

BOTSWANA

LAND GOVERNANCE COUNTRY ASSESEMENT FOR NAIP

Established in 2003, the **Comprehensive Africa Agriculture Development Programme (CAADP)** is the African Union's policy framework for agricultural transformation of the continent. It aims to contribute to a significant increase in agricultural productivity in Africa's mostly agriculture-based economies. With the adoption by the AU General Assembly in June 2014 of the **Malabo Declaration on Accelerated Agricultural Growth and Transformation**, CAADP has gained renewed political momentum. At the heart of the implementation process are country-specific strategies, the **National Agriculture Investment Plans (NAIPs)**, that aim to increase investment and productivity in agriculture. This Policy Brief is the result of an in-depth country level **Land Policy and Land Governance Assessments** undertaken by NELGA experts with the objective to strengthen and mainstream **land issues in the successor (or 2nd generation) NAIP and to contribute towards achieving the Malabo targets.**

BACKGROUND

Land, as a resource, has the potential to play a primary role in indicators such as poverty reduction, environmental management, social reconstruction, enhancing economic opportunities for women, promoting conflict resolution, strengthening governance and driving agricultural modernization. It is the most basic of all resources available for social and economic development in Botswana. The land question therefore critically examines the available land resources, the systems of evolved land governance for the sustainable use and management of these land resources and the role of the state in the use of policy instruments to regulate these traditional land governance systems in the national interest.

Approximately 63% of land is available for citizens, with the remaining 37% dedicated to game reserves, national parks and wildlife management areas. Land tenure is divided into three tenure categories:

- Freehold land (3%)
- State land (26%)
- Tribal land (71%)

FREEHOLD LAND: Is held under perpetuity and the owner is free to sell, lease and mortgage the property to both citizens and non-citizens subject to the Land Control Act. Thus, freehold title is inheritable, freely transferable and registerable.

STATE LAND: State land is owned by the government of Botswana under the State Land Act and is found both in rural and urban areas. Allocation of state land is done under the following grants: deeds of state grants, fixed-period state grants (FPSGs) and certificates of rights.

TRIBAL/CUSTOMARY LAND: The policy notes that customary land grants cannot be used to secure loans/funds in banks since they are not registered. Having only user rights limits one's economic opportunities. Tribal land rights can be cancelled by the state anytime. 'Adequate' compensation is made only for the developments on the land. To ensure that customary land certificate holders have security, the policy indicates that '(i) Tribal land will be planned and surveyed before allocation to facilitate registration; and (ii) The certificate of customary grant will be registrable under the Deeds Registry Act, without the need to convert to common law land right'.

STUDY FINDINGS

LAND ADMINISTRATION

Botswana developed the Botswana Land Policy in 2015, which also takes a holistic view of land administration. The functions of the Land Boards are:

- a) The granting of rights to use any land;
- b) The cancellation of the grant of any rights to use any land including a grant prior to the coming into operation of this Act;
- c) Hearing of appeals from, confirming or setting aside any decision of any subordinate land authority;
- d) The imposition of restrictions on the use of tribal land;

As can be seen from these functions the Land Boards roles do not include planning of land although they have power to cancel any grants of rights if it is perceived that the grantee of such rights has failed to observe restrictions imposed on him under Section 13(1)(d) or under the provision of any law relating to town and country planning of good husbandry (Section 15 (b)).

Governments in their desire to improve services in Land Administration continue to introduce technology and new innovations. The Government of Botswana has since

2009 been working on the Improvement of Land Administration Processes, Capacity and Systems (LAPCAS) with the desire to improve the Land Administration system in the country. One of the components of the intended improvements is the computerisation of the Deeds Registry. This computerisation will lead to improved transaction management at the Deeds Registry and in many respects is within the ambit of the national e-government strategy which aims for a transformed government. In which government shall provide on-line transactions to citizens as well as providing on-line information access.

Government to consider developing land use planning, servicing and alienation partnerships between land boards, district councils and various land rights holders. The partnership will require that different land holdings be consolidated and treated as one large unit for the sole purpose of land use planning and servicing. Once land has been serviced, affected rights holders will be given a certain proportion (e.g. 30%) of the resultant plots and will be at liberty to retain or immediately sell to prospective developers. The remainder should be disposed of by council and/or land board in accordance with financial and other material contributions by either party. This approach is based on the experience of land pooling and readjustment programme carried out in some Asian countries.

LAND CONFLICTS AND DISPUTE

The recent land reforms in Botswana have reflected that:

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

LAND USE PLANNING AND MANAGEMENT: RURAL AND URBAN

A recent announcement by Ministry of Lands and Water Sanitation on facilitation for efficient utilisation of land which would differentiate the permissible amounts of ancillary usages for both ploughing fields and Natural Agricultural Production Zones and the subdivision of ploughing fields down to 1 ha without consulting the planning authority, may be viewed as counter progressive in the management of Land use by Landboards as this potentially disregards physical planning. Improperly planned areas will collapse and people will be left with heartaches. The rule that

says "a properly planned space maintains value" should always be sustained.

VALUATION, TAXATION AND COMPENSATION

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

Compensation is the payment for property taken or adversely affected by another. The payment varies between jurisdictions and may take the form of money, bonds, or exchange with alternative land. Interference with the rights of ownership of land, whether through compulsory acquisition of those rights or through planning restrictions, may result in a total or partial loss of value of the rights on the part of the owner. In most jurisdictions there are legislative provisions, sometimes enshrined in constitutional guarantees, providing for compensation in respect of such losses. These provisions, the procedures and assumptions that they include, and their relative generosity, vary between jurisdictions.

PROVISION OF LAND INFORMATION

Land information system is a tool for legal, administrative, and economic decision-making and an aid for planning and development.

Public access to information is a feature of public policy by which each society defines what information, particularly about private citizens and corporate entities, should be available to the public. Public access is an important issue in relation to land information as such information can form a very significant part of decision-making for individuals, corporations and governments. It is an area of rapid development as computer and internet technology increases capabilities to access, distribute and analyse data.

Land markets: It is now accepted that, due to a variety of factors, informality is the predominant characteristic of urban growth and that a majority of urban residents, especially the poor, access property rights through transactions occurring outside state regulation and formal land market.

Gender and land administration: Evaluating gender equity makes it possible to identify areas of gender equity as well as inequity. Particular attention must be given: to existing legislations with regard to rights to land (e.g. does formal legislation support or limit the rights to land of women and men?); to conflicting relationships between statutory and customary land rights; to registration of land rights in the name of women; to equitable protection of land rights by courts and community tribunals.

LAND FOR INVESTMENT

Botswana has national regulations in place regarding investments in land. The problem is that the regulations protecting the rights of communities are less effectively implemented than those promoting the rights of investors. Governments have often promoted extensive tax holidays to encourage private investment and have set up Investment promotion authorities, but they have been far less active in drawing up and implementing laws to ensure that prospective investments are transparent, that communities affected are consulted, and that studies are undertaken to assess how to maximise the positive impacts of investments and mitigate their negative impacts.

OVERVIEW OF LAND PROBLEMS IN BOTSWANA

- Residual **effects of colonial land policy**;
- The **poor service delivery** by the land boards;
- **Land scarcity** in spite of idle lands;
- Provocative **squatting**;
- Worsening **land pressure**;
- **Illegal selling of tribal land**;
- **Mismanagement of land development**;
- Conflicts derived from an explosive mixture of **political manipulation of competition for land**;

POLICY RECOMMENDATIONS

MAINSTREAMING LAND GOVERNANCE IN POLICIES, STRATEGIES AND PROGRAMMES

Analysis of Botswana's programmes and projects reveals that land governance has not been adequately mainstreamed within the country. The Agriculture and Livestock policy makes reference to land governance however no mechanisms for its implementation are elaborated. The CAADP- Regional Agricultural Investment Plan recognises land governance as a key constraint to achieving food security. Furthermore, the Natural resources strategy recognises the centrality of land governance to natural resource management. These provide entry points for mainstreaming land governance in programmes. Mainstreaming land governance in the NAIP involves integrating sustainability objectives into poverty reduction practices, building internal and external capacities, promoting national strategies, policies and programmes for improving land governance and improving the capacity of the NAIP to deliver land related programmes to achieve broader socioeconomic and human development goals.

For mainstreaming land governance to happen, **senior management and technical officers need to understand the importance of addressing land issues within programmes and projects.** Awareness and in-house short course trainings need to be offered to the technical staff in Ministry of Agriculture Development and Food Security and

Ministry of Lands and Water Sanitation. Financial and human resources needs to be mobilized for this purpose.

The ability to **secure access to land resources through a variety of tenure systems** that guarantee returns for short- or long-term investments is important if productivity in agriculture is to improve.

In the administration of Tribal Land, the basic problem is that the system for administration was designed by the service providers themselves, to satisfy their own agenda rather than to meet the needs of service users. In particular, **more emphasis on meeting the real needs of system users** is required if the land rights of the poor are to be protected and upheld and national goals for social and economic development achieved.

Botswana's drive to computerize deeds records will be more beneficial if these records can be accessed by not only staff at the Deeds Registry but also by other clients who require deeds records. This means that there is **need for data linkages to be created** through the government data network and the web between different spatial data providers as well as attribute data providers.

There are indications of conflicting statements emanating from the various **land boards** regarding the interpretation of the TLA. These reflect badly on the land boards that may in fact be victims of poorly articulated government policies on land. They must **therefore find ways of being heard, bearing in mind the parameters of their employment terms and conditions.** The role of the land boards in local government with regard to land use and administration is an important vehicle of local governance delivery. Involving the peripheral population in such affairs is an example of participatory grassroots democracy; regular interfaces at the Kgotla with land board officials would play a large role in creating an understanding of their functions and mandate, legitimising the land boards and, thus, accommodating their shortcomings.

There is a need to **demarcate the physical and operational boundaries between state land and tribal land and the role of the land boards therein**, for example, with regard to the Land Control Act (Cap 32: 11). Water, water points and streams or rivers within the jurisdiction of the land board and its role under the Water Act, Cap 34: 01 must also be clarified.

New Land Administration Systems requires human resources qualified in these areas. It is expected that the Government, in tandem with the acquisition of this technology, will address the issue of human resource development.

Government of Botswana is **to amend policies and existing legislation to provide for free transferability of land rights** for residential, commercial, industrial and community facilities. Land reserved or used for agricultural activities should be excluded until rezoned by responsible authorities.

To eliminate fronting and under-utilisation of resources, **plots should be allocated or and sold to those who are able and ready to develop them. Holders of large undeveloped or underdeveloped land should be taxed accordingly.** The objective should be to collect so much revenue to facilitate servicing of more land while minimising speculation.

Land, especially land for human settlement, should be leased, sold, transferred, taxed, etc. just like food, clothing, cattle, cows or any other commodity. The multiplier effects of a capitalist (not feudalistic) oriented land market will boost the economy, encourage housing development and promote peace and order in peri-urban communal land settlements.

Author

Main Author
Loyd Sungirirai
Department of Real Estate Management
BA ISAGO University

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Fitawrari Damtew Road - P.O. Box 100009 - Addis Ababa,
Ethiopia - Tel.: +251 11 470 33 55

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For more information and full references, please consult the Final Report on SLGA Website

