



**FACULTY OF ENGINEERING AND SUSTAINABLE  
DEVELOPMENT**

## Administration of Tribal Land in Botswana

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## **ABSTRACT**

This thesis concerns the management and administration of tribal land in Botswana. The administration processes that are practiced today are neither effective nor suitable for present and future needs. Existing problems relates to registration, archiving and order among the ownership rights. A solution to these problems would promote a system that secures the right of each individuals land.

Our aim is to recognize the processes and work methods that are the reason for the mentioned problems in administration of tribal land. We want to find suggestions for solutions to these problems. To be able to recognize the existing difficulties a thorough literature review has been made as well as interviews with persons with dissimilar positions at three different land boards. Interviews were made at the Mogoditshane Subordinated Land Board, Tlokweng Main Land Board and Mochudi Subordinated Land Board. Questions asked concerned the Tribal Land Act, practice of land allocation and location of plots, appeals, recordkeeping and compensation.

We have also looked into how a pilot study regarding land adjudication directed by the LAPCAS-project, which is a five year running project in cooperation with Swedish Lantmäteriet and Ministry of Lands and Housing in Botswana, can act as one solution to the many problems that exists.

Our conclusion is that tribal land tenure in its own meaning is not a problem, the problem concerning tribal land lies in the administration thereof. Some common regulations for all land boards are needed to implement routines and structures that will improve the administration of tribal land. These kinds of routines can be learnt from involvement and close work with the LAPCAS-project.

**Keywords: land administration, tribal land, Botswana, land boards, LAPCAS**

## **PREFACE**

This Bachelor Thesis has been carried out within the framework of the Minor Field Studies Scholarship Programme, MFS, which is funded by the Swedish International Development Cooperation Agency, SIDA.

Through discussions with our instructor Stig-Göran Mårtensson, Senior University Lector, Tekn.dr. in tekniskt lantmäteri, who works at the University of Gävle, we came in contact with Åke Finnström who works at Lantmäteriet in Gävle. He is the Swedish project leader in the project Improvements of Land Administration Procedures, Capacity and Systems (LAPCAS) in Botswana. The contacts resulted in that we have done our Bachelor Thesis within that project.

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# **1 INTRODUCTION**

## **1.1 HISTORIC BACKGROUND**

This thesis concerns the management and administration of tribal land in Botswana. The administration of tribal land today is neither effective nor suitable for present and future needs. Existing problems relates to registration, archiving and order among the ownership rights. The main problem is the lack of an overall regulation of the administration of tribal land. It is important to find solutions to these problems to get a trustworthy system which secures the right of each individuals land.

Making changes in land administration is a popular progress tool for countries in development and was primarily on the agenda when colonization of larger parts of Africa took place (Peters, 2009). By changing the conditions of land tenure social developments can be done, for example, land taxation can be practiced. Once again the topic has become an important issue and nowadays it is a vital element in many countries' land policies (Peters, 2009). The issue of land administration is closely connected with population growth, food security and restitution for injustices (McMillan, 2000). Rights to land are not only an economic issue but also an important social status symbol that signals prestige and power (FAO, 2002). One way to encourage development towards a better welfare is to improve land administration and to secure land tenure (Clover and Eriksen, 2008).

Botswana (see figure 1) has as many other African countries been directly influenced by the western world. Since the beginning of the 19<sup>th</sup> century Europeans mostly represented by tradesmen, missionaries and white farmers, started to occupy the south east parts of Botswana. These parts of the country were back then the home of the Tswana people who during the 16<sup>th</sup> and 17<sup>th</sup> century had ejected the aboriginal inhabitants, San, which then lived there as hunters and collectors. The immigration of the Boers (emigrants from the Netherlands, Germany and France) resulted in that the Tswana chiefs looked for support from Great Britain. In 1885 the Tswana people's area, except a part which integrated in the Cape colony, became a British protectorate. The declaration was established without discussion with the Tswana people and the protectorate was named Bechuanaland. The Tswana chiefs could continue to govern over the tribe's land as they had done before, this due to the fact that Great Britain had no interested in Botswana's development (Olesen and Palmberg, 2010).



**Figure 1** Map over Botswana with the capital Gaborone.

Political parties started to operate in the beginning of the 1960s, and in 1965 the first general election was held. Botswana became independent the 30<sup>th</sup> of September in 1966 and Seretse Khama became the first president. The constitution of Botswana is from 1966 but amendments have been done since then. Botswana has today a multiparty system. The president has the executive power and together with the national assembly they have the legislative power (Olesen and Palmberg, 2010; Palmberg 2010).

Botswana has been one of Africa's poorest countries but since the mining started in the 1970s the diamond industry has contributed to a more solid economy. Botswana's economic growth has continued and today the country is one of Africa's richest. Likewise Botswana is regarded as one of the most political stable countries in Africa (Kalabamu, 2000; Olesen and Palmberg, 2010).

Since Botswana's independence the country has been working solidly with land administration to be able to improve and make this area more effective. The constitution of the Tribal Land Act made in 1968 and the establishment of land boards in the beginning of the 1970s contributed to important changes. As well as then, tribal land is today one of the biggest concerns is land administration. Tribal land is allocated for free and can be applied for by every citizen of Botswana. There are no proper registers over the allocated land parcels and many persons lack evidence that establish their rights. This results in problems with duplication of rights of land parcels. Problems also concern knowing who the legal holder of a right is as well as knowing the parcels boundaries and location on the ground. The land boards do not have the proper information on what land they can distribute which results in a long and difficult administration process when allocating land to the people. These problems are of major concern for Botswana's future development and welfare.



## 1.2 THE GENERAL CONCEPT OF LAND TENURE

The Food and Agriculture Organization of the United Nations declared a definition of what land tenure is in FAO (2002 p.7).

*“Land tenure is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land.”*

Land tenure has developed due to social, political and economic structures that have existed within a country. Therefore it is important to understand each country's specific history as well as culture to be able to understand the land tenure structure that has developed within the country studied and why. According to FAO (2002) land tenure is often categorized into different sub areas these are:

- **Private** - refers to land which is tied up to an individual or a party with exclusive right to that specific land.
- **Communal** - each member of a society has the right to use this type of land.
- **Open access** - this means free access to resources to all, for example forests and marines.
- **State** - the rights to this tenure category are assigned to an authority in the public sector.

Different types of rights exist within these categories. They can be simplified into use rights, control rights and transfer rights. A use right gives a person right to use land for different purposes, these include grazing, farming and minor forestry production for example. A control right gives a person right to make decisions regarding one's land, for example what kind of crop he/she want to grow. A transfer of right means that one can sell the land on the market or mortgage the land (FAO, 2002).

### 1.2.1 Customary and statutory rights regarding land

Rights regarding land can either be formal or informal. Formal rights are acknowledged by the state and secured by legal means. Informal rights are rights that are not protected by laws or the government. In some cases a right can be defined somewhere in between the formal and informal rights. The right may not be against the law but it is not recognized by the law either, for indigenous areas this is common (FAO, 2002). This has been formally known as customary land. Customary rights bounded by customary law are often practiced within indigenous areas and are governed by traditional procedures and rules (Kalabamu, 2000).

Statutory rights are formally recognized rights which are often defined within market capitalism. Statutory land tenure means that an ownership guarantees certain rights; the most important is the right to sell one's property, to transfer the property on the market (Kalabamu, 2000).

In some cases customary law has over time been written down into formal rights, these rights are regulated under common law (Dale and McLaughlin, 1999).

### **1.2.2 Why are individual rights to land so important?**

Tenure systems determine under what conditions and circumstances people can use land resources (FAO, 2002). If the land administration system does not work properly the use of land resources cannot be optimized, one example of this is agriculture. To have control over land tenure means that control over land resources is established. Many have argued that secured access to land is the best way out of poverty. It has been shown, as Dekker (2003, p. 6) implies, that economic investments in land increases when people's rights are secured. Farmers tend to make technical improvements on their legal land which will give them grater profit in the future.

Access to land is very important for the individual in social, economic and environmental aspects. Through the right to land a person can obtain food security and create a capital. Access to land is an assumed political status, prestigious and has also a cultural and social value (Clover and Eriksen, 2008). It is important to advocate tenure security to ensure the rights of the individuals. Individuals that are especially vulnerable are women, migrants, tenants and pastoralists. It is important to ensure the rights of those with least influence (Toulmin, 2008). In some countries women are unable to get land rights without consent of a male relative (Dale and McLaughlin, 1999).

## **1.3 LAND ADMINISTRATION**

### **1.3.1 The function of land administration**

Land administration is the management of land tenure rules. Examples of processes within land administration are the process of determining land rights, land adjudication, land-use regulations and the valuation and taxation of land (FAO, 2002).

Land and property is one of the most important financial assets for a country. Without land, hardly any investments can be done. Therefore a well functional land administration system is essential for every country. A good system can lead to increased development in both economic and social areas (Dale and McLaughlin, 1999).

### **1.3.2 Land adjudication**

Land adjudication is the process of resolving disputes and uncertainties in ownership relations regarding land. There are two ways of performing adjudication, systematic or sporadic. Systematic land adjudication takes place in an area for example in a village over a specific time period. Every parcel with its related rights are investigated and measured, and then registered and archived. A sporadic adjudication takes place "here and there" and often when a certain issue is raised. Within the process of adjudication the rights that exist on the ground is determined. Adjudication must take place within the boundaries of the existing law and rather than altering these rights their legal position is confirmed (Dale and McLaughlin, 1999). Before adjudication is carried out it is important to know how the situation looks like at that specific time. It is important to know from where to start the continuous up-dating (Myles, 2009). When performing land adjudication the goal has to be to look after the

majority of land holders, otherwise an unfair image of the situation of rights regarding land will be recognized. Therefore the advertising and letting the public know about the process that is about to take place is one of the most important steps within the adjudication. Often the process relies on the fact that concerned people actually show up and participates. Another important factor to be aware of is that the process will result in a lot of data which has to be administered and registered. Therefore it is of tremendous concern that the person responsible for recordkeeping has the proper training and understanding for the importance of recordkeeping (Myles, 2009).

## **1.4 AIM AND OBJECTIVES**

The primary aim for this report is to investigate in problems concerning land administration of tribal land in Botswana. Our intention is to reflect upon the situation in Botswana and on how to improve the land administration system. We will look at solutions that will make the system more effective for all parties concerned.

The objectives for this thesis are to;

1. Give a comprehensive illustration of the land tenure situation in Botswana with main focus on tribal land. Within the area of tribal land we will look at the administrative system of land boards. We will also describe the management and procedures regarding Certificates of Customary Land Grants and Grants of Common Law Leases.
2. Identify problems concerning administration of tribal land and try to find solutions to these problems with aim at making the management more effective.

## **1.5 LIMITATIONS**

For our thesis we have chosen to look at tribal land within the peri-urban area of Gaborone and to focus on problems that are specific for districts near larger cities.

In this thesis we will not look at the tenure situation in Botswana from a political and economic view more than briefly reveal some of these problems concerning land tenure.

We will focus on customary rights which are why the definition of statutory rights is only shortly explained with the purpose to give a comparative illustration.

When considering the land categories state land and freehold land in Botswana we will only look at rights, certificates and the security bounded to these categories. We will not describe the processes of how to acquire these rights.

# **2 METHODOLOGY**

## **2.1 LITERATURE REVIEW**

This thesis is partly based on a literature review which includes objective (1). The literature review has developed by reading scientific papers and theories. To be able to understand the

theory and wider concepts of land adjudication we have read literature written by Dale and McLaughlin (1999). The literature has been thoroughly revised and then compared and analyzed amongst each other.

We have used databases such Academic Search Elite and Science Direct to find relevant articles, where search words were *land administration*, *Botswana*, *land tenure* and *tribal land*.

## **2.2 INTERVIEWS**

One objective is to recognize the problems in land administration of tribal land. To be able to define these problems we have been in contact with local land boards; Mogoditshane Subordinated Land Board, Tlokweng Main Land Board and Mochudi Subordinated Land Board. We chose these three land boards due to their location but also because we had heard that their administration processes differed and we wanted to recognize these differences. The land areas managed by the chosen land boards are attractive due to their closeness to Gaborone which means that many persons want a piece of land within the specific areas which means that the three different land boards are exposed to similar problems. We wanted to ask questions on how they are able to administer land in a just way when the procedures differs between the offices but also see how much the procedures really differ. We also wanted to see the differences in productivity and work processes between land boards and subordinated land boards.

To get a broad perspective on the management we have talked to persons with different positions and undertakings. At some land boards the interviewed staffs consists of fewer persons than at other land boards we have been in contact with, this means that some of the persons we have talked to have competence within many areas. At some land boards we have talked to many persons to get hold of the wanted information, whereas at other land boards it has been sufficient to speak with just one person. With these persons we have had open interviews where the issues of tribal land have been discussed. The discussions were very united and just with purpose to recognize the problems each land board are dealing with. The issues that have been discussed were set from the beginning whereas the questions asked could differ from each situation depending on where the discussion led. Issues talked about under the interview concerned;

- Location of plots
- Amendments in the Tribal Land Act
- Practice of land allocation
- Appeals
- Recordkeeping
- Compensation

The questions that were asked at the interviews are described in appendix 1. The interviews were performed with the aim at giving an illustrative picture of the differences that exist between the different land boards. The answers that we got from the interviews cannot be

looked upon as proof but rather to point out some of the problems that people who are working with land administration in peri-urban areas in Botswana encounters in their daily work.

## **2.3 CASE STUDY**

When investigating in solutions to problems concerning administration of tribal land we have especially looked at a pilot study directed by the project for Improvement of Land Administration Procedures, Capacity and Systems (LAPCAS) in the village Matebele. We have looked at how this study can be a long term solution to these problems.

We chose to look at this study because we believe it is an interesting project which differs a bit from other project within similar areas. The main difference is the working process, within similar projects consults from European countries have been working with the specific project and when it is finish they have left the continuing work to the local professionals. What LAPCAS instead are trying to do is to consult the locals in their work. The projects means is to assist with knowledge and authority but the idea is that the persons who area left when the project is finished should be able to be involved from the beginning, this to get a broader picture and understanding. In this way the project is more likely to have a successful outcome. This will led to that project like this will start in other parts of Botswana and even worldwide, in the future.

We have been in close contact with the project team leader Dr. Kristin Andreasson who is responsible for the pilot project. To get knowledge about the project, its aim and methods, we have been provided with reports which we have used in our work, this to be able to give a comprehensive image of the systematic adjudication in Matebele. This literature includes:

- Improvements of Land Administration Procedures, Capacity and Systems in Botswana, Project Description, LAPCAS (2009)
- Component 4: Systematic Land Adjudication Plan for pilot project, Mission Report, Myles A. K. (2009)
- Guidelines for the Systematic Adjudication Process (Pilot project in Matebele), LAPCAS (2010)

## **3 RESULTS**

### **3.1 LAND TENURE IN BOTSWANA**

#### **3.1.1 Land tenure categories**

Before Botswana's independence in 1966 the three land tenure categories were: tribal reserve, freehold land and crown land. Tribal reserves were land that at the time belonged to the eight major Tswana tribes. White settlers acquired land in Botswana and such land became freehold land. Likewise, land that was acquired by companies became freehold land. The remaining parts of Botswana became crown land (LAPCAS, 2009).

Today, there exist three land tenure categories in Botswana: tribal land (earlier known as tribal reserves), freehold land and state land (earlier known as crown land).

Tribal land is a traditional land tenure category that exists in rural areas and has been administered under customary rules and is therefore by right the same as customary land (Adams, Kalabamu and White, 2003). Every individual in Botswana is entitled to a land plot for free which is made accessible to the people through administration of tribal land. Tribal land is administered by statutory land boards under customary and common law (Law's of Botswana). The rights to land are allocated through two different types of certificates. Customary Land Grants which are allocated under customary law and Common Law Leases which are allocated under common law (Kalabamu, 2000). These certificates will be described in section 3.2.4.3 and 3.2.4.4.

State land exists in both rural and urban areas and is owned by the government. The land is managed under the State Land Act (Chap 32:01) of 1966 (Adams et al., 2000). State land is distributed to individuals and organizations for residential-, commercial- and industrial purposes in urban areas, while in rural areas state land is distributed for establishment of national parks, game reserves and forestry reserves (Nkwae and Dumba, 2009). State land is allocated through a Certificate of Rights which is convenient for urban poor because of its low-cost form. Land can also be allocated through a Fixed Period State Grant which nowadays is the most common type in urban areas (Nkwae and Dumba, 2009).

Certificates of Rights are inheritable, perpetual and secure. The holder has the usufruct to the plot while the state has the ownership (Nkwae and Dumba, 2009). A Certificate of Right can be converted into a Fixed Period State Grant if the plot is cadastral surveyed and registered at the Deeds Registry Office. A Fixed Period State Grant is leased for 99 years for residential use whilst 50 years for commercial and industrial use (Adams et al., 2009). A holder of a Fixed Period State Grant has the possibility to sell or transfer the remaining time of the grant period (Kalabamu, 2000).

Since Botswana's independence, tribal land has increased from 49 % and at present it accounts for 71 % of Botswana's territory, state land has decreased from about 47 % to 25 % and freehold land represents about 4 % of Botswana's land tenure (Adams et. al., 2003) (see Figure 2).

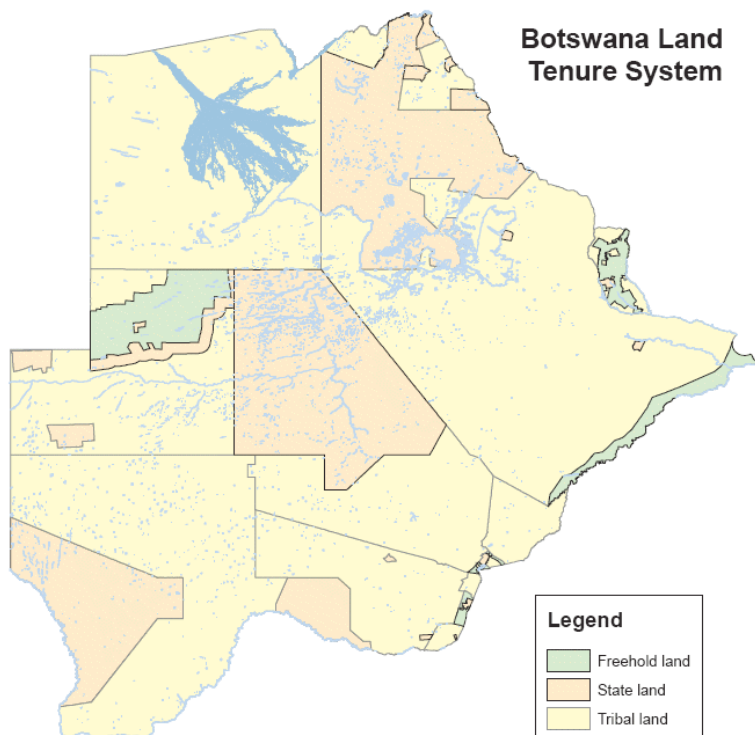
Freehold land is mainly represented by farms and can be found in the agricultural belts. Freehold land was earlier managed and transferred to non citizens under The Land Control Act of 1975 (Mathuba, 2003). Since 1978 the government has stopped allocation of the land category (Nkwae and Dumba, 2009) and freehold land has become converted into tribal land and state land (LAPCAS, 2009). Freehold land is perpetual, inheritable and transferrable (Nkwae and Dumba, 2009).

## 3.2 LAND ADMINISTRATION OF TRIBAL LAND

### 3.2.1 Land administration of tribal land before independence

Before the introduction of land boards, land administration was regulated under a customary land tenure system. Its rules and procedures were passed on from generation to generation within the tribe and the administration was led by a paramount chief (Kalabamu, 2000).

In Botswana as well as in many other African countries, the chiefs have had a strong position. Their main task was to allocate land to the villagers. The chiefs acted as communicators with the ancestors and other spirits concerning rules about natural resources. If there were disagreements between persons regarding resources and land, the chief acted like a mediator



**Figure 2** Land Tenure Categories in Botswana (LAPCAS, 2009).

(Clover and Eriksen, 2008).

The chiefs allocated land to the subordinated chiefs (Molomo, 2008). The subordinated chiefs apportioned the land to ward heads, chief representatives and headmen which in turn distributed the land to family heads. The family heads allotted land to themselves and to their family members (Republic of Botswana, 2003). The administration of land took place in the kgotla (definition described in section 3.2.1.1).

A significant characteristic of a customary land tenure system was that individuals who belonged to a particular tribe automatically got a right to their tribe's land which is formally known as *right of avail* (Kalabamu, 2000). Individuals acquired this land for free (Adams et al., 2003).

The tribal land was either residential land, arable land or grazing land (Molomo, 2008). A holder of residential land had inheritable, transferable and permanent rights to the allotted land which were secure (Mathuba, 2003). When residential land was needed for public interest the holder could lose his lot but became allotted with a new piece of land. Unfortunately the new lot seldom had the same high condition as the first one (Adams et al., 2003).

The arable land included the same rights as residential land with the exception that a holder of arable land only had the exclusive occupation right while the land was under cultivation. After cultivation the land returned to communal use. When the land lot lost its fertility a holder was allocated a new lot (Adams et al., 2003).

The remaining land was grazing land where everyone had the right to graze their animals (Republic of Botswana, 2003). In grazing areas individuals also had the right to collect water from a well or a borehole (Adams et al., 2003).

#### **3.2.1.1 Kgotla's meaning in society**

The word kgotla implied the social and administrative core of a community. A kgotla also implied the physical body that consisted of a semi-circular log palisade where there is a hearth at the centre. A kraal which is the place where they kept their animal was also found within the kgotla. There was also a shelter named leobo, where the roof was usually covered by grass.

The kgotla was governed by a chief. Traditionally, the kgotla was the central place in a village where the tribe's chief managed the villages' undertakings. The chief accepted laws and managed the administration of land. It was a place for democratic decisions and disputes and different problems were discussed and solved. The kgotla was like a court where justice was created among the people. The kgotla was also used for other purposes like marriage, festivals and rituals.

The men used to sit in the kgotla at mornings and evenings discussing and debating issues of interest. Principally only the men had admittance to the kgotla where they used to meet each other before and after work. The women were called to the kgotla when there was something that concerned them, such as discussions about their marriage.

Today the kgotla has a reduced role in society due to the chief's decreased power but kgotla still exist and is the main authority out in the villages.

#### **3.2.2 Land administration after independence**

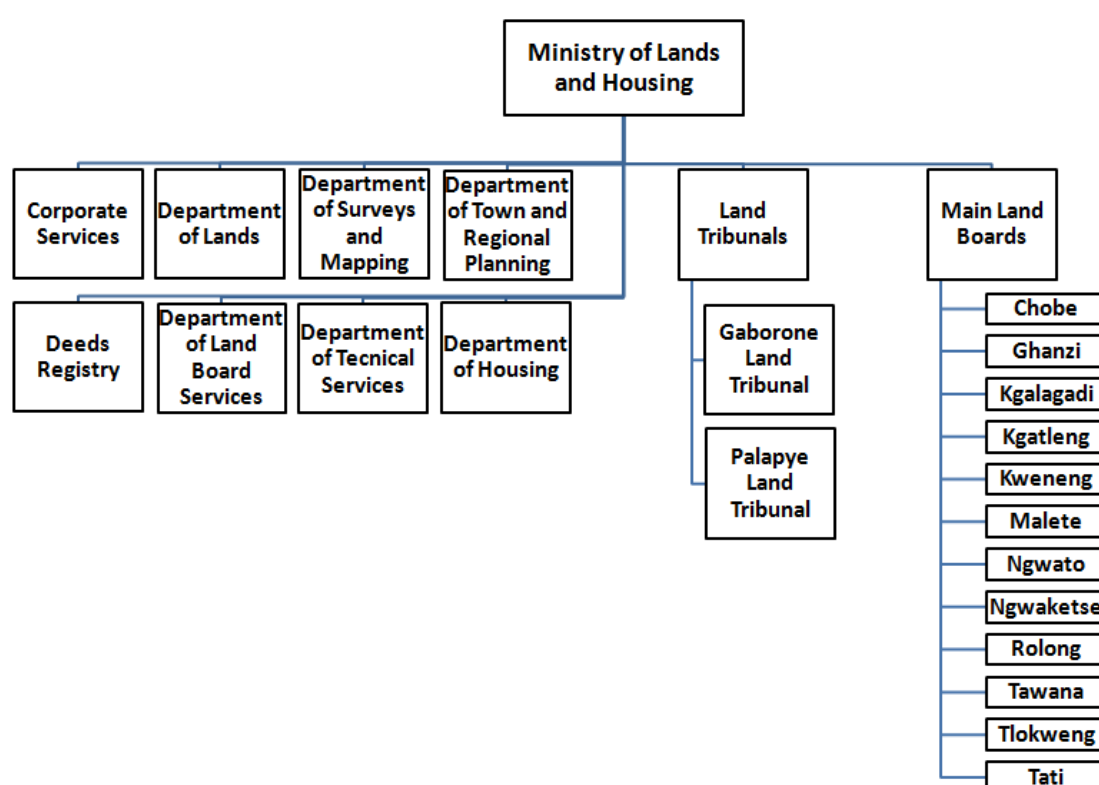
Since Botswana's independence in 1966 the country has moved from being one of Africa's poorest countries to one of the richest (Kalabamu, 2000). The patriarchy and the traditional gender contracts became replaced by a government that promoted democracy and a constitution with the purpose to guarantee equality for all individuals (Kalabamu, 2003). The nation accepted four national principles namely: democracy, development, self reliance and



unity. Land administration became a fundamental block to facilitate those principles (Mathuba, 2003).

Many factors contributed to changes in land administration. The most important was new structures within the government at both local and central level. These included a new state president, cabinet and parliament. A remodelled judiciary, the constitution of the Tribal Land Act in 1968 and the establishment of land boards also contributed to important changes (Kalabamu, 2003).

Today, most matters regarding land administration is dealt with by the Ministry of Lands and Housing. The Ministry consists of 8 departments, 2 land tribunals and 12 main land boards with their respective subordinated land boards (see Figure 3).



**Figure 3** The structure of the Ministry of Lands and Housing in Botswana.

### 3.2.3 The Tribal Land Act

Botswana's national law consists of numerous of acts concerning land and its administration. The Tribal Land Act of 1968 with amendments done in 1993 is divided in seven parts regulating administration of tribal areas (Laws of Botswana, 2010). The act mainly regulates the land boards' structure and procedures including the procedure for carrying out Certificates of Customary Land Grants and Grants of Common Law Leases (Laws of Botswana, 2010).

### 3.2.4 Land boards

#### 3.2.4.1 Its structure and membership

The land board offices are directed by land board secretaries who are appointed by the Minister (Laws of Botswana, 2010). The establishment of land boards started in 1970 (Republic of Botswana, 2003). Botswana has at present 12 main land boards and 39 subordinated land boards (Molomo, 2008). The need of subordinated land boards arose because the ten districts of Botswana were too large and required more than one land board each. The subordinated land boards have the opportunity to work at a more local level than the main land boards and have therefore a closer contact to the local inhabitants. Despite that, the distances can be up to 300 km between a subordinated land board and the people (Republic of Botswana, 2003).

Earlier, the constitution of land board membership consisted of two members appointed by the District Council. The chiefs and the District Agricultural officers were made into ex-officio members who automatically attained a membership within their respective land board. The lasting members, who represented tribesmen and other local interests, were elected by the Minister of Local Government Lands and Housing (Republic of Botswana, 2003).

The main land boards consists of 12 members and the subordinate land boards consists of 10 members (Republic of Botswana, 2003). Their purpose is to make decisions regarding applications that are administered by the land board staff and they are summoned when they are needed. Within these members, two members represent the Ministries of Agriculture and Commerce and Industry. The Minister select five members for the main land boards and four for the subordinate land boards, these hold office for a period of three years. The remaining five members of the main land boards and the four members of the subordinated land board are chosen by the land boards Selection Committee, who comes up with a list of candidates through elections at the kgotla. These members are elected for a four year period of time and the Minister has the possibility to re-elect them (Republic of Botswana, 2003). To be a member each candidate has to fulfil the minimum qualification of a Junior Certificates which corresponds to ten years of basic education (LAPCAS, 2009).

#### 3.2.4.2 The land boards function and procedures

The land boards' main functions are defined as;

- **Land allocation** - deals with surveying and mapping.
- **Land registration** - concerns spatial and transactional data collection.
- **Land use planning** - integrates GIS and spatial data management.
- **Land use monitoring** - meaning allocation, archiving and accounting of land.
- **Land adjudication** - denotes the acquisition of land.

(LAPCAS, 2009)

The constitution of land boards was established with the purpose to give a more effective management of tribal land. Before the independence chiefs had been in charge for allocating

land within each tribe. When the population of Botswana increased along with a more stable economy, it became difficult to execute land issues in a socially just way. The traditional administration process could not live up to the new developments and the needs for administration of tribal land. The questions regarding land became more and more comprehensive and a new structure of management was needed instantaneously (Republic of Botswana, 2003).

The Tribal Land Act Chapter 32:02, Part VI, Section 13, states that;

The function of land boards in relation to customary tenure is:

(1) All the powers previously vested in a chief and a subordinate land authority under customary law in relation to land, including

- (a) the granting of rights to use any land;
- (b) the cancellation of the grant of any rights to use any land;
- (c) the imposition of restrictions on the use of tribal land;
- (d) authorizing any change of user of tribal land; or
- (e) authorizing any transfer of tribal land,

shall vest in and be performed by a land board acting in accordance with powers conferred on it by or under this act.

(2) A land board may hear an appeal from any decision of a subordinate land board in respect of any of its functions conferred on such subordinate land board.

The main land boards allocate land within both customary law and common law. They have the authority to carry out both Customary Land Grants and Common Law Leases. The subordinated land boards only have the authority to carry out Customary Land Grants (Kalabamu, 2000). If the case is administered under common law the subordinated land boards can give recommendations in the specific case to the main land board. Subordinated land boards cannot make changes in land use. They are neither authorized to distribute Customary Land Grants for the purpose of grazing land, commercial land or industrial land (Republic of Botswana, 2003).

### **3.2.4.3 Certificate of Customary Land Grant**

A Certificate of Customary Land Grant can solitarily be carried out to the citizens of Botswana. The Minister can make exceptions in specific cases. Customary Land Grants cannot be assigned for commercial purposes (Laws of Botswana, 2010).

A holder of a Customary Land Grant has usufruct to the plot and the tenure is secure, inheritable and perpetual but the state continues to hold the ownership (Kalabamu, 2000). The holder of a certificate cannot transfer the rights bounded to the certificate, whether by sale, exchange or through a gift, without the consent of a land board.

The Tribal Land Act Part III Section 38 states the following exceptions;

Land which has been developed to the satisfaction of the land board concerned;

- (i) A sale in execution to a citizen of Botswana;
- (ii) A hypothecation by a citizen of Botswana; or
- (iii) The devolution of such land on inheritance.

Land boards have two ways to allocate a Customary Land Grant. This depends on if the plot is situated in an unplanned area or in a planned area. In unplanned areas the applicant, neighbours, local leaders and other people of interest are invited to a meeting. The land board's representative decides where the plot should be located on the ground based on collected facts. The plot is measured and its boundaries are demarcated. If there are no objections by the people concerned the applicant will receive a Certificate of Customary Land Grant. The certificate states the evidence of the rights bounded to the plot. In planned areas Land Boards let the public know which plots are available. The applicant can give suggestions to which plot he/she wants and send the application to the land board responsible for that district. The land board's decision is made with regard to the physical planning. The land board allocates plots to the one that first handed in the application and the applicant receives a Certificate of Customary Land Grant (Kalabamu, 2000; LAPCAS, 2009).

A holder of a certificate can have his rights cancelled due to different reasons. These are regulated under section 15 in the Tribal Land Act. One of the reasons that can cancel a holder's right is when the land parcel is used for other purposes than has been stated in the certificate, or if the holder does not start to build on his allotted land within the time period that has been given (Laws of Botswana, 2010).

Customary Land Grants can be converted into Common Law Leases which enables the holder to use the land as collateral (Kalabamu, 2000).

#### **3.2.4.4 Grant of Common Law Lease**

This certificate cannot be given to a person who is not a citizen of Botswana unless he has been given a written consent by the Minister. If a person is not a member of a tribe or the Government of Botswana he has to get permission from the Minister to be allocated land for agricultural or horticultural purposes (Laws of Botswana, 2010).

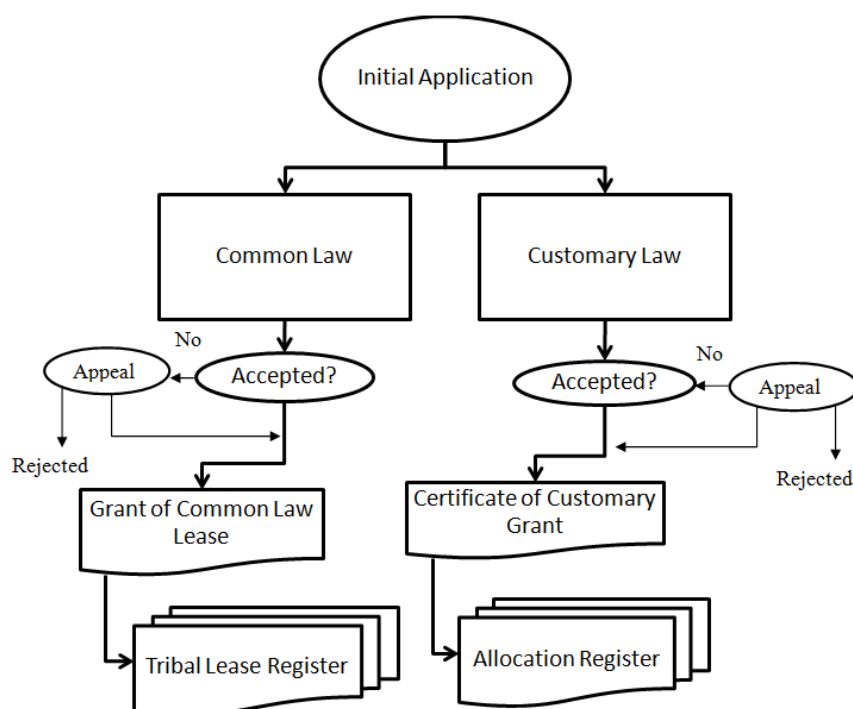
For customary land, the applicant can as well as a Customary Land Grant be given a Common Law Lease. The grant can be divided into two categories, short term leases and long term leases. The short term lease is a grant of land rights and is set up on a monthly basis. Each party has to give a one month notice when they want to end the agreement. This lease is carried out for land which does not exceed five acres (Laws of Botswana, 2010).

The long term lease is granted for 99 years for residential purposes and 50 years for other purposes (LAPCAS, 2009). The grant is a written agreement handed out by the land board. With the difference from a Certificate of Customary Grant a plot granted with a Common Law Lease has to be measured and the boundaries demarcated. This information is presented in a document explaining the geometric, numerical and verbal representations of the plot.

These grants can be registered in the Deeds Registry Office and is by that process enough to fulfil the financial institutions demands for hypothecation (Laws of Botswana, 2010).

The rules for Grants of Common Law Leases regarding the transfer of rights are the same as for the Certificate of Customary Land Grants. Common Law Leases can as Customary Land Grants be cancelled due to different reasons. This can occur when a transfer of the land parcel has not been made correctly (Laws of Botswana, 2010).

The application processes for both Certificates of Customary Land Grants and Grants of Common Law Leases are illustrated in Figure 4.



**Figure 4** A simplified illustration of the land allocation process under customary tenure (Nkwae, 2008).

### 3.2.5 Plot number as reference

In the towns where the land tenure usually is represented by state land, plots have an individual reference number that is called plot number. The documents that belong to a plot are often stored with the plot number as reference. In tribal land there is a lack of referencing and plots do not always have proper individual plot number. The documents that belong to these plots are stored in different files which make record keeping complicated. The plot number is also used when you search for information about a specific plot in a database system or other types of register. Sometimes old plots and plots in rural areas do not have plot numbers which creates huge problems when you want to find the location of these plots or the documents that belong to them. The land boards usually give such plots a local plot number.

There exists no system for addresses in Botswana. Street addresses exist, but they are not linked to the plots and the connected houses. This creates problems when you want to find the location of a specific house or place. It is difficult for individuals to connect plot numbers to specific places, which makes it difficult for people to find the place they are looking for (LAPCAS, 2009).

### **3.2.6 Land Tribunals**

Decisions from the land boards can be appealed at the Land Tribunals. Before the first Land Tribunal was established in 1995 the Minister was the appellate body. Today there are two permanent tribunals in the country, one in Gaborone and another in Palapye. Two other temporary tribunals have also been established with main focus on increasing the capacity. The Land Tribunal is a three-member team with a president as its head. The President is a lawyer serving in public service. There are two persons under him, appointed by the Minister of Lands and Housing. As well as persons who have issues with land boards' decisions, land boards themselves can appeal against certain matters to the Tribunal (Republic of Botswana, 2003).

### **3.2.7 Consequences due to the changes in land administration**

A well planned land use policy is very important in developing countries, this to make the economic investments effective. As Williamson (2001) wrote it is important to improve or introduce land administration systems. The Republic of Botswana states (2003) different changes to improve land management and also how poor will get land rights secured. One example is how the Tribal Land Act and the establishment of land boards have improved the administration of tribal land (Mathuba, 2003).

The traditional land tenure system was indefensible. Persons that did not belong to a tribe had difficulties to get access to land. Until 1993, a person who belonged to a particular tribe had the right to a parcel from that tribe's land. According to changes in the Tribal Land Act from 1993 a citizen outside the tribe, also has right to tribal land (Kalabamu, 2000). Another problem was that chiefs tended to distribute large pieces of land to themselves and to people who gave them money or other bribes (Kalabamu, 2000). The alternation in land administration made it possible to prevent different situations which could have lead to corruption (Kalabamu, 2000). The changes resulted in that the government decreased the ownership of private land, maintained their pre-emption rights to avoid landlessness amongst the natives, reallocated state land to individuals and companies and also made opportunities in digital storage of land records (Kalabamu, 2000).

## **3.3 INTERVIEWS**

### **3.3.1 Interview with Mogoditshane Subordinated Land Board**

Mogoditshane is a village in peri-urban Gaborone and has around 43 000 inhabitants. Mogoditshane Sub Land Board is administered under the Kweneng Main Land Board. The area is very popular due to its closeness to the capital.

At the interview with Mogoditshane Sub Land Board we talked to Abednico Maphuru – Sub Land Board Secretary, Stanley Mokgatla – Estate Officer and Gosaitse Kenosi – Records Manager. Issues talked about under the interview concerned;

- Location of plots
- Amendments in the Tribal Land Act
- Practice of land allocation
- Appeals
- Recordkeeping
- Compensation

The specific questions that were being asked can be found in appendix 1.

### **Location of plots**

Typically for Mogoditshane Sub Land Board is that it is an attractive village to acquire plots in which results in long waiting lists. Some subordinated land boards do not have these kinds of problems because they administer land in rural areas which are not equally popular as land in peri-urban areas.

### **Amendments in the Tribal Land Act**

As we denoted when preparing our study the problems concerning long administration time increased in 1993 when amendments in the Tribal Land Act were made. The amendments made it possible for every citizen of Botswana to apply for tribal land anywhere in the country for free and they no longer had to apply for land within their tribe's area. This resulted in that many people wanted to acquire plots in the peri-urban areas. Even though tribal land has the same economic value no matter where located in the country, because it is allocated for free, the plots near larger cities has a higher attraction value due to its closeness to different everyday services.

One solution that the Mogoditshane Sub Land Board saw to this problem would be to demand some kind of relation to the area applying for. As the situation is today each citizen can apply for land all over Botswana, this supported by the Tribal Land Act. To make the changes that the Sub Land Board is talking about, an adjustment in the act would be necessary.

### **Practice of land allocation**

Mogoditshane Sub Land Board practices a waiting list whilst on other land boards they can choose to use the process of advertising plots in media when allotting land to the people. Today, the Sub Land Board has approximately 150 000 applicants on their waiting list. The number of applicants illustrates the problem concerning long waiting period when allocating land.

The purpose of the waiting list is to in a just way administer every person's application for land in which turn the applications were handed in. Due to the amendments in the Tribal Land Act as mentioned earlier, but also due to poor recordkeeping the waiting list at Mogoditshane

Sub Land Board has grown out of proportion. The long waiting list also depends on the fact that Mogoditshane Sub Land Board hardly does have any land to allocate to the people. It can take approximately 15 years for an application to be administered by the Sub Land Board. The applications handed in are of different matters and can deal with requests for land as well as applications for compensations that occur when land is reclaimed by the authority because of exploitation reasons. The fact that the waiting period is that long results in people not using the Sub Land Board's services but instead handles their land issues themselves. This is illegal according to Tribal Land Act part VII, section 38 which states that all matters concerning tribal land must be administered by a land board.

### **Appeals**

The increase of appeals has led to an establishment of two temporary tribunals. Every person has the right to appeal and the process does not cost the individual any significant amount. If the applicant wants to appeal the decision of the subordinated land board, he first has to go to a main land board and if he is still not satisfied with their decision he can turn to one of the tribunals. There are no time limits for appeals regulated in the law but the praxis used for an appeal to a tribunal is within four months. The Mogoditshane Sub Land Board does not think that time limits would create fewer appeals. The reason for the increased amounts of appeals depends on the lack of explanation in the rejection they receive.

### **Recordkeeping**

When talking to the staff at Mogoditshane Sub Land Board it is obvious that recordkeeping is a main issue. The situation today consists of not properly handled records and archives. The records are archived in different files depending on what type of document it concerns. This results in that the documents belonging to a specific plot are not stored at the same place. It creates problems when wanting cohesive information about one plot. There are many different archive files where the records can end up, which means that the process to find the right document is time-consuming and many times documents are completely lost. The Sub Land Board is aware of this problem and sees introducing unique descriptions of properties as a solution. All documents belonging to a specific parcel would be stored in the same file which will lead to effective management of the records.

### **Compensation**

According to the Tribal Land Act a person shall be compensated when his/her land is returned to the land board administration. A common reason for this is when the land is needed for exploitation purposes. In peri-urban areas the holders are reluctant to give away their land. It depends on that their land has got a high attraction value due to the plot's location. They feel the compensation is too low in proportion to the attraction value. People in rural areas tend to give up their land to a greater extension. They get a fair compensation that is equal to the value of their plot. The compensation is handed out and the holder can easily acquire a new plot within the same area. In peri-urban areas problems arise in administration of land when holders do not give their land back to the land board even if they are compensated. This results in a bottle neck situation with long waiting lists and project that cannot start.



In ploughing areas the plots are not always measured and registered, which leads to that it is difficult for holders to prove their right to the plot. When it concerns compensations in ploughing areas the situation results in time consuming investigations in how the legal relationships really are.

### **3.3.2 Interview with Tlokweng Main Land Board**

Tlokweng is a village in southeast peri-urban Gaborone. At the meeting with Tlokweng Main Land Board we talked to persons with different positions: Mr. Thapedi Matlapeng – Board Chairman, Neo Mothobi – Board Secretary, Baikani Molefe – Principal Administration Officer, Seitshiro Molefe – Assistant Land Registration Officer, Bindiya Kolobe – Acting Records Manager, Mosimanegape Wakgomo – Principal Land Surveyor and Francis Chitsike – Land Surveyor.

We have discussed the same issues and asked the same questions as we did in our interview with Mogoditshane Sub Land Board and Mochudi Sub Land Board.

#### **Location of plots**

Tlokweng is an attractive peri-urban area where people want to acquire plots. The main reason for this is the closeness to Gaborone which lies within just a couple of kilometres from the village.

#### **Amendments in the Tribal Land Act**

The Main Land Board says that the amendments resulted in that lots of people wanted land in peri-urban areas like Tlokweng. They also think that the amendments reduced discriminations among people when it concerned acquiring of land, nowadays according to the Tribal Land Act, people have the same conditions irrespective to which tribe they belong to.

Even if the establishment of the Tribal Land Act decreased the chiefs' power to administer and allocate land, the traditional system has still a high authority in villages in rural areas. Tlokweng Main Land Board points out the importance of land boards being out in the villages informing and educating people about the legal framework for tribal land, but also the function of land boards. Without this information available to the public the old ways and procedures will be difficult to abolish.

#### **Practice of land allocation**

Land boards where they have more land to allocate often choose to advertise for the vacant plots in public media. Individuals have the opportunity to apply for these plots. Usually the advertisement concerns many hectares of land that have been demarcated separately into independent parcels on the ground. It is more effortless and time saving for the land board to administer all these plots in the same conduct.

At Tlokweng Main Land Board they do not use a waiting list any more, instead they advertise their plots in public medias. One motive to why they changed their system was because they had no land to allocate which means that there was no reason for people to be put in a waiting

list. What is special for Tlokweng is that they make physical plans for each area within their district. All allocation that is made happens within the direction of these plans.

### **Appeals**

An applicant has the opportunity to appeal a decision taken by the land board to the tribunal. The practiced time period for doing an appeal is four months but it is still possible to appeal after that time. When they give the applicant the decision, they also state the reasons for the decision which will prevent appeals on the basis of lack of information according to the decision. Many appeals concern compensations where land boards take back land for exploitation purposes. A holder of a plot thinks that he is given a too low compensation according to the plots attraction value.

### **Recordkeeping**

Tlokweng Main Land Board has a very structured way to record the information bounded to a plot. They have a computer register where they can search on a person's ID-number or plot number to find information. Then they find information regarding holder, plot number, if the plot has been transferred and where they can find the document in the records offices.

All documents that belong to a specific plot are stored in the same folder. They have two different record offices; one for Customary Land Grants and one for Common Law Leases.

A plot that has a Customary Land Grant is stored by plot number while a plot that has a Common Law Lease is stored by an individual file number and is also assorted in residential land, agricultural land etc., at the record offices. If the plot has been converted to a Common Law Lease there will be a document in the plot's folder in the Customary Land Grant record offices that states that it has been converted. All documents can be found in the Common Law Lease record offices.

When it concerns old plots it is common that information is lost or difficult to find in the record offices. There is also a lack of information, and not complete information stored in the computer register make it complicated to find what you are looking for.

Tlokweng Main Land Board differs from many other land boards in the way that they have their spatial data in the same register as their attribute data.

### **Compensation**

Tlokweng Main Land Board gives compensations to a holder if his plot is retaken by the land board in exploitation purposes. In peri-urban areas like Tlokweng persons usually think they receive a too low compensation for their plot. That is why the land board has put in practice to give them compensation as well as another land parcel for their children. Government means that tribal land is free and therefore has the same value in all of Botswana, yet people are saying that their compensation is too low due to the location of the plot.

### **3.3.3 Interview with Mochudi Subordinated Land Board**

Mochudi is a village located approximately 45 kilometres north of Gaborone. The village has about 40 000 inhabitants. Mochudi Subordinated Land Board is administered under Kgatleng Main Land Board.

We have had an interview at Mochudi Sub Land Board, with Doreen Kenaleeng, Deputy Sub Land Boards Secretary. The same issues and the same questions were asked as in our interviews with Mogoditshane Sub Land Board and Tlokweng Main Land Board.

#### **Location of plots**

The location of the village makes the area attractive for acquiring plots. It has led to that there is no land left to allocate to the people.

#### **Amendments in the Tribal Land Act**

The Sub Land Board says that according to the amendments the amounts of applications for acquire land increased. People from different parts of Botswana wanted land in this area. It resulted in a huge waiting list. A positive outcome due to the amendments that they mention is that it reduced the unfairness that the old system brought. People now have the possibility to get plots in each district in Botswana.

#### **Practice of land allocation**

Mochudi Sub Land Board earlier used a waiting list when they handled applications from people that wanted to acquire a plot. The waiting list had about 20 000 applicants in the line. The Sub Land Board has no more land to allocate to the people which have resulted in that they have frozen the waiting list. There is no meaning for people to stand in a long waiting list when there is no land to allocate. One problem the sub land Board had with the waiting list was that one person could apply for land more than one time. This means that the same person could appear in the list more than once even though the application concerned the same issue.

#### **Appeals**

If the applicant wants to appeal a decision the time period for an appeal is within 30 days. The Sub Land Board says that people sometimes appeal a decision. The decision can concern plots in residential areas or for an example changes in land use for a specific plot. The Sub Land Board says that the appeals do not depend on that the decisions are done without giving a proper explanation of the decision taken.

#### **Recordkeeping**

The Land Board practices the Tribal Land Integrated Management System, TLIMS, which is a database system on a local basis in where they can search on attributes like person's ID-number, first name and plot number. The goal is to have the system working on a national basis with all land boards connected to the government's database. They will receive information about the documents that belong to the plot and where they manually can find the

documents. They are working with improvements on the database. More information will be linked to each plot and all old plots from earlier years will be found in the register.

The Sub Land Board showed different rooms where they store all their files. The plots different documents are manually stored in different files and because of that, it creates problem when searching for information about a plot. The documents can be difficult to find and sometimes they cannot find them at all which very time consuming.

### **Compensation**

When the Sub Land Board retakes land for purposes like exploitation the holder has right to compensation. They will get a plot with equal value within the Mochudi area as well as some economic compensation.

## **3.4 CASE STUDY**

### **3.4.1 Short on the LAPCAS-project**

The project for Improvement of Land Administration Procedures, Capacity and Systems (LAPCAS) is an actor driven cooperation between Lantmäteriet, the Swedish Mapping, Cadastre and Land Registration Authority and Ministry of Lands and Housing in Botswana. The aim for the LAPCAS-project is to accomplish long term solutions that in a more effective way deals with questions regarding land administration. This will result in social and economic development for Botswana as a nation (LAPCAS, 2009).

The project consists of seven main goals which are stated as components, each dealing with different problems in land administration.

1. National systems for unique referencing of land parcels and location addresses
2. Improved land administration processes
3. A computerized Deeds Register
4. Procedures and legal support developed for systematic adjudication of rights in tribal land
5. An organization that is competent to operate and maintain land administration and planning systems
6. A national spatial data infrastructure developed and implemented in planning and land administration systems
7. Training and study trips, dealing with training needs that are common for several components

(LAPCAS, 2009)

### **3.4.2 Case study Matebele**

The case study in Matebele concerns the accomplishment of component 4, which treats the systematic adjudication of rights in tribal land. The purpose of the pilot project is to clarify the tenure situation within the village and to accomplish a complete and up to date land register which includes all land within the village and their respective holders. This type of register

does not exist today which creates problems for land boards when dealing with administration of tribal land.

Matebele is a village located north of Gaborone. Within the village a temporary office will be established where persons, with land rights within the village, under a few weeks time will be able to come and show evidence of their rights. The evidences for adjudication of rights that will be accepted are the following;

- Certificate of Customary Grant, issued by the Land Board or Sub Land Board.
- Grant of Common Law Lease, issued by the Land Board.
- Title Deed from Deeds Registry.
- Allocation Letter (to help finding the relevant Land Board Minutes).
- Letter from Chief, certifying that the land in question was allocated to the claimant or the claimant's deceased predecessor, before 1970. In the latter case, it should be accompanied by evidence that previous owner is deceased and that the claimant is the authorized heir.
- Affidavit, signed by neighbour, or other trustworthy person, certifying as to how the land in question was attained and how long it has been occupied.
- Will or Estate Probate, certifying that the claimant has inherited the land.
- Decree Absolute, certifying ownership after divorce.
- Transfer document, if new owner has not been registered at Land Board.

(LAPCAS, 2010)

Their claim will be thoroughly investigated and compared with other claims and documents stored by the land board. The claims will be divided into clear respectively unclear cases. The results will be presented as a map over the village which shows the rights bounded to each parcel. The people concerned will have the opportunity to leave comments during a display of the findings that takes place over a few weeks time. The Sub Land Board of Oodi which is responsible for the area will make decisions concerning current rights to the land parcels in the village. All the parcels will get a unique description of property and the holders will get new certificates that state their right.

If a developed plot is not accounted for its abounded rights will not be adjudicated. The land board will register the known information and in the future when the plot is being transferred it will go through a sporadic adjudication which will not necessarily be for free (Myles, 2009). If a plot is not claimed the land board cannot cancel the rights other than in cases where the plot is undeveloped, this according to the Tribal Land Act (Myles, 2009).

## **4 DISCUSSION**

### **4.1 CONSEQUENCES DUE TO CUSTOMARY LAND**

The positive criticism to traditional land tenure systems is that the use of natural resources can happen more efficiently (Kalabamu, 2000). The structure of customary rights urges a peaceful

coexistence within the villages. By having a more decentralized system, disputes within these areas can be solved rather quickly. But there are also negative outcomes of customary land tenure which can be difficult handling. A decentralized system where local authorities are in charge, the system has more than often shown to be beneficial for the highest person and his closest companions. The system is not unfamiliar to bribes. Those things have been recognized through our literature review and is also stated by Peter (2009) and Dale and McLaughlin (1999). What also has been criticized is the fact that old, conservative persons occupy the posts where the decisions get made. That results in a system that is not open for modernization which also Kalabamu (2000) states.

## **4.2 CHANGES IN LAND ADMINISTRATION**

It has now gone more than forty years since Botswana's independence and the country has gone through vast progress during a short period of time, not least when it concerns administration of tribal land.

The administration has altered in a significant way and one of the characteristics is the chiefs' decreased power in allocation of land. This was the result of the establishment of land boards that took over land allocation after the chiefs. The alternation in land administration was developed, like Kalabamu (2000) states, step by step and without radical changes which by that time were common in other African countries. In Botswana the new system was developed in agreement of traditional management of land rights and traditional land tenure. Instead of making radical changes, traditional customary land rules that were administered under customary law, in some parts became written down into formal rights and regulated under common law (Kalabamu, 2009). This development led to that people came closer to the changes and could slowly be familiar with the new systems. We also think that people will get more knowledge and understanding about the alternation if development is slowly processed. The chiefs still have a strong position and authority in the community when it comes to other matters within customary law, not at least in the villages. The kgotla is the highest judiciary within customary law and every village has its own kgotla where trials are taking place. The kgotla is still the community's social and administrative core which results in that land boards sometimes have a difficult time, administering land as they nowadays should. Some people still goes to the chief in their villages when having issues that relates to land and they do not understand that the land board has the highest authority in these matters. One solution to these problems would be for each land board to be more visible out in the villages. As we have experienced it is very difficult to find the land board facilities partial because of the lack of signs explaining the way. A larger concern among the villagers would develop if land boards were to be more visible.

An immense change that was recognized and which concerned the people of Botswana were the amendments made in the Tribal Land Act in 1993, which resulted in that a person can get access to land even outside their tribe's land. Earlier the membership within a specific tribe had been a secure mean to acquire land. The amendments in the Tribal Land Act made sure that tribal land would still be allocated for free and that land from here on was allocated on a

democratic basis. This resulted in that many persons wanted a land parcel near the cities, because they now could get hold of that land and for free. It is good that individuals can acquire land in all districts of Botswana. Today a citizen can acquire a plot in each district but there should be some limit in how many plots each person can hold. There has to be a balance among people regarding acquiring of plots, and it is not suitable to allocate land as it is being done today. In many areas there are no land left to allocate and a sustainable development has to be promoted.

### **4.3 FAILINGS IN TODAY'S SYSTEM**

Through our investigations we have seen that a main problem is that there exists no overall regulation of how to administer tribal land. Every land board decides about their own land and how to manage it. There is no cohesive deciding power over the land boards. The same type of application can be managed in different ways depending on which land board that handles it. This result in people being unjustly treated regarding land questions. Many believe, as well as us, that the Tribal Land Act is not sufficient enough. The act is very vague and leaves huge gaps where each land board can act after what they think suites them best.

Another problem arises when a holder of a right wants to transfer the right bounded to the land parcel to another person. The problem is to find the evidence that states the right to the land parcel, this means that the administration process will be time consuming. Because of the long administration time at land boards, people choose to transfer the land without using the land boards' services which according to the Tribal Land Act is illegal. The lack of complete records of tribal land results in unawareness in how many plots a person has. According to practice land boards try to limit persons' rights so that the allocation of land takes place by means of equilibrium in a district. Today this is difficult because of the incomplete records which enable persons to acquire more than one parcel within a district. This leads to unfairness and is a contradiction to the otherwise democratic system the Tribal Land Act is trying to evocate.

We have noticed through discussions with persons working at land boards and within the LAPCAS-project that a wish for proper and more advanced computer systems for record keeping exists. We as well as the LAPCAS-team believe that the kind of systems that the land boards require is too difficult to manage due to existing conditions. Even if they will get an introduction of an advanced data system it would mean that the system will not have the technical pre-conditions to operate properly. As we see it, it should not be a high priority to invest in such systems because there are other problems at a basic level that has to be dealt with first. It is more important that it exist a basic system for recordkeeping which can handle the needs of today and later can be developed according to future needs.

When doing this investigation we have seen that land administration is a fundamental mean to create a well functional society. A proper land administration system is in its whole essential for the country's welfare and development as Dale and McLaughlin (1999) also mention. Adjudication of land is important to build up a proper management for recordkeeping and is

also important to secure each individual's right to land, both for economic and social purposes.

#### **4.3.1 Conclusions to be drawn from the interviews**

When visiting different land boards we got evidence of that there is a problem relating to that each land board decides over its own land administration and how to manage questions regarding land.

Typical for the land boards that we have talked to, is that they do not have any land left to allocate to the people. They deal with the problem to be located in a peri-urban area where people want land in a large extent. For Mogoditshane and Mochudi this results in long waiting lists. In Tlokweng they use advertising instead of a waiting list because there is no reason for people to stand in a waiting list where there is no land to allocate. We think that Tlokweng has made a good decision to use advertising instead. It demands less administration work than having a proper and updated waiting list. Each land parcel the land board allocates is included in a plan and demarcated before allocated. This means that more systematic and equal procedures are put into practice. Mochudi Sub Land Board has frozen their waiting list at the moment which we also find to be the correct thing to do, there is no reason to have people waiting for a plot if it takes decades to acquire it.

Land boards in peri-urban areas do often have the same problem regarding allocation of land whereas land boards in rural areas have other problems to manage. The lack of order and systematic procedures that arise when there are no written directives can be one of the problems when the work load gets bigger, which is the case in peri-urban areas. In rural areas the access of land is immense, Botswana is a large country and its inhabitants are few. The land boards usually have lot of land to allocate to the people.

A clear difference between the land boards is the recordkeeping. Tlokweng has an excellent order when it comes to storing their documents. All documents belonging to a specific parcel are stored in the same file and when a customary right is transferred into a Common Law Lease a clear reference to the new file is made. The Main Land Board says that they can be even better when it concerns recordkeeping and they work a lot with the establishment of proper databases where they can store and update their information. A data based register is already in practice. One of the biggest differences when comparing the three land boards is that Tlokweng has spatial data bounded to the rights of each plot which is very unusual, these can be found in a data based register. It is not common that a land board can actually find the concerning plot in the same register as for the spatial data.

In Mogoditshane and Mochudi the documents that belongs to a specific plot is stored in different files which can be for applications and transfers. This can mean that every time something happens with the plot a new file is opened. We became truly aware of how difficult it is to find a document that belongs to a specific parcel when using different files concerning different occasions for each plot. It is time consuming and sometimes the document searched for cannot be found. When a transfer is stored in one file and the right of certificate in another



file it is easy to overlook that the plot has been transferred. At Mogoditshane Sub Land Board they told us that they are aware of their problems regarding recordkeeping which we believe is a good start.

Over all we could see a big difference between Tlokweng as a main land board and the other two as subordinated land boards. The higher authority of Tlokweng made huge differences in their effectiveness. Tlokweng works with more areas of physical planning which makes it easier to see a broader perspective and therefore develop procedures which are well adapted for their intended work.

#### **4.4 THE PILOT PROJECT IN MATEBELE AS ONE SOLUTION**

One of our objectives was to investigate in, and see if and how component 4 according to us could be a solution to issues and problems that today is clouding the processes concerning administration of tribal land. As we have discovered through close discussions with Dr. Kristin Andreasson and by carefully reading reports by experts within this area a systematic adjudication is very much needed and must be the absolute fundament for future procedures with aims of improving the administration of tribal land. Without this foundation, which would establish a new start for recordkeeping over the area, it would be a time-consuming job trying to get some kind of order among the rights of ownership. We think that it is absolutely of biggest concern that Botswana, one area at a time, goes through adjudication, this to get order among their records and ownership rights related to tribal land.

The purpose with the LAPCAS-project is to guide, the project team just lend a helping hand and the goal is to get the land boards to do the changes themselves. Persons from different land boards will come to Matebele to support and to be involved in the pilot project. This will hopefully lead to them going back with information and knowledge which they can use at their land board to establish similar changes.

As we have mentioned earlier each land board is its own and no overall management exists. This result in each office being managed in extremely different ways and that it is impossible to draw conclusions that include them all. Some land boards have a very structured management whilst others are situated in chaos. Since there is no overall management of all land boards it is going to be difficult to implement the procedures learnt in the pilot project on other land boards in the country. Each land board is at a different level in their development and everyone needs its own adapted form of adjudication. Despite this we think that a pilot project like the one in Matebele can act as a fundament and later be altered to fit every land board's needs.

Other problems that can arise concern work ethics due to cultural differences. Within the pilot project they all have to work at together, both Swedish and Botswana members of the team. Each side will most certainly look with different eyes at the same problems. Cultural manners will make their ways of operating different. These problems are important to be aware of and take in consideration when working in this kind of project.

## 5 CONCLUDING REMARKS

We have found out that tribal land tenure in its own meaning is not a problem, the problem concerning tribal land lies in the administration thereof.

Land administration is fundamental for the function of society. Without order in land administration, irritations and unfairness arise among people. Security of land is very important for individuals in social, economic and environmental aspects. Therefore we believe that the issue of land administration has to be a high priority in each country's development towards a better welfare.

If the maltreatment of tribal land continues in Botswana, they will not be able to exploit the benefits this land tenure gives to the people. As for now the development is focused on the larger cities but in a few years this development will also have reached other parts of the country and for that the land administration of tribal land has to be in order.

There are no proper registers over the allocated land parcels and many persons lack evidence that establish their rights. This results in problems with duplication of rights of land parcels. Problems also concern knowing who the legal holder of a right is as well as knowing the parcels boundaries and location on the ground. The land boards do not have the proper information on what land they can distribute which results in a long and difficult administration process when allocating land to the people. These problems are of major concern for Botswana's future development and welfare.

Flaws in recordkeeping we mainly believe are because of the fact that it do not exist any overall instructions of how to manage these procedures. If such methods did exist and was mandatory for every main land board and subordinated land board to follow the problems at least would be taken more seriously. We also believe that there exists a request for these kinds of directives among the staff. None consistent procedures lead to lack in routines. A university program within the area of land administration would create a foundation for the establishment of these types of routines.

The purpose of the land tenure tribal land is that every citizen of Botswana should be entitled to land and that each person should be able to apply for it everywhere within the country. This is a social just stand Botswana has taken and people we have talked to are very proud of this opportunity that their country supply for its citizens. As the situation is today a just management of tribal land is not practised. Depending on in what district you apply for land your application is treated different. This we believe is not very democratic and is something the government of Botswana has to look over. We believe that a solution to this would be to have one cohesive law that regulates the administration of tribal land. The Tribal Land Act we believe does not account for this. Irrespective of which land board that handles an application, the outcome should be the same.

When studying a project like LAPCAS we have found out that a long term project like this can create solutions that last. The exchange between land boards that the LAPCAS-project enables is positive and something that can be beneficial for the future.

The extent of problems regarding land administration of tribal land depends on which land board you are referred to. The problems cannot be generalized for all of Botswana, every land board deals with their own problems and issues.

## 6 APPENDICES

### 1. Questions asked at the interviews

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## **Appendix 1**

Questions that were asked at the interviews at Mogoditshane Subordinated Land Board, Tlokweng Main Land Board and Mochudi Subordinated Land Board were the following:

1. Is the location of your land board's plots one reason for the high request for acquiring land?
2. Did people start to apply for land in a greater extent due to the amendments in the Tribal Land Act that were made in 1993?
3. How does the land board practise land allocation?
4. Are there any appeals against a decision taken by the land board?
5. How works the system for recordkeeping at your land board?
6. When you take back land for exploitation purposes, how does the holder gets compensation?

