



The World's Largest Open Access Agricultural & Applied Economics Digital Library

This document is discoverable and free to researchers across the globe due to the work of AgEcon Search.

Help ensure our sustainability.

Give to AgEcon Search

AgEcon Search

<http://ageconsearch.umn.edu>

aesearch@umn.edu

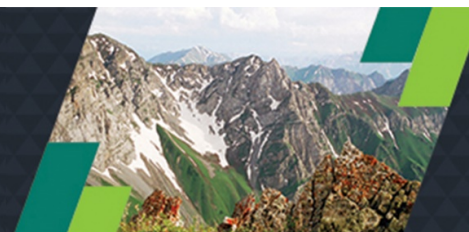
*Papers downloaded from **AgEcon Search** may be used for non-commercial purposes and personal study only. No other use, including posting to another Internet site, is permitted without permission from the copyright owner (not AgEcon Search), or as allowed under the provisions of Fair Use, U.S. Copyright Act, Title 17 U.S.C.*

No endorsement of AgEcon Search or its fundraising activities by the author(s) of the following work or their employer(s) is intended or implied.



AJLP & GS

African Journal of Land Policy and
Geospatial Sciences



Reflections on Botswana's Tribal Land Act No. 1 of 2018

¹Boga Thura Manatsha

¹Senior Lecturer in History at the University of Botswana, Boga.Manatsha@mopipi.ub.bw, Gaborone, Botswana

ABSTRACT

In August 2017, Botswana's Parliament passed the Tribal Land Bill, which became the Tribal Land Act (TLA) No. 1 of 2018. This Act shall come into operation once the Minister sanctions. Until then, the 1994 TLA shall be operational. The new Act is aimed at addressing the challenges that cannot be effectively addressed by the operational Act. Some hail it as progressive, but this article argues that it has some weaknesses. Its insistence on the compulsory registration of customary grants with the Registrar of Deeds may lead to unintended consequences. The Act aims at strictly regulating the acquisition of tribal land by non-citizens, but this will not address the rising accumulation of land by the local elite through the market. Moreover, the Act and the 2015 land policy contradict each other in some instances. Progressively, the Act provides for the establishment of an association of Land Boards to assist in tackling land problems.

Keywords :

Tribal Land Act
Land policy
Land Boards
Registrar of Deeds
Customary land rights
Botswana

Received in : 26.07.2019

Reviewed form in : 25.08.2019

Accepted in : 05.09.2019

Published in: 30.09.2019

1. INTRODUCTION

In sub-Saharan Africa, especially Southern Africa, land issues are very emotive, complicated and complex (Kepe and Hall, 2018; Peters, 2013; Moyo, 2008). For this reason, land policies and laws, including land tenure reforms, invariably attract academic inquiry, hence this article. Botswana's land administration system is often hailed as a model to be emulated by other developing countries (Kalabamu, 2000; Manatsha, 2011). This, however, does not mean that the country has no challenges with its land administration. Since the 1990s, for instance, Botswana has been grappling with serious land problems, mainly in the urban and peri-urban areas (Ng'ong'ola, 1992; Republic of Botswana, 1991, 2015). In addition, recurring conflicts over land rights, especially involving marginalised ethnic groups, mainly *Basarwa*/San, have pitted them against the government drawing in local and international human rights activists (Ng'ong'ola, 1997). The rising acquisition of land, mainly tribal and state land, by non-citizens also dominates Botswana's land question debate. Some Members of Parliament (MPs), across the political divide, insist that the government should pass laws which prohibit the ownership and or acquisition of land by non-citizens/foreigners (Moeng, 2013).

Mainly responding to these complex issues, the government continuously reviews and or amends land laws and policies, hence the Tribal Land Act (TLA) No. 1 of 2018, under review, is no exception. The Tribal Land Bill, which preceded this Act, was presented to Parliament in August 2017 by the then Minister of Land Management, Water and Sanitation Services (hereafter Minister of Land), Prince Maele. The Bill had been in and out of Parliament and Ntlo ya Dikgosi (House of Chiefs) for discussions before its final approval by the former. It was assented to by the President in February 2018, and "shall come into operation on such a date as the Minister may, by Order published in the *Gazette, appoint*" (Republic of Botswana, 2018a, section (1)). This means that the TLA of 1994 is still operational (Republic of Botswana, 1994). When presenting the Tribal Land Bill, Minister Maele had explained that it "was necessitated by the continued emergence of economic opportunities" that could not be effectively addressed by the operational TLA. Addressing "the loss of land rights to non-citizens" also prompted the Bill, emphasised the Minister (Republic of Botswana, 2017).

Critically, the new Act intends to protect *Batswana* (citizens of Botswana) from the self-inflicted deprivation since many willingly engage in legal and illegal land dealings/transactions with non-citizens. As a result, unscrupulous syndicates, which include citizens and non-citizens, use (legal) loopholes in the operational Act to acquire chunks of tribal land from *Batswana* (Piet, 2010). In 2010, *Kgosi* (Chief) Thabo Maruje III of Masunga, and a specially nominated representative of the North East District at Ntlo ya Dikgosi, tabled a motion which called on the government to undertake a comprehensive land audit countrywide. Maruje complained that some non-citizens acquire land illegally from citizens. He argued that "It is the responsibility of Government and all leadership to make it a point that the future of this country is still under the control of *Batswana*" (Republic of Botswana, 2010: 150). Maruje's motion was adopted, but Ntlo ya Dikgosi only plays an advisory role to Parliament. In August 2014, the leader of the opposition Botswana Congress Party, Dumelang Saleshando, tabled a similar motion in Parliament, but it was defeated because of the numerical strength of the ruling Botswana Democratic Party, in power since 1966 (Republic of Botswana, 2014). These issues, among others, necessitated the amendment of the TLA.

The 2018 TLA has been hailed by the Minister of Land as progressive. This article, however, contends that the Act still has some weaknesses and or loopholes. The Act is divided into eight parts, and this article looks at only six. It does not discuss part I, which is just an introduction, and part III, which just explains the government's financial provisions to the Land Boards. Part IV and V are discussed in one section. The article relies on this Act, official documents and published works. It further calls on other experts or academics to interrogate this Act from various angles.

2. PART II: LAND BOARDS: COMPOSITION AND FUNCTIONS

Part II broadly focuses on the Land Boards and their functions, which have generally remained the same as in the operational (1994) Act. In the true spirit of nation building, section 4 of the 2018 Act reaffirms that tribal land shall be for the benefit of all citizens of Botswana for their socio-economic development. This is critical because some citizens, especially in the peri-urban areas, often use tribal affiliation to demand that the allocation of tribal land in their villages should mainly benefit them at the 'exclusion' of other citizens. They often cite shortage of land in these areas, which is mainly a result of the influx of other *Batswana* from across the country. Some few years ago, the peri-urban villagers demanded a quota system to favour them in the allocation of tribal land. Their demand reached Parliament through an independent MP for South East South, Odirile Motlhale, in 2013 (Republic of Botswana, 2013a, 2013b). Parliament, however, rejected it and other similar land quota motions in 2014 and 2015 on the basis that in this case preferential treatment was against the TLA and some sections of the Constitution. Botswana's President, Ian Khama, (2008-2018) used his executive powers to impose a quota system in late 2015 (Republic of Botswana, 2018b).

Section 5 (2) (b) of the 2018 TLA introduces equity as fundamental to attaining sustainable development and the protection of natural resources. This resonates well with Botswana's Vision 2036 and the World Commission on Environment and Development which emphasise inter and intra-generational equity in the utilisation and distribution of natural resources (The Vision 2036 Presidential Task Team, 2016: 23-24; United Nations, 1987). That the concept of "sustainable development" is clearly mentioned in the new (2018) Act is commendable because it is worryingly missing in the operational Act. Land, as a finite resource, needs to be sustainably managed and utilised. Failure to do so may not only lead to ecological crises, but socio-political conflicts and economic problems, and examples in sub-Saharan Africa abound.

Progressive too, section 5 (5) of the 2018 TLA states that when formulating policies, the Land Board shall consult the District Council and the Tribal Administration, and this is not provided for in the operational Act. In fact, section 17 (1) and (4) of the operational (1994) Act only provides for their involvement in the implementation of policies, not formulation. This is against the spirit of participatory democracy, which stresses active and genuine participation of citizens in all stages of development (Arnstein, 1969; Hilmer, 2010; Michels and De Graaf, 2010), and land policies are not exempted. Tribal Administration comprises chiefs, whose marginalisation by the operational Act puts them at loggerheads with the government.

Sections 7 (1) (b) and 53 (2) (b) (i) of the new (2018) Act state that *kgosi* or *moemela kgosi* (chief's representative) shall be an ex-officio member of the main and subordinate Land Boards. This calls for some analysis. Across sub-Saharan Africa, chiefs broadly play key roles in local and national development as the link between their communities and the government, and Botswana is no exception (Bauer, 2016; Ifezue, 2015; Morapedi, 2010). This enhances participatory democracy at the local level. Despite this, some argue that the chieftainship is inimical to democracy, and insist that it should be excluded from the land administration system (Ntsebeza, 2003, 2005). Similar views have also been expressed in Botswana (Masire, 2006). When the Government of Botswana introduced the Land Boards in 1970, chiefs were made ex-officio members. They were later 'demoted' to ordinary members in 1994 when the TLA was amended in a quest to 'democratise' the Land Boards and the tribal land administration system. Since then, chiefs continued to exert pressure on the government to 'restore' their lost powers on tribal land administration. In 2008, for instance, President Khama commissioned a Joint Advisory Committee (JAC) of Ntlo ya Dikgosi and Botswana Council of Churches on Social Values to broadly consult *Batswana* on how social ills can be tackled. One of the recommendations was that chiefs should be 'reinstated' to their ex-officio position in the Land Boards (Republic of Botswana, 2008). Chiefs continue to mount pressure and are now vociferous about it (Republic of Botswana, 2010: 150-154; *Weekend Post*, July 13, 2019).

In the context of Botswana, Mgadla (1998) argues that in the past, chiefs formally welcomed strangers in their villages, and this ensured that order and peace prevailed. The Land Board system

has no such provision, and this, argues chiefs, contributes to lawlessness. In some instances, the 'new comers' disrespect their host chiefs, notes Sekgoma (1994). The involvement of chiefs in land administration, as ex-officio members of the Land Boards, may help in resolving land disputes because they (chiefs) have deep knowledge about their territories or villages than civil servants. Botswana's former Presidents, Ketumile Masire (1980-1998) and Festus Mogae (1998-2008), often reiterated that the main reason why chiefs were replaced by the Land Boards was because they had become "dictatorial", "regressive" and "resistant to change" (Masire, 2006: 184-185).

In the 1994 and 2018 Acts, the Minister appoints the chairpersons of Land Boards. As stated in the 2018 Act, the Minister shall also "give a land board directions of a general or specific nature" and it shall act provided such instructions are not inconsistent with this Act (Section 6). In section 11 (2) of the 1994 Act, it is the President who may give the Land Boards such instructions, and the Land Boards must comply. This shows that the Land Boards are not truly independent. It is not surprising because across Africa, the bodies that administer tribal land are not truly independent (Moyo, 2008).

3. PART IV: GRANT OF CUSTOMARY LAND RIGHTS

Part IV elucidates the conditions under which customary land rights shall be granted and cancelled. Section 23 states that no land shall be occupied without "a deed of customary land grant" issued by the Registrar of Deeds. This is a new development since the operational Act does not compulsorily require tribal land to be registered with the Registrar of Deeds. In his seminal article, "Tragedy of the Commons", Hardin (1969) argues that communal ownership of land contributes to its misuse, hence land registration is now emphasised worldwide. Section 23 (3) states that those in possession of a customary land certificate and or a lease granted under the operational Act shall be required to register it within "six months of the commencement of this [2018] Act". This resonates well with those who insist that unregistered land is a dead capital (De Soto, 2000). In Botswana, as elsewhere, it is argued that the registration of customary land with the Registrar of Deeds would unlock its economic value. Willy (2011: 733) opines that in sub-Saharan Africa, customary land rights are not seen as "amounting to real property rights, deserving of protection" in their existing form. Similarly, De Soto (2000) insists that rural communities are poor because their unsecure land cannot be used as collateral in banks. Others also argue that the unregistered customary land has become an easy target by local and international actors in the ensuing "land-grabbing" or "land-rush" crusade, especially in sub-Saharan Africa (Hall, 2011; Peters, 2013; Wily, 2011).

In Botswana, although the compulsory requirement to register customary land with the Registrar of Deeds is hailed as progressive, it might cause conflicts in some families, mainly extended families. As elsewhere in sub-Saharan Africa, Botswana is a patriarchal society, and women have always been historically disadvantaged and or side-lined by inheritance laws (Jonas, 2013; Kalabamu, 2006). "The type and amount of property each child was entitled to inherit from the parents' estate was dictated by the child's sex and position in the family", notes Kalabamu (2009: 212). Moreover, in rural Botswana, ploughing fields (*masimo*) are mainly held as family property. Therefore, possibilities are high that under the new (2018) Act, some members or a member in the family may insist on using the registered fields or any land for economic gain, while others or one may refuse and insist on something else. A registered title tends to individualise/privatise land ownership.

In July 2017, the Tribal Land Bill was referred to Ntlo ya Dikgosi for the chiefs' input. They decried that the insistence on registering tribal land with the Registrar of Deeds may lead to family feuds because some siblings may take advantage of others, for various reasons, to register family land in their names. Chiefs cautioned policy makers to be extra cautious, lest the new Act leads to unintended consequences (*Daily News*, July 5, 2017). Section 23 of the 2018 Act seems to envisage a scenario where all land holdings are held by individuals. Few years ago, a local woman in Kanye, southern Botswana, 'fought' and won a long-drawn legal battle with her male sibling over the inheritance of family property (Jonas, 2013). Policy makers should prepare for the unintended consequences once

this Act becomes operational. Thus, prescribing Western land laws on African land tenure often leads to 'conflicts' (Bennett and Vermeulen, 1980; Peters, 2013; Wily, 2011).

The new Act states that when registering their land, land holders shall submit applications only at a Land Board where their land holdings are located (Section 23 (5)). It is the Land Board that shall submit the applications to the Registrar of Deeds after assessment (Section 23 (7)). This article argues that land holders should be allowed to submit their applications at any Land Board. Botswana is a rapidly urbanising country; hence there is high rural-urban migration. Most citizens own land in the rural areas, but live in urban centres. Their continued absence in the rural areas may slow down the registration of land within the stipulated six months. Five years ago, the government struggled to have people register their land under the Land Administration Procedures Capacity and Systems programme. It had restricted people to register at the Land Boards which allocated the land holdings in question. Facing some 'resistance', the government retreated and allowed the registration process to be done at the nearest Land Board, but threatened hefty fines for those who would fail to register their land holdings. Similar challenges might be experienced under the 2018 Act. The Ministry should decentralise this process when it kick-starts. Dipholo and Mothusi (2005) contend that Botswana is not committed to genuine decentralisation.

Somehow lenient, section 23 (8) states that if, for whatever reason, any person "fails", "refuses" or "neglects" to register his/her land within six months, the Land Board shall proceed and register it under his/her name. For whatever reason, there is no penalty stipulated. Section 23 (4) suggests and or admits that some land holders have no customary grant certificates and or leases for the land they were granted by chiefs before the Land Boards came into operation in 1970. Such people shall register the said land "within six months of the commencement of this Act". Fifty-years after the Land Boards replaced chiefs, the government simply accepts or condone that some people still have no customary grant certificates, but only chiefs' permission. Section 23 (9) seems redundant by requiring the "re-registration of the common law lease as a customary land grant within six months of the commencement of this Act". After re-converting common law lease into customary grant, the same shall be re-registered with the Registrar of Deeds. What is the purpose of this long and redundant process?

In an effort to strictly regulate access to tribal land by non-citizens, section 24 states that no main or subordinate Land Board shall grant land under this Part:

to any person who is not a citizen of Botswana, unless that person has been specially exempted, or is a member of any class of persons who have been specially exempted, by the Minister in writing from the provisions of this section:

Provided that where the land board makes a grant of land to a non-citizen, such grant may only be by way of common law lease.

Citizens are entitled to common law grant under Part IV and Part V. Section 28 (1) states that the holder of any land under Part IV who wishes to convert it to common law should make an "application in writing to the land board of the tribal area within which the land board is situated". The Land Board has the right to refuse or accede, and there "shall be an appeal to the Land Tribunal against any refusal within such time as may be prescribed" (Section 28 (2)). Section 24 broadens the powers of the Land Boards by authorising them to grant land under common law to non-citizens without the Minister's consent. Generally, citizens view the Land Boards as elitist, inefficient and corrupt (Manatsha, 2011: 148). With the rising acquisition of land by non-citizens, through legal and illegal means, citizens might be concerned about the Land Boards' new powers to grant the former land without the Minister's consent.

4. PART VI: LAND REQUIRED FOR PUBLIC PURPOSES

As with the operational Act (section 32 (1)), the 2018 Act (section 29 (1)) empowers the President to sanction the acquisition of tribal land for public purpose(s). The President shall instruct the Minister to execute the process, and the latter shall, in turn, write to the Land Board and District Council "having jurisdiction over such land". The Minister "may then, having ascertained the views of the District Council in the matter, grant such land to the State". If, for whatever reasons, the Land Board "declines", "neglects" or "refuses" to implement the Minister's instructions "within three months" from the time the request was issued or the Land Board "imposes terms or conditions upon the grant which are unacceptable to the Minister", the incumbent (Minister) "may direct that an inquiry shall be held by a commission appointed under the provisions of section 30" (Section 29 (2) (a), (b) and (c)) of the Act. Upon the completion of the inquiry, the Minister shall give direction, as he/she shall think fit (section 29 (3)), but this should not be inconsistent with the commission's findings. The Land Board must comply, but should it refuse or neglects to execute the instructions, "the Minister may execute the grant for and on behalf of the land board" (Section 29 (4)). This, again, shows the sweeping powers of the Minister, as previously noted.

The Minister shall nominate the chairperson of the said commission (Section 30 (1)). The Land Board shall also nominate a member, but should it fail to do so within six weeks, the Minister "may nominate the [said] member" (Section 30 (b)). One more member shall be jointly nominated by the chairperson of the commission and the member nominated by the Land Board, or under the conditions stated in section 30 (b) of the Act. The commission shall investigate whether indeed the land is required for public purpose, and to establish if the state's requirements are "reasonable" (Section 30 (2) (a)). The commission shall also hear and decide on the objections, if any, from the Land Board and District Council (Section 30 (2) (b)). The state shall grant "adequate" compensation, and may also grant another land to the affected person(s), if available (Section 32 (2)). Section 32 (3) explains the conditions under which compensation shall be paid. The compensation rates shall be based on the market value. This would be a welcome development to many *Batswana*, who decry the low compensation offered by the government when acquiring tribal land for public use. Only lawful land owners, not squatters, shall be compensated.

In the 1990s, the government 'condoned' illegalities on tribal land in the peri-urban areas after some citizens and non-citizens had illegally acquired land and built houses. The government considered extenuating factors, such as acute housing problems, its failure to timely avail serviced land and that the demolitions would have left over 4,000 *Batswana* homeless. All affected citizens were required to pay a mandatory fine of BWP5, 000 (US\$500 today) each and then regularise their land holdings. The affected non-citizens were, however, instructed to surrender their ill-gotten land to the Land Boards (Republic of Botswana, 1992). Under the 2018 Act, the state shall not compensate for any developments done a year before the property is acquired unless the owner can prove that such was not in anticipation of the acquisition (Section 32 (4)). There are instances where individuals with inside information had hastily effected developments on their land in anticipation of the acquisition. However, some aver that compensating tribal land at market value will make it too costly for the government since tribal land is freely allocated (*Sunday Standard*, August 28, 2017). Section 32 (6) (a), (b) and (c) of the 2018 Act states that any disputes on compensations and the legality of the acquisition shall be handled by the Land Tribunal, which "may make such order in the matter as it deems fit". In 2013, the Land Tribunal powers were expanded and strengthened by Parliament (Republic of Botswana, 2013d).

The wording of section 29(1) of the new Act seems to suggest that when executing the state acquisition orders, only the Land Board and District Council shall be directly consulted and involved, at the exclusion of the communities. Even though the District Council comprises elected representatives of the communities, experience shows that land issues need the direct involvement of all local institutions and structures (Manatsha, 2011: 138-164). Across sub-Saharan Africa, including in Botswana, there is a growing tendency by the state to compulsorily acquire customary

land under the pretext of national interest (Peters, 2013; Wily, 2011). Between 2007 and 2009, for instance, the Tati Land Board compulsorily acquired ploughing fields in Tati Siding, Shashe Bridge and Masunga in the North East District, Botswana, for new residential plots and public projects (Manatsha, 2011: 175). This negatively impacts on peoples' livelihoods. The state should clearly explain what constitutes public interest to the affected communities. Borrás (2003: 389) rightly states that "the rural poor demand land, but it is often difficult for them to effectively articulate those demands because of their political powerlessness that derives from their class position."

5. PART VII: LAND BOARD'S CONSENT TO DEAL WITH LAND

Some individuals (citizens and non-citizens) engage in illegal land transactions, especially tribal land. This also prompted the enactment of this Act. Such transactions lead to citizens losing their land to non-citizens and other citizens alike (Bothoko, 2017; Piet, 2010). To curb this, section 33 (1) explains that the Land Board's consent shall be required when the following land transactions are made:

- (a) transfer, mortgage, charge, bond or lease capable of running for a period of five years or more, exchange, partition or other disposal or dealing with any tribal land;
- (b) the division of any such land into two or more parcels to be held under separate titles; or
- (c) the issue, sale, transfer, mortgage or any other disposal of, or dealing with, any share in a private company owning land,

Provided that the provisions of this sub-section shall not apply in the case of –

- (i) a sale in execution to a citizen of Botswana,
- (ii) a hypothecation bond by a citizen of Botswana, or
- (iii) the devolution of such land on inheritance.

Section 33 (2) further states that the Registrar of Deeds shall only register tribal land or interest in it provided the application is supported by a certificate issued by the appropriate Land Board, or a written lease, or "where relevant, he or she is satisfied that one of the conditions set out in the proviso to subsection (1) apply." Section 33 (3) emphasises that a citizen "shall not include a company incorporated or registered under the Companies Act, unless all classes of shares in such company are beneficially owned by individuals who are citizens of Botswana." Section 34 (1) tackles secondary dealings in land with non-citizens, when it states that "Any person who proposes to enter into transaction ... with a non-citizen shall, not less than 30 days prior to the proposed date of such transaction, publish a notice in the *Gazette* and in at least one newspaper circulating in Botswana." Among others, the notice shall describe the land, states full names of the parties to the proposed transaction and details of the proposed transaction. The notice shall also give "a reference to the right of any citizen of Botswana interested in entering into a similar transaction in respect of the property in question to receive priority notwithstanding the proposed transaction set out in the notice" (Section 34 (1)). Even though this appears progressive, it shall not curtail the increasing accumulation of land by the local elite through the market (see Bothoko, 2017; Piet, 2010).

Section 34 (1) shall not apply when a non-citizen acquires the land through inheritance, or when it is "transferred to a non-citizen in execution of a court order resulting from divorce proceedings" (Section 34 (2) (a) (b)). Section 34 (3) states that anyone intending to object the transactions proposed in section 34 (1) may do so in writing to the appropriate Land Board. Any application seeking to transfer land to non-citizens under the provisions of section 33 (1) (a), (b), or (c) "shall be accompanied by evidence of the notices published under section 34 (1)" (Section 35). When making its decision, the Land Board shall consider the impact on the economic development of the land, its maintenance and improvement (Section 36 (a)). It shall also consider "the wish of any citizen of Botswana to enter into the proposed transaction". Above all, it is stated that the decision should "be in the public interest" (Section 36 (c) (iv)).

There are complaints from the public that some citizens front for non-citizens so that the latter access land and other resources (Republic of Botswana, 2010: 150-152). Section 38 of the operational Act does not require the Land Board's consent when transferring developed plots. Using this legal gap, non-citizens have lawfully acquired developed plots (on tribal land). In 2004, a Presidential commission of inquiry on state land allocations in Gaborone, the capital city, found that community land was illegally allocated to non-citizens and non-citizen owned companies despite it being reserved for citizens (Republic of Botswana, 2004). In 2010, *Kgosi* Maruje III advised the government not be over zealous about attracting Foreign Direct Investment by allocating chunks of land to foreigners at the expense of locals (Republic of Botswana, 2010: 150-153). The new Act shall heftily punish those who engage in illegal land transactions. Its section 40, for instance, imposes a fine not exceeding BWP50,000 (about US\$5000) or a prison term not exceeding five years, or both, if any person knowingly gives false information in relation to land application under this Act. This, it is hoped, may address illegal dealings in land, mainly in the peri-urban areas.

6. PART VIII: GENERAL ISSUES

Part VIII deals with general issues. Section 43 specifies the grounds under which the Land Board can cancel a grant of land:

- (a) the holder of the grant is no longer eligible to hold land under the provisions of this Act;
- (b) the holder of the grant fails to observe conditions or restrictions imposed under this Act or the provisions of any law relating to town or country planning or good husbandry;
- (c) without reasonable excuse, the land has not been cultivated, used or developed to the satisfaction of the land board for such period as may be prescribed in respect of that land, or has not been cultivated, used or developed in accordance with the purpose for which the grant was made;
- (d) the grant was induced by fraud or misrepresentation attributable to the grantee; or
- (e) the grantee fails to demarcate, in accordance with section 42, the boundaries of the land which he or she has been granted.

The Land Board may bring in the Land Tribunal if there is any breach of the above conditions to assist in the "recovery of such land" (Section 44 (1)). Section 44 (2) states that if the land is recovered by invoking section 44 (1) or for breaching the conditions under section 43, the Land Board or the state shall not pay any compensation on the developments effected on such land. Any improvements made on such land shall benefit the Land Board, or it can enter into agreement, in writing, with any developer to remove such developments within a reasonable time "without causing irreparable damage to the land" (Section 44 (3)). This is aimed at curbing self-allocations as happened in the 1990s. But one wonders whether the Land Boards are capacitated enough to manage such properties should the need arise. In 1991, the Presidential commission of inquiry on illegal land dealings in the peri-urban villages had recommended that the Land Board(s) should acquire the illegally developed structures, manage and utilise them. The government, however, argued that they (Land Boards) had no capacity to do this (Republic of Botswana, 1991, 1992), and this may still be so. Section 49 (c) states that any person who illegally transfers land to any other person "commits an offence and is liable to a fine of [BW]P20,000 and to imprisonment for two years, or if the offender is a corporate body, to a fine of [BW]P50,000." This is improvement to section 39 of the operational Act, which prescribes a BWP10,000 fine and one year imprisonment for an individual, and BWP20,000 for a corporate body.

The new Act shall establish an association of the Land Boards, and its mandate shall be to protect and promote the interest of the Land Boards, engage the government, Land Boards, civic society and relevant bodies on the equitable distribution of land to citizens. It shall also advise government on the broad aspects of land management. It shall promote research on land issues by working closely

with local, national, regional and international institutions (Section 52). Land experts from various institutions can play a significant role in this. The association may partner with the University of Botswana and other tertiary institutions. This initiative resonates well with Botswana's Vision 2036, which calls for a knowledge based economy. Section 54 states that the accounts of the Land Boards shall be audited, and there shall be clear prescriptions on the tender processes to ensure transparency and accountability. The Land Boards have always been accused of malpractices, especially corruption (*Weekend Post*, July 13, 2019).

7. TLA NO. 1 OF 2018 AND THE 2015 LAND POLICY

The two legislations contradict each other in some instances. For instance, the 2015 land policy introduces a discriminatory provision/clause that only one spouse is entitled to a plot directly allocated by the land authority. This is discriminatory, and it violates sections 4 of the 2018 Act, 10 (1) of the operational Act and 14 (1) and 15 (3) of the Constitution. The land policy states that no person will be allowed to alienate his/her last residential plot acquired directly from the land authority. This is missing in the 1994 and 2018 Acts because it is unlawful. Thus, the policy has to be aligned to these Acts. The land policy also encourages those who 'fail' to develop their tribal land within the specified period to surrender it to the land authority. Once ready, they shall be given preference when the land is available provided they apply in the same locality (Republic of Botswana, 2015: 17-18). This is not supported by the 1994 and 2018 Acts. Every citizen has the right to live anywhere in Botswana as per section 14 (1) of the Constitution of Botswana.

8. CONCLUDING REMARKS

The 2018 TLA was passed to address complex challenges facing tribal land administration in Botswana. Once operational, it is, however, likely to face serious challenges. In particular, the compulsory registration of land with the Registrar of Deeds may prove to be more complex than anticipated. The Act is also aimed at curtailing the rising acquisition of tribal land by non-citizens. This is unlikely to address the rising acquisition of land by the local elite. The Act and the land policy contradict each other in some instances, and this should be resolved before the former becomes operational. In conclusion, it is commendable and welcome that a Land Board association shall be formed to assist in tackling land problems. It should work closely with other stakeholders.

9. ACKNOWLEDGEMENT

I acknowledge the support I got from some of my colleagues.

10. REFERENCES

- Arnstein, S. R., (1969). A ladder of citizen participation. *Journal of the American Institute of Planners* 35, 216-224.
- Bauer, G., (2016). 'What is wrong with a woman being chief?' Women chiefs and symbolic and substantive representation in Botswana, *Journal of Asian and African Studies* 51(2), 222-237.
- Bennett, T. W., & Vermeulen, T., (1980). Codification of customary law, *Journal of African Law* 24(2), 206-219.
- Borras, S. M., (2003). Questioning market-led agrarian reform: Experiences from Brazil, Colombia and South Africa, *Journal of Agrarian Change* 3(3), 367-394.
- Bothoko, P., (2017). Land crisis continues to haunt Batlokwa, *Mmegi*, 17 March. <http://www.mmegi.bw/index.php?aid=67511&dir=2017/march/17> (accessed June 7, 2019).
- Daily News*, (2017). *Ntlo ya Dikgosi* agrees to deeds registry." July 5.
- De Soto, H., (2000). *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. New York: Basic Books.
- Dipholo, K. B and Mothusi, B., (2005). Decentralisation in Botswana: The reluctant process, *Journal of Social Development in Africa* 20(1), 40-58.

- Hall, R., (2011). Land grabbing in southern Africa: The many faces of the investor rush, *Review of African Political Economy* 38(128), 193-214.
- Hardin, G., (1968). The tragedy of the commons, *Science* 162, 1243-1248.
- Hilmer, J. D., (2010). The State of *participatory* democratic theory. *New Political Science* 32(1), 43-63.
- Ifezue, G. O., (2015). Understanding chieftainship in Botswana: The status and powers of chiefs in present day Botswana. *Journal of African Law* 59(2), 271-293.
- Jonas, O., (2013). Gender equality in Botswana: The case of *Mmusi and Others v Ramantele and Others*, *African Human Rights Law Journal* 13(1), 229-244.
- Kalabamu, F. T., (2000). Land tenure and management reforms in east and southern Africa: The case of Botswana, *Land Use Policy* 17, 305-319.
- Kalabamu, F. T., (2006). Patriarchy and women's land rights in Botswana, *Land Use Policy* 23, 237-346.
- Kalabamu, F. T., (2009). Towards egalitarian inheritance rights in Botswana: The case of Tlokweng, *Development Southern Africa* 26(2), 209-223.
- Kepe, T. & Hall, R., (2018). Land redistribution in South Africa: Towards decolonisation or recolonisation?, *Politikon* 45(1), 128-137.
- Manatsha, B. T., (2011). The land question in post-colonial Botswana: The case of North East District, PhD dissertation, University of Hiroshima, Japan.
- Masire, Q. K J., (2006). *Very Brave or Very Foolish? Memoirs of an African Democrat*. Gaborone: Macmillan Botswana.
- Mgadla, P. T. (1998). The *kgosi* in a traditional Tswana setting. In *Botswana: Politics and Society*, edited by W. Edge and MH. Lekorwe, 3-10. Pretoria: JL Van Shaik.
- Michels, A., & De Graaf, L., (2010). Examining citizen participation: Local participatory policy making and democracy, *Local Government Studies* 36(4), 477-491.
- Moeng, G., (2013). Ntuanne seeks to prohibit foreign land ownership." *Mmegi*, March 3. <https://www.mmegi.bw/index.php?sid=1&aid=1491&dir=2013/March/Monday4/> (accessed June 7, 2019).
- Moyo, S., (2008). *African Land Questions, Agrarian Transitions and the State: Contradictions of Neo-Liberal Land Reforms*. Dakar: CODESRIA.
- Ng'ong'ola, C., (1992). Land problems in some Peri-urban villages in Botswana and problems of conception, description and transformation of "tribal" land tenure, *Journal of African Law* 36(2), 140-167.
- Ng'ong'ola, C., (1997). Land rights for marginalised ethnic groups in Botswana, with special reference to the Basarwa, *Journal of African Law* 41(1), 1-26.
- Ntsebeza, L., (2005). *Democracy Compromised: Chiefs and the Politics of the Land in South Africa*. Brill Academic Publication.
- Peters, P. E., (2013). Conflicts over land and threats to customary tenure in Africa, *African Affairs* 112(449), 543-562.
- Piet, B., (2010). Foreign syndicates buying up land. *Mmegi*, September 24. <http://www.mmegi.bw/index.php?sid=1&aid=2190&dir=2010/May/Friday7&aid=5189&dir=2010/September/Friday24> (accessed June 7, 2019).
- Republic of Botswana., (1991). *Report of the Presidential Commission of Inquiry into Land Problems in Mogoditshane and Other Peri-Urban Villages*. Gaborone: Government Printer.
- Morapedi, W. G., (2010). Demise or resilience? Customary law and chieftaincy in twenty-first century Botswana. *Journal of Contemporary African Studies* 28(2), 215-230.
- Ntsebeza, L., (2003). Land rights and democratisation: Rural tenure reform in South Africa's former Bantustans. *Transformation* 52, 68-95.
- Ntsebeza, L., (2005). *Democracy Compromised: Chiefs and the Politics of the Land in South Africa*. Brill Academic Publication.

- Republic of Botswana., (1992). *Land Problems in Mogoditshane and Other Peri-Urban Villages: Government Paper No. 1 of 1992*. Gaborone: Government Printer.
- Republic of Botswana., (1994). *Tribal Land Act*. Gaborone: Government Printer.
- Republic of Botswana., (2004). *Report of the Judicial Commission of Inquiry into State Land Allocations in Gaborone*. Gaborone: Government Printer.
- Republic of Botswana., (2008). *Report of the Joint Advisory Committee of Ntlo ya Dikgosi and Botswana Council of Churches on Social Values*. Gaborone: Government Printer.
- Republic of Botswana., (2010). *Fourth Meeting of the 2nd Ntlo ya Dikgosi Sitting from 25 October to 5 November 2010*. Gaborone: Ntlo ya Dikgosi.
- Republic of Botswana., (2013a). *The Second Meeting of the 4th Session of 10th Parliament, Hansard No. 172, 4-28 March 2013*. Gaborone: Botswana Parliament.
- Republic of Botswana., (2013b). *Special Meeting of the 10th Parliament: National Development Plan 10 Review, Hansard No. 173, 8-30 April 2013*. Gaborone: Botswana Parliament.
- Republic of Botswana., (2013c). Government reviews land policy, <http://www.gov.bw/en/News/Government-reviews-land-policy/> (accessed June 27, 2019).
- Republic of Botswana., (2013d). *Land Tribunal Bill No. 14 of 2013*. Gaborone: Government Printer.
- Republic of Botswana., (2014). Parliament rejects land audit motion. <https://www.facebook.com/BotswanaGovernment/posts/669310776484917>. (accessed July 18, 2019).
- Republic of Botswana., (2015). *Botswana Land Policy*. Gaborone: Government Printer.
- Republic of Botswana., (2017). Maele presents Tribal Land Bill, <https://www.facebook.com/BotswanaGovernment/photos/maele-presents-tribal-land-billbotswana-has-over-the-years-experienced-social-an/1409954702420517/> (accessed July 20, 2019).
- Republic of Botswana., (2018a). *Tribal Land Act No.1 of 2018*. Gaborone: Government Printer.
- Republic of Botswana., (2018b). Update on 60/40% quota for allocation guideline in Tlokweng, <https://www.facebook.com/BotswanaGovernment/posts/update-on-6040-quota-for-allocation-guideline-in-tlokwengtlokweng-land-board-has/1970780153004633/> (accessed July 20, 2019).
- Republic of Botswana. *The Constitution*. Gaborone: Government Printer.
- Sekgoma, G., (1994). Does chieftainship have a future in the next century? In: Brothers S, Hermans J and Nteta D (eds) *Botswana in the 21st Century: Proceeding of a symposium organised by the Botswana Society*. Gaborone: The Botswana Society, pp.403-418.
- Sunday Standard.*, (2017). Amended Tribal Land Act will make developments very expensive, August 28.
- The Vision 2036 Presidential Task Team., (2016). *Vision 2036: Achieving Prosperity for All*. Gaborone: Government Printer.
- United Nations., (1987). *World Commission on Environment and Development: Our Common Future Report*. United Nations: New York.
- Weekend Post.*, (2019). Dikgosi blast land boards over corruption, July 13.
- Wily, L. A., (2011). 'The law is to blame': The vulnerability status of common property rights in sub-Saharan Africa, *Development and Change* 42 (3), 733-757.

11. Key Terms Definitions

Chief: The head of a tribe.

Land Boards: Botswana's statutory bodies which administer tribal land. They were established in 1970.

Registration: The process by which the rights and interests to land are recorded.

Title Deed: It can be simply defined as a legal deed or document constituting evidence of a right, especially to ownership of property.

Tribal Land Act: A legal instrument which guides the administration of tribal/customary land. This Act was first enacted in 1968 and amended in 1994. The 2018 amended Tribal Land Act is not yet operational.

Tribal Land: The land administered by the Land Boards. It is sometimes referred to as customary land. Although it is said to be owned by the tribes, and administered by the Land Boards on their behalf, the fact is that no tribe owns land in the absolute sense of the word 'ownership'.