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# **BOTSWANA LAND POLICY**

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## I. INTRODUCTION

1. Botswana land mass covers an area of approximately 578 000 km<sup>2</sup>. It is densely populated on the east and sparsely inhabited on the west. The country is well endowed with forests, wildlife, rangeland, veld products and mineral resources but has limited soils suitable for arable agriculture.
2. Botswana's economic, social and environmental landscape has since independence changed. The country has experienced a notable economic progress which has continuously generated new concepts in access to land, protection of land rights as well as land management. This economic progress has inevitably led to emergence of a number of land management issues that have to be addressed. The cultural, economic and social values relating to land have also gone through some changes. The land use has evolved from the traditional land use system of residential, pastoral and arable to contemporary uses such as multi residential developments, integrated farming, game farming and agro tourism.
3. These developments dictate a conducive and complementary land management and administration response. This land policy is therefore formulated to be responsive to the challenges emanating from global economic competitiveness, need for economic diversification, rural urban migration; food security, poverty eradication, environmental sustainability, need for shelter; economic growth, and most importantly to create a balance between the competing land use needs for social, economic and political harmony. It has to facilitate initiatives and interventions towards addressing these challenges.
4. Efforts to create a balancing effect and harmony between competing and sometimes conflicting land uses have been done piecemeal through sectoral strategies, policies and statutes. While this approach has hitherto delivered significant success in land administration, it is nevertheless necessary to come with new approaches to address contemporary challenges, hence this "Botswana Land Policy" document.
5. Notwithstanding the profound changes witnessed by Botswana in the last four decades, the strategy of careful change, responding to particular needs with specific land management innovation remains as valid today as in the past. Land is not just a place to reside and a source of livelihood. It is also a place to be buried, a place shared with the spirits of the ancestors, a sense of place that is central to the identity of a people and as such this relationship has to be recognized and protected. Land management and land tenure thus remain matters of grave importance and any change required is to be made with great care.
6. The emerging land management issues include access to land, security of tenure and protection of land rights, recognition of vulnerability of certain groups, alienation of land rights and land administration processes, procedures and structures and land market. The policy specifically covers issues of the protection of the rights of the vulnerable groups, improvement of security of tenure,

improvement of land management in all tenures, decentralization of functions to Local and Land Authorities, enhancement of institutional capacity and efficient land information management.

7. It is important that mechanisms are put in place to monitor policy implementation and impact. Therefore it is imperative that information management, which is central to such monitoring, be given due prominence.
8. In developing this Policy, extensive nationwide consultations were conducted in 2004, 2006, 2010, 2011 and 2013 to reaffirm the validity of the proposed policy pronouncements. Submissions were solicited from all relevant stakeholders to come up with the policy.

## **II. THE CURRENT LAND TENURE SYSTEM**

9. All land in Botswana was originally communal. In 1885, when Botswana was declared a Protectorate, three tenure systems emerged; native land (now Tribal land), crown land (now State land) and freehold land. Tribal land has progressively increased overtime from 49% in 1966 to approximately 71% in 2013 through conversion of state land and freehold land. Freehold land is approximately 3%, having progressively diminished from 5% since 1966 due to conversion of freehold to state and tribal land. Meanwhile, over the same period, state land has reduced from 46% to 26%. The decrease of state land is mainly due to conversion of rural state land into tribal land. Thus the general trend over the years has been to increase the proportion of tribal land at the expense of state and freehold land.

### **a) Tribal Land**

10. Before and after independence, until 1970, tribal land was administered by Dikgosi assisted by ward heads. In 1968, the Tribal Land Act (CAP 32:02) was enacted and came into effect in 1970 to improve land administration, rationalize land allocation and introduce leasehold to accommodate national economic and social goals and aspirations. The Tribal Land Act provided for the establishment of the Land Boards as body corporates to administer tribal land. It vested all land rights and title to land in tribal areas in the Land Boards.
11. Tribal land is allocated under both Customary and Common Law. Customary land rights are allocated as a grant for the right to perpetual use of land for residence, water points and ploughing at no charge. On the other hand, residential common law land rights are granted for a fixed term of 99 years for citizens and 50 years for non-citizens. All business and civic and community uses are granted for a 50 year period at a specified rental. Licenses of up to 5 years and leases of up to 25 years are also issued. Grants below 10 years are not registrable at the Deeds Registry.

## **b) State Land**

12. State land previously belonged to the colonial government as crown land. The State Land Act, CAP 32:01, was enacted in 1966 to vest state land on the President and to provide for sound management of such land. The President has since delegated the management of land to the Minister responsible for land portfolio. State land management and allocation falls under the Ministry responsible for Land management while land allocation of residential plots under the SHHA programme is delegated to Local Authorities. SHHA plots used to be allocated under Certificate of Rights which is not registrable unless converted to Fixed Period State Grant. It was due to this limitation that the issuance of Certificate of Rights was discontinued.
13. Allocation is made through Fixed Period State Grant of 99 years in the case of residential and 50 years for business and 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.

## **c) Freehold Land**

14. Freehold land was created for Settlers during the colonial era mainly for agricultural purposes. It is owned in perpetuity by individuals and companies. However, there are pockets of such land in urban centres for residential and commercial use. Some of the freehold land was subsequently confirmed by various pieces of legislations to bestow upon the owner free and undisturbed possession and ownership of the defined piece of land.
15. To avoid the continued transfer of this land from non-citizens to non-citizens and to encourage citizen ownership of freehold land, the Land Control Act (CAP 32:11) was introduced in 1975 to regulate transfer of freehold agricultural land to non-citizens. Over time however, freehold land has fallen into the hands of citizens.

## **III. MILESTONES IN BOTSWANA LAND POLICY**

16. Several Policies and Acts in the past were formulated to address issues of land management and administration. The product of such an approach to policy review has been a number of policy documents and pronouncements outlined below:

### **a) Land Related Policies**

17. **Government Paper No.2 of 1973 on National Policy for Rural Development:** The objective of the rural development policy was to promote rapid rural development through many initiatives; creation of income earning opportunities; properly planning urban centres to provide employment to the rural population; resource conservation; increased agricultural productivity; fencing of farms under leasehold;

drew the terms of reference for the land policy and introduced land use planning as an important tool for land management. These have since provided a basis for subsequent policy interventions.

18. **Government Paper No. 2 of 1975 on Tribal Grazing Land Policy:** The objectives of the Tribal Grazing Land Policy were to improve management of the rangelands and facilitate commercialization of cattle ranching. The policy advocated for division of the country into three land use categories viz: Communal, Commercial and Reserve land. Commercial cattle ranches and wildlife management areas were created, the remainder being communal land. A total of 505 commercial ranches were allocated. It was not possible to have reserve land as all land was already in communal use for various activities. The policy also introduced conservation measures by prescribing 8 kilometres distance between livestock boreholes. The implementation of the distances policy was successful in the conservation of the rangeland and wildlife resources, such that in 1991 the policy review resulted in reduction of borehole distances from 8 kilometres to 6 kilometres and 4 kilometres in some instances. Meanwhile wildlife management areas have since been opened to allow other compatible economic activities.
19. **Government Paper No.1 of 1981 on Local Government Structure:** Government was concerned with poor performance by the Land Boards due to poor resources. In order to fully exercise their autonomy, the Land Boards have since been restructured and resourced to deliver on their mandate.
20. **Government Paper No. 1 of 1985 on National Policy on Land Tenure:** In 1983, the President appointed a Commission to review the land tenure systems in Botswana. The Commission concluded that no radical changes were necessary and it recommended fine-tuning of some aspects of both state and customary land tenures. The findings and recommendations of the Commission resulted in the issuance of Government Paper No. 1 of 1985 which provided for the amendment of the Tribal Land Act, extension of Common Law Leases to residential plots in respect of citizens and modification of Common Law Leases for businesses. Further, it endorsed the operations of the State Land Allocation Advisory Committees for urban land and dealt with issues of land accessibility and affordability to citizens. The major change as a result of the amendment of Tribal Land Act was to remove the word tribesman and replace it with citizens thereby allowing citizens to settle anywhere in the country.
21. **Government Paper No. 1 of 1986 on Wildlife Conservation Policy:** The objective of this policy was to encourage sustainable development of a commercial wildlife industry. The policy ensured the management of the resource such that utilization creates economic opportunities, jobs and incomes for the rural population and the national economy. The policy advocated recognition of the potential wildlife's contribution to the economy in terms of its heritage and aesthetic value and hence calling for the land use planning to accord it a position that is commensurate with that contribution. This resulted in the establishment of community concession areas to directly benefit the community surrounding the area.

22. **Government Paper No. 1 of 1990 on National Conservation Strategy:** The National Conservation Strategy was formulated in 1990 to sensitize the nation on the importance of natural resources conservation. The strategy promotes integration of environmental issues in development planning. The strategy has helped in the conservation of the environment.
23. **Government Paper No. 2 of 1990 on Tourism Policy:** This policy was formulated to underscore the contribution of the tourism industry in the economy and to encourage formal recognition and designation of areas for commercial tourist activities, as well as to regulate such activities. Since this policy was implemented, the contribution of the tourism sector to the national economy has increased substantially.
24. **Government Paper No. 1 of 1991 on National Policy on Agricultural Development:** The policy sought to improve agricultural production through provision of secure and productive environment for agricultural producers. The fencing component of the policy provided for extended determination of land for cattle ranching by allocating demarcated ranches to farmers in the grazing areas where there are boreholes. By mid-2013, a total of 738 ranches were allocated under the policy. However, their contribution to the beef sector has been very marginal as 80% of beef still comes from communal grazing areas.
25. **Government Paper No. 1 of 1992 on Land Problems in Mogoditshane & Other Peri-Urban Villages:** In 1991, a Presidential Commission was appointed to investigate land problems in Mogoditshane and other peri-urban villages. The thrust of the enquiry was to establish the extent to which the Tribal Land Act was violated through unauthorized land allocations in Mogoditshane and other peri-urban areas and the reasons for such violation. Following the Report of the Commission, a Government Paper was produced. This Government Paper resulted in the amendment of the Tribal Land Act in 1993.
26. **Government Paper No. 1 of 1998 on Industrial Development Policy for Botswana:** The policy underscores and promotes the importance of availability of serviced and un-serviced land for industrial development at cost effective and competitive prices. Industrial land has since been made available to investors.
27. **Government Paper No 2 of 1998 on National Settlement Policy:** The Policy provides guidelines and a long term strategy for the establishment and development of human settlements, as well as for the development of transportation and utility networks to strengthen the functional linkages between settlements. Particular emphasis is on rationalization and promotion of the optimum use of land and the preservation of the best agricultural land and conservation of natural resources for the benefit of future generations, thus further underscoring and emphasizing the importance of land use planning. The result was to have a settlement hierarchy that guides service and infrastructure provision.

28. **Government Paper No. 2 of 2000 on National Policy on Housing in Botswana:** The Policy sets out principles under which housing issues should be dealt with. The major emphasis of the policy was for Government to change from provision of housing to facilitation in partnership with other stakeholders. However, Government resources would be channeled more towards assisting the low and middle income groups in both urban and rural areas to achieve basic housing structures. Provision of housing is considered an instrument of economic empowerment and poverty alleviation.
29. **Government Paper No. 1 of 2002 on National Master Plan for Arable Agricultural and Dairy Development:** In recognition of the human settlement pressure on agricultural land and the need to improve food security at the household and national levels, this policy seeks to secure and preserve scarce agricultural land resources. It propagates for gazettement of soils that are good for arable farming. Large tracts of land have been identified in the country for arable production.
30. **Government Paper No. 3 of 2002 on Revised National Policy for Rural Development:** The principle of the Policy is to reduce poverty through provision of opportunities for income generation and involvement of Botswana in economic activities. It further advocates popular participation of Botswana in the development planning and implementation processes as a basis for broad based, balanced and sustainable development.
31. **Government Paper No. 1 of 2004 on the Second Local Government Structure in Botswana:** The aim of the paper was to strengthen institutions at local level in order to improve service delivery and implementation of policies and programmes at local level. The government aimed to achieve such through capacity building and decentralization with a view to enhance local level accountability to the public. Amongst the recommendations accepted with modifications was that Land Boards should remain corporate bodies responsible for land administration and that subordinate land boards be given authority to make final decisions on all land use applications. This document specified that land boards be provided with skilled personnel for efficient execution of their functions, including records keeping and computerization of records. Deferred recommendations of this paper while awaiting the outcome of the land policy are; physical and land administration; effectiveness of Land Boards; land speculation; compensation for land and Land Board procedures.
32. **Government Paper No. 2 of 2004 on National Settlement Policy:** This was an improvement of the 1998 National Settlement Policy to arrest proliferation of settlements. The thresholds for a settlement was increased from 250 to 500 inhabitants save for Remote Area Communities (RACs) settlement whose threshold remains at 250. Since then, some settlements were established around the country.



## **b) Land Related Statutory Instruments**

33. **State Land Act, CAP. 32:01:** This Act was enacted in 1966 for the purpose of defining the state land of Botswana and procedure for its disposal. State land includes townships, Game reserves and National Parks, rural and urban statelands and land acquired outside Botswana. The Act has defined this land tenure to date.
34. **Tribal Land Act, CAP. 32:02:** This Act was enacted in 1968 and came into effect in 1970 to establish Tribal Land Boards and vested management of tribal land in such Boards. Over the years the Tribal Land Act has been subjected to a number of amendments with the most notable being the 1993 amendment where reference to tribesman was replaced with citizen to facilitate access to land by all Batswana anywhere in the country. The amendment also established the Land Tribunals to deal with appeals from the Land Boards. It provides for formulation of policies by Land Boards and as a result land allocation policies by different Land Boards sometimes differ.
35. **Tribal Territories Act, CAP. 32:03:** It commenced in 1933 and it was enacted to define the boundaries of the tribal territories. This is an Act which signifies the history upon which the contemporary Botswana was built.
36. **Immovable Property (Removal of Restrictions) Act, CAP. 32:08:** It was enacted in 1967 to provide for the removal of restrictive covenants and conditions (as appearing in Title Deeds) affecting the use of immovable property. The Act provides for the final step in the process of change of use made in terms of the Town and Country Planning Act and the Tribal Land Act. It is only after the full processes of change of use have been followed that tittle deeds, including common law leases issued by the land boards and so registered at the deeds registry are accordingly amended to reflect such a change of use.
37. **Town and Country Planning Act, CAP. 32:09:** It was enacted in 1977 and came into effect in 1980. It makes provision for the orderly and progressive development of land in both urban and rural areas and for preservation and improvement of amenities thereof. The Act also provides for the granting of permission to develop land and for powers of control over the use of land and for purposes ancillary to and connected with the matters aforesaid. The Act was recently amended and approved on the 17th April 2013, with the major introduced change being the transfer of planning functions from Central Government to Local Authorities. It thus establishes the Councils as planning authorities. This transfer is meant to improve service delivery by bringing services closer to the people.
38. **Acquisition of Property Act, CAP. 32:10:** It commenced in 1985 and makes provision for acquisition of property for public purposes. According to the Act, the President may acquire any real property where such acquisition is necessary or expedient in the public interest. Compensation is determined under the provisions of the Act. The Act applies only to State land and freehold land. The exclusion of Tribal Land has led to different values for compensation amounts in the different tenures.

39. **Land Control Act, CAP. 32:11:** This is an Act to provide for the control of transactions in Freehold agricultural land. Under this Act, agricultural land excludes Tribal land and townships. The Act regulates transactions with the effect of changing the ownership and/or control of the land by giving preference to citizens over non-citizens. As a result, most of Freehold land is now in the hands of the citizens.
40. **Land Survey Act, CAP. 33:01:** The Act commenced in 1959. It provides for survey of land in Botswana. Surveying serves to ensure certainty of plot boundaries and thus enables certainty and security of one's right over a piece of land. In this way registration of land is facilitated.
41. **Deeds Registry Act, CAP. 33:02:** It commenced in 1960. This Act provides for the registration of land titles and other registrable rights. It applies to all land tenures save for customary grants certificates issued by the Land Boards. The effect is that the bulk of the country's land is not catered for by the Act. Such grants become registrable only when they are converted to common law leases, a process that is cumbersome to ordinary Botswana. But once properly registered under this Act, rights of holders are legally protected.
42. **Sectional Titles Act, CAP. 33:04:** It commenced in 2003 to provide for the division of buildings into sections for the acquisition of separate ownership of the sections and the transfer of ownership of sections and the registration of sectional mortgages. This is a new concept of ownership in the country and provides for ownership of parts of buildings in much the same way as ownership of land. It thus facilitates in the provision of shelter to more people without necessarily using up a lot of land.
43. **Transfer Duty Act, CAP. 53:01:** This is an Act that provides for the payment of transfer duty in respect of transactions or dealings in land. Transfer duty thus provides revenue to Government. It further provides for exceptions under which tax is payable to, among other things, promote home ownership. The Act is not applicable in Tribal land.
44. **Fencing Act, CAP. 33:03:** It commenced in 1962. This is an Act to provide for the apportionment of fencing costs by owners of farms sharing a common boundary. It does not apply in residential land and arable fields.
45. **Water Act, CAP. 34:01:** It commenced in 1968. It defines the ownership of any rights to the use of water; to provide for the grant of water rights and servitudes and distances between boreholes.
46. **Borehole Act, CAP. 34:02:** It commenced in 1956. It is an Act to regulate boreholes and keeping of records and samples relating to boreholes. Borehole data base has helped in locating reliable well-fields to sustain settlements.
47. **Administrative Districts Act, CAP. 03:02:** It commenced in 1954 and was enacted to establish the Administrative districts in Botswana. Since independence administrative districts, 10 rural and 6 urban, were established to bring services closer to people.

48. **Botswana Boundaries Act, CAP 03:01:** It commenced in 1892 and was enacted to define the boundaries of Botswana.

49. **Real Estate Professionals Act, CAP 61:07:** It commenced in October 2003. The Act provides for the regulation of the practice of Real Estate in Botswana and matters incidental thereto.

#### **IV. POLICY GOALS AND OBJECTIVES**

50. Land is an important resource, the very base on which the nation stands. The way in which it is administered is fundamental for the socio-economic development of the country. The overall goal of this land policy is to protect and promote land rights of all land holders and promote sustainable human settlements. Factors that may compromise access to land rights such as market forces, gender, poverty, or any that may hamper efforts towards protection of such rights are being addressed by this policy. Specifically the policy will:

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

51. The overall goal of the policy calls for improvement in the land administration and management, both from a system, environmental and economic perspective. This should reduce conflicts at the macro and micro levels, particularly the demographic and economic growth and environmental degradation. The object is to use land, conserve and protect it for future generations. On the basis of these, the overall objectives of this policy are to:

- i. Protect and promote the land rights of all land holders;
- ii. Ensure that all eligible citizens have the opportunity to access and use the land;
- iii. Encourage citizens retention of rights to land;
- iv. Promote equity in access to land and natural resources;
- v. Improve land management system on customary, state land and freehold land to make it predictable, transparent, reliable, consistent and timeous;
- vi. Establish an up-to-date, efficient and accessible land information centre; and
- vii. Promote compatible and best use of land, and other land resources.

## **V. LAND TENURE**

52. The current land tenure systems will be retained as they have served the country well save for a few shortcomings in administrative processes. Thus where necessary, changes in management systems, including changes in the legal framework, will be put in place to ensure efficient land administration.

### **a) Tribal Land**

53. Tribal Land is held under a certificate of Customary law land grant and Common law leases. Customary law land grant is not registrable and as such not accepted by financial institutions as a form of security. The following will be done to instill confidence in the Certificate of Customary law land grant:

- 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 rights.
54. Security of Common law land lease, once surveyed, is guaranteed and registrable. The lease period will continue to be as follows:
- i. Fixed term of 99 years for citizens and 50 years for non-citizens for residential;
  - ii. Fixed term of 50 years for non-residential at specified rental;
  - iii. The terms and conditions under which tribal land is granted under common law lease will include a provision for renewal at the end of the lease period;
  - iv. Licenses of up to 5 years and leases of up to 25 years will be issued; and
  - v. Leases below 10 years will not be registrable at the Deeds Registry.

### **b) State Land**

55. State land is allocated by way of a Fixed Period State Grant (FPSG). In the past there was no provision for renewal of the Fixed Period State Grant upon its expiry. In 1985 Government decided through Government Paper No.1 of 1985, that FPSG be renewable. It was decided that State land and tribal land must not be converted to Freehold. No reason has been found to justify a departure from this decision. As a result the following will apply with respect to Stateland:

- i. Fixed period state grant will continue to be the title under which state land is granted;
- ii. The terms and conditions under which state land is granted will include a provision for renewal at the end of the FPSG;

iii. Fixed period state grant will continue to be granted for a fixed term of 99 years for residential to citizens and 50 years for non-citizens. Fixed Period State Grant for non-residential will continue to be granted for a fixed term of 50 years at specified nominal rental; and

iv. Certificate of rights will be registrable.

### **c) Freehold**

56. Freehold tenure confers unencumbered land rights to the owner in perpetuity. Of recent, there has been many transactions i.e. subdivisions, changes of land use and ownership on freehold land which require consideration by Government. However, it is noted that the current regulatory mechanisms on the treatment of freehold land create loopholes which are inconsistent with the general direction of land use management practices in Botswana. In view of the above, it is necessary that;

i. Statutory provisions be made in the proposed Land Act to administer freehold land;

ii. All freehold land shall be declared planning areas; and

iii. Conversion of other land tenures to freehold tenure will not be allowed; however, conversion of freehold tenure to other tenures will, where necessary, continue to be permitted.

## **VI. ACCESS TO LAND AND PROTECTION OF LAND RIGHTS**

57. Access to land is meant to address both the social and economic needs. The underlying principle of Government is to enhance the security of tenure and to enable people to freely take part in the socio economic development of the country. There is need for justice and equity in accessing land and to strike a balance between the economic and social needs. Once secured, land rights need to be protected.

### **a) Access to Land**

58. **Residential Land:** Shelter or housing is a basic need, and residential land is a pre-requisite to provision of shelter. As such the Government is committed to ensuring that each family is housed and further encourages home ownership. As land is a finite resource that may not be always available, measures will be put in place emphasizing access to housing without necessarily owning a plot. To ensure equity and address this basic need, the following will apply:

i. Every Motswana will be eligible for allocation of residential plot at an area of their choice within the country;

ii. One is deemed to be allocated a plot if they have a lawfully acquired plot registered in their names;

- iii. Once a person has a residential plot registered in their names, they will not be eligible for allocation of another residential plot;
- iv. Additional plots may be acquired through the private market, inheritance or other legitimate channels recognized in law and policy;
- v. Low income groups will be allocated land at subsidized prices;
- vi. Residential plots will be planned and surveyed before allocations are made;
- vii. Waiting lists will be maintained where necessary;
- viii. Where eligible applicants exceed the number of plots available, the Land Authority will determine the appropriate method for allocation e.g. raffle, first come first served, waiting list depending on the circumstances;
- ix. Government will facilitate access to housing by the public through allocation of land for multi residential and high density developments to the private sector for housing delivery; and
- x. Growth points will be identified to reduce pressure from populous centres.

59. **Commercial, Industrial and Civic and Community Land:** It is not prudent to allocate commercial, industrial and civic and community plots on the basis of waiting list as this hampers economic usage of land. It has also resulted in wide spread speculation on land. To ensure transparency and development of land as well as to facilitate achievement of economic diversification and industrial development policy objectives, the following will apply:

- i. Access to land for investment will be through open competitive public tender;
- ii. Commercial, industrial and civic and community plots will be planned and surveyed before allocation;
- iii. Serviced commercial, industrial and civic and community plots will be leased or sold at market price in a transparent manner;
- iv. Blocks of un-serviced land will be made available to investors for development through public tender;
- v. Local commercial centres will be reserved for single developers to facilitate timely development and enhanced aesthetic values;
- vi. Preference on plot allocations in local commercial centres will be given to citizen consortia; and
- vii. Non-citizens will be allocated commercial, industrial and civic and community plots in accordance with the prevailing legislation and guidelines.

60. **Arable:** Arable farming remains an important source of food, income and employment for many Batswana. As there is shortage of arable land, the Land Authorities will ensure that it is used efficiently and effectively. To ensure equity and economic development in the allocation of arable land under customary grant:

- i. There will be a limit of one agricultural holding allocation per eligible citizen. However the Land Authority has the discretion to allocate subsequent plots based on land availability and utilization of the existing one;
- ii. Additional plots may be acquired through the private market, inheritance or other legitimate channels recognized in law and policy;
- iii. Integrated farming will be allowed on land allocated for agricultural purposes provided the field is fenced;
- iv. Once a person has been allocated an arable field they will not be allocated any other agricultural land subject to paragraph 60 (i);
- v. Ploughing fields (Masimo) on fertile land will be protected through zoning. Once zoned, change of land use will not be allowed;
- vi. Where feasible, arable fields will be planned and surveyed; and
- vii. Farmhouses (mekgoro) will be situated inside the arable fields and agricultural holdings.

61. **Commercial Agricultural Land:** Government formulated policies to improve productivity of both the livestock and arable sub-sectors as well as better management of the rangeland. To that end tenure reforms were introduced to facilitate zoning of land for commercial livestock ranching to give cattle ranchers' exclusive rights to specified grazing resources. Efforts continue to be made to identify potential arable areas to facilitate improved production through the National Agricultural Master Plan for Arable Agriculture and Dairy Development (NAMPAADD). To further improve and instill the commercial spirit in the livestock ranching and arable farming industries, the Land Authorities will ensure that:

- i. Lease rentals on all commercial agricultural activities will continue to be levied at market rates;
- ii. Where an allottee mismanages land and measures to persuade the holder to manage it properly fail, the Land Authority will repossess it;
- iii. Commercial agricultural land especially farms and ranches that are not put to productive use or abandoned will be repossessed or acquired to encourage productive use of such land;
- iv. Commercial agricultural farms in areas designated for specified use will be gazetted and retained as such;

- v. Effective range management practices will be implemented to discourage the practice of dual grazing rights. Acquisition of an exclusive farm or ranch, through whatever means, will exclude the holder of the farm or ranch from competing for or access to communal grazing land elsewhere in the country;
- vi. Government will facilitate infrastructure development;
- vii. Small agricultural holdings will be allocated at varying sizes subject to feasibility studies; and
- viii. Utilisation of shared water points will be encouraged;

62. **Communal Grazing:** Majority of Batswana still depend on communal land for grazing. Due to non-exclusivity of rights, most of these areas suffer degradation because no person is held accountable for its management. It is necessary to put in place appropriate structures for communal area grazing management. The following will therefore apply:

- i. Communal fencing of grazing areas will be continued subject to fencing feasibility studies;
- ii. Watering points will continue to be allocated to syndicates and individuals in areas where designated distances are satisfied;
- iii. Preference will be given to syndicates in areas where grazing resources are limited; and
- iv. Sip wells, dug outs, seasonal water points in communal water holding bodies and water courses will not be registrable.

63. **Game Farming:** <sup>✓ not ranching</sup> Game farming provides opportunities for growth in the tourism sector and is becoming a popular undertaking in the country. There is however, an emerging conflict between game farming and livestock production because most game farms are developed from converting livestock farms into game farms which impacts on food security and sustainability of the beef industry. To minimise conflict and safeguard food security;

- i. Land will be zoned for game farming; and
- ii. Conversion of commercial agricultural land to or their integration with game farms will be preceded by feasibility studies and development plans undertaken by the applicant for consideration by the Land Authority.

64. **Wildlife Management Areas:** Future growth of wildlife and tourism will require that linkages between wildlife systems are maintained, including connectivity and links between protected areas and wildlife management areas. Growth will focus on areas with comparative wildlife utilization advantage through conferring of



legal status to currently un-gazetted WMAs, encouraging multiple resource uses compatible with wildlife utilization and protection of user access rights. Wildlife Management Areas continue to serve the purpose for which they were zoned, serving as wildlife migratory routes and buffer zones. The following interventions will be made;

- i. Wildlife Management Areas (WMAs) will be maintained. Uses that support and compliment WMA's will be permitted;
- ii. Government will plan for the utilization of WMAs; and
- iii. WMAs will be gazetted.

65. **Communal Natural Resource Use:** Majority of Batswana still depend on communal land for a variety of resources including wildlife, firewood, grazing, timber, thatching grass, phane, herbs, pit and river sand, etc. To close the management vacuum and secure the subsistence of the communities, the following will apply:

- i. Community Based Natural Resource Management (CBNRM) programmes will continue to be encouraged to give communities responsibilities to manage particular areas to sustain their lives and resources;
- ii. Management of these areas will be further enhanced where feasible by incorporating partnerships with the private sector;
- iii. The community partnership with the private sector will be as per CBNRM programme;
- iv. Development of a comprehensive resource strategy as part of an overall land policy to enable acquisition of surface rights; and
- v. The Ministry responsible for Environment, Wildlife and Tourism will play a lead role in ensuring that revenues that accrue through CBNRM ventures are used in an accountable manner.

66. **Tourism:** The tourism industry in Botswana has grown rapidly over the past decade, providing both local employment and a foreign earnings to the country. It is now one of the engines of economic growth. The tourism industry in Botswana relies mainly on natural resources, which have to be protected and conserved. Government will continue to support the sector in terms of enabling policies and providing a conducive environment for the industry to flourish. The following will apply:

- i. Suitable sites (including cultural and heritage sites) will continue to be identified and set aside for communities tourism purposes;
- ii. The communities will continue to be allowed to sublease such land in accordance with applicable procedures;

- iii. Individuals and companies will be allocated tourism concession areas at market rates through tendering and/or affirmative action whichever may be applicable;
- iv. Concession leases will have restricted period of 15 years and will be advertised upon expiry of the lease period;
- v. Tourism leases will provide for extension of lease periods where investors meet the minimum development standards in their areas of operation; and
- vi. Sub leasing should take into account the remainder of the Head lease.

67. **Special Purpose Zones:** The land policy necessitates the provision of special purpose zones. These zones shall consist of various types of developments or combination of uses which are not necessarily permanent in nature. The zone will cater for land use activities such as desert racing, freedom squares, horse racing, folk song events "dikhwaere" and bike riding. The establishment of these zones will promote and allow flexibility of broader and major recreational uses and national sporting events. In order to facilitate for the establishment of these zones:

- i. The development control code will make deliberate establishment of the special purpose zones as land use zones;
- ii. Once zoned, the special purpose zones will be handed over to Local Authorities for management;
- iii. The Local Authority will issue special permits for temporary use; and
- iv. Permanent allocation of special purpose zoned areas will not be allowed.

#### **b) Land Rights**

68. **Registration of Land Rights:** The rights to land are registered or documented in the form of Title Deeds, Leases, Licenses, Cessions, Certificate of Rights and Certificate of Customary Land Grants. The Title Deeds for freehold land and Fixed Period State Grant in stateland and leases for ten years or more are registrable in the Deeds Registry in accordance with the Deeds Registry Act (CAP 33:02). Certificates of Customary Land Grant are issued by the Land Authorities upon allocation of customary land rights and Certificate of Rights are not registrable. Therefore, the law shall be amended to:

- i. Ensure that land titles are issued for Customary Land Grant Certificate and Certificate of Rights are registered;
- ii. Compel all land rights holders to register their land rights with Land Authorities; and
- iii. Exempt first time home owners from VAT and transfer duty.

69. **Alienation of Land Rights:** The Tribal Land Act and the Policy on allocation of Stateland forbid alienation of undeveloped plots without the consent of Land

Authority. This is intended to discourage alienation of freely acquired or subsidized land and to maintain Government's effort to empower Batswana through access to land for shelter and as a source of production and income generation. An attempt to guard against this on state land was to make transferors pay lien. This however has not achieved the intended purpose. The following will be done to curb citizen dispossession and to discourage speculation:

- i. Where Government has allocated land at subsidized prices, those who want to alienate their land rights within a period of 15 years will be required to pay the difference between the subsidized price and full market price of the plot at the time of allocation; and they will not be eligible for any subsequent allocations;
- ii. Land allocated under special dispensation and economic empowerment schemes will not be alienated within a period of 15 years. In the event the alienation has to be effected within 15 years, an assessment by the Land Authority will be done before approval;
- iii. Once allocated land in a particular use category, one may not be eligible for allocation of land in the same category after alienating the plot;
- iv. A person will not be allowed to alienate their last residential plot acquired directly from the Land Authority;
- v. The alienation of any land will give preference to citizens and any alienation to non-citizens will be subject to advertisement of notice of intention to alienate.
- vi. An individual who voluntarily returns their plot to the Land Authority will be given priority in future when plots are available and they apply in the same locality, provided they surrender them before it is due for repossession.

**70. Cancellation of Land Rights:** Both state and customary land allocations provide security of tenure. Reasons justifying cancellation of land rights are spelt out in the law as well as in the terms and conditions of offer. In addition to stipulated grounds of cancellation of land rights provided for in the Tribal Land and State Land Acts, cancellation of land rights will also apply where:

- i. Land is required for public purpose and adequate compensation is paid;
- ii. Terms and conditions of allocation are breached;
- iii. Developments are unsightly and where land is idle, neglected and deteriorating; and
- iv. Land is repossessed for non-development.

### **c) Affirmative Actions**

71. There are special categories of society whose rights and access to land should be acknowledged, realized and protected. Disadvantaged members of the society should be provided with the opportunities that will ensure their inclusion in the economic development mainstream through affirmative action in land allocation. Such categories include remote area communities, widows, orphans, youth and the vulnerable groups (people with disabilities and the needy).

#### **Protection of Existing Land Rights**

72. **Widows and Orphans:** There are instances where some widows and orphans who are compelled to head households find themselves in urgent need of land, especially for residential purposes. However, many find that access to their deceased husbands'/parents' rights are denied or restricted by their in-laws/guardians or others. While our land policies or land laws do not undermine the land rights of these two categories of the society, the reality on the ground is different. Not many widows/orphans find access to the administrative and legal fora to assert and defend these rights. In order to address the plight of widows and orphans:

- i. Government institutions such as Land Authorities, Local Authorities and Non-Governmental Organizations will be encouraged to step up their campaign to educate women and orphans about their legally protected rights and offer them legal support to successfully claim their legitimate land rights.
- ii. Customary practices and Common Law dealing with Deceased Estate which do not disadvantage widows and orphans will continue to be implemented to ensure protection of the land rights of the widows and orphans and practices that are unfavourable will be identified and addressed; and
- iii. Since only one spouse can apply for a plot, the surviving spouse must as of right inherit their land allocations.

73. **Remote Area Communities (RACs):** RACs are often dispossessed of their land rights by people from other areas. There is therefore need to protect their rights; and the following shall apply:

- i. Where appropriate, Government will identify growth points for establishment of formal settlements in consultation with affected communities;
- ii. Government will continue to sensitize members of the Remote area Communities on the importance of land ownership and land rights; and
- iii. Land Authorities will confer titles to those allocated pieces of land; and
- iv. Transfer of land rights acquired under affirmative action for members of remote Area Communities will not be allowed except under special circumstances.

## **Special Dispensation on Access to Land**

74. **Special Investors (Foreign and Domestic):** Government is desirous to ensure that foreign direct investment opportunities are created. Support for foreign direct investment will however not be at the exclusion of domestic investment. It is therefore important that land should be made readily available for investors. In order to make the country attractive to investors, the following will apply:
- i. Identify suitable areas for investment i.e. commercial, industrial, tourism, agriculture, recreational and other investments;
  - ii. Reserve land to relevant user Ministries for allocation to investors; and
  - iii. User Ministries will monitor developments and give regular updates on the status of the investment.
75. **Youth:** The youth have often experienced difficulties in accessing land despite government initiatives and schemes to economically empower them. The following will be done:
- i. Where land is available on public tender, a quota will be reserved for the youth, where appropriate; and
  - ii. Special measures will be put in place and applied to expedite allocation of land to youth (groups) to facilitate access to special funding.
76. **Vulnerable Groups:** Vulnerable people constitute another category of land users who need special assistance in securing land. These are essentially People with Disabilities, Remote Area Communities and the Needy. It is recognised that with proper facilitation and support, this category of people can make good investment on land to take care of themselves and contribute meaningfully to the growth of the economy. It is not possible for most people with disabilities to compete on an equal footing with able bodied citizens in identifying suitable land for development. To give support to this category of citizens, the following will apply:
- i. Allocation of residential land to members of this group will be expedited based on the recommendations from Social Workers; and
  - ii. Preferential treatment will be applied in favour of this group in consideration of applications.

## **VII. LAND MANAGEMENT AND ADMINISTRATION**

77. Population growth and the increase in the number of livestock and wildlife have resulted in land use conflicts. These conflicts manifest themselves in spiraling encroachment of land uses such as settlements into arable land, arable

into grazing, and grazing into wildlife areas. The ultimate effect of this is land use conflicts leading to unsustainable resource management and environmental degradation. The Policy intends to facilitate access, development and utilization of land to achieve the policy goals. Various sectors have to secure portions of land and the development and utilization of such land has to be environment friendly and protective of the land resources:

- i. Land authorities will after assessment of fertility of the area, repossess some arable land for settlement growth; and
- ii. Title holders will not be allowed to change agricultural landholdings in tribal land to non-agricultural developments.

#### **a) Physical Planning**

78. Population growth has put pressure on the limited land resources. This has manifested itself as problems of rural urban migration, village sprawl, squatting, pressures on arable, grazing land and wildlife resources. It is therefore necessary that land be efficiently planned, utilized and administered. The lack of development plans and/or the non-adherence to them results in inefficient and unsustainable utilisation of land. To ensure orderly, efficient, cost effective and sustainable land development and the exploitation of natural resources, based on the potential of land suitability, the following will be undertaken:

- i. The whole country will be declared a planning area save that some planning legislation requirements will be relaxed in some areas;
- ii. National land use map, Regional plans, District Integrated land use plans, Village development plans and detailed layout plans will be prepared;
- iii. All land will be zoned and demarcated before allocation;
- iv. Plot sizes and development standards will be reviewed on a continuous basis;
- v. Intensification of developments will be encouraged to ensure efficient use of land;
- vi. Plans will provide flexibility to encourage and accommodate new compatible innovations;
- vii. Integrated cluster farming and cluster fencing will be allowed in both arable and pastoral areas;
- viii. Ploughing fields (Masimo) on fertile land will be protected through zoning and gazettelement. Once gazetted as such, change of land use will not be allowed;
- ix. Urban agriculture will be encouraged through identification and zoning of land for such activity; and
- x. Sites with natural resources that are not replaceable will be protected.

## **b) Land Allocation Processes and Procedures**

79. Land allocation processes and procedures are important in ensuring speedy delivery of land. The process towards availing land and facilitating its development and utilization contributes to productive and efficient management of land resources. To ensure efficient land delivery, the following will be done:

- i. Computerization of land allocation processes and procedures;
- ii. Standardization of land allocation procedures;
- iii. Improved methods of assessment on land applications to avoid land speculation; and
- iv. There will be sectoral committees to adjudicate and make recommendations on tenders for land allocations in accordance with the laid down rules and regulations.

## **c) Land Servicing**

80. It is desirable that all land be serviced before allocation. However, it has become challenging for Government to service all land because of the numerous commitments which put pressure on the country's financial resources. To ensure constant delivery of serviced land:

- i. Basic services will be provided in villages to facilitate development of allocated land;
- ii. Government will continue to encourage and expand private sector participation in land servicing and delivery in all areas of the country; and
- iii. Where resources permit, land in production areas will be serviced.

## **d) Information Management**

81. Land information is necessary for efficient and sustainable management of resources, both from an environmental and economic perspective. Land information is also important to enable land administrators to allocate land equitably and efficiently and to establish effective demand for land, as well as to enable holders to realize the value of their properties and thus improve their economic opportunities. It is also important to enable land based taxes and rents to be collected efficiently. In order to enhance security, reliability and accessibility to such information:

- i. The Ministry responsible for land management will establish a Land Information Centre;
- ii. The land information systems will be integrated to provide inter-operability as per e-government programme; and

- iii. The land information systems will be interlinked for easy access by customers, stakeholders and managers/administrators.

#### **e) Development of Land**

82. It is important that when land is allocated it is developed with minimal delay. Land that is developed converts into capital which leads to appreciation of its value and contributes to the growth of the economy through revenue generation. It is therefore necessary that appropriate measures be put in place to facilitate land development. The following will therefore apply:

- i. Strict enforcement of development covenant;
- ii. Repossession and re-allocation of undeveloped land with minimal delay;
- iii. Once allocated land, allottees will be required to submit development compliance certificate in a prescribed manner and time; and
- iv. Improve methods of assessment and vetting on land applications in order to identify suitable candidates.

#### **VIII. LAND VALUES AND MARKET**

83. Various factors contribute to the value of land and the land market. These include physical location; quality of the soils; landscape; zoning of the land; potential revenue and cultural values. Customary entitlement to land has been oblivious to the value of land as capital and investment resource. Government has forgone opportunities for earning revenue from land, property development and transfers. On the other hand, costs are incurred in providing services on land transactions and on facilitating land availability and development. To ensure Government derives maximum value out of land development, the following will apply:

- i. Property rates will be payable on all land tenures with exceptions as may be prescribed;
- ii. Property transaction taxes to be charged on all land tenures;
- iii. Residential plots will be allocated under subsidized cost recovery principle except allocations under affirmative action which will be free;
- iv. Investment land will continue to be allocated at market prices;
- v. Government will, in accordance with the Government cost recovery policy, continue to review all charges related to land; and
- vi. Adequate compensation will be paid for land and developments acquired.



## **IX. INSTITUTIONAL FRAMEWORK**

84. Botswana faces the challenge of continuing to improve the land administration and management system to meet the needs and aspirations of its people. It is therefore necessary to put in place efficient institutional and administrative structures and processes which can engender confidence in the public.

### **a) Physical Planning**

85. Local Authorities are better placed to appreciate local needs and engage communities in land use planning and decision-making. However, it is necessary to ensure that there are checks and balances in land use planning and management within statutory planning areas. As such there will be separation of powers between those who prepare development plans and those who approve them. To that end the preparation of development plans will be streamlined as follows:

- i. Government will formulate national land use and physical planning policies and prepare national and regional spatial plans;
- ii. Local Planning Authorities will be responsible for the preparation of general physical development plans for settlements and preparation of detailed layout plans, and also monitor developments to ensure that there are no planning contraventions; and
- iii. The Department responsible for Town and Regional Planning will support, advise and assist Local Authorities, Land Authorities and other stakeholders in the preparation and implementation of all types of land use plans, policies and guidelines.

### **b) Land Surveying and Mapping**

86. Currently, land is allocated either surveyed or unsurveyed. This then creates confusion in terms of ascertaining individual rights for unsurveyed plots. To that end, efforts will be made to:

- i. Survey all plots in the Country that were allocated but have not been surveyed; and
- ii. Survey all plots before allocation

### **c) Title Deeds Administration**

87. Conveyancing of Alienation of land rights at the Deeds Registry has been the legal monopoly of conveyancers. This monopoly has resulted in exorbitant fees being charged for the service. In order to reduce costs of land registration, maintain the standard of registration as well as increase efficiency further:

- i. Standard forms will be created for simple registrable transactions where owners, in addition to conveyancers, will be allowed to prepare and lodge such documents with the Registrar of Deeds;

- ii. Legislative amendment and electronic infrastructure innovations will be made where possible to provide for the introduction of electronic conveyancing; and
- iii. Some of the Registry of Deeds functions will be decentralized to Land Authorities.

#### **d) Land Administration**

88. There are challenges in land administration which include issues of efficiency of allocation systems, transparency and delays in decision making. It is therefore necessary to improve the administrative, financial, legal and technical capacity of land management authorities. The following will apply:

- i. Land Authorities will be established at local level to be responsible for all land tenure systems;
- ii. The organizational structure of the ministry responsible for land will be reviewed to improve efficiency;
- iii. The allocation of state land SHHA plots by Urban Local Authorities will be transferred to the Land Authorities; and
- iv. Local Authorities will however, continue to receive applications for SHHA plots, and submit recommendations to the Land Authorities for allocation.

#### **e) Land Adjudication**

89. Adjudication of disputes on land has evolved over time. Before 1970 when Dikgosi were allocating land, appeals against their decisions were made to Kgosi Kgolo. After the establishment of the Land Boards appeals from the Land Boards and from State Land allocation were directed to the Minister. Since 1997, Customary Land appeals against decisions of the Land Boards are directed to the Land Tribunal. To further improve land adjudication process, the following will apply:

- i. More power/wider jurisdiction will be given to the Land Tribunal to include appeals on state land allocation, land use planning, compensation matters, sectional titles disputes.

#### **f) Coordination and Consultation**

90. There are concerns that stakeholders are not involved in the development and implementation of Government policies. To address these, effective consultative mechanisms will be put in place to regularly give the Ministry feedback on implementation of the Land Policy as well as areas for possible improvement. To this end, the following will apply:

- i. A Land Development Committee will be resuscitated to foster stakeholder participation and advise Government on Land related issues;

- ii. Intensification of stakeholder engagement through Ministry Communication and Change Management Strategy; and
- iii. The Ministry responsible for land will spearhead research for land development and management.

## **X. LEGAL FRAMEWORK**

91. There are different land laws all dealing with land across the three land tenure systems. This leads to varying interpretations, misconceptions and treatment of similar issues and processes. Further, since this Policy has made pronouncements that necessitates a unified Land Authority at local level responsible for all land tenure systems, that customary land certificates be registrable and that there be a universal land delivery process, the following Policy initiatives will be carried out:
- i. Consolidation of land related Acts; and
  - ii. Review of Deeds Registry Act to enable registration of customary land grant and recognition of electronic records.

## **XI. IMPLEMENTATION, MONITORING AND EVALUATION**

92. The effectiveness of this policy will depend on its ability to drive socio-economic development. It is important, therefore, that monitoring tools are put in place to assess policy implementation and impact. Information management will be central to the monitoring exercise. To this end the following will apply:
- i. A structure for policy implementation and monitoring will be established;
  - ii. Appropriate tools to monitor policy implementation will be identified.
  - iii. Mid-term review of the policy will be done in the fifth year; and
  - iv. A comprehensive evaluation of the policy will be done on the tenth year after its approval.