Review of land tenure policy, institutional and administrative systems of Botswana

CASE STUDY
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Foreword

Across Africa, governments grapple with the challenge of designing appropriate policies that foster development and strike a balance between current and future development goals. In the natural resources sectors, the challenge is further exacerbated by sustainable development concerns. Ensuring that the economic value derived delivers inter-generational value is an important goal, but it is a difficult challenge to overcome. Environmentally, the carbon footprint resulting from natural resources exploitation and its potentially adverse effects is easier to understand than it is to address from a policy perspective. Socially, governments are challenged to design inclusive policies by harmonizing the divergent interests of different groups. Yet a number of countries have managed to come up with policies that increasingly demonstrate a move toward sustainable development principles.

Through a series of policy review reports, the African Development Bank’s African Natural Resources Center (ANRC) will document responses by regional governments to these policy challenges and opportunities across several sectors. The goal is to use these reports to promote peer learning, facilitate informed policy reforms by using experiences of other countries to increase knowledge. Internally, the Center will use the information to assist other Bank departments to overcome policy challenges and opportunities and implement High-5 priorities successfully.

To this end, ANRC partnered with the Botswana Institute for Development Policy Analysis (BIDPA-Botswana), a Botswana-based think tank, to review land tenure policy, laws and institutions in the “Review of Land Tenure Policy, Institutional and Administrative Systems of Botswana” study. The historic and contemporary responses emanating from this review have useful lessons for others confronted by similar cultural and economic challenges.

This report would not have been possible without the contribution of the ANRC team made up of James Opio-Omoding, Modibo Traore, Dieter Gijsbrechts and Mehdi Khouili. The contribution by Patrick Malope, Senior Research Fellow and the research team at BIDPA-Botswana for their commitment in writing this case study was invaluable.

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The African Natural Resources Center (ANRC) delivers capacity-building programs to governments in natural resources management. Its work covers both renewable (water, forestry, land and fishery) and non-renewable (oil, gas and minerals) resources. The mandate of the Center is to assist governments in maximizing development outcomes derived from Africa’s natural resources by boosting the capacity of African governments to achieve inclusive and sustained growth from natural resources.

In the context of the Bank’s High 5 operational priorities, ANRC’s focus is on three main work streams: deepening Bank teams’ knowledge of extractives through analytics, internal seminars and a knowledge portal for lending departments; providing information on natural resources policies, markets, value chains and governance; and supporting African countries in creating an enabling environment for investment by advocating for policies that achieve positive development outcomes.

Consistent with the Bank’s High 5s, the Center’s strategy is anchored upon two pillars, namely integrated resource development and good governance of natural resources. This report is part of ANRC’s support for resources planning, conservation and transparency under the Integrated Resources Development and Good Governance of Natural Resources strategic pillars.

The Bank, through its Agriculture Transformation Strategy, recognizes the important role that land policies will play in achieving its goals. Among others, the Bank acknowledges the need to assist regional member countries (RMCs) in creating an enabling environment and conditions through inclusive land policies that balance the needs of different users. This role is captured in the “Agenda for Transformation,” which requires addressing seven areas, including creating an enabling agribusiness environment with appropriate policies and regulations.

One of the most important enablers is the availability of land resources upon which subsistence and commercial agricultural activities occur. This is achievable through land tenure systems based on policies, laws and institutions that govern land ownership and other forms of usage rights. Clear policy-based land planning and resources utilization is
necessary for RMCs to scale agricultural activities. In the absence of an overarching policy framework, it is not possible for governments to rationalize conflicting land utilization needs, manage allocation, guarantee security of tenure and attract long-term investment in agricultural production.

Rwanda has well-documented land policy legislation and institutions to guarantee equitable land rights. The regulatory frameworks have been adapted, amended and reviewed to align with development needs. This study will provide a detailed review of these institutions and policy frameworks to assess the extent to which they create an enabling or restraining environment for land tenure regulation. This is in line with the Center’s mandate and contribution to the High 5 priority areas of the Bank.
Review of land tenure policy, institutional and administrative systems of Botswana
The evolution of land administration in Botswana can be divided into three discernible periods: pre-colonial, colonial and post-independence. During the pre-colonial period before 1895, land was administered by traditional chiefs, or Dikgosi, who allocated land to their tribesmen for both residential and subsistence agriculture. Between 1895 and 1966, the colonial period, land was categorized into three land tenure systems of administration, namely native reserves, freehold and crown lands. Native reserves remained under the control and administration of chiefs for allocation to tribesmen. Freehold land was allocated to white settlers, mainly for commercial livestock farming. Crown lands belonged to the state for the common good. At independence in 1966, land tenure systems remained the same, save for a change in name of “native reserves” to “tribal land” and “crown land” to “state land”.

Presently, land policy and governance are based on three types of land tenure systems: tribal land, which accounts for 71 percent of the total land area of Botswana; freehold, which comprises 3 percent; and state land, which accounts for 26 percent (Republic of Botswana, 2015). Tribal land is allocated under customary law through the Tribal Land Act of 1968 by statutory bodies known as land boards. Tribal land is allocated for residential, commercial, civic, industrial and agricultural uses. The holders of tribal land rights are given certificates that provide owners perpetual and exclusive tribal land rights, except in communal grazing areas where there are no defined property rights to grazing resources. Holders of these certificates can convert them into common law leases, which can then be registered at the deeds registry. Owners then obtain a title to their land. Tribal land belongs to the state and cannot be sold unless it has been developed, in which case the sale is deemed to be a sale of improvements and not of the land.

Tribal land includes leasehold ranches and some areas designated for wildlife. Owners of freehold land have title to the land they hold under leasehold, normally 99 years renewable. This land title gives owners security of tenure, as they are free to sell at the prevailing market price without consent of the land authorities. State land is allocated under the State Land Act for residential, civic, commercial and industrial uses in urban areas through fixed period state grants (FPSGs).

Land allocated through the Tribal Land Act can be repossessed by government for any purposes it sees fit, with compensation determined by government. Freehold landowners, on the other hand, are free to negotiate and determine the price at which they can dispose of land to government. This negatively affects tenure security for those having customary land rights and acts as a disincentive for land development, especially for agricultural purposes. Moreover, tribal land cannot be used as collateral or security for any commercial or mortgage loan. This limits the ability of owners to develop their land agriculturally or residentially.

Land administration in Botswana has continued to face numerous challenges since independence, which have been resolved in a piecemeal fashion through sector strategies, policies and statutes (Malatsi and Finniström, 2011; and Republic of Botswana, 2015). For example, to improve tenure security in tribal land areas, the country enacted the Tribal Land Act in 1968, which established land boards to allocate tribal land and grant certificates of rights to rights holders. Previously, rights holders were not given anything to show that chiefs had allocated them land. In addition, in 1975, the Tribal Land Grazing Policy (TLGP) was formulated, giving exclusive rights to grazing in communal areas by conferring common law leases to cattle farmers. These leases also gave ranch owners...
exclusive rights to grazing and other resources found in their fenced farms. The fencing of communal land was continued in 1991 through the fencing component of the National Policy on Agriculture Development (NPAD), which is still being implemented. Thus, government’s strategy has been one of careful change, responding to particular needs, with specific tenure innovations (Republic of Botswana, 2002). This strategy remains relevant today. However, while recognizing its relevance and the fact that it has hitherto delivered significant success in land administration, it is necessary to come up with new approaches to address contemporary challenges facing the land sector (Republic of Botswana, 2015).

To respond to these new challenges, Botswana took a bold step toward administering tribal lands in 2008. This step is a departure from previous responses to land administration challenges as it takes a holistic approach. The Ministry of Lands and Housing (MLH) started the process in partnership with the Swedish government, through the Swedish International Development Cooperation Agency (Sida), and Lantmäteriet, the Swedish mapping, cadastre and land registration authority. The land tenure administration project was named Improvement of Land Administration Procedures, Capacity and Systems (LAPCAS). The LAPCAS project included a component of land tenure regularization (LTR) which involved national registration of all land parcels in the country. While government initiated LAPCAS in 2008, it implemented the project from 2009-2013. Rollout to all land boards is expected to conclude in December 2016. All new allocations will follow the LAPCAS guidelines.

The process of land administration was undertaken to identify all land parcels in the country, their size, location and owners. The process will result in a database of plots and their owners. The process is expected to bring a number of benefits to plot owners as they will have title to their land and hence can more easily access financing from commercial banks and other institutions to develop their properties. As an outcome, it is expected that land values and productivity will rise, leading to wealth creation for land rights holders. To support the process, Botswana developed the Botswana Land Policy in 2015, which also takes a holistic view of land administration.

A number of African countries face problems of insecure land rights, especially in tribal areas. Botswana is no exception. Most of these countries have or are planning to introduce formalized systems of land registration. The main objective of this study is to provide a comprehensive review of the evolution of land tenure policy and administration structures in Botswana, their successes and their obstacles so far. The study is undertaken as part a comparative study of approaches and experiences in Botswana and Rwanda. The results, together with those of Rwanda, will be further synthesized to provide guiding principles for others to consider in determining systems of land administration.

To achieve this objective, this study used both secondary and primary data sources. Secondary data was collected through document reviews covering land policies, land acts and other documents relating to land governance and administration. The review sought to find out how land administration, governance and tenure regularization have evolved. It also identified successes and challenges of land governance and administration in Botswana. The main sources of primary data were officials of the MLH, particularly those working on the LAPCAS project; land board officials; local authorities, such as councils; and other stakeholders involved in LAPCAS. The main method for collecting primary data was informant interviews that solicited information on how LAPCAS was
initiated, implemented at a pilot site and rolled out nationally. Information on successes and challenges met during both pilot and rollout were solicited from project implementers with the view of learning lessons and identifying ways to avoid pitfalls in land administration process.

The remainder of this paper is organized as follows: Chapter 2 discusses the need for structured land tenure systems in Africa; Chapter 3 deals with the policy and legal drivers of land tenure systems; Chapter 4 reviews the outcomes of the LTR process in Botswana; Chapter 5 discusses monitoring and evaluation of the LTR process; and Chapter 6 concludes with a summary of challenges and key lessons learned.

2. The need for structured land tenure systems in Africa

Land tenure refers to the terms and conditions under which land is held, used and transacted (Adams, et al. 1999). It is a relationship, whether legally or customarily defined, among individuals or groups with respect to land. Land tenure is an institution where rules are invented by societies to regulate behavior (FAO, 2002). Thus, a land tenure system defines the terms of ownership of a land parcel, its use and the conditions under which the parcel can be transferred or sold. The African Union Commission (AUC), the United Nations Economic Commission for Africa (ECA) and AfDB (2010a) define land tenure as the nature of and the manner in which land rights and interests over various categories of land are created or determined, allocated and enjoyed. The land tenure system also defines the property rights regime under which land is held. This chapter discusses land tenure systems in southern Africa and the need for land tenure regularization. The chapter proceeds to discuss land governance in southern Africa, and land tenure administrative systems. This is followed by land tenure security in post-colonial Botswana, land tenure administrative systems, implementation challenges of land tenure administrative systems, and lessons learned.

2.1. Land tenure systems in southern Africa

At the time of independence, southern African countries inherited legal systems from their former colonizers. Anglophone countries adopted Roman-Dutch law; Lusophone countries, Angola and Mozambique, adopted Portuguese civil law; and Francophone countries, Madagascar and Mauritius, adopted the Torrens title systems. Most countries in southern Africa use customary law for administering land in tribal areas. The dual legal systems of southern African countries are the basis for the region’s two principal land tenure systems – statutory and customary. The dual land tenure system was racially based and introduced by colonial governments (Adams, et al., 1999; ECA, 2004). Statutory and customary tenure were established in urban and rural areas, respectively, segregating the residential and commercial activities of the white and black populations. Statutory tenure existed in rural areas only where there was commercial farming by whites.

Customary land tenure is governed by traditional rules (often unwritten) and administered by traditional leadership (ECA, 2003). In many African countries, “customary lands are essentially state land and cannot be transferred through the market system” (ECA, 2004:22). Notwithstanding that residential land is held through exclusive rights, arable land is held through seasonally exclusive rights in some countries, while grazing land is communal. Moreover, customary land cannot be used as collateral for loans (ECA, 2003), and tenure security is not guaranteed under the customary land tenure system. Land belongs to the State, and land use rights could be withdrawn whenever the State wants to occupy the land, even without reference to the law (ECA, 2004). Insecure land rights are common among owners of tribal or customary lands, with investment in the land.
2.2. The need for land tenure regularization in southern Africa

Land tenure regularization involves systematic registration of land parcels in order to improve tenure security and hence enhance opportunities associated with ownership of land rights. The need for LTR, especially in southern Africa, therefore stems from insecure tenure in customary lands. LTR will improve tenure security, which will in turn promote investment in land as well as increase productivity, especially for agricultural land. Insecure land rights often lead to conflict, which can even result in war. In southern Africa, the need for LTR also arises out of the need to correct colonial injustices of dispossession and to address the inherent inadequacies of customary land tenure. In other instances, the objective is to enhance efficiency and effectiveness in land administration. For instance, in Botswana, the key objective of LTR is the “successful social and economic development of the nation … based on efficient, effective and transparent land administration” (Malatsi and Finnström, 2013:1).

Southern African countries that had legal barriers to some citizens accessing productive land have more complex challenges in reforming their land tenure systems. Adams, et al., (1999) noted that in South Africa and Namibia the main problem was the complex and unstructured nature of the laws governing customary tenure. According to De Vries and Lewis, (2009), legal challenges remain a problem for Namibia’s land administration system, including urban land tenure, which, in fact, was a problem itself and not a solution to the problem. Thus, in some cases, regulation and regularization have not solved the inherent problems in land tenure they were supposed to solve.

2.3. Land governance in southern Africa

FAO (2009) defines land governance as the rules, processes and structures through which decisions are made about the use of and control over land. It also encompasses the manner in which the decisions are implemented and enforced, and the way in which conflicting interests in land are managed. Land governance encompasses both statutory as well as customary and religious institutions involved in land administration. These institutions include state structures, such as land agencies, courts, ministries responsible for land as well as non-statutory actors. Land governance covers both the legal and policy frameworks for land as well as traditional and informal practices that enjoy social legitimacy. It is about power and political economy of land, which is reflected in land tenure systems, which are themselves made up of relationships among people with respect to land and its resources. Indeed, the quality of land governance can affect the distribution of power in society.

Land governance in southern Africa evolved through a similar pattern from the pre-colonial, to the colonial and post-colonial periods. Most countries in southern Africa were colonized by the British (Botswana, Lesotho, Swaziland, Malawi; Zimbabwe, Zambia, South Africa);
others, such as Mozambique and Angola, were colonized by the Portuguese. Germans colonized Namibia and later South Africa, while the French colonized Madagascar and Mauritius. Among these countries, South Africa was the first to gain independence, in 1910. However, the country pursued apartheid rule until 1995, which continued the colonial legacy of disposessing the black majority of often good agricultural land.

Botswana, Lesotho, Madagascar, Malawi, Mauritius, Swaziland, Tanzania and Zambia attained their independence through negotiated settlements; while Angola, Mozambique, Zimbabwe, Namibia and South Africa attained their political independence through armed liberation struggles (AUC-ECA-AfDB, 2010b). The intensity of colonial settlements also differs from country to country. For example, countries like Angola, Mozambique, Namibia, Zimbabwe and former apartheid South Africa faced extensive land expropriation and settler occupation. In these countries, prime agricultural land was allocated to minority white settlers, while indigenous black people were left with land of poor quality in terms of agricultural use.

The remaining countries in the region experienced less expropriation and occupation, yet they suffered colonial land-related domination (AUC-ECA-AfDB, 2010b). The challenges in land governance in these countries therefore differ from those of countries that were heavily settled by white colonialists. In the latter group, there was a need to redistribute land from minority whites to blacks who were disposessed of their land during the colonial period. Still, for other countries in the region, such as Mozambique and Angola, post-independence saw internal conflicts in the form of civil war that displaced many people from their land. These countries also had to deal with land governance issues, as they had to redistribute land to displaced people.

After independence, all countries in southern Africa introduced some kind of land reform with the main objectives of addressing colonially based unequal ownership and rationalizing discriminatory land use policies and insecure land tenure systems. (AUC-ECA-AfDB, 2010a). The land reform process followed different routes, with countries such as Angola, Mozambique and Zambia nationalizing settler- and foreign-owned corporate land. Others such as Botswana, Lesotho, Swaziland and Malawi followed a route that involved less expropriation of land for redistribution. For example, in Botswana, a policy of increasing customary land was followed by the purchase of freehold land by the state. Some countries, such as Swaziland and Zimbabwe, used land acquisition through market-based compensation, with some financing coming from former colonial masters. Countries such as South Africa and Namibia tried to follow a market-based approach to land distribution based on a willing-seller, willing-buyer principle. The experience in both countries is that it is very slow approach. As a result, other countries – notably Zimbabwe – abandoned it and followed an approach of evasions and expropriations that were often contested in courts of law. This land reform process in Zimbabwe led to the demise of commercial farming (Kleinbooi, 2010).

Thus, in all countries of southern Africa, there has been some form of land reform to address inequitable land distribution. In addition, some countries have had to pursue land reform after conflicts in order to secure land rights; others have had to undertake land reform in order to improve tenure security, especially under customary land tenure systems. The reform process has been through the formulation of land policies and the enactment of laws.
2.4. Land tenure security in post-colonial Botswana

2.4.1. Evolution of land tenure systems in Botswana

The evolution of land administration in Botswana can be divided into three discernible periods: pre-colonial, colonial and post-independence as depicted in Figure 1. During the pre-colonial period (before 1895), land was administered by traditional chiefs, or Dikgosi, of the respective tribes under customary law, and it was held under a communal system of tenure (RoB, 2015). Dikgosi had the responsibility of allocating land to their tribesmen for both residential and subsistence agricultural purposes. During the colonial period (1895–1966), three types of land administration systems were introduced: native reserves, freehold and crown lands. Native reserves remained under the control and administration of Dikgosi, and land under this category was allocated to tribesmen for residential and subsistence agricultural purposes, as before. Freehold land was under the authority of colonial administrators and was allocated to white settlers, mainly for commercial livestock farming. Crown lands, on the other hand, remained the property of the state for the common good. At independence in 1966, the three-tier tenure system was maintained, save that native reserves became known as tribal land and crown lands became state land (See Figure 1).

Figure 1
Evolution of land tenure systems in Botswana

![Evolution of land tenure systems in Botswana](source: Adapted from Malatsi and Finnström, 2011)
Tribal Land

Land under this tenure system consists of about 71 percent of Botswana's land mass having increased from 49 percent as indicated in Table 2.1. The increase was a result of a deliberate effort by government to increase the share of tribal land by converting both freehold and state land. Tribal land tenure has gone through a number of changes. The most significant was the enactment of the Tribal Land Act of 1968, which established land boards in tribal areas. These boards assumed the responsibility previously undertaken by Dikgosi of allocating tribal land, although Dikgosi became ex-officio members of the boards.

Thus, statutory bodies were deemed appropriate for the allocation of tribal land by the new government. They were also viewed as part of the development of democratic institutions of the new nation. In addition, the new government considered it inappropriate that chiefs were involved in administering public policy, including land, the judiciary and mineral rights. The common view was that government, through the district administration, better served this role. The Tribal Act of 1968 stated that only tribesmen were eligible to be allocated land in their tribal areas. This act was amended in 1993 to allow every citizen of Botswana to be allocated land anywhere in the country irrespective of his/her tribe. Previously a non-tribesman could only be allocated land with the consent of the minister responsible for land. This amendment substantially increased the number of applications, especially for residential plots in peri-urban areas, and resulted in long waiting lists, which are a phenomenon even today. The long waiting lists have in turn increased the propensity for self-allocation.

<table>
<thead>
<tr>
<th>Year</th>
<th>Tribal land</th>
<th>State land</th>
<th>Freehold land</th>
</tr>
</thead>
<tbody>
<tr>
<td>1966</td>
<td>48.8</td>
<td>47.4</td>
<td>3.7</td>
</tr>
<tr>
<td>1979</td>
<td>69.4</td>
<td>24.9</td>
<td>5.7</td>
</tr>
<tr>
<td>1998</td>
<td>70.9</td>
<td>24.9</td>
<td>4.2</td>
</tr>
<tr>
<td>2009</td>
<td>70.9</td>
<td>24.9</td>
<td>4.2</td>
</tr>
<tr>
<td>2013</td>
<td>71</td>
<td>26</td>
<td>3</td>
</tr>
</tbody>
</table>

Freehold land

Land under this category comprises only three percent of Botswana's land mass, as indicated in Table 1. Freehold land tenure gives the owner perpetual ownership rights and the right to transfer the land parcel without any conditions attached, such as development of the land parcel and consent of the land board or another land authority. However, the Land Control Act regulates transfers to non-citizens, as such handovers should be advertised first. Sale or transfer to non-citizens can only be concluded if no one shows interest. This is meant to encourage citizen ownership of freehold land and remove the historic tendency of only Europeans/whites holding land under freehold title.

As indicated in Table 2.1, the proportion of land held under freehold tenure increased from 3.7 percent in 1966 to 5.7 percent in 1979; and decreased to 4.2 percent in 1998 and again to 3 percent in 2013. This is in part due to the State purchasing farmlands under freehold tenure in the vicinity of cities or towns to increase land available for urban development.
State land

State land comprises 26 percent of Botswana’s land mass, as indicated in Table 2.1, and is governed by the State Land Act of 1966. This type of land tenure includes public areas in cities or towns, national parks, forest reserves and other land parcels used by the State. State land is administered by the Department of Lands (DoL) in the MLH and is allocated to individuals in the form of FPSGs. FPSGs are normally issued for 99 years for residential and commercial plots and 50 years for other uses, with shorter leases (15 years) usually being issued for concessions in tourist areas.

2.4.2. Tenure security under different land tenure systems

Tenure security is defined by the property rights that an individual has over a piece of land. These property rights are in turn defined by the land tenure system under which that piece of land is held. A land right refers to the inalienable ability of an individual to freely obtain, utilize and possess at their discretion as long as their activities on the land do not impede on their individuals’ rights. In the land sector, the rights an individual or an entity has over a piece of land are often referred to as property rights. Rules of tenure define how property rights to land are allocated within communities. They define how access is granted to rights to use, control and transfer of land, as well as associated responsibilities and restraints (FAO, 2002).

Property rights to land are often classified as either private, communal, open access or state rights (FAO, 2002). Private property rights are assigned to a private party; the holder has inclusive rights and hence can exclude others from using the resource. Communal rights give each member of the community the right to use independently the holdings of the community. Open access refers to cases when specific rights are not assigned to anyone and no one can be excluded. State rights are assigned to some authority in the public sector. The three types of land tenure systems discussed above determine the kind of property rights one has and hence the level of tenure security.

Tribal land is held under customary law, and different kinds of property rights exist for it. Under customary or tribal land tenure, while the owner has a right to perpetual use (which can be transferred and inherited), the land remains the property of the state. As such, the land can be repossessed for developmental purposes, with the owners receiving compensation determined by government. Notably, this compensation is uniform across the country, irrespective of the land’s market value. The owner of tribal land is allowed to transfer ownership with the consent of the land board and after certain developments have been made to the land (i.e., the development covenant).

Tribal land can be allocated under two types of grants: customary grants and common law leases, which are allocated under customary law and common law, respectively. Customary grants are only available to citizens, and land held under customary grant cannot be encumbered. However, customary grants may be converted to common law lease. These are allocated for residential, commercial, industrial, civic and agricultural purposes, especially for arable land and boreholes for livestock watering in communal areas. Land allocated for residential, commercial, civic, industrial and arable agricultural purposes gives the rights holder exclusive and perpetual use of that land.

Land boards grant common law leases to citizens and non-citizens. However, allocation to non-citizens requires consent from the minister responsible for land. Such leases are granted for periods of 15 to 99 years, and once they are registered in the deeds registry,
mortgage bonds may be registered in order to secure loans. (Armstrong, 2012). Common law leases are granted for business and commercial agriculture. They have been granted for commercial livestock farming through the Tribal Land Grazing Policy (TGLP) and the fencing component of the NPAD. Rights holders have exclusive rights to grazing and other resources within their ranches.

**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. The rights under this tenure system are the most secure as land parcel owners can dispose of their land to anybody at prices agreed between the owner and the buyer. The seller does not need to have developed the land or obtained consent from the land authorities before selling.

**State land** is owned by the government of Botswana (GoB) 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, FPSGs and certificates of rights. The owner of land allocated under the deeds of state grants becomes the full owner of the property in perpetuity. The holders are free to sell, lease or mortgage their properties to citizens or non-citizens; there is no time limit to this kind of title. Deeds of state grants were discontinued in the late 1970s, and it is unlikely that they will be issued in the future. (Armstrong, 2012). They were discontinued because land held under these grants is not registrable unless converted to FPSGs.

In urban areas, state land is allocated through FPSGs, which are issued for plots that have been surveyed. This grant provides the grantee with the absolute right of disposal over the relevant property, however, they must comply with the development covenant in the deed. The grant is usually fixed for a period of 50 to 99 years, with residential land having 99-year leases; commercial and civic land have 50-year leases. Residential land can only be allocated to citizens. Until the development covenant is complied with, the deed holder may lease or mortgage the property, but s/he cannot transfer it, except to the State. Before 1985, land held under FPSG reverted back to the State on the expiry date of the grant, but the new land policy includes a provision for renewal at the end of the FPSG (RoB, 2015). The main purpose of this policy is to eliminate the need for squatter settlements and to help the poor find land for housing within the limits of the law, especially in urban areas.

The responsibility of allocating state land rests with the minister responsible for the land portfolio. Allocation for residential plots under the Self Help Housing Agency (SHHA) program has been delegated to local authorities in both urban and rural areas. Before the Government White Paper No. 2 of 2000 on the National Policy on Housing in Botswana, only lower-income groups in urban areas were eligible for SHHA plots and financial assistance.

Thus, in terms of differences in tenure security between the various systems in Botswana, the freehold land tenure system offers the most secure land ownership. Under the system, owners are free to sell their land to the highest bidder without consent from any authority. The State also has some form of security as landholders are given leases, although they have to seek permission before they can sell. Tribal land is less secure, and land within tribal lands cannot be sold. Only developments undertaken on the land can be sold, and they must have consent from the land board. However, tribal land certificates can be converted into common law leases, which are registerable at the deeds registry. Once
registered, land can be used as collateral for loans from financial institutions. However, it is important to note that land rights in Botswana – whatever their nature – are limited to surface rights. They do not extend to underground resources, such as minerals, which are the preserve of the State. In addition, the land remains the property of the State.

2.5. The land tenure administrative systems in Botswana

2.5.1. Tribal Land Act of 1968

As indicated in Chapter 1, Botswana started formalizing its land tenure administrative processes just after independence, in 1968, with the enactment of the Tribal Land Act. In 1970, the Tribal Land Act established statutory bodies, known as land boards, in tribal territories. Before the establishment of land boards, chiefs allocated tribal land to tribesmen. Land was not formally registered, but each tribesmen knew who owned each land parcel.

Land boards were given authority to allocate tribal land and issue certificates of customary land grant. The land was allocated mainly for residential, commercial, industrial, civic and arable agricultural purposes. The holders of certificates of customary land grants have exclusive use rights, and although the land cannot be sold, it is inheritable. For livestock farming, land boards allocate parcels for borehole drilling or dams, and the owners of water points do not have exclusive rights to the grazing areas around their water sources. Thus, most of the grazing land in Botswana is largely communal, with individual livestock keepers not having exclusive use rights.

That being said, owners of water sources have de facto rights to grazing areas around the source, especially in sand veld areas where there are no permanent surface water sources. Another step that was undertaken to improve land administration in Botswana was allowing customary land rights certificates to be converted to common law lease certificates with lease periods of up to 50 years. For this to happen, the land parcel must first be surveyed and registered at the deeds registry. Common law lease certificates, unlike customary rights certificates, are accepted as collateral by financial institutions, after the owner of the land parcel has obtained a title deed for the land.

2.5.2. Tribal Grazing Land Policy of 1975

Before the formulation of the TGLP, all livestock on tribal lands grazed in communally owned lands. The major objectives of TGLP were to: stop overgrazing and degradation of the range; promote income equality in rural areas; and allow growth and commercialization of the livestock industry on a sustained basis. These objectives were to be achieved by granting exclusive rights to individuals and groups that will then have incentives to manage their grazing in appropriate ways (Hitchcock, 1990). While the objectives of TGLP were to improve cattle productivity through better range management, the policy also improved tenure security as it introduced fenced farms to which owners had exclusive use rights.

One of the arguments for adopting TGLP was that livestock management was difficult in communal areas, as livestock keepers could not practice modern husbandry, such as controlled breeding and range management. The policy of allocating ranches is still being practiced under the fencing policy of NPAD. Some land boards are continuously demarcating grazing areas and allocating them to individuals or groups for their use. Ranchers are given leases for 25 years and pay rent to the land boards. Livestock farmers
with ranches have exclusive use of grazing areas and other resources on their ranches, unlike those in communal areas. Thus, TGLP and the fencing component of NPAD have improved tenure security for livestock farmers who have been allocated ranches. The hope is that this will encourage investment in range and livestock management and hence livestock productivity.

2.5.3. Land administration, procedures, capacity and systems (LAPCAS)

Land administration in Botswana has undergone a number of changes to resolve emerging challenges. Botswana followed a strategy of careful change, responding to particular needs with land management innovations (Malatsi and Finnström, 2013; and Republic of Botswana, 2015). Despite this, the present land administration system is besieged with a number of challenges, especially regarding tribal lands. As custodians of tribal land, land boards have failed to administer land in a way that benefits the communities they serve. In 2008, all stakeholders in land administration were called to a workshop in which they were asked to identify challenges in land administration. The main problem identified was that land administration processes and systems were not providing information and services that society needed. Some additional identified problems are discussed below.

**Poor record keeping in many land boards.** Record keeping in the majority of land boards was very poor, with important information missing in the records, such as the names of rightful plot owners. Lack of proper records made it difficult for land boards to determine with certainty who owns what and where, not to mention the number of plots an individual has. This leads to some individuals being allocated many plots unknowingly, which creates inequitable land distribution. Poor record keeping also leads to a lack of information about which land parcels have not been allocated and hence are still available for allocation to deserving applicants. Not knowing which land parcels are available also contributes to the high number of people who have applied for but have not received land. This leads to an increase in self-allocations and squatting. It also leads to poor service delivery and high transaction costs for applicants, as a lot of time is spent trying to retrieve records and information on land.

**On tribal land, plots do not have unique plot numbers or similar referencing.** Certificates of customary grants issued by land boards cite only the general location and size of a plot. There are no unique plots numbers (as they have not been surveyed), making it difficult to locate plots and the documents that belong to them. Locating plots is made even more difficult by subsequent transfers that may have taken place. As a result, financial institutions are discouraged from accepting certificates of customary grants as collateral for loans. For these to be accepted, the plot owner has to apply for a common law lease and register a title deed at the Deed Registry Office. The owner, however, has to pay to survey the plot before it can be registered and granted a title deed. This process requires time and money and, as such, it can be prohibitive to some landowners, especially the poor. Since the location of plots is not certain and boundaries are not well-defined, double allocation of plots is possible, causing unnecessary land conflicts. The main challenge with this system, however, is that each land board numbers plots differently, making them difficult to reference.

**Some plots allocated before the existence of land boards are not registered at all.** Many land boards have difficulties locating previously issued use rights, as Dikgosi allocated many rights without surveying or mapping them. Dikgosi also allocated plots without registering them as, at the time, land was not considered scarce. As well, people
knew which plot belonged to whom without needing to register land and keep records (Malatsi, and Finnström, 2011). Making matters worse, registration of such plots is voluntary and many landowners do not register their rights as they fear repossession (Mothibi, et al. undated). This makes it difficult for land boards to determine land availability.

**No common register for tribal land.** Every land board keeps a register of who has been allocated land parcels and their location within its jurisdiction. Land boards do not have access to each others’ registers, making it difficult to know whether a prospective applicant has been allocated land elsewhere in the country. Land boards thus struggle to implement land policies meant to ensure equitable distribution of land amongst citizens.

**Poor coordination of land administration institutions and overlapping legislation.** Land administration institutions within the MLH are scattered physically, making it difficult for them to collaborate. As well, communication is poor between these institutions and departments. Sharing or exchanging information is generally very difficult, leading to duplication of effort and registers with conflicting information. The Tribal Land Act provides that land boards will formulate allocation procedures and, as a result, land allocation procedures sometimes differ between boards, even though they serve the same public.

Some land boards cannot administrate land where they are located because the land is held under a different tenure system – state land. For example, in the Chobe and Ghanzi administrative districts, a sizeable proportion of land is held under the state land tenure system. The land boards covering these districts cannot serve the communities because the State Land Act governs land. Residents have to travel long distances to the Department of Lands (DoL) in Gaborone and Francistown for service. This results in delays and poor service delivery as well as in high costs for communities to access services. In addition, there is no role clarity among different organizations involved in land administration.

**Inadequate capacity.** One of the challenges hampering efficient and effective land administration in Botswana is inadequate skills in various fields among MLH staff and land board members (Malatsi, and Finnström, 2011). Within the MLH, only 30 percent of staff do the core business of land administration, while the bulk undertake support duties. Most staff are poorly trained to perform land administration duties, including land board members. This leads to poor service delivery.

To tackle the challenges facing land administration, the GoB, in partnership with Lantmäteriet, the Swedish Mapping, Cadastre and Land Registration Authority, established a project known as Land Administration, Procedures, Capacity and Systems (LAPCAS), which was instituted in 2008. The initial project ran for five years (2009-2013). Subsequently, it is being rolled out to all land boards in Botswana. This process is expected to be completed in December 2016.

LAPCAS came about in recognition that the current land administration was not providing the services and information society needed. The overall objective of the project is the “successful social and economic development of the nation of Botswana based on efficient, effective and transparent land administration.” At the end of the project, it is expected that “land administration processes and systems are providing the services and information that society needs.” The focus of the work is getting MLH staff to develop an efficient land administration system based on: simplified procedures; correct information on land parcels and land rights; and robust and interoperable information systems that can be maintained and supported in a sustainable manner.
The LAPCAS project is divided into seven components: national systems for unique referencing of land parcels and location addresses; improvement of land administration processes; deeds registry computerization; national land registration; development and organization of IT procedures; exchange and dissemination of land administration data; and capacity building. Below is a brief discussion of each component and its objectives.

Component 1
**National systems for unique referencing of land parcels and location addresses.**
As indicated above, more than 71 percent of land in Botswana is held under tribal land tenure. Land parcels under this tenure system do not have plot numbers. In towns and cities where there are plot numbers, they are used as location addresses by default. In addition, while there are street names in townships, these are rarely used because associated plot numbers are too long or signs with street names are unavailable, among other reasons. In villages, there are neither street names nor plot numbers and people rely on wards or dikgوتa names and landmarks for location purposes. This component therefore aims at developing a system that uses street names combined with individual house numbers as well as wards as a basis for addresses in villages. The objective is to develop and implement a standardized system for numbering land parcels across all land tenures, including parcels that were previously not surveyed. The outcome of the component is expected to be quicker response times for security and emergency services, improved parcel delivery and better transport networks, leading to reduced operation costs for service providers.

Component 2
**Improvement of land administration processes.**
Current procedures and processes for land administration are cumbersome and do not meet the needs of a modern society. While some processes may have served the country well in the past, they are now out-of-date and in need of revision. Some take too long, while others are unnecessary. Hence, this component aims to map current processes, both manual and digital, and propose legal and organizational changes necessary for improved land administration. This may require organizational shifts within MLH and other institutions involved in land administration. There are currently several pieces of legislation under different acts that govern land administration in Botswana. These need to be harmonized, possibly even into one act, if feasible.

Component 3
**Deeds register computerization.**
Currently, records in the deeds register office are kept manually, making retrieval and access very difficult as their volume increases. This component therefore aims at computerizing record keeping in the deed registry as the office holds some of the most important information in society, such as information on land rights. At the end of this component, all land in the country will be registered, and the information contained in the deeds registry will be easily accessible electronically.

Component 4
**National land registration.**
This component’s main objective is to regularize all land parcels in the country, especially in the tribal land through systematic adjudication and registration. This is perhaps the most important and complex component because it includes many stakeholders, in particular the holders of land rights gained through the certificate of rights in tribal areas. Before the
establishment of land boards, land in tribal areas was allocated without records, either of the landholder or of the plot itself. This means that these plot owners are legitimate occupiers even though land boards and other authorities do not have information about them. The aim of this component is to develop a systematic process of adjudication, which will clarify tenure and land ownership for tribal land. The process will involve an investigation of existing rights, which will have to be mapped and adjudicated with sufficient evidence of rights. Where there are conflicts, they will be resolved. At the end of this component, land authorities will have information on all landholdings in the country, including land allocated prior to the establishment of land boards. Figure 2 shows a schematic view of the adjudication process, which was first piloted in the Matebele village in 2010.

**Figure 2**
Procedures for systematic adjudication under LAPCAS

The adjudication process involves publicizing the process in the area concerned to inform stakeholders; surveying and mapping plots; and receiving and verifying claims at land board offices. After adjudication, the board will issue new certificates with unique plot numbers and specific boundaries. The basic requisite of a good land information system is that all plots should have a unique identifier (plot number), area, location and plot owner. At the end of this component, all plots or land parcels will have this information.

**Component 5**
**Development of land information systems**
GoB is committed to using IT to improve service delivery in all of its ministries. Thus, e-government has been adopted as a strategy to improve service delivery across government departments. Efficient and effective, IT requires both the appropriate hardware and software as well as qualified personnel to operate and manage the IT system. The aim of component 5 is to specify IT competence demands and to propose a suitable organization for IT activities within MLH to manage current and future computer systems. At the end of this component, MLH will have an IT department or unit that coordinates software procurement, virus management, systems integrations, systems
upgrades and maintenance, and ensures that MLH’s IT systems are running on a daily basis. This system will be compatible with other GoB computer systems for ease of use.

**Component 6**

**Information exchange and dissemination.**
Currently, information is scattered throughout land administrators with minimal exchange because of the high costs of doing so. The aim of this component is to establish an information exchange and dissemination system for both internal and external users. Such national spatial data infrastructure is of major importance for a well-functioning land administration system, and it may save costs. The main sources of information will come from within MLH, such as the Department of Surveys and Mapping (DSM), Department of Lands (DoL), deed registries and land boards. Main users will be financial institutions, tourism organizations, government departments and other organizations, and individuals.

**Component 7**

**Capacity building.**
This component addresses the capacity needs of implementing all components. This will ensure that proposals made by the project are sustainable. Capacity building will be undertaken through training within and outside Botswana, and through study tours to other countries with well-functioning land administration systems. Tailor-made short courses will be developed to cater to the needs of MLH staff.
2.5.4. Implementation of the land tenure administrative systems: challenges

As indicated above, the first major attempt at tenure administrative framework in Botswana was through the enactment of the Tribal Land Act in 1968, which established land boards as statutory bodies to administer land in tribal areas. The Tribal Land Act was amended in 1993 to address challenges that emerged in land administration in these areas. As also previously stated, tenure regularization through the 1968 Act and its 1993 revision was found to be lacking, hence the introduction of the LAPCAS program. The LAPCAS program’s main objective is to make land administration more transparent and efficient for the social and economic development of Botswana.

Tenure regularization through TGLP presented a number of challenges, the main one being that, in some instances, commercial ranches were allocated in areas that were already settled, especially by the indigenous populations of Basarwa. TGLP made pronouncements that the Basarwa and others who did not own cattle would be compensated for losing their right to use areas allocated for commercial ranches. This did not happen at implementation, however, and so ultimately TGLP did not benefit them. In fact, the result was that the poor were displaced from their lands and forced to adopt a different lifestyle from that of hunter-gathers, which they were used to. The allocation of commercial ranches is continuing under the fencing component of NPAD.

The LAPCAS project started operations in 2009 and ended in 2013, with the pilot being conducted in 2010 followed by a rollout of the project throughout the country by MLH. LAPCAS has met a number of challenges during both piloting and implementation. These are discussed below under each project component.

National systems for unique referencing of land parcels and location addresses.

This component involves the development and implementation of a standardized system for numbering land parcels in the country across all land tenures. The system has been developed and is being implemented in all land boards after an initial pilot in Matebele. This component involves capturing old surveys, surveying previously un-surveyed plots and renumbering plots that were previously numbered. The challenges met under this component are: the platform used for the cadastral information system needed upgrading, and a consultancy firm was engaged to undertake the task; plots in rural areas did not have street names, which required the use of ward names for location address purposes; and there was insufficient ownership of the process by stakeholders, such as the Botswana Post and local authorities. For instance, in Gaborone two pilot areas were chosen and the participation of the Gaborone City Council was minimal. Although an officer was assigned to implement this component, she did not seem to understand her role. As a result, the component has not yet been rolled out to other local authorities.

Improvement of land administration processes.

To improve land administration, the procedures for land allocation must be harmonized across land boards. All organizations dealing with land administration will be brought closer together, which will increase organizational efficiency by removing any duplication of effort. To this end, it has been recommended that land boards be replaced with land authorities that will deal with all land matters in their jurisdiction, including state land but excluding tribal land. This is expected to save both time and money for clients who want services regarding state land, as they will not have to travel long distances to DoL offices. The major challenge under this component is that certain legislation needs amending, which takes time and creates delays in implementing the agreed organizational structure. Thus, there is a need to review the institutional structure of land administration as well as the laws and regulations governing it.
Deeds register computerization. All hard copies of records have already been scanned and converted to soft copies, and a digitalization strategy has been developed to prepare departments and land boards for computerization. Challenges include that the budget allocated for this component proved too small; merging leases with customary certificates was challenging; and managing incomplete records proved difficult.

National land registration. This is perhaps the most complex and demanding component of LAPCAS. Before rolling out national land registration, a pilot was undertaken in which all land boards brought their staff to the Matebele, Kgatleng district for hands-on training with the help of the Swedes. After the pilot, guidelines were developed; full rollout is underway. The officers who were at the pilot are now passing on their learning to colleagues at land boards throughout the country. The process of registering tribal land involves surveying all plots and adjudicating land rights after which a new certificate will be issued. Certificate holders will be able to use it as collateral to obtain credit from financial institutions.

The process of land registration requires the full participation of all stakeholders, especially plot owners who must come and claim their land rights. Owners are required to bring a form of documentation that proves their right to the land they claim to own. The greatest challenge faced under this component is that some landowners have not shown up to claim their land rights. People are not appearing in large numbers, as project implementers anticipated. They underestimated the importance of public education about the process, and have since realized that change management is very important as people by nature resist it. People must be made aware of impending change for them to embrace it. An interview with the implementers revealed that another possible reason why people are not claiming land rights may be the new land policy, which subscribes “one man, one plot” on tribal land. This might have discouraged people with more than one plot to come forward to register their plots, fearing that the extra land will be repossessed. Another reason for the lack of interest in plot registration is that there have been delays in finalizing and issuing new certificates for those whose plots have already been adjudicated.

In addition, registration of tribal plots is not mandatory. However, going forward, everyone will be forced to register their plot in order to access a number of services such as voting during the elections and agricultural support programs. Registration will be done at the owner’s expense and not for free, as is presently the case.

Although it is proceeding very slowly, the process of land registration is expected to be complete by December 2016. As of the first quarter of 2015/16, out of a targeted 464,634 plots, only 35,255 (8 percent) have been adjudicated and 209,449 (45 percent) have been surveyed. Others are at various stages leading to adjudication.

To address this problem, a number of effective and innovative ways of communicating have been proposed to encourage people to register their land. This includes radio announcements and television programs, as well as road shows in major settlements. Print media have also been used, as have Kgotla meetings in a number of villages. The surveying of plots is currently being undertaken for free. After the end of the project, in December 2016, plot owners will be required to pay for the service, which currently costs BWP 630 (USD 6.30). Surveying plots has proved a daunting task for land boards and they have resorted to using private surveyors to speed up the process. In addition, people are now allowed to register their plots wherever they are; they do not have to go to the land
board that issued the certificate to do so. This was introduced to make it easy for people residing in towns and cities that are far from their residential and agricultural plots in their home villages.

**Development of IT procedures and organization.** Before starting this component, a detailed statement of user requirements was undertaken to ensure that the needs of every user are met. Afterward, a company was brought in to develop the land information system. The Swedish team is providing technical assistance in the form of quality control. The system being developed will address the needs of both internal and external users. When fully developed, the systems will have seven modules covering deeds registry, plot and plan registry; Tribal Land Certificate of Grant; land leases and fixed period land grants; mapping; and plan management and assessment. The greatest challenge under this component is the lack of IT skills. In addition to engaging a consultant to develop the system, technical assistance has been sought from the Swedish partners. One final challenge is that plot boundaries are often not visible or do not conform to what is contained in land board certificates.

**Exchange and dissemination of information.** This component will be implemented after the component on IT procedures and organization has been completed. It will involve data sharing policy, data standards, information exchange and dissemination systems, and creation of national spatial infrastructure.

**Capacity building.** Capacity building through training and study tours has been intensified since identifying the skills gap. MLH, the University of Botswana, other training institutions in the country and the region, and the University of Gävle in Sweden are working together. Several short-term courses have been run with assistance from Lantmäterieriet, University of Botswana and University of Gävle. These courses have targeted specific needs as identified by MLH. Both MLH and UB staff are benefitting from this training. In addition to short-term training, formal courses at the certificate, diploma and degree levels have been established, and, with time, the University of Botswana is expected to become a center of excellence in these fields. About 764 staff have been trained in various aspects of land administration and at different levels. The challenge with this component has been high staff turnover, with some staff leaving MLH and the land boards to join private practices after being trained. In fact, many are working as consultants to the land boards for the project.

### 2.5.5. Lessons learned from the land tenure administrative process

Land tenure administration can be a very complex and long process, depending on its objectives and scope. It requires changes in the policy, legal and institutional frameworks from which the administrative aspects are drawn. For instance, in Botswana, the LTR process started back in 1968, with the enactment of the Tribal Land Act. The country also formulated the Tribal Land Policy in 1975 to improve tenure security in communal grazing areas. This was followed by the fencing component of NPAD.

A number of lessons can also be drawn from the Botswana land administration process, especially LTR, through LAPCAS. **First,** before any process can begin, it is crucial that a diagnostic be carried out to identify problems, their causes and effects. According to Malatsi and Finniström (2011), before the introduction of LAPCAS, the reform process in Botswana was dealing with the symptoms and not the problems and their causes. It was only after a diagnostic that solutions to the identified problems could be found and implemented.
Second, piloting is important as it affords project implementers the opportunity to learn by doing before a full rollout. For example, the pilot enabled the project team to come up with guidelines to address challenges experienced during the trial. In addition, the pilot enabled implementers to identify skills required for completing the process and then to train local staff on them.

Third, for sustainability, local staff must be involved from the onset of the project. More importantly, local staff should be trained such that when technical partners leave, they are able to continue with the process. Some technical expertise takes a while to build; thus the project team should be prepared to source it externally while local staff are on long-term training to build capacity.

Fourth, LTR requires a huge amount of resources, both in terms of financing and time. As such, government’s full commitment is required for the success of the LTR process. During implementation, a number of unbudgeted expenditures emerged, and funding for these was made available. Since its inception in 2009, the land regularization process has spent about BWP 245 million (USD 24.5 million), with only 7 percent of targeted plots being adjudicated. Of this amount, BWP 10 million (USD 1 million) was received from the Swedish government. A substantial amount of money is still to be spent on the process before free national registration elapses in December 2016.

Fifth, stakeholder participation at all levels is required for successful implementation of the LTR process. Stakeholders, especially landholders, should be willing to come forward and claim their land rights. Full participation of stakeholders requires effective and innovative ways of communicating. Other stakeholders such as the postal service, other local authorities, other government departments and ministries, and parastatals need to be fully involved at the early stages of the project, as their participation is very low.

Sixth, one of the most important stakeholders in the LTR process are the staff of the land administration authorities who are tasked with implementation. Resistance to change is a normal human behavior, and so it should be carefully managed early in the process. There should be regular change management training, as this will ensure that staff fully embrace the changes being introduced.

Seventh, and last, it is important for project implementers to review existing policies and legislation as well as organizational structures, as changes to these might be necessary for effective implementation of the LTR process.
3. Policy and legal drivers of land tenure systems

This chapter discusses the land policy and legal drivers needed for successful land tenure administration systems. The chapter then proceeds to discuss land administration and institutional reforms; land use planning and urbanization; land supporting systems to scale and ensure sustainability; and, finally, the role of soft institutions in land tenure policy formulation.

3.1. Land policy and the legal drivers of land tenure administration

The main policy instrument governing the implementation of the land tenure system in Botswana is the Botswana Land Policy of 2015 (Republic of Botswana, 2015). An earlier draft land policy, produced in 2011, had already been in place (Republic of Botswana, 2011). The 2015 policy serves to respond to the needs of land use, taking into account the contemporary uses of land, ranging from multi-residential housing, integrated farming, game farming and agro-tourism. The policy recognizes the existence of other related policies, strategies and government pronouncements with which it must be harmonized. Among the policy documents listed in the land policy are the two local government structure reports whose objectives were to make the institutions responsible for land administration more effective. In addition, given that land is a contentious issue, there have been incidents that necessitated the establishment of commissions of enquiry, which produced reports, such as “Land Problems in Mogoditshane and Other Peri-urban Villages.”

The principal aim of the land policy is to promote productive land use, conservation and protection for future generations. The specific objectives are to protect and promote the land rights of all landholders; promote equitable access to land by all eligible citizens; encourage retention of land rights by citizens; improve land management systems; establish an efficient and accessible land management information center; and promote optimal use of land and other land resources. The policy is in its first year of implementation. Among the major initiatives involved in implementing the policy is LAPCAS (see Section 2.4).

3.1.1. Other policies related to land use and administration

The use and management of land in Botswana has been driven by a number of policies, which are centered around the settlement of people and their socio-economic activities. The first National Settlement Policy was developed in 1998. It was revised in 2004 in response to the proliferation of settlements, which tested the ability of government to adequately provide communities with amenities. Traditionally, Batswana are farmers, especially of cattle. Thus, there are policies that relate to the development of the agricultural sector with a view to optimizing production and developing sustainable livelihoods, including the Tribal Grazing Land Policy (TGLP) of 1975, National Policy on Agricultural Development of 1991 and the National Master Plan for Arable Agriculture and Dairy Development of 2002. Other policies relate to wildlife and other natural resource conservation that provide key inputs for the tourism sector as well as for livelihoods, especially for people in rural areas.

Over the years, the tourism sector has increased its share of GDP, and it plays an important role in employment creation. Relevant policies to that sector include the National Tourism Policy of 1990, National Conservation Strategy of 1990, Wildlife Conservation Policy of 1986 and the Community-Based Natural Resource Management Policy of 2007. As two important economic activities, agriculture and wildlife conservation have often resulted in conflicts between the needs of humans and wildlife (Government of Botswana, 1997).
3.1.2. Legal Framework

Each of the three land tenure regimes is governed by specific pieces of legislation. Under the current land policy, some pieces of legislation (and the administrative procedures and processes emanating from them) will be reviewed to make land administration more efficient (Government of Botswana, 2015).

**Tribal land**

Under tribal land tenure, the Tribal Land Act is the legal instrument used to govern the administration of land. The Tribal Land Act, which was first promulgated in 1968 and came into effect in 1970, has gone through numerous reviews, the latest being in 2004. The main role of the act is to establish tribal land boards. Tribal land boards operate within the parameters of the land in their respective tribal territories. The Tribal Territories Act defines the boundaries for the respective tribal authorities. The tribal territories defined by the act include only the so-called principal tribes,¹ with the exception of the Barolong (Republic of Botswana, 1933). The Tribal Land Act has, under its second to fourth schedules of the Act, defined the boundaries for land boards that are not associated with any specific tribe: Tati Tribal Area, Chobe Tribal Area, Kgalagadi Tribal Area and the Ghanzi Tribal Area (Republic of Botswana, 1968).

The Tribal Land Act authorizes land boards to allocate and grant land rights under customary law and common law. Section 16 of the Act prohibits the occupation of land granted until the respective land board has issued a certificate for the land parcel in question. Under customary law, land rights are only granted (through a certificate of customary land grant) to citizens² for perpetual use, while under common law, land rights are granted through common law leases for 99 years for citizens and 50 years for non-citizens. Part IV of the Act provides for granting land rights under the common law.

Under current legal provisions, land rights granted under the customary law land grant cannot be registered under the deeds registry unless the land grant is first converted to common law. The current land policy proposes to amend the laws and processes to make the certificate of customary law land grant registerable under the Deeds Registry Act. For instance, as part of the process, tribal land will be planned and surveyed before allocation to facilitate the registration of the respective land parcels with the deeds registry. This is meant to ease access to credit by the holders of land rights under the customary law.

Under the current regime, the land grants under customary law cannot be used as a form of security at financial institutions (Republic of Botswana, 2015).

**State land**

State land is land that previously belonged to the colonial government as crown land (Government of Botswana, 2015). At the time of independence, the State Land Act, CAP 32:01 was enacted to transfer ownership and authority over state land to the new republic. The act confers on the state president the power to “... make and execute grants or other dispositions of any state land.” The president may authorize a person to exercise such authority on his/her behalf (Republic of Botswana, 1966c). Land rights for state land are granted for 99 years for residential purposes or 50 years for business and civic and community uses. Only citizens can be granted rights over state land for residential purposes. To date, the minister responsible for land management and, in the current structure of government, the minister of lands and housing have been responsible for enacting the law (Republic of Botswana, 2015).

¹ The tribal territories as listed in the Tribal Territories Act include: Bamangwato, Batawana, Bakgatla, Bakwena, Bangwaketse, Bamalete and Batlokwa. Section 78 of the constitution of Botswana lists these tribes, including the Barolong, that fall within the so-called eight principal tribes (Republic of Botswana, 1966b). The Barolong Tribal Territory is defined in the Botswana Boundaries Act as Barolong Farms (Republic of Botswana, 1966a).

² See Sections 6(1) and 8(1)(a) of the Tribal Land Regulations (Republic of Botswana, 2011). Section 20 of the Tribal Land Act prohibits allocation and granting of land rights to non-citizens except those who have been exempted by the minister or who are a member of a class of persons who have been specially exempted from eligibility to be granted land rights under the Act (Republic of Botswana, 1968).
3.1.3. Other legal instruments in land administration

There are other legal instruments that govern land administration and other functions pertaining to the development and use of land. Most of them are discussed in Section 3.2 in relation to their respective institutions and the functions of such institutions in the realm of land administration. Below is a discussion of some of the legal instruments that were created to support socio-economic development.

3.2. Land administration and institutional reforms

The institutions charged with responsibilities relating to land include those that administer land allocation and granting of land rights, land servicing, land use, land grants registration (deeds registration), land surveying and mapping, physical planning of the land as well as land adjudication. In Botswana, these institutions and their functions have evolved over the years. The origins of some date as far back as before independence. The change in political setup, particularly the attainment of independence itself, led to significant changes in the institutional framework of land administration. Since independence, the need to make land administration more efficient to respond to contemporary socio-economic needs has necessitated the reform of its institutions.

3.2.1. Land boards and their role in land administration

The tribal land boards are established as corporate bodies through an act of parliament, the Tribal Land Act of 1968. The functions of the tribal land boards, as spelled out in Section 13 of the Act, include: i) granting of rights to use any land; ii) cancellation of the grant of any rights to use any land; iii) imposition of restrictions on the use of tribal land; iv) authorizing any change of user of tribal land; and v) authorizing any transfer of tribal land. The Tribal Land Act requires that land boards consult the district councils in the formulation of policy relating to the exercise of their functions (Republic of Botswana, 1968).

In 2001, the president appointed the second Presidential Commission on Local Government Structure, whose terms of reference, among others, were to make recommendations for achieving effectiveness and efficiency of local government structures in service delivery to the communities. The commission found that land boards were extremely inefficient in executing their mandates. There were specific issues pertaining to lack of consultation between the land boards, communities, and village institutions that are responsible for implementing development plans (e.g. councils, village development committees (VDCs), tribal administrations). The commission recommended that the land boards be maintained as an important institutional structure on land matters.

Another recommendation concerned the election of the members of land boards.
given that the election system had not produced adequately capable members for the boards. The commission recommended that there be a minimum qualification of a junior certificate required for land board members; candidates formally apply and be screened for suitability; and that the election be conducted by secret ballot. The commission also recommended that persons nominated by the minister for land board membership have special skills in land administration that can enhance the operational efficiency of the board.

The tribal land regulations were last reviewed in 2011. Among the issues that the revised regulations spell out is the procedure for appointing members to land boards. Under the revised procedure, there are no elections of land board members. Positions for land board membership are advertised in the local newspapers, the Land Board Selection Committee interviews candidates¹ and the names of shortlisted candidates are referred to the minister for appointment.

3.2.2. Administration of title deeds

The function of registering land grants is vested in the deeds registry, which is established by the Deeds Registry Act, CAP 33:02 (Government of Botswana, 1960). The act provides for the registration of all land parcels held under land tenures except for those under certificates of customary land grant issued by land boards. Since the bulk of the land is in tribal land areas, most of the land parcels in the country are currently not covered by this act and thus not registered with the deeds register. Under the current arrangement, holders of land rights under the certificate of customary land grant have to first convert to the Common Law grant before they can register their land. As an initiative to empower citizens by improving their access to finance, the Deeds Registry Act will be reviewed to allow for the registration of land held under customary law. The new land policy will also facilitate the development of standard forms that will simplify registerable transactions and allow holders of land rights to personally prepare and lodge documents with the registrar of deeds. This is meant to remove the legal monopoly of conveyers and their exorbitant fees (Republic of Botswana, 2015).

According to MLH authorities, a new certificate of customary land grant is being developed under which land parcels will be automatically registered with the deeds registry upon issuance. To facilitate this, all plots will be surveyed prior to allocation and issuance of certificates. Further, the LAPCAS project will facilitate the conversion of the currently held certificates into ones that are also automatically registered with the deeds registry. Therefore, upon completion of LAPCAS, all land parcels held under the certificate of customary land grant will be registered with the deeds registry. This will not only reduce the current processes involved in registering land parcels held under the certificate of customary land grant, but it will also significantly reduce the cost of registering titles.

Among the processes involved, for example, is surveying the land parcel, which costs a substantial amount of money and could be unaffordable to some groups of people. Other processes include the actual application for registering with the deeds registry, which some people find cumbersome.

¹ The Land Board Selection Committee is established in terms of sub-regulation 11 of the Tribal Land regulations. It comprises the District Commissioner who is the chairman, the Land Board Secretary who is its secretary, the Council Secretary, the Chief or Sub-Chief of the tribal area and a member appointed by the Minister (Republic of Botswana, 2011).
3.2.3. Institutions for land use planning and development

Physical plans for developing land are a critical part of land use planning. The Town and Country Planning Act (CAP 32:09) makes “… provision for the orderly and progressive development of land in both urban and rural areas and to preserve and improve the amenities thereof or grant permission to develop land and for other powers of control over the use of land…” (Republic of Botswana, 1980). Section 15 of the same act empowers the minister to declare areas of land in Botswana as planning areas, to which the provisions of the Act are applicable. According to the new Land Policy, the whole country will be declared a planning area, thus the provisions of the Town and Country Planning Act will be applicable to all land in Botswana.

However, the authorities at the Department of Town and Country Planning have clarified that the declaration of the whole country as a planning area will be done incrementally, in recognition of the lack of capacity to fully enforce the provisions of the Town and Country Planning Act. Several zones are being considered as candidates for planning areas. The factors include the level and type of socio-economic activity in the area. For instance, the overwhelming level of tourism in the Tuli Block area, Chobe and in parts of the North West region necessitates adherence to planning standards to safeguard the natural resources that are essential for tourism there. Consultations are already happening in these areas to eventually declare them as planning areas.

The Town and Country Planning Act appoints the district, town and city councils as planning authorities whose functions are to determine applications for permission to develop land and to advise the minister on preparing or revising development plans in their respective areas. Section 5 of the act provides for the appointment of the Physical Planning Committee through which the councils perform their functions. The previous act established the Town and Country Planning Board, whose functions have now been devolved to the councils. In the amended act, (Section 4), the position of Director of Town and Country Planning plays a supervisory role over the planning authorities. The Department of Town and Country Planning will enforce the function of the director at the meetings of the physical planning committees of the councils. The other functions of the director include preservation of records and registering and, where necessary, disciplining practicing physical planners (Republic of Botswana, 1980).

3.3. Land use planning and urbanization

3.3.1. Urbanization in Botswana

Urbanization in Botswana has a long history, dating to the time around independence in 1966. Gaborone was established as the capital in 1965 and other towns were developed after independence. Francistown, Selebi Phikwe, Jwaneng, Orapa and Sowa were developed when mining resources were discovered in their respective areas. Lobatse is the oldest non-mining town in Botswana.

Urbanization has been rapid, especially with the transformation of large rural villages into urban centers with social amenities that were previously only found in urban settlements. Table 3.1 shows the rapid urbanization that took place in Botswana between the census periods of 1971 and 2011. During this period, the number of urban settlements multiplied more than tenfold from 5 in 1971 to 52 in 2011. In addition, 64 percent of the population in 2011 was urbanized. While census reports include urban villages in the urbanization change and growth of Botswana, the Township Act does not recognize villages as towns.
no matter how big or urbanized they are (see Mosha, 1996). Some villages in Botswana are bigger than legally recognized towns. For instance Molepolole village had a population of 66,466 in 2011 while the town of Selebi Phikwe had only 49,411 people.

**Table 2**

Urbanization Change and Growth

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Number of urban places</td>
<td>5</td>
<td>8</td>
<td>25</td>
<td>34</td>
<td>52</td>
<td>47.1</td>
<td>4.4</td>
</tr>
<tr>
<td>Total urban population</td>
<td>54,300</td>
<td>166,400</td>
<td>909,800</td>
<td>1,297,287</td>
<td></td>
<td>42.6</td>
<td>3.6</td>
</tr>
<tr>
<td>Total population</td>
<td>596,900</td>
<td>941,000</td>
<td>1,680,900</td>
<td>2,024,904</td>
<td></td>
<td>20.5</td>
<td>1.9</td>
</tr>
<tr>
<td>Urban population as a % of total population</td>
<td>9.1</td>
<td>17.7</td>
<td>45.2</td>
<td>54.1</td>
<td>64</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total urban village pop. as a % of total urban population</td>
<td>0.0</td>
<td>9.8</td>
<td>50.6</td>
<td>56.9</td>
<td>66</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Gwebu, 2011.

* % change = (Pt – Po)/Po *100
** Annual growth rate r is a derivative of the geometric growth rate Pt=Po(1+r)n

Botswana has two cities, Gaborone and Francistown. Gaborone has developed as a primate city in Botswana. We adopt Jefferson’s definition that a primate city is “at least twice as large as the next largest city and more than twice as significant” (Jefferson, 1939 cited in Gwebu, 2011: 174). This shows an unbalanced urban network in Botswana. Another factor to note is the slow growth of large urban settlements in Botswana. According to the 2011 National Census Report, peri-urban settlements grew the fastest. Mmopane, adjacent to Gaborone, recorded the highest population change of 339.9 per cent between 2001 and 2011 or an annual growth of 16.0 per cent. Big urban areas recorded slower growth than the national urbanization rate of 42.9 per cent. Urbanization and growth is fastest in peri-urban areas, where land and rent are cheaper, and in district headquarters, where high-order services and goods are available (Gwebu, 2011).

3.3.2. Urban planning in Botswana

Responsibility for land management lies with the Ministry of Lands and Housing. Most of the ministry’s responsibilities are performed through departments such as the Department of Town and Regional Planning, Department of Surveys and Mapping, Department of Lands and the deeds registry. Some responsibilities, however, have been devolved to local authorities (municipalities) to plan and undertake development control functions. Other land use planning responsibilities have been delegated to decentralized central government agencies – the district administration headed by the district commissioner – to assist local authorities with the technical expertise for planning. The day-to-day management of the developing environment is the responsibility of local authorities while the Department of Town and Regional Planning is accountable for physical planning. The
Department of Surveys and Mapping handles the production of surveyed and approved maps, while the Department of Lands is responsible for land allocation and administration (Mosha, 1996).

Urban planning is guided by a number of instruments, namely: the National Settlement Policy, 2004; National Policy on Land Tenure, 1985; Government Paper No. 1 of 1992 on Land Problems in Mogoditshane and Other Peri-Urban Villages; the 2015 Botswana Land Policy and several laws governing land use and planning. The laws include the Town and Country Planning Act, 1977; Immovable Property Act, 1967; Land Survey Act, 1959; Sectional Titles Act, 2003; and the Deeds Registry Act, 1960. These acts regulate land use planning in villages and urban settlements. There are many other laws that relate to land management, but they go beyond the scope of this work.

The main instrument with a direct bearing on urbanization is the National Settlement Policy (NSP) of 2004. This policy is an improvement on the previous two policies of 1992 and 1998. Its objective is to provide national physical planning and a framework for distributing investments in a way that reflects settlement size, population, economic potential, level of infrastructure and their role as service centers. The other objectives of the policy are controlling rural-urban migration; providing guidelines and long-term strategy for the development of human settlements; promoting optimal use of land and preserving arable land; conservation and preservation of natural resources for future generations; providing guidelines for assessing the institutional, financial and manpower resources needed to implement the NSP; and providing guidelines for developing transportation networks to better link settlements.

The NSP is supported by a set of urban development policies, including the policy of non-subsidy, the policy on housing and land servicing, and the policy of social mix (Mosha, 1996). The policy of non-subsidy is aimed at supporting the broader objectives of the NSP (quality of infrastructure, service provision, resource allocation) by ensuring that these do not encourage rural-urban migration but rather promote rural development. In this sense, investment in urban land servicing is done on a cost-recovery basis; no subsidy is provided. In contrast, a tax subsidy from tax revenue is provided to rural areas. However, to cater for low-income households in urban areas, the pricing incorporates cross-subsidization from wealthier households and commercial and industrial developers to low-income households (Mosha, 1996). Mosha notes that Botswana’s approach to regional development is among the few that redirect resources from urban to rural areas.

The policy on housing relates to mass housing built by the parastatal Botswana Housing Corporation (BHC) for both rental and outright purchase. Financial institutions, such as the Botswana Building Society (BBS), and commercial banks now have a major role to play in providing housing. Government introduced the SHHA in the 1970s under local authorities to house the urban poor. This service has since been extended to rural areas and handed over to the BHC. Through the SHHA scheme government provides funds for housing to those who may not qualify for a mortgage with a commercial bank or building society. These funds are paid over a relaxed period of time. The other approach has been to regularize squatter areas instead of demolishing them to provide housing to more people. Shabane, et al. (2010) found this to unfairly advantage squatters in terms of plot size and to exacerbate conflict in planned areas.

In the late 1980s, government introduced the Accelerated Land Servicing Program (ALSP)
3.4. Land supporting systems to scale and ensure sustainability

The new land policy recognizes the importance of land in all its uses in the modern age. It aims to ensure that emerging land management issues, including access to land by everyone, improved security of tenure, protection of land rights, recognition of the vulnerability of certain groups, improved land management in all tenures, improved land markets, decentralized functions to local and land authorities, enhanced institutional capacity and efficient land information management systems (Government of Botswana, 2015). Development of the policy involved a national consultative process that spanned five years in order to ensure that policy pronouncements represented the views of the people. The new policy places a premium on effective implementation, as this is where people will feel the results.

To assure citizens’ access to land and to protect their rights to it, government has gradually increased tribal and communal land. Tribal land has increased from 49 percent at independence to about 71 percent in 2013, as indicated in Table 2.1 (Government of Botswana, 2015). This has happened through the conversion of state land and freehold land to tribal land. State land has decreased from 46 percent to 26 percent, while freehold land shrank from 5 percent to roughly 3 percent in the same period.

Access to tribal land has been made much simpler and free of charge. Government promises to allocate land to low-income groups at a subsidized price in urban areas. Land rights under customary land grant are perpetual for residential, borehole and plowing
fields. As stated in chapter 2, customary land grants can be changed to common law land grants for a fixed term of 99 years for residential land for citizens and 50 years for foreigners. Two things have prompted the need for more land and thus an increase in tribal land: increasing human settlements and the changing use of land as economic development progresses. New land use needs continue to emerge, and land policies must be flexible enough to adjust to them. The new policy seeks a comprehensive approach as opposed to the piecemeal solutions proposed in the past. The policy also notes emerging challenges, among them globalization, economic diversification, rural-urban migration, environmental sustainability, and competing needs for social, economic and political harmony.

Land is a finite resource and government seeks to manage it in the most prudent of ways. While government allows multiple ownership of plots or land that may be acquired through legitimate means, it only promotes a single allocation per person for residential and plowing fields. Further, allocation of arable land depends on the availability and utilization of existing land. The policy also discourages the practice of dual grazing rights in which someone is allocated a cattle ranch and, at the same time, owns a borehole in communal grazing areas. In addition, the policy discourages poor land management but this is not yet supported by any legal instrument. Finally, the Land Policy seeks to involve stakeholders in advising government on land issues and on change management.

3.5. Role of soft institutions in land tenure regularization (Social capital: Trust and collective action)

Soft institutions play a pivotal role in the formulation of land tenure policy and systems. However, the term institutionalism means different things to different scholars (Peters, 2000). There are various institutional approaches that are bound together by some commonalities. One such commonality is the argument that formal structures (as in government) do matter, as do the values that the structures possess and how they are infused into new members (Peters, 2000). It is not easy to explain institutionalism succinctly, but soft institutions are perceived not to mean power and authority but rather social mechanisms (e.g. negotiation). The Botswana land policy recognizes the significance of cultural norms institutions in land policy. It places a premium on stakeholder participation and sets out a strategy to engage the public through:

- Resuscitating the land development committee to foster stakeholder participation;
- Intensifying stakeholder participation through the Ministry of Lands and Housing’s communication and change management strategy; and
- Researching land development and management.

What the Ministry of Lands and Housing probably did not expect is the slow response rate to the land adjudication process in districts. This is especially perplexing given government efforts to disseminate information over various outlets, such as radio, newspapers and kgotlas.
4. Land tenure regularization outcomes

LTR improves tenure security and is therefore expected to bring positive outcomes. This chapter discusses the expected benefits of the LTR process starting with a discussion of social and governance outcomes. This is followed by economic outcomes, which include investment in housing; access to formal credit; farm and land improvement; impacts on municipal revenues; and an improved land market. The chapter then discusses the effect of LTR on youth, women, indigenous and marginalized populations. It concludes with a look at compensation and conflict resolution in the LTR process and the resource implications of the LTR process.

4.1. Social and governance outcomes of land tenure regularization

4.1.1. Social outcomes

Land titling, other than any other form of tenure, is expected to have a positive impact on the social well-being of the titleholder, as it provides tenure security. However, social outcomes of LTR are not always clear; they depend on the perception residents have of their tenure security. A study by Payne and Associates (2008) in the urban and peri-urban areas of Senegal and South Africa found that perceptions were important as residents of informal settlements already enjoyed de facto tenure security. Land titling will therefore have a minimal impact on the social well-being of titleholders. Payne and Associates (2008) however found that land titling had a very positive impact on the social wellbeing of women, as it increased their security simply by identifying them as titleholders on ownership records.

The social outcomes of LTR in Botswana are expected to have a minimal impact in residential and arable agricultural areas because plot owners already have certificates of rights. Indeed, the certificate of rights, although not registerable in the deeds registry, gives the holder tenure security. The titling of plots therefore will have no major impact on plot holders because they already have tenure security. In addition, the new certificates or titles will only contain the names of the current plot owners. Hence, they will only improve women’s tenure security if a woman is the current plot owner.

Peace and security are immeasurable dividends that can be derived from tenure regularization. As well, tenure regularization is increasingly being recognized as a critical part of the fight against poverty in Africa (De Vries and Lewis, 2009; Janvry and Sadoulet, 2005; ECA, 2004; Adams, et al., 1999). It is directly and indirectly linked to rural livelihoods and, as the ECA (2004: 25) rightfully noted, “limited access to land and tenure insecurity are directly and causally linked to poverty in Africa.”

LTR will aid the process of equitable land distribution. For instance, the new Botswana land policy proposes that each individual should be allocated a residential plot for free. Before LTR, implementation of this policy would have been almost impossible because each land board had its own register, which was poorly kept with information that was not readily shared among other boards. LTR will make it mandatory for land authorities to share information and hence every land authority will have access to information on each applicant.
4.1.2. Governance outcomes

Land titling is expected to have a positive impact on governance outcomes because, where titles are issued, it is easier to know who owns what land parcel and for which use. This makes it easier to make allocation decisions. Further, titling increases transparency, which is a positive attribute of good land governance. The current situation in Botswana is such that every land board allocates land under its jurisdiction and keeps its records the way it sees fit, and there is no smooth sharing of the information. This leads to a situation where it is very difficult for any land board to know with certainty how many plots an applicant has and their current uses as the land board depends on the individual filing the application form. In addition, access to readily available information increases the efficiency of the land authorities by reducing the time they take to process applications for new plots, change use and make transfers. In the end, this reduces transaction costs for both new applicants as well as those seeking transfers.

Similar to elsewhere in Africa, most countries in southern Africa have experienced rural-urban migration coupled with ineffective land governance by both the central and local governments. This, in turn, has led to the mushrooming of illegal settlements in both peri-urban and urban areas (AUC-ECA-AfDB, 2010; and Kleinbooi, 2010). LTR will ensure effective and efficient land administration in that information will be computerized and hence easily retrievable. This will reduce the time required for processes such as the allocation and transfer of land rights. In addition, land administration organizations will be reorganized to avoid duplication, and save on time and resources. Land authorities will also know which land parcels are available for allocation, thus speeding up the allocation process.

The current LTR process in Botswana includes a national system of unique references for land parcels and location addresses. At the end of the process, each land parcel will have a unique plot number and location address. One benefit of this referencing is that it becomes easier and less costly to undertake other activities such as population and housing censuses, and elections. For instance, it will be no longer necessary for population and housing census officers to go around assigning unique numbers to plots as they will already be registered together their use and owners. Electoral officers will more easily establish residential addresses when registering voters, as registration is based on the place of residence. Not to mention that the general public will be able to locate places with ease. This will also make it easier for service providers such as emergency and postal services to locate plots, leading to more efficient service delivery.

4.2. Economic outcomes of land tenure regularization

Throughout human history, access to land has been recognized as the primary source of wealth, social status and power. In Africa, land is one of the most important primary resources in that it has extremely important implications for household and individual welfare. Most people living in rural areas use it for agricultural production and as a means for their livelihoods, while people in urban areas use it for residential purposes. Ownership of land and security over it has important implications for agricultural production, as farmers are more likely to invest in land improvements that improve productivity if they have secure rights to the land.

Indeed, the relationship between land and development is multidimensional and complex, involving many trade-offs (Janvry and Sadoulet, 2005). The economic benefits of tenure reform are difficult to predict yet the outcomes of not undertaking tenure reform also could be high, such as civil unrest (Adams, et al., 1999).
4.2.1. Investment in housing and access to formal credit

The mere fact that LTR improves tenure security is expected to be an incentive for home improvements in residential areas. According to Payne and Associates (2008), the superior tendency of land titling to stimulate investment in housing and property development has been advanced as a key factor in promoting titling over any other form of tenure. The authors argued, however, that there is a lack of evidence linking titles and investments in home improvements. There are three reasons for this: First, titles are normally allocated as part of upgrading a settlement; second, differences between titled and untitled settlements are unclear; and third, the location of a settlement influences behavior.

Payne and Associates’ studies in Senegal and South Africa indicate that, rather than titles, it may be a perception of tenure security and the relative benefits of increased property rights that exert a greater influence on investment levels and other benefits. According to Payne and Associates (2008), 70 percent of households that invested in their property indicated that they would have made improvements on it, even if they did not receive a new land title. In Senegal, they found that LTR had an impact on improvements and extensions of beneficiary households, such as transforming shacks made of nonpermanent materials into houses made of permanent materials. They concluded that titling had clearly stimulated investment in housing, with those who did not improve their housing citing a lack of finances as the main reason.

The 1968 Tribal Land Act provided for the issuance of certificates of customary land grant, which can be converted into common law leases that are in turn registerable in the deeds registry. The fact that plot owners have certificates of ownership acts as an incentive for them to invest in housing and build permanent structures, as they have proof that the plots belong to them. This will unlock capital, land and hence encourage investment. For example, plot owners will be in a position to obtain loans to build houses or even develop existing ones, hence improve their living standards. This is why many Batswana have constructed modern houses over the years in tribal land areas, even those who have not converted to common law leases. However, only those with common law leases can access formal credit by offering their land as security for mortgage loans.

According to Payne and Associates (2008), the ability to use property titles as collateral in accessing formal credit is widely considered a key reason for selecting land title over other tenure options. They found however that in Senegal and South Africa there was limited uptake of credit for home improvements for households that had titles to their land. They concluded that these households feared losing their prized asset by offering it as collateral for loans. (This can especially be true in rural areas where people might have cultural attachments to their homes.) The households instead opted to use their savings or informal credit from friends or family members, even though these may be expensive. Thus, land titling by itself is not expected to increase home improvement through access to formal credit. In addition, many may not meet the requirements of financial institutions and hence fail to gain access to formal credit.

One of the reasons holders of customary certificate of grant convert them into common law leases and register the leases at the deeds registry is that it allows them to obtain title deeds. These titles are accepted as collateral for loans by financial institutions, while certificates of customary land grant are not. Through the LTR process that is currently taking place, the deeds registry will log all land parcels and hence the certificates issued will be acceptable to financial institutions.
4.2.2. Investment in farm and land improvements

According to Lawry et al. (2014) secure and predictable access to land as a productive resource is key for millions of farmers around the world. The authors argue that secure land rights enable farmers to invest in long-term improvements to their farms in expectation of returns in the future. Farmers make these investments because they do not fear that land would be confiscated arbitrarily. The literature supports this, suggesting that land tenure insecurity in the farming sector constrains farmer’s access to credit thereby limiting farm investments, technology adoption and hence productivity. Dube and Guveya (2013) found that more secure land rights lead to more long-term investments, especially in plantation crops and permanent farm buildings. The authors concluded that there is a strong relationship between tenure security and farm investment by small-scale commercial farmers in Zimbabwe, and that rural development can only be achieved if tenure security is addressed.

Land titling is also expected to be an incentive for improvements in agricultural lands. With secure land rights, the owner of an agricultural land parcel is more likely to invest in it. In Botswana, arable agricultural land parcel owners are issued certificates of customary land rights (which can be converted into common law leases) and common law leases, just like the owners of residential plots. Therefore, agricultural land parcel holders have the incentive to make improvements, as the land is held under exclusive use. These improvements include fencing off the land to prevent damage from livestock and wild animals as well as preventing other people from accessing the land. The owner of the land parcel who has invested in fencing is able to enjoy inclusive use of crop residues from his/her land after harvesting, while those who have not risk livestock and wildlife consuming crop residues. Crop residues are important as they can be used both as fodder for livestock and as fertilizer, hence improving both crop and livestock productivity.

In Botswana, productivity between commercial farmers (who operate either leasehold or freehold farms) and communal farmers (who operate under customary land) differs, with the former performing better. For instance, in the livestock sector, death rates in the traditional sector (12 percent) are twice as high as those in the commercial sector (5 percent) from 1979-2013. Similarly, offtake rates are higher in the commercial sector (15.5 percent) as compared to the traditional sector (8.1 percent) for the same period. The same differences in productivity between the commercial and traditional sectors are observed in the arable sector. For instance, in 2013, the yields per hectare in the commercial sector for sorghum and maize were 2,305 kg and 647 kg per hectare, respectively, while for the traditional sector they were as low as 193 kg per hectare and 161 kg per hectare, respectively.

Part of the reason for these differences in productivity can be attributed to the fact that, first, commercial farmers are likely to have more resources and better farming skills than their traditional counterparts. Second, commercial farmers are able to access credit from financial institutions and hence invest in modern farming practices that yield better results. Their counterparts in the traditional sector, however, do not have access to farm credit precisely because of the land tenure system they operate under. They can only access farm credit on tribal land if they have converted to common law leases and if they have been granted title deeds to their plots. This is a long and expensive process, as farmers have to survey their fields, which many, especially smallholder farmers, cannot afford. However, it is difficult to attribute such productivity differences between the groups purely to differences in land tenure; there are also differences in resource endowments and skills between them.
4.2.3. Municipal revenues

One of the arguments for land titling is that formalized settlements have the potential to increase local authority revenue through property taxes. In Botswana, holders of common law leases are required to pay rent for the leased land, although these have been found to be very low. In urban areas, plot owners are required to pay property rates, and these increase the revenues of the respective towns and city councils, while common law leases are paid to land boards. These payments make more funds available for development; however most funding for local authorities comes from the central government, which has control over how the funds are utilized. In fact, the amount of revenue local authorities collect through leases and property rates will determine the amount the central government will give them – the more revenue collected, the less the central government gives. This in itself acts as a disincentive for local authorities to collect revenue.

The new land policy advocates for payment of property rates on all forms of land tenure. This will definitely increase the revenue of local authorities. This revenue increase will in turn reduce their dependence on central government funding and increase their financial independence and autonomy, especially in rural districts where rates are currently not being paid.

4.2.4. Impacts on the land market

Land titling is often promoted as a means of stimulating land markets in which households trade up their properties to increase their asset base. However, the findings by Payne and Associates (2008) are in agreement with the literature: Residential mobility is very limited as there is little buying and selling of homes in consolidated communities. This appears to be the case in Botswana, where sales of residential plots are confined to urban and peri-urban areas. Urban plots have titles, while the majority of peri-urban plots have certificate of rights under customary law. Owners of residential and other customary plots are only allowed to transfer ownership after they have developed the plots, as the land itself cannot be transferred by law. Thus, there is a requirement for a development covenant, which forbids people who have been allocated land to sell it in an undeveloped state.

While it is easy for property owners to dispose of their properties if they have title deeds, it is difficult for those without titles to the land, the majority of whom are on tribal land. For property owners to obtain title deeds, they need to survey the land, which is expensive. This also discourages prospective buyers, as they cannot access mortgage finance for unregistered plots without titles. This in turn leads to the development of informal land markets where plot owners sell their land illegally and engage in extralegal transactions, especially on tribal land near urban centers. This also encourages land fronting, where the person who applies for the plot prearranges to sell it to someone who has resources to develop it. In addition, there are instances where plot owners make minimal developments to their plots (or where prospective buyers make the developments themselves) for the purpose of transferring the plot to the buyer (Republic of Botswana, 2002).

The current LTR process and the accompanying new land policy are expected to address the challenges of plot owners in tribal areas, as all plots will be registered and hence mortgage financing can be undertaken against them. This will facilitate property transactions as well as reduce the need for illegal and extralegal property transactions. Thus, LTR can indeed promote formal markets for property.
4.3. Land tenure systems and the youth

Youth are often marginalized in land allocation and hence LTR does not necessarily benefit them. In Botswana, the legal age at which one can obtain a land parcel is 18, which is similar to age requirements for most youth development programs. Applications for plots on which youth can operate businesses often take time. In fact, in most cases they are forced to rent, which decreases the project’s viability and leads to a high failure rate of youth-led businesses.

Part of the current LTR process is to make land administration more efficient through the development of land management information systems. This should reduce waiting times for plot allocation.

Government has identified youth specifically as a disadvantaged group in terms of access to land and has made provisions for them in the land policy. For example, the 2015 Botswana Land Policy advocates reserving a quota for youth where land is available for public tender as well as instating special measures to expedite land allocation for youth groups to facilitate their access to special funding.

4.4. Land tenure systems and women

In Africa, women have been disadvantaged when it comes to land allocation. In most cases men own the land for residential, agricultural or commercial purposes. However, in some countries positive steps have been taken to address these inequities. According to Lawry et al. (2014), it is difficult to translate laws into practical improvements in women’s rights because implementation of the laws is problematic. In Botswana — at least in theory — everybody has access to land and people can apply for both residential and agricultural plots wherever they wish, as long as they are 18 years or older.

In terms of agricultural holdings by gender, women own 46 percent, representing 41 percent of the country’s total land area. Women also held the same amount of planted land holdings (46 percent) (Statistics Botswana, 2013). Thus, ownership of arable land by gender in Botswana is not as skewed as in other African countries. However, the same cannot be said of ownership of residential plots, owing to the patriarchal nature of Botswana society, where men are regarded as the head of family, and residential plots are likely to be held in their names. A similar pattern is expected for commercial farms and boreholes for livestock watering, as tending to livestock is predominately a male activity (Bahta and Malope, 2015).

To improve women’s ownership of property, including land, Botswana abolished the marital power act so that men and women hold the same status under marital law. Women married in community of property (probably the majority of women) are equal partners in the couple’s property, including land. The problem will only arise if a couple is not married, and the man is the one who owns the land parcel. There are many disputes where couples cohabitate, with women and children often losing out. The new land policy prescribes one plot per person, with a married couple treated as a single entity. This has raised concerns, mostly from women, who argue that they are being discriminated against, as unmarried people can own a piece of land each.

The new land policy includes affirmative action for certain groups. However, the policy leaves out women (but not widows). The Tswana law of inheritance – especially the inheritance of boreholes for cattle farming – disadvantages women irrespective of whether they are widows. However, in one landmark case in which two sisters brought suit against
their younger brother over the inheritance of their deceased parents’ homestead, the court settled in favor of the sisters, arguing that they too are entitled to their parents’ property. According to Tsawa customary law, the youngest brother inherits the parents’ homestead when the parents die.

Poor and rural dwellers who hold customary tenure (the majority of whom are women) are likely to benefit from tenure regularization. LTR can actually be an instrument of social inclusion in the economy. In Botswana, one goal of using all land, including customary land, as security for mortgage loans is to include owners who have traditionally been excluded from the mainstream economy (Malatsi and Finström (2013). Tenure regularization in Botswana has led to significant developments, especially of the new land policy, which, among others, aims at making customary tenure secure. Tribal land is planned and surveyed prior to allocation to make it registerable under the Deeds Registry Act without needing to convert to common law rights, as was previously the case (Republic of Botswana, 2015).

4.5. Land tenure regularization and the minority, indigenous and vulnerable groups

There are certain minority groups in Botswana, such as the Baswara, whose way of life has placed them at a disadvantage with respect to LTR. The Basarwa are hunters and gatherers and, as such, they traditionally lived nomadic lives. Moving from one place to another in search of food meant they did not require permanent residences. In addition, since they were neither livestock keepers nor crop growers, they did not need places to grow crops and graze livestock. However, recent developments have forced them to set up permanent residence and live a life that they are not accustomed to. Many were evicted from places where they freely practiced their hunter-gatherer lifestyles or were forced to abandon their way of life because of laws prohibiting hunting, especially in national parks. The Basarwa have been moved out of places where they used to hunt and gather wild fruits as a result of allocations to ranches for commercial cattle farming as well as through the creation of wildlife reserves and mines. Indeed, as argued by Malope and Batisani (2008), the Basarwa lost their rights to use resources found on fenced ranches through the formulation of policies such as TGLP and NPAD. The Republic of Botswana (2002) lends support to this argument, saying that the establishment of leasehold ranches through the TGLP and NPAD has led to suffering for many poor people, including minorities, as they have lost subsistence income and seen their entire economic support system destroyed.

The Basarwa successfully presented their case of eviction from the Central Kgalagadi Game Reserve (CKGR), which they won after a protracted battle against government. After losing the case, government removed services that were required for decent occupation of their ancestral homes, such as water and health services. However, recently government has abided by the court ruling and begun providing services to Basarwa on the CKGR. Only those who were on the list of high court cases are allowed back into the reserve, though, leaving many who did not participate in the court case with no legal rights to their ancestral land.

Other vulnerable groups that are offered protection in the policy are orphans (especially youth) and widows. The land policy seeks to ensure that both are protected from being dispossessed of their land rights by relatives or guardians. Usually the challenges they experience relate to the inheritance of land rights from deceased husbands or parents. Tswana customary law, for example, does not allow the dispossess of widows and orphans of their assets, but families have been known to distort culture to disenfranchise vulnerable relatives.
4.6. Compensation and conflict resolution

Tribal land belongs to the State, although certificate holders have perpetual use rights to it. Even in instances where tribal land has been converted into common law leases, the land still belongs to the State and can be repossessed for developmental purposes through the use of the Acquisition of Property Act. During the implementation of TGLP and later NPAD, many people were displaced from their lands, and they were supposed to be compensated adequately. This did not happen as the State did not use the market value of the land. The new land policy, however, advocates for adequate compensation for land and developments made. Another instance where tribal (mainly agricultural) land has been repossessed is for the establishment of mines.

The repossession of tribal land is more frequent in peri-urban and urban areas, where agricultural land is being repossessed to expand residential zones. The procedures for repossession may differ between land boards, but the principle followed is the same. The owners of the land parcels are compensated, with government determining the amount. Currently, rates are the same across the country, irrespective of the location and land values. For example, in the peri-urban areas of Gaborone, a land parcel measuring 25 by 35 meters has an open market value of BWP 100,000\(^6\), which translates to more than BWP 1 million per hectare; the land board or government however offers BWP 8,000 per hectare for repossessed agricultural land in the same area. Thus, the compensation offered does not reflect the market value of the land parcel. There is understandably resistance to letting government repossess plots as a result, especially in peri-urban areas.

The new land policy recognizes that compensation for dispossessed tribal land is not market-related. It thus recommends a new set of rules that will ensure compensation based on replacement or market value. Under the new rules, even undeveloped plots will be compensated at market value; guidelines are being developed to implement this.

Conflict resolution in matters related to tribal land starts with the land boards. If they fail to resolve the conflict, the matter is taken to the land tribunal. If the land tribunal cannot resolve the matter, it is then taken to the high court, which has final say. An individual can appeal to the highest court in the land, the Court of Appeals, whose decision is definitive.

4.7. Processes and resource implications for the land tenure regularization

The procedures for LTR are guided by what the country wants to achieve with the reform. Deininher, et.al. (2010) suggest that the following general procedures should be undertaken in any LTR process:

**Notification of areas under the LTR program:** This involves making stakeholders aware of where the LTR program will be undertaken to ensure their full participation.

**Local information dissemination:** It is important that information on the LTR process is disseminated on time and correctly so the public is fully aware of what is involved.

**Appointment and training of land committees:** All stakeholders involved in the process must be trained so they are capable of performing their tasks effectively.

**Demarcation of land and marking of boundaries on photographic images** provides a visual representation of all land parcels.

**Adjudication** entails recording personal details, issuing claims receipts and recording

\(^{6}\) BWP (Botswana pula) is the national currency of Botswana and one pula was equivalent to one United States Dollar (USD) at the time of writing.
objections and corrections simultaneously with demarcation.

**Publishing adjudication records and compiling a parcel index map** will form the record of the adjudication process and its results.

**Having an objections and corrections period** to finalize records and disputes lists.

**Mediation period for disputes:** This offers land rights holders an opportunity for mediation in the event that there are still some disputes.

**Registration and titling** involves the preparation and issuance of title documents.

The first three steps are administrative and require a set of transparent procedures using simple documentation boundary demarcation methods. The last three steps are legal and require that the first six steps are completed first, culminating in formal registration and titling.

Malatsi and Finnström (2013) highlighted the key components of the procedures for LTR as experienced in Botswana, yet they did not discuss funding. However, funding is central to tenure regularization (as noted by Adams, et al., (1999)) and therefore included in the procedures listed here, which are: determining user needs; determining funding; reviewing the legal framework; and reviewing the organizational structure and information technology.

User needs are varied and stakeholders have to be consulted and their specific needs established. The second step after determining user needs should be to secure funding to finance activities that will address them. LTR is expensive and requires public funding or fees to be paid by the recipients of services. Adams, et al., (1999) suggested that public funds must be secured for public information, training of officials, community facilitation, dispute resolution, etc. In Botswana, government provided funding for the entire tenure regularization process, with no expenses whatsoever incurred by individuals or companies, even for new land titles.

Land administration takes place within a specified legal framework that may have to be reviewed and adjusted to facilitate a well-functioning land governance system. Malatsi and Finnström (2013) opined that land administration is another important land governance issue. Organizations have to be streamlined so as to respond to customer needs and avoid unnecessary bureaucracy. The use of information technology is important, especially with the advent of e-government the world over. In a globalized world, demand for efficient service delivery and the need for governments to re-engineer their processes makes information and communication technology an important tool for service delivery (Nkwe, 2012)

Resource implications for the LTR process depend on the magnitude of the process. Essentially, is it regional or national? Resource needs also depend on the objectives of the reform process itself as well as on the components of the LTR program. The current LTR process in Botswana has been rolled out nationally, targeting 464,184 people. The process includes seven components to be undertaken simultaneously the and hence it is very costly, especially the registration of existing land parcels in tribal areas.

The process is made even costlier by the fact that all plots needs to be, surveyed and
Botswana chose numeric cadastre rather than general boundaries. Numeric cadastre is more expensive because of its relative accuracy, and once done, there is no need to repeat it. The main reason why Botswana chose numeric cadastre over general boundaries is that there is a general lack of well-defined physical features with good topographic mapping system in the country. Thus, numeric cadastre does not rely on physical features, but on precise surveying of properties and hence works well where most of the land is barren with limited physical features. The LTR process is also made more expensive by the vastness of the country and its sparsely populated plots that must be visited for surveying. The other major cost component of the process is the public education as the success of the program depends on the participation of all stakeholders, including the public. Other costs relate to the number of components the reform process is embarking on, such as producing unique plot numbers based on street names, computerization of records, capacity building of staff, etc.

5. Tracking progress of land tenure regularization outcomes

Progress must be tracked to determine whether the LTR process has produced the desired outcomes. This chapter starts by discussing the indicators needed to measure the effectiveness of LTR, followed by a look at the monitoring and evaluation framework, which is paramount for successfully implementing LTR.

5.1. Choice of indicators to measure LTR effectiveness

LTR was adopted with a clear vision of ensuring an efficient land delivery system to achieve social and economic development in Botswana. The project was based on three objectives, as stated in Section 2.4 and restated here for convenience. Government seeks an efficient, effective and transparent land administration system based on:

- Simplified procedures,
- Correct information on land parcels and rights,
- Robust and interoperable information systems that can be maintained and supported in a sustainable manner.

These objectives will be achieved through the implementation of the seven project components discussed in Section 2.4 above and restated below:

- A national system for unique referencing of land parcels and location addresses.
- Improvement of land administration processes.
- Deeds register computerization.
- Systematic adjudication of tribal land.
- IT operations and maintenance organization.
- Information exchange and dissemination.
- Training and study trips.

The project objectives and the components through which the project is implemented provide the basis for a monitoring and evaluation (M&E) framework. To measure the LTR’s effectiveness and the achievement of its objectives, it is necessary to adopt results-based M&E that goes beyond traditional M&E to focus on inputs, activities and outputs. Indeed, results-based M&E blends traditional M&E with the assessment of outcomes and impacts (Imas and Rist 2009, 108).

Results-based M&E is based on the theory of change, which explores how an intervention or initiative leads to the desired results or impact (Imas and Rist, 2009). The theory
includes the following components:

- Inputs: Financial, human and material resources
- Activities: Tasks undertaken to transform inputs into outputs
- Outputs: Products and services produced or delivered
- Outcomes: Behavioral changes, both intended and unintended, positive and negative
- Impact: Long-term, widespread improvement in society.

The history and character of a country will influence the characteristics and components of its LTR. The M&E process will, in turn, be influenced by the components of the project. In the case of Botswana, M&E will thus be based on the seven components on which the LAPCAS project is organized. All seven should be subject to the main elements of the theory of change stated above. An example is given in Table 3.

### Table 3

<table>
<thead>
<tr>
<th>Component</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Inputs</strong></td>
<td>Finance, staff, material resources</td>
</tr>
<tr>
<td><strong>Activities</strong></td>
<td>Tribal land registration, survey of plots, land rights claims, claim verification, claims adjudication</td>
</tr>
<tr>
<td><strong>Outputs</strong></td>
<td>Correct information on land parcels and rights</td>
</tr>
<tr>
<td><strong>Outcomes</strong></td>
<td>Secured land rights, access to loans</td>
</tr>
<tr>
<td><strong>Impacts</strong></td>
<td>Improved living conditions or reduced levels of poverty in the country</td>
</tr>
</tbody>
</table>

Source: Adapted from Imas and Rist (2009).

### 5.2. Monitoring and evaluation framework

Part XI of the Botswana Land Policy envisages both implementation and M&E frameworks. The monitoring framework is similar to results-based M&E in that it will entail monitoring tools that assess policy implementation and also measure its impact. The land policy’s M&E framework has four components:

- Establishing a structure for policy implementation and monitoring,
- Identifying appropriate tools to monitor policy implementation,
- Conducting a mid-term review of the policy in its fifth year,
- Carrying out a comprehensive evaluation of the policy on the 10th year after its approval.

The M&E framework specifically states “the effectiveness of the policy will depend on its ability to drive socio-economic development” (Government of Botswana, 2015: 25). The framework incorporates impact evaluation as well. However, it has to be noted that the MLH has not yet developed M&E tools.

Stakeholder consultations remain a key element to implementing the land policy and to conducting ongoing monitoring. The policy envisages regular feedback from stakeholders to improve the policy, if needed (Government of Botswana, 2015: 24). MLH will also conduct research on land development and management. Government will use these approaches to ensure the sustainability of LTR and guarantee that it achieves the set objectives.
6. Concluding remarks

6.1. Land tenure regularization: challenges and lessons

Land governance in southern Africa is administered under dual tenure: customary and statutory. Under the customary land tenure system, land rights are insecure, and hence tenure regularization is needed to make them more secure. To do this, most countries have undertaken reforms through enacting new policies and laws. In some countries land reform was meant to redistribute land following colonial injustices in which blacks were dispossessed of their property.

In Botswana, there are three types of land tenure systems: tribal, state and freehold, with the latter having more rights than the other two. Over the years, the country has undertaken a number of reforms through the enactment of laws and policies to make land rights more secure, especially on tribal lands; the major ones are the Tribal Land Act, TGLP and the fencing component of NPAD. The latest attempt to improve land tenure security in tribal areas is the LAPCAS project, which has seven components and includes policy, legal and institutional framework changes in land administration.

Lessons that can be drawn from the LTR process in Botswana are that the process is long and requires careful planning. As well, it became clear that changes to the land administration could help address challenges as they emerged. For example, after the establishment of land boards it became apparent that land administration was not serving Batswana, hence the formulation of the LAPCAS project.

One lesson learned from both TGLP and the fencing component of the NPAD is that, if not planned well, LTR might result in unintended impacts that could harm sections of the society. The two land policies displaced several groups, in particular the indigenous Basarwa and people without cattle. These groups were forced to adopt a new way of life and many are now trapped in a vicious cycle of poverty. A lesson drawn from this is that careful research and planning must be undertaken before any LTR process begins to determine if it will displace populations. Once this assessment is made, government can prepare adequate compensation for these groups so they are not left worse off after LTR.

A number of lessons can be drawn from the LAPCAS project. The main one is that, depending on the scope and objective, the LTR process can be complex, enormous and long, involving a lot of stakeholders whose participation is critical to success. The engagement of stakeholders at an early stage is critical to ensure buy-in and participation. In addition, public education is important so that stakeholders, especially those with land rights, understand the objective of the project. LTR often involves change. Hence, land authority staff must be taken through the process of change management. This will ensure that they understand the process, embrace it and fully participate in its implementation.

6.2. Policy and legal drivers of land tenure regularization

LTR is often carried out under existing policies, laws and regulations that might need to be reviewed and reformed. For instance, the LTR process in Botswana is undertaken under different land administration laws, which need to be reviewed for it to be successful. The Tribal Land Act currently governs tribal land and establishes land boards. The ongoing LTR process has identified the current practice of land boards serving tribal land and not state land as inefficient. To increase the efficiency of service delivery, it has been suggested that land authorities replace land boards in order to offer services under other land tenure systems apart from tribal land. This calls for a review of the Tribal Land Act
and State Land Act, as well as other legislation. In addition, the proposal to issue a new certificate for tribal land that is registerable in the deeds registry will require some form of legislation before it can be instituted.

LTR may also require changes to the institutional framework, which would necessitate an institutional review and possibly reforms. For example, the establishment of land authorities will entail an institutional reform of land administration authorities, abolition of current ones and bringing existing ones in line with the new laws and policies. The establishment of land authorities will require changes to the Tribal Land Act in order to abolish current land boards; it will also require a new institutional arrangement in land administration.

6.3. Land tenure regularization outcomes

The LTR process can usher in a number of positive outcomes if undertaken carefully. Tenure regularization improves security, and hence it is expected to enhance investment in land and farm improvements. It is also expected to facilitate title holders’ access to mortgage finance. However, in some instances this does not happen because landowners fear losing their homes if they fail to repay the mortgage. Instead, these landowners tend to rely on savings or credit from friends and relatives to develop their homes.

Access to mortgage finance can also improve the land market. Prospective buyers will be able to purchase properties, as they will have a secure title to offer as collateral for loans from financial institutions.

LTR can yield positive governance outcomes in that it can improve the effectiveness and efficiency with which land administration authorities operate. This can speed up land allocation and transfers, and hence reduce transaction costs to applicants. Depending on its scope, tenure regularization can also benefit service providers, such as postal and emergency services, by making it easier to locate and thus access addresses.

LTR can bring about both positive and negative outcomes for certain groups such as women, youth, people living with disabilities, and indigenous people. Where tenure regularization has been planned well and the needs of marginalized people are met, the process will bring positive benefits to them. However, tenure regularization that involves privatization of common areas (e.g. TGLP and the fencing component of the NPAD) can actually have negative impacts on some groups, especially marginalized ones, such as indigenous people. To avoid these outcomes, careful research and planning should be undertaken before the LTR process begins. Moreover, adequate compensation should be provided for people disadvantaged by the tenure regularization process.

The approach taken to land tenure regularization depends on the scope and objective of the process. However, as stated above, involving stakeholders through a rigorous public education process is important. Finally, resource implications of the LTR process can be huge, requiring careful planning to ensure that funds are available to undertake the required tasks.

6.4. Tracking progress of land tenure regularization outcomes

Depending on the scope and objectives, land regularization can be complex and time-consuming. If not carefully planned and implemented, it can produce undesired outcomes. It is therefore important to have a set of indicators to measure progress. In addition, the process must be accompanied by a strong results-based M&E system.
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