

TRIBAL LAND (SUBORDINATE LAND BOARDS) REGULATIONS

(under section 37)

(15th June, 1973)

ARRANGEMENT OF REGULATIONS

PART I

Preliminary

REGULATION

1. Citation
2. Application

PART II

Subordinate Land Board

3. Election or appointment of members of subordinate land boards
4. Composition of Subordinate Land Boards
5. Co-option
6. Vacation of office
7. Procedure of subordinate land boards
8. Chairmen of boards
9. Clerk of board

PART III

Grant of Customary Land Rights

10. Application for customary land rights
11. Procedure on receipt of application
12. Procedure before grant of customary land rights is made
13. Decision of board to be communicated
14. Demarcation of land over which customary rights are granted
15. Certificate of grant of customary land rights
16. Appeals against decisions of subordinate land boards
- 16A. Cancellation of customary land rights for failure to develop land
17. Cancellation of customary land rights

Schedule - Certificate of Customary Land Grant

S.I. 48, 1973,
S.I. 62, 1973,
S.I. 93, 1984,
S.I. 97, 1989,

PART I
Preliminary (regs 1-2)

1. Citation

These Regulations may be cited as the Tribal Land (Subordinate Land Boards) Regulations.

2. Application

(1) These Regulations shall apply to all subordinate land boards established under section 19 of the Act.

(2) In any matter not expressly provided for in these Regulations the Tribal Land Regulations shall, *mutatis mutandis*, apply.

PART II
Subordinate Land Board (regs 3-9)

3. Election or appointment of members of subordinate land boards

(1) The provisions of subsections (3) and (4) of section 3 of the Tribal Land Act shall apply to members of a subordinate land board as they apply to members of land boards.

(2) The membership of each subordinate land board shall be-

- (a) 4 members, appointed in accordance with the procedure described in this regulation, who may hold office for 4 years and be eligible for re-election and re-appointment;
- (b) 4 members, appointed by the Minister of Local Government, Lands and Housing, which members may hold office for 3 years and be eligible for re-appointment;
- (c) any member, appointed to replace a member referred to in paragraphs (a) and (b) who's office has become vacant, who may hold office for the unexpired period of the original incumbent's term, and be eligible for re-election and re-appointment;
- (d) 1 member representing the Ministry of Agriculture; and
- (e) 1 member representing the Ministry of Commerce and Industry.

(3) Any member, appointed under sub-regulation (2)(a) of this regulation, shall be appointed from the names, kept in the Ministry in terms of regulation 2(9)(a) of the Tribal Land Regulations, of elected candidates for that subordinate land board area.

(4) From the elected candidates, referred to in sub-regulation (3), the Land Board Selection Committee (established in terms of regulation 2 (11) of the Tribal Land Regulations) shall select the most eligible members, from whom the Minister shall make appointments to the subordinate land board, and in doing so shall endeavour to ensure that, so far as possible, all relevant parts of the subordinate land board area are represented on

the subordinate land board.

(5) In making appointments the qualifications and experience of the candidate shall be taken into consideration.

4. Temporary members

(1) If any member of a subordinate land board, other than an *ex-officio* member, is temporarily unable to exercise the functions of his office, whether by reason of illness, absence or other cause, the person or authority who appointed or elected such member may appoint or elect a temporary member to exercise such member's functions during the period of his incapacity.

(2) An appointment of election made under the preceeding subregulation shall cease to have effect if the person or authority who made the same notifies the temporary member of the revocation of such appointment or election, or if the member in whose place the temporary member has been appointed or elected notifies such person that he is about to resume or has resumed his functions, or that member vacates his office by virtue of the provisions of regulation 6.

5. Co-option

(1) A subordinate land board may, with the approval of the tribal land board, co-opt not more than two persons with suitable knowledge or experience to assist the board in the discharge of its functions.

(2) Persons so co-opted may attend any meeting of the subordinate land board, and at such meetings may speak but may not vote.

(3) The chairman of a subordinate land board may invite not more than two persons to a particular meeting to assist the board in the discharge of its functions.

(4) Persons invited in accordance with the provisions of subregulation (3) may attend the meeting of the board to which they have been invited and at such meeting may speak but may not vote.

6. Vacation of office

(1) A member, not being an *ex-officio* member, may at any time resign his office by notice in writing to the chairman or secretary of the tribal land board, and the office of the member thereupon shall become vacant.

(2) Such vacancy shall immediately be reported to the Minister.

(3) The Minister may by notice in writing require any member, other than an *ex-officio* member, to vacate his office; if, after giving such member an opportunity to be heard and after having consulted the appropriate tribal land board and subordinate land board the Minister is satisfied that such member-

(a) has been absent from meetings of the subordinate land board without leave of absence granted by the land board for a period exceeding six consecutive months; or

(b) is unable to exercise the functions of his office by reason of illness, absence or

other cause and has been, or is likely to be, so unable for a period exceeding six months; or

- (c) is otherwise unfit to discharge the functions of his office.

7. Procedure of subordinate land boards

(1) Subject to the provisions of the Act and any regulations made thereunder, or to any directions made by the tribal land board, a subordinate land board may regulate its own procedure:

Provided that no grant of land shall be of any effect unless the subordinate land board by resolution approves such grant and a record of the substance of such resolution is recorded in the minutes of the meeting at which the resolution was passed.

(2) The quorum of a subordinate land board shall be half of the number of appointed and elected members thereof, or if such number is an even number, a majority of such members shall constitute a quorum.

(3) Any member or administrative officer of a tribal land board in the tribal area concerned may attend any meeting of the subordinate land board and may speak but not vote at such meeting.

(4) Decisions of the subordinate land board shall be taken by a majority of votes of members present and voting, the chairman having both an original and, in the event of an equality of votes, a casting vote.

(5) If any member of a subordinate land board present at a meeting of the board has any pecuniary or other interest, direct or indirect, in any matter under discussion, or is the husband, father, grandfather, son, grandson, or brother, father-in-law, brother-in-law or son-in-law of any person seeking a grant from the board he shall disclose the fact and, if the chairman or other member presiding at the meeting so directs, he shall withdraw from the meeting during such discussion or refrain from discussion of, or voting on, the matter.

(6) The tribal land board may issue special or general directions to subordinate land boards regarding their procedure or administration.

8. Chairmen of boards

(1) The members of a subordinate land board shall, each year, and for the ensuing year, elect from their number a chairman, and a deputy chairman who shall act as chairman at any meeting of the board when the chairman is absent.

(2) At any meeting of a subordinate land board, when the chairman and the deputy chairman are absent, the members present at the meeting shall elect one of their number to act as chairman for that meeting.

9. Clerk of board

(1) The tribal land board shall appoint a clerk for each subordinate land board in its area of jurisdiction.

(2) The records of a subordinate land board shall be kept by the clerk who shall also record and preserve the minutes of all its proceedings, receive all applications and other

documents addressed to the board and conduct correspondence on behalf of the board.

PART III

Grant of Customary Land Rights (regs 10-17)

10. Application for customary land rights

(1) An applicant for a customary law right to the use of land shall furnish verbally or in writing to the clerk of the subordinate land board within whose area the land falls the following particulars which the clerk shall record-

- (a) the full name and postal address of the applicant;
- (b) whether the applicant is married and how many children he has;
- (c) the ward, if any, in which the land right is sought;
- (d) the nature of the right sought, e.g., for grazing, ploughing, residential or business purposes;
- (e) the location, description and extent of the land affected;
- (f) the ward affiliations of the applicant; and
- (g) what other land rights the applicant possesses in Botswana.

(2) An applicant may also produce to the clerk a letter from the head of the ward concerned or his local representative stating whether the granting of the right applied for will conflict with other people's land rights, or with present land use, which letter the clerk shall file.

11. Procedure on receipt of application

(1) As soon as may be after receipt of an application for a customary land right the clerk shall-

- (a) notify the applicant of the date and place of the next meeting of the subordinate land board, not being less than 21 days after the said receipt, at which representations concerning the application will be heard;
- (b) post on a notice board open to public inspection at the subordinate land board's offices a notice of such application giving details thereof and the date and place of the meeting at which representations concerning the application will be heard and calling upon any interested person who wishes to make such representations to appear at the said meeting;
- (c) ascertain in the most expedient manner the attitude towards the application of the head of the ward concerned, or his local representative, if it has not already been communicated to him in writing.

(2) Any meeting of the subordinate land board at which representations concerning an application for a customary land right are heard shall be held in public and any interested person shall be entitled to make representations concerning the application, the substance of which shall be recorded by the clerk.

(3) For the purpose of resolving any dispute or difference arising from the representations submitted to it, or otherwise for the purpose of enabling it to decide upon an application, a subordinate land board shall have power to summon persons to give evidence before it.

(4) Any person who without reasonable excuse fails to obey a summons under this regulation which has been served upon him shall be guilty of an offence and liable to a fine of P100 and to imprisonment for three months.

(5) A subordinate land board shall have power, for the purpose of determining any application for a customary land right, to administer an oath or affirmation to any person appearing to give evidence before it.

(6) No evidence shall be heard by a subordinate land board unless the applicant and any interested person whose name has been recorded as objecting to the application has been given notice of the meeting at which the evidence is heard.

12. Procedure before grant of customary land rights is made

(1) The subordinate land board shall satisfy itself-

- (a) whether or not the applicant is a citizen of Botswana;
- (b) whether or not the land is subject to rights in favour of any person other than the applicant;
- (c) whether or not the land is available and whether its size and location are suitable for the use proposed by the applicant.

(2) If it is proposed to make a grant of customary rights, a resolution to that effect, embodying any conditions which it is proposed to impose, shall be put to the subordinate land board and if such resolution is passed it shall be recorded in the minutes of the meeting at which it was passed.

13. Decision of board to be communicated

The subordinate land board's decision on an application for a customary land right shall be communicated in writing to the applicant by the clerk, and shall be posted by the clerk on a notice board open to public inspection at the subordinate land board's offices, as soon as the subordinate land board has made its decision.

14. Demarcation of land over which customary rights are granted

(1) With the object of avoiding disputes arising from imprecise or conflicting grants, it shall be the duty of a subordinate land board in making a grant of customary rights in respect of a piece of land which is not defined by a diagram to describe it in the certificate of grant by reference to permanent and ascertainable boundary points or boundaries whenever possible, and whenever possible to attach a sketch plan.

(2) Any grantee who fails to maintain any mark which has been established to demarcate such land shall forfeit his rights to such land, and any person who without reasonable excuse damages, destroys, moves or otherwise interferes with any mark established by or under the direction of a subordinate land board to demarcate land, shall be guilty of an offence and liable to a fine of P100 and to imprisonment for three months.

(3) Before a certificate of grant of customary land rights is issued, it shall be the duty of the subordinate land board to ensure that the boundaries of the area of land concerned are pointed out to the grantee by a person designated by it for this purpose, and such pointing out shall be recorded in the certificate of grant:

Provided that the subordinate land board shall make all reasonable efforts to ensure that such pointing out is done in the presence of the head of the ward or of two responsible heads of family.

(4) Such additional person as may be present during the pointing out shall also be recorded in the certificate of grant.

15. Certificate of grant of customary land rights

A certificate of grant of any customary right to the use of land issued by a subordinate land board shall specify whatever conditions the subordinate land board has, by resolution pursuant to regulation 12(2), imposed and shall be in the Form set out in the Schedule and shall be signed by the chairman or the clerk.

16. Appeals against decisions of subordinate land boards

(1) Any person aggrieved by a decision of the subordinate land board may appeal to the tribal land board by lodging a notice of appeal either verbally or in writing with the clerk of the subordinate land board or the secretary of the tribal land board.

(2) Upon the noting of an appeal the clerk of the subordinate land board shall furnish the tribal land board with the reasons for the decision of the subordinate land board and shall serve a copy of such reasons to the appellant.

(3) On consideration of an appeal against a decision of the subordinate land board the tribal land board may allow such appeal and set aside, or in any manner vary the decision of the subordinate land board.

(4) On receipt of the decision of the tribal land board setting aside or varying the decision by the subordinate land board the clerk of the subordinate land board shall forthwith cancel the duplicate copy of the certificate of grant, if any, issued in the matter and shall call upon the grantee to return the original certificate of grant which he shall cancel forthwith.

(5) The subordinate land board shall thereafter issue, if the tribal land board's decision so requires, a new certificate of grant which shall conform to the requirements of the decision of the tribal land board.

(6) Any person aggrieved by a decision of the tribal land board on an appeal may within four months from the date upon which he became aware of such decision, appeal therefrom to the Minister who shall have the power to allow the appeal, set aside or vary any decision made by the tribal land board.

(7) Any decision made by the Minister under subregulation (6) shall be final.

16A. Cancellation of customary land rights for failure to develop land

(1) A subordinate land board may recommend to the land board a cancellation of a grant of a customary right to use land for arable farming, a borehole, or residential purposes if, after the expiration of five years from the date of the grant, the land has not been developed

without sufficient excuse to the satisfaction of the subordinate land board.

17. Cancellation of customary land rights

(1) A subordinate land board shall in no case cancel the grant of any customary right to use land but may recommend cancellation of such rights to the tribal land board.

(2) In dealing with any recommendation from a subordinate land board for the cancellation of any customary right to use land, the tribal land board shall follow the procedure prescribed in regulation 15 of the Tribal Land Regulations.

(3) Any person may appeal to the Minister against the decision of a tribal land board to cancel customary rights following a recommendation from a subordinate land board.

(4) The procedure laid down in regulations 16 and 17 of the Tribal Land Regulations, shall apply to any appeal.

SCHEDULE CERTIFICATE OF CUSTOMARY LAND GRANT

REPUBLIC OF BOTSWANA

TRIBAL LAND ACT

(Cap. 32:02)

(Reg. 15)

To whom it may concern:

This is to certify that in accordance with the provisions of Part III of the Tribal Land Act, and the regulations made thereunder

.....

of

.....

has been granted for

purposes the use of an area of land estimated at approximately

acres in extent and situated at

..... (specify ward) the boundaries of which
area of land are demarcated by the following boundary marks or natural features (give a
clockwise description of the boundaries to identify them clearly)

.....

.....

.....

.....

(as will more fully appear from the sketch plan/diagram annexed hereto marked 1(2) "A"),
which boundaries have been pointed out to the said

.....

by

on the 20 in the presence of

.....

This grant is subject to the undermentioned conditions-

.....

.....

.....

Chairman/Clerk

.....20

.....

Subordinate Land Board