all kinds, be it land related, commercial or civil have been taking time to be resolved in the courts and ADRCB will go a long way in helping to dispose of cases or anything getting them ripe for the court process. ADRCB aims to provide an integrated approach to resolving conflicts, by consolidating the different alternative dispute resolution services.

**Customary Arbitration/ Traditional Dispute Resolution**

It is worthwhile to note that even before the advent of colonialism and establishment of the modern state in Africa, Botswana included, pre-colonial societies in Africa had indigenous or their own ways and means of settling their disputes. These mechanisms included mediation and arbitration though not described then as such. This means were preferred because of their capacity to promote cohesion even after disruptive disputes.

**The Botswana Kgotla System: A Mechanism for Traditional Conflict Resolution In Modern Botswana**

Before Botswana gained independence in 1966, a form of governance (*bogosi*) existed in the Tswana society (Molen, 2004) The Kgotla became the main core institution among the local tribes. In each tribal community there were and are still various Kgotla hierarchically organized with the Kgosi being the leader. The Kgotla as a traditional system was and still is an institution serving as a forum for policy formulations, decision making, including political and economic developmental activities and judiciary on litigations. Traditionally, a counsel of advisers mostly from royal relatives assisted the chiefs as leaders of the Kgotla.

The Kgotla institution continues to play a vital role in modern Botswana in regard to addressing conflicts arising from within and between communities. The Kgotla institution pioneers serious and candid consultation for the community or society at large as well as enriches a solid pattern of interaction at the village or town Kgotla. Basic human values of sociability, respect, and inclusiveness are portrayed in a way which makes proceedings take social significance far exceeding that of the adjudication of petty individual cases.

Informal justice system is the dispute resolution mechanism falling outside the scope of the formal justice systems. It refers to the localized approach by communities to attain justice. This differs from formal justice systems which involves; civil and criminal justice and also includes formal state based justice institutions and procedures, like police, prosecution, courts and custodial measures. Traditional justice is a component of the informal justice systems which is usually culture and community specific. Every society that forms informal justice system does so in relation to their individual pattern of social ordering of cultural norm (Lampe & Kaplan, 1999).

***Advantages***

The various advantages of the traditional dispute resolution mechanisms include but not limited to: The increase in the access of marginalized groups to a framework within which solutions to their conflicts emerge as a result of a participatory consensual approach between disputants; Less abuse of discretion due to the more predictable application of rules to resolve a conflict; Lower users‟ direct cost of solving disputes; The provision of more transparent procedures and management of disputes than offered by the courts; The provision of enhanced options available to the public and businesses to resolve disputes away from the undue influence exercised by the “powerful” on judges‟ final rulings; and finally the provision of better practices and mechanisms oriented to serve the interests of citizens through a “fairer resolution of the case” than offered by civil courts (Carpenter & Kennedy, 1988)

***Disadvantages***

Although there are many interpretations surrounding the customary law definition, in accordance with the Botswana system customary law is defined as: “traditional norms, values, habits and other principles which have been associated with the various ethnic groups” (Molokomme, 1994). Customary law is therefore, used where the Kgotla system exists.

In tribal groups where Kgotla do not exist, the customary law cannot be constituted nor could such communities use it within their localities. The customary law is non-existent in those communities without the Kgotla. The Kgotla is the only traditional recognized court where the rule of customary law is used. Although there were other communities in Botswana such as Basarwa (the San), which did not have Kgotla, the customary law was not in existence.

Tswana customary laws cannot be traced to any simple declaration or proclamation; it was by and large based on the Tswana custom - in other words custom could be said to be the basis of the law. At times there is no authority to implement decisions made. Sometimes their solutions are not sustainable; Corruption may play part hence biased decisions; Arbitrators usually lack qualification/professionalism in tackling the dispute due to poor training; Even if there are documents or evidence, they do not consider them.

# Key Findings

Most of Botswana’s districts are too large for a single land board to handle. Thirty-seven subordinate land boards have therefore been created to carry out many of the same functions as main land boards, at the local level. In theory, this devolution of powers preserves one of the most important characteristics of the land allocating body - its local knowledge and understanding of the people’s need for land and their traditional rights. In practice, in sparsely settled parts of the Kalahari, the subordinate land boards can still be very remote from local communities, in some cases as much as 250 km away.

Non-recognition of rights of women in informal marriages;

* High level of informal land transactions;
* Lack of policy governing public land;
* Institutional overlaps in land management;
* Absence of resettlement policy;
* Ineffective land revenue collection;
* Inadequate compensation for expropriated land.

**The one spouse, one plot policy**

The land policy makes the controversial pronouncement that ‘Since only one spouse can apply for a plot, the surviving spouse must as of right inherit their land allocations’ (Republic of Botswana, 2015:18). This A Special Issue on Humanities at UB and Botswana’s 50 Years of Independence violates individual’s right to own land as stipulated in the TLA. The Constitution also grants citizens the right ‘to reside anywhere in the country’ (The Constitution of Botswana Section 14(1)). It is discriminatory for the land policy to deny Batswana the right to acquire ‘free’ land on the basis of marriage. This also fails to acknowledge that Botswana has a high rate of divorce cases. In 1994 there were only 394 divorce cases registered with the High Court in Lobatse. In 2011 and 2012 the ﬁgure stood at 2,089 (Echo 11 September 2015).

**Access to arable land**

The policy stresses the vitality of arable farming as a ‘source of food, income and employment for many Batswana’ (Republic of Botswana 2015:13). It recognises the shortage of arable land and proposes that mechanisms will be devised to ensure that arable land is ‘used efﬁciently and effectively’ (Republic of Botswana 2015:13). In 1985 the Commission on Land Tenure stated that ‘many people in rural areas have no other means of earning a living except from the land’ (Republic of Botswana 1985:14). To ‘efﬁciently and effectively’ utilise arable land, the land policy proposes to limit ownership to one agricultural holding per eligible citizen. Subsequent plots will be allocated on certain conditions. Like with residential plots, ‘additional plots may be acquired through private market, inheritance’ or other legal means (Republic of Botswana, 2015). Considering the value of arable land (*masimo*) the government should stop repossessing it. Those who are unable to utilise their masimo should be encouraged to lease them. The government has been repossessing the unused masimo since 2010 (Manatsha & Maharjan, 2010). The land policy further re-emphasises the importance of scaling up integrated farming. It also notes that *masimo* found ‘on fertile land will be protected through zoning. Once zoned, change of land use will not be allowed’(Republic of Botswana, 2015:13). The TLA (section 17(1)) empowers the land board to ‘determine and deﬁne land use zones within the tribal area, and may from time to time make amendments thereto’. Is the policy ﬁrmly pronouncing that once masimo have been zoned, the land boards cannot turn around and demand the same in the future for other developments? Many Batswana have lost their *masimo* due to village expansions (Manatsha & Maharjan, 2010). Attaining food security should be at the core of the agricultural sector.

For example, access to livestock on communal rangelands in Botswana is free and unrestricted (open access) and if not properly managed can lead to overstocking, overgrazing and subsequently desertification.

The Amendment of Tribal Land Act

1. Second reforms also ignored specific needs, claims and rights of minority ethnic groups
2. Litigations on ‘who owns tribal land’ have persisted despite deletion of section 10(2) of the Tribal Land Act (1968).
3. Amendment of section 10(1) of the Tribal Land Act has drastically increased the multiple demand, competition and scramble for tribal land in peri-urban areas e.g. Tlokweng and Mogoditshane.
4. The demand for peri-urban land has resulted in growing tenure insecurity and fear of dispossession among local communities in peri-urban areas.
5. Local communities do not trust land boards and land tribunal. They view them as central government’s agencies.
6. Appeals to land tribunal have been growing and diversifying.

Absence of fencing of protected areas cause wildlife related crop damage, house invasions and human injuries, though compensation is offered. The compensation will only be paid after a thorough investigation, adding that in a case where the farmer had killed a lion that had caused the damage, compensation will not be paid.

Forests are classified according to the type of land tenure system in which they are located, hence there are forests in State land / protected areas, which include most Forest Reserves, National Parks, Game Reserves and Wildlife Management Areas], communal/tribal land, and freehold/private land.

# Policy Best Practice Analysis and Policy Recommendations

The policy Analysis also provides ways in which the identified issues can be resolved.

* The latest attempt to improve land tenure security in tribal areas is the LAPCAS project, which has seven components and includes policy, legal and institutional framework changes in land administration.
* The Land Tenure Regularisation (LTR) processes in Botswana are that the process is long and requires careful planning. As well, it became clear that changes to the land administration could help address challenges as they emerged. For example, after the establishment of land boards it became apparent that land administration was not serving Batswana, hence the formulation of the LAPCAS project.
* Post LAPCAS and adjudication, all spatial data was digitalised and centralised in an electronic land register and cadastre. The national land register and cadaster contains all land in Botswana which is recorded and mapped (including State-owned land, private land, forests, protected areas, wetlands and swamp lands).
* There is no disparity between men and women owning land in Botswana (reflected in the figures where, for example, Women also held the same amount of planted land holdings (46 percent) (Statistics Botswana, 2013).
* Open competition in the allocation of public land, where everyone interested in acquiring public private land for investment has to go through an open bid tender process. This process has been in place with the aim of improving transparency in terms of public goods management;

Whilst Botswana has made significant in-roads in its land reforms, Land Governance Assessment has identified a number of areas which require improvement. The main issues identified in this report are:

* Establishment of a national continuous operating system (CORS) covering the entire national territory to facilitate all land survey work;
* Creation of e-governance in land administration including a digital land administration information system (register and cadastre); a land query notification system (that is, where the applicant receives a tracking number for the file. S/he receive the message indicate the number of the file, where the file is, brief the status of the file; a mobile phone land information system which is currently under construction. This system will anyone willing to buy any piece of land to check information on that piece of land including land size, location, use and any encumbrances that might be registered to the parcel.
* Introduction of land week awareness programme. The government of Botswana to adopt the land week awareness programme every year. Land week aims at raising awareness on land related issues especially encouraging land owners to register any land transaction, collect their land titles and respond to any query landowners might have. Staff from Ministry of Land and Water Sanitation, zonal offices, District land offices and sector land managers makes various visits to meet local community and hold meetings with them. Local authorities including Mayors and sometimes Ministers are also invited to attend such meeting to stress the importance on registering land transactions. Campaign also helps land officials to know issues pertaining to land they may not have known shouldn’t they have visited the communities.
* and speedy revision of laws and policies to keep up with developments and emerging issues;
* Model office: The model office concept the purpose of the model office it to optimize organizational design, reduce procedures, staffing, tooling, control and monitoring in small and large office. This Model office will reduce time for applicant and also cost for transport. The handling of physical files and the issuance of certificates at the zones office should be phase out. The files should be scanned and stored and used to process and approve. That would improve the delivery time and available capacity effectively. In the module office certificates should be replaced by computer printouts.
* Land Policy should be reviewed more occasionally and updated to meet the changing times of land demand and supply issues, also to be in correspondence with changing land uses of urban areas mostly in Peri-urban area as most land is being converted from agricultural to residential.

1. **Policy Recommendation matrix**

Having identified areas of improvement, this report provides a series of recommendations for each issue identified.

|  |  |  |  |
| --- | --- | --- | --- |
| **Issues** | **Recommendations** | **Responsible agencies** | **Indicator/outcome where**  **applicable** |
| **Land tenure regularization :** | | | |
| * Each individual citizen should be allocated a residential plot for free. * Urban land rights can be weakened by land development requirements in new masterplans. | * Make it mandatory for land authorities   to share information and hence every land authority will have access to information on each applicant, through full implementation of LAPCAS   * Urban plans must respect tenure security of land owners. Expropriation carried out for urban master plan implementation purposes must respect the market value of the property and owners of land to be expropriated must be paid according to market price. * Regulation on land lease should clarify categories of land when sublease is allowed and when it is not and should specify the rights of sub-lessees | City authorities,Land Boards | Decreased land speculation in peri-urban are- as. |
| **Gender issues** | | | |
| * The new land policy prescribes one plot per person, with a married couple treated as a single entity. This has raised concerns, mostly from women, who argue that they are being discriminated against, as unmarried people can own a piece of land each. | * Establish legal provision allowing women in informal and polygamous marriages to own land on an equal basis as men and be registered on land document. * Continue information and awareness   campaigns on women’s rights. | MLWS, NGOs working on  women’s land rights issues | * Legal provisions allowing women in informal and polygamous marriages to own land and have rights registered in their own names or as co-owners alongside their male partners. * Positive change of attitudes where people, especially men, understand that women should have equal land rights as their male counterparts. * Proportion of land documents registered in husband and wife’s names in informal marriage. * Proportion of land registered in women’s names in informal marriages |
| **Policy and institutional framework** | | | |
| * An increase on people on the waiting lists for land allocation especially for residential plots in peri-urban areas, and The long waiting lists have in turn increased the propensity for self-allocation. * Insufficient institutional and staff capacity and resource gaps still exist. * Improvement of land administration processes.T | * More efficient in the development of land management information systems. * Private sector involvement for the provision of services to available land. * Land boards be replaced with land authorities that will deal with all land matters in their jurisdiction, including state land but excluding tribal land. | MoADFS, MF | * Land governance Monitoring system in place;    Land administration institutional development strategy in place;   Clear land institutional mandates and responsibilities;   Staff performance monitoring and incentive scheme introduced; |
| **Land use Planning** | | | |
| * The whole country has been declared a planning area, in the new Land Policy, However there is lack of capacity to fully enforce the provisions of the Town and Country Planning Act. * District land use plans are under development but public participation in their preparation needs to be thorough. * Implementation of land use plans lacks coherence, is ad-hoc, and bottlenecks for implementation are not analysed properly | * Include costed implementation plan in the review of the NSP document. * Develop integrated planning frameworks and processes to guide all land institutions. * Make public consultation during land use plans preparation mandatory in the review of the NSP * Make monitoring of NSP’s implementation mandatory and develop monitoring framework. Assess impact on livelihoods and incomes of changes in land use zoning and urban | Department of Town and Country Planning. | * Presidential order on urban delineation in place. * Revised NSP to include requirements for costing land use plans implementation. * Revised NSP to include mandatory public consultations during land use planning process. * Revised NSP to include a monitoring framework |
| **Public/State land** | | | |
| * State land is allocated under the State Land Act for residential, civic, commercial and industrial uses in rural and urban areas. * Allocation of state land is done under the following grants: deeds of state grants, FPSGs and certificates of rights. The owner of land allocated under the deeds of state grants becomes the full owner of the property in perpetuity. Residents have to travel long distances to the Department of Lands (DoL) in Gaborone and Francistown for service. | * Prepare a costed implementation plan for public land policy with monitoring criteria set. * Review and clarify procedures and laws governing public land management by institutions such as Local council, Landborads, and Departments of Lands. | MLWS | * Eliminate the need for squatter settlements and to help the poor find land for housing within the limits of the law, especially in urban areas. * Available data on number of parcels expropriated and amount of compensation paid. * Number of investment projects with area of land assigned (public land, government acquired; expropriated). * Timeliness of compensation payment. |
| **Transfer of public land for investment** | | | |
| * Some proposed projects of national importance cannot be implemented due to scarcity of land; no overview of land reserves that potentially may be allocated to investors (rural/urban). * Land use changes have taken place with clear private benefits but limited public benefit. * Records of investment projects for   which public land was assigned, land acquired/expropriated are not available.   * Lack of proper mechanisms to assess social and community benefits attained through various investment projects. * Lack of third party monitoring of private investment on public allocated land. | * Identify land reserves that can be assigned to investors. * Establish client charter for leasing of agriculture land to investors. * Define unambiguous criteria and decision making process for project of national interest/public benefit. * Combine fast-tracking of land acquisition procedures with transparent process and appeal possibilities. * Strictly enforce criteria permitting land use conversion. * Monitor compliance with contracts regulations and compliance with land lease obligations by investors. * Disclose contractual provision for benefit sharing. * Develop monitoring mechanisms for community gains through investments projects and protection of local interests. * Public participation and community engagement be strengthened when allocating large tracks of lands to investors. * Contracts between the State and investors be in the public domain; | MoADFS | * Potential land for investment identified and mapped. * All investors identified and amount of lease fees due paid. * Client charter for leasing agriculture land in place. * Monitoring system for public benefits through private investment projects in place. * Investment contracts between government and investors publicly available; |
| **Expropriation and compensation** | | | |
| * Inadequate compensation for expropriated land. * Expropriation procedures do not take into account secondary rights (rental of land or house) or unrecorded rights to natural resources. * Absence of resettlement policy. * Resettlement is often far from original community, to sites that are not prepared, causing hardship and grievances. * Loss of plots for family homes due to expropriation. | * Review expropriation law to include compensation of unrecorded rights (rented land, road reserves, fisheries and grazing lands). * Develop resettlement policy. * Resettlement should be close to former homes; sites should be well-planned. * Compensate expropriated (rural and urban) homestead plots with alternative residential plots. | MLWS | * Amended expropriation law with provisions on compensation of unrecorded rights; * Resettlement policy in place; |
| **Land Registration and Information** | | | |
| * No common register for tribal land. * Some plots allocated before the existence of land boards are not registered at all. * On tribal land, plots do not have unique plot numbers or similar referencing. * Informal land transactions; * The land register does not record history of transactions, undermining its utility as evidence for any dispute that may emerge in future; | • Reduce land transaction fees  • Ensure that the land register database can reproduce transaction history of a parcel.  • Speed up the operationalisation at local level of the rural land survey adopted by LAPCAS.   * Explore use of protected internet routes to ease information sharing and improve service delivery. * Review land registry mandate to enable income generating activities to ensure sustainability. * Introduction of land week awareness programme every year. | MLWS | * Computerisation will assist us to see the real magnitude of land and housing requirements and it will also boost government's tax revenues.   • Land services accessible on line;  • Land administration client charter developed and disseminated;  • Business model for a self- financing land administration system in place and approved; |
| **Land valuation and taxation** | | | |
| * valuations system lacks efficiency and coherence due to limited understanding of valuation law and procedures by District land officers; * No policy requirements for Establishing valuation rolls; | * Enhance the connection between the land register and the tax authority (land based revenue information system) to help ensure property tax and lease fees are paid; * Review law on land-based Revenues, collection and use to allow land institutions to maximise the collection of land related fees. * Monitor land collection processes and affordability by land owners; * Establish district level valuation rolls and review them on annual basis of property values under REAC guidance with central government financial support; * Make valuation calculation formula available on a public platform; | MLWS, MFDP | * LAPCAS fully connected to BURS tax collection system; * Valuation rolls in place and made public; * Reference prices for expropriation purposes established and their revision schedule in place and made public; |
| **Forest** | | | |
| * A draft Forest Policy was prepared. The status has not been established. * Rights to forests and protected areas are according to the type of land tenure, but the forest register and cadastre are not yet completed and this constitutes a hindrance to forest management. * Botswana has never had a nationwide forest and range resources inventory study,hence no details are available about the country’s forest resources, especially outside protected areas.. * Ambiguous boundaries of national parks hinder enforcement of protected area regulations. | * Complete both forest register and cadastre. * Ensure timely and adequate compensation due to wildlife damages. * Ensure that communities neighbouring protected areas have a stake in management, benefit from this, and are part of decision making on use of revenues. | * Forest department. * tourism department) and Lands and Mapping department | * Fully functioning forest register and cadastre. * Document outlining community’s roles in management of protected areas and the benefits. * Reinforce the role of forestry in poverty reduction. * Increase number of skilled foresters. |

# Monitoring and evaluation framework

The monitoring framework is similar to results-based M&E in way that it entails monitoring tools that assess policy implementation and also measure its impact. The land policy’s M&E framework has four components:

• Establishing a structure for policy implementation and monitoring,

• Identifying appropriate tools to monitor policy implementation,

• Conducting a mid-term review of the policy in its fifth year,

• Carrying out a comprehensive evaluation of the policy on the 10th year after its approval.

The M&E framework specifically states “the effectiveness of the policy will depend on its ability to drive socio-economic development” (Republic of Botswana, 2015: 25). The framework incorporates impact evaluation as well. However, it has to be noted that the MLH has not yet developed M&E tools.

Stakeholder consultations remain a key element to implementing the land policy and to conducting ongoing monitoring. The policy envisages regular feedback from stakeholders to improve it, if needed (Government of Botswana, 2015: 24). MLH will also conduct research on land development and management. Government will use these approaches to ensure the sustainability of LTR and guarantee that it achieves the set objectives.

# CONCLUSION

The Botswana Land policy is a milestone development in the administration of land in Botswana. It has opened up more contentious debates. In general, the policy overlooked the real problems as argued above. Based on this assessment, the paper recommends that the minister of Lands and Housing should take this policy back to the National Assembly for revisions and amendment.

In addition, the implementation of the NDP 11, SDGs, Vision 2036 and the performance of private developers also provide impetus for broader economic growth and that of the housing sector.

The state has recognised the need to reform in key areas, such as land administration, and is also meeting the costs of land servicing in many areas. There is demand for student accommodation and low cost housing in urban areas due to the high levels of urbanisation. However, the overriding issue will continue to be affordability; most households are not able to afford formal housing and are unattractive customers for formal financial institutions. Hence, the majority of low income housing is incremental, self-built or informally built, and is contingent on access to free unserviced land or subsidised serviced land. In this situation, the demands on government to provide housing subsidies in one form or another are high, and potentially very expensive, and hence need to be provided on a rational, analytically sound basis. At present, access to subsidised housing is determined by various rationing mechanisms, but there is a need for a more efficient mechanism to deliver targeted housing subsidies.

* Land reforms in Botswana, like elsewhere in Africa, have been informed by elitist /liberal ideologies and interests of cattle barons and ignored the needs of the poor peasant farmers.
* The reforms have also failed to acknowledge and embrace the country’s changes in socio-economic and demographic transformations: a mixture of hunter-gatherer communities, livestock farmers, peasants and urbanites.
* The one-reform-fits-all is not working properly.
* To eliminate land conflicts in Botswana and other countries in Sub-Saharan Africa, it is imperative that future reforms adopt a bottom-up and inclusive approach.

According to (Boydell & Holzknecht, 2003:206), solutions to land conflicts “must be formulated from within and must reflect national, family and individual needs and aspirations and the changing global, regional, national economic, social and political dynamics that determine our destiny.

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**APPENDIX A**

**PEOPLE CONSULTED**

**Ministry of Lands and Housing**

Mrs. Ikgopeleng Shabane Acting Director Department of Land

Mr. Vister Mokope Principal Land Officer

Bruce Justice Thibelakae Principal Land Officer (Valuation)

**Ministry of Finance and Economic Development**

Mpho Kgorelotso, Principal Economist

Jullian Mbalekelwa, Senior Economist

**Ministry of Agricultural Development and Food Security**

Stanley Semetsa Chief Land Utilisation

Mooketsi Bitsang Principal Land Officer

Peace M Kennegae Mapping Officer

**Department of Lands**

Mrs Joyce Wautlo, LAPCAS Officer

Ms K. Mothibi, Senior Lands Officer (Lands Use)

**Department of Land Board Services**

Mrs Josephine Kandjii, Principal Records Officer

Mr Kebaabetswe Rammilong, Records Officer

**Department of Town and Regional Planning**

Mrs Aone Phiri Principal Town Planner

**Farmer Organisation Representatives**

1. Peter Kirby Gold Star
2. Thebe T Molefe Wadisigo Farm
3. Boikaego Phole Botswana Horticulture Council
4. Thabo Mokwena Botswana District Farmers Association
5. Molatlhegi Modise Botswana Commercial Producers Association
6. Nissaria Kwele Botswana National Beef Producers Union