

CHAPTER 32:02 - TRIBAL LAND: SUBSIDIARY LEGISLATION

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ESTABLISHMENT OF SUBORDINATE LAND BOARDS ORDER

(under section 19)

(15th June, 1973)

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1. Citation

This Order may be cited as the Establishment of Subordinate Land Boards Order.

2. Establishment

The subordinate land boards referred to in the second column of the Schedule hereto are established as the subordinate land boards within the district named in the first column of the said Schedule.

3. Area of jurisdiction

The area of jurisdiction in respect of which each subordinate Land Board will perform its functions shall be the area or villages stated in relation to each subordinate land board in the third column of the Schedule.

4. Functions

(1) The functions under customary law which vest in the subordinate land authority which are transferred to the subordinate land board shall include the hearing, grant or refusal of applications to use land for—

- (a) building residences or extensions thereto;
- (b) ploughing to a maximum extent of land determined by the tribal land board;
- (c) grazing cattle or other stock;
- (d) communal uses in the village.

(2) Subordinate land boards shall receive and make recommendations to the tribal land board in respect of applications for boreholes in their areas.

(3) Subordinate land boards shall hear and adjudicate upon disputes concerning customary land grants or rights within their area of jurisdiction.

(4) Subordinate land boards shall receive and make recommendations to the tribal land boards in respect of applications for common law grants of land.

SCHEDULE

Bakgatla Tribal Territory	Artesia Subordinate Land Board	Artesia, Dikgonnye, Kgomodiatshaba, Leshibitse, Olifantsdrift, Palla Camp
	Mathubudukwane Subordinate Land Board	Malolwane, Mathubudukwane, Ramonaka, Sikwane

	Mochudi Subordinate Land Board	Bokaa, Dikwididi, Malotwane, Matebele, Mochudi, Modipane, Morwa
Bakwena Tribal Territory	Lentswe-le-tau Subordinate Land Board	Botlhapatlou–northwest of Hatsalatladi, Gakuto–west of Mmopane, Hatsalatladi, Kopong–north of Mmopane, Lentsweletau, Mahetlwe, Medie
	Lephephe Subordinate Land Board	Lephephe, Sojwe
	Letlhakeng Subordinate Land Board	Khudumelapye, Letlhakeng, Maboane, Moshaweng, Salajwe, Takatokwane
	Molepolole Subordinate Land Board	Molepolole
	Motokwe Subordinate Land Board	Dutlwe, Motokwe, Tsetseng
	Thamaga Subordinate Land Board	Kumakwane, Mmankgodi, Thamaga
Bangwaketse Tribal Territory	Kanye Subordinate Land Board	Kanye, Moshaneng
	Mabutsane Subordinate Land Board	Khakhea, Mabutsane, Morwamosu, Sekoma
	Mmathethe Subordinate Land Board	Digawana, Gamojela, Magoriapitse, Mmathethe, Mokgomane
	Moshupa Subordinate Land Board	Kgomokasitwa, Lekgolobotlo, Manyana, Moshupa, Ntlhantlhe, Ranaka

	Phitshane-Molopo Subordinate Land Board	Loporung, Mabule, Mmakgori, Phitshane-Molopo, Tshidilamolomo
Bamangwato Tribal Territory	Bobonong Subordinate Land Board	Bobonong, Kobojango, Mathathane, Molalatau, Semolale, Tsetsebjwe
	Letlhakane Subordinate Land Board	Letlhakane, Makoba, Mmatshumo, Mosu, Thalemabele
	Mahalapye Subordinate Land Board	Bonwapitse, Dibete, Dovedale, Kudumatse, Makwate, Mahalapye, Mmaphashalala, Mookane, Palla Road, Radisele, Taupswe, Tewane
	Marapong Subordinate Land Board	Borolong, Chadibe, Dukwi, Kutamogoree, Marapong, Mathangwane, Mmea, Semitwe
	Maunatlala Subordinate Land Board	Kgagodi, Maunatlala, Mogapinyana, Tamasane
	Mmadinare Subordinate Land Board	Mmadinare, Sefhophe, Serule, Tobane
	Nata Subordinate Land Board	Gweta, Nata
	Palapye Subordinate Land Board	Lecheng, Lerala, Malaka, Mekoro, Palapye, Ratholo
	Rakops Subordinate Land Board	Xhumaga, Makalamabedi, Mopipi, Rakops, Xhomo

	Sefhare Subordinate Land Board	Chadibe, Maape, Machaneng, Matlhakola, Mhalapitsa, Mokobeng, Moshopa, Pilikwe, Ramokgonami, Sefhare, Seleka, Shakwe
	Serowe Subordinate Land Board	Mabeleapudi, Mashoro, Mogorosi, Mojabana, Paje, Serowe, Tlhabala, Tshimoyapula
	Shoshong Subordinate Land Board	Kalamare, Mpolotshane, Shoshong
	Tonota Subordinate Land Board	Foley, Mmandunyane, Mooke, Shashe, Tonota
	Tutume Subordinate Land Board	Maitengwe, Mathangwane, Nkange, Sebina, Tutume
Batawana Tribal Territory	Gomare Subordinate Land Board	Gomare
	Maun Subordinate Land Board	Makalamabedi, Maun, Shorobe
	Nokaneng Subordinate Land Board	Danega, Haba, Nokaneng, Xangwa
	Sehitwa Subordinate Land Board	Sehitwa, Toteng, Tsau
	Seronga Subordinate Land Board	Seronga
	Shakawe Subordinate Land Board	Sepopa, Shakawe

Ghanzi Tribal Area (as defined in the Fifth Schedule to the Act)	Charles Hill Subordinate Land Board	Charles Hill, Makunda (including Dryhoek and Tjwavango), Mamono, Nojane
Kgalagadi Tribal Area (as defined in the Fourth Schedule to the Act)	Hukunsi Subordinate Land Board	Hukunsi, Kang, Lehututu, Lokgwabe, Tshane
	Tshabong Subordinate Land Board	Bogobogobo, Bokspits, Gakhibana, Kisa, Kolonkwaneng, Makopong, Middlepits, Omaweneno, Phepheng, Tshabong, Werda

ESTABLISHMENT OF SUBORDINATE LAND BOARDS (AMENDMENT) ORDER

(under section 19)

(1st June, 1992)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Establishment of Subordinate Land Board

S.I. 45, 1992.

1. Citation

This Order may be cited as the Establishment of Subordinate Land Boards (Amendment) Order.

2. Establishment of Subordinate Land Board

(1) There is hereby established a Subordinate Land Board to be known as Mogoditshane Subordinate Land Board.

(2) The area of jurisdiction of the Mogoditshane Subordinate Land Board shall be in respect of the following villages, namely, Mogoditshane, Gabane, Mmopane, Nkoyaphiri, Mmokolodi, Kgaphamadi, Tlhape, Gaphatshwe, Dumadumana, Go-nku, Metsimotlhabe, Fikeng,

Senamakola, Tloaneng, Phiriyabokwete, Tlhwane, Lelotong, Mosusu, Diphiri and Letlhajweng.

TRIBAL LAND REGULATIONS

(under section 37)

(30th January, 1970)

ARRANGEMENT OF REGULATIONS

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S.I. 91, 1999
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PART I
Preliminary (reg 1)

1. Citation

These Regulations may be cited as the Tribal Land Regulations.

PART II
Land Boards (regs 2-5)

2. Procedure for appointment of elected members to land board

(1) At least two months before the election of members, for appointment to any land board, as specified in the third column of the First Schedule to the Act, the Ministry of Local Government, Lands and Housing shall cause to be published in two or more newspapers of national circulation an invitation, to any person residing within the tribal area of that land board, desiring to be elected and appointed as a member of that land board, to submit his application

to the secretary of that land board.

(2) In order to qualify as a candidate for election and appointment as a member of any land board the applicant shall—

- (a) be a citizen of Botswana, holding a valid identity card issued under the National Registration Act;
- (b) have attained the age of 21 years and not be over the age of 65 years;
- (c) hold a minimum academic qualification of, or equivalent to, a Secondary School Junior Certificate;
- (d) reside within the tribal area in respect of which he seeks election; and
- (e) not be actively involved in party politics.

(3) If the Land Board Selection Committee, established in terms of sub-regulation (11) of these Regulations, is satisfied that the applicant qualifies as a candidate in terms of sub-regulation (2) of this regulation and is not disqualified from being appointed in terms of section 3(3) of the Act, it shall submit the person's name to the *kgotla*, as a candidate for election.

(4) On the day set for election of members to a land board—

- (a) people residing in the tribal area of that land board shall assemble at the principal *kgotla* and elect 20 candidates residing in the tribal area, and the names of these candidates shall be submitted to the Land Board Selection Committee for that tribal area:

Provided that if the tribal area is too large for it to be practicable for all the residents to assemble at the principal *kgotla*, the villages in the tribal area may be divided into groups, with each group of villages electing a proportionate amount (relative to its population in the aggregate population of the groups) of the 20 candidates, the names of whom shall be submitted to the Land Board Selection Committee for that tribal area; and

- (b) people residing in an area falling under the jurisdiction of a subordinate land board shall assemble at a *kgotla* and elect 10 candidates residing in the subordinate land board area, and the names of these candidates shall be submitted to the Land Board Selection Committee for that tribal area:

Provided that if the subordinate land board area is too large for it to be practicable for all the residents to assemble at the *kgotla*, the villages in the subordinate land board area may be divided into groups, with each group of villages electing a proportionate amount (relative to its population in the subordinate land board area) of the 10 candidates, the names of whom shall be submitted to the Land Board Selection Committee for that tribal area.

(5) During the election of candidates the Tribal Authority or his representative shall preside,

assisted or guided by senior Government officers within the area.

(6) A person shall not be entitled to vote for a candidate to a land board within a tribal area unless he—

- (a) is a citizen of Botswana;
- (b) holds a valid identity card issued under the National Registration Act;
- (c) has attained the age of 18 years; and
- (d) resides within the tribal area of that land board.

(7) At the *kgotla* all the candidates shall first be introduced to the people and thereafter the people shall indicate their vote for a candidate by standing in a queue behind that candidate.

(8) From the lists of candidates submitted, the Land Board Selection Committee shall select the most eligible members, from whom the Minister shall make appointments to the land board (in accordance with the number of members and period of office for that land board, as provided in the third column of the First Schedule to the Act) and in doing so shall endeavour to ensure that, so far as possible, all relevant parts of the tribal area, including subordinate land board areas, are represented on the land board.

(9) The names of the candidates who have been elected but not appointed to the land board by the Minister shall be kept in the Ministry for the purposes of appointing—

- (a) under regulation 3(2)(a) of the land board (Subordinate Land Boards) Regulations, members to any subordinate land board within the land board area, from candidates, elected in terms of regulation 4(b) of this regulation, residing within the area of jurisdiction of that subordinate land board;
- (b) new members, should the office of any elected member to the land or subordinate land board become vacant; or
- (c) in the Minister's discretion, for appointing any other member of the land board or subordinate land board.

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

(11) There is hereby established, for each land board listed in the First Schedule to the Act, a Land Board Selection Committee for the corresponding tribal area, which shall be comprised of—

- (a) the appropriate District Commissioner, who shall be the chairperson;
- (b) the Land Board Secretary of the tribal area concerned, who shall be the secretary of the Land Board Selection Committee;
- (c) the Council Secretary of the District Council concerned;

- (d) the Chief or Sub-Chief of the tribal area concerned; and
- (e) a member appointed by the Minister.

(12) The Land Board Selection Committee shall determine its own procedure.

3. Chairman of land boards

(1) Every land board shall, at intervals of or of approximately 12 months, elect from among its members a member to be the chairman of the board and a deputy chairman who shall act as chairman of any meeting at which the chairman is absent.

(2) The chairman and the deputy chairman of a land board shall hold office as such until the election of a new chairman or deputy chairman, as the case may be:

Provided that the office of the chairman or of the deputy chairman of a land board shall immediately become vacant on:

- (i) his ceasing, for any reason, to be a member of the board;
- (ii) the submission to the board of his written resignation from office; or
- (iii) the passing at a meeting of the board, by the members of the board present, of a resolution of no confidence in him.

(3) Notwithstanding subregulation (1), where the office of the chairman or deputy chairman of a land board becomes vacant, the board shall forthwith proceed to elect from among its members a member to be the new chairman of the board, or the new deputy chairman of the board, as the case may be.

(4) Where the chairman of a land board is unable or not readily available to perform the functions of his office as such at any meeting of the board, and where the deputy chairman is also unable or not readily available to perform the functions of the chairman, the members present at the meeting shall elect one of themselves to act as chairman for the purpose of the meeting.

4. Duties of secretary

The records of a land board shall be kept by the secretary who shall record and preserve the minutes of all its proceedings, receive all applications and other documents addressed to the board, and conduct correspondence on behalf of the board.

5. Consultation with district council

(1) Whenever it proposes to formulate or adopt a policy relating to its functions under the Act, a land board shall outline such proposed policy and enumerate any matters connected therewith on which it desires the views of the district council and cause the said policy and matters to be submitted in writing by the secretary to the district council, with a request to the district council to express its views thereon.

(2) The district council shall consider the land board's proposal, and if it disagrees with it the

council shall, within a period of six months from the date of receipt of such proposal, so inform the land board, giving the reasons for its disagreement in writing.

(3) The land board shall not be obliged to accept the district council's opinion, but if it rejects it the land board shall inform the Minister of its decision, confirming that the district council was consulted, accurately reporting the council's disagreement and the reasons given therefor, and at the same time stating its own reasons for rejecting the council's opinion.

(4) After due consideration of the report from the land board, the Minister may make such order in respect of the matter as he thinks fit, and the district council and the land board concerned shall comply with the Minister's order.

PART III

Grant of Customary Land Rights (regs 6-17)

6. Application for customary land rights

(1) An applicant for a customary law right to the use of land shall produce his national identity card, and furnish verbally or in writing to the secretary of the land board within whose area the land falls the following particulars which the secretary shall record—

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

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

7. Procedure on receipt of application

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

- (a) notify the applicant of the date and place of the next meeting of the land board, not being less than 21 days after the said receipt, at which representations concerning the application will be heard;
- (b) post on a notice board open to public inspection at the land board's offices a notice of

such application giving details thereof and the date and place of the meeting at which representations concerning the application will be heard and calling upon any interested person who wishes to make such representations to appear at the said meeting; and

- (c) ascertain in the most expedient manner the attitude towards the application of the head of the ward concerned, or his local representative, if it has not already been communicated to him in writing.

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

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

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

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

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

(7) The applicant and any interested person attending the meeting of the land board at which representations concerning the application are heard shall be entitled to call and question any witness.

8. Procedure before grant of customary land rights is made

(1) The land board shall satisfy itself—

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

(2) If it is proposed to make a grant of customary rights, a resolution to that effect, embodying any conditions which it is proposed to impose, shall be put to the land board and if such

resolution is passed it shall be recorded in the minutes of the meeting at which it was passed.

9. Decision of board to be communicated

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

10. Demarcation of land over which customary rights are granted

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

(2) For the purposes of fixing boundary points not otherwise readily ascertainable it shall be the duty of the grantee within six weeks of the issue to him of a certificate of grant to demarcate the land in respect of which customary rights have been granted to him in such a manner as the land board may direct.

(3) Any grantee who fails to demarcate land in respect of which customary rights have been granted to him in the manner directed by the land board within the period prescribed in subregulation (2) or who fails to maintain any mark which has been established to demarcate such land shall forfeit his rights to such land, and any person who without reasonable excuse damages, destroys, moves or otherwise interferes with any mark established by or under the direction of a land board to demarcate land, shall be guilty of an offence and liable to a fine of P100 and to imprisonment for three months.

(4) Before a certificate of grant of customary land rights is issued, it shall be the duty of the land board to ensure that the boundaries of the area of land concerned are pointed out to the grantee by a person designated by it for the purpose in the presence of the head of the ward or of two responsible heads of family, and such pointing out shall be recorded in the certificate of grant.

11. Certificate of grant of customary land right

A certificate of grant of any customary right to the use of land issued by a land board shall specify whatever conditions the land board with the approval of the Minister imposes, shall be signed by the chairman or the secretary, and shall be in Form I set out in the First Schedule.

12. Notice of appeal against decision on application

(1) Any aggrieved person wishing to appeal against the decision of a land board on an application for a grant of customary rights to the use of land do so by lodging notice of appeal with the Minister.

(2) Such notice of appeal shall state—

- (a) the date on which it was lodged;
- (b) the appellant's name and postal address;
- (c) full particulars of the decision appealed against, the name of the land board which gave the decision and its date;
- (d) what the appellant's interest in the matter is;
- (e) the concise grounds on which he appeals; and
- (f) the date on which he became aware of the decision appealed against.

(3) Where an appellant requires assistance in formulating or lodging an appeal, he may seek such assistance from the district commissioner of the area concerned, and the district commissioner may thereupon, personally or by an administrative officer, render such assistance and forward the notice of appeal to the Minister within 30 days of being asked for such assistance, with a copy to the land board concerned.

(4) Where the appellant is not the applicant, a copy of the notice of appeal shall at the same time be served on the applicant.

13. Reasons for decision to be furnished

(1) On receipt of a notice of appeal the land board shall furnish the Minister with the reasons for its decision and shall serve a copy of such reasons on the appellant.

(2) Within 30 days after receipt of the land board's reasons the appellant, assisted if necessary as provided in regulation 12(3), shall be entitled to supplement or amend his grounds of appeal by notice served on the Minister, the land board, and, if the appellant was not the applicant, the applicant.

14. Allowance of appeal against grant of customary rights

(1) If the Minister, on consideration of an appeal against a decision of a land board to grant customary rights to use land allows such appeal and sets aside or varies the grant, the secretary of the land board on receipt of the Minister's decision shall immediately note such setting aside or variation on the duplicate copy of the certificate of grant kept in terms of section 16(2) and require the grantee by notice served on him to return the original certificate to the land board to enable it to be cancelled, endorsed or replaced in accordance with the Minister's decision.

(2) If the grantee fails without reasonable excuse to return the original certificate to the land board within 30 days of receipt of notice to do so, he shall be guilty of an offence and liable to a fine of P100 and to imprisonment for three months.

15. Procedure before cancellation of customary land rights

(1) A land board shall in no case cancel the grant of any customary right to use land—

- (a) without the consent of the holder of the grant unless it has first notified the said holder

in writing of the grounds on which it proposes to cancel the grant and has allowed him not less than 35 days within which to show cause why the grant should not be cancelled or unless it is satisfied for reasons stated in its minutes that it is impossible to notify the holder of the proposed cancellation;

(b) without having ascertained the opinion, if any, of the head of the ward.

(2) Any decision of a land board to cancel the grant of any customary right to use land shall, as soon as it is made, be posted by the secretary on a notice board open to public inspection at the board's offices, and unless the land board is satisfied for reasons stated in its minutes that it is impossible to notify the holder of the right, be communicated to him in writing by registered post.

16. Notice of appeal against decision to cancel

(1) Any aggrieved person wishing to appeal against a decision of a land board to cancel customary rights to the use of land shall do so by lodging notice of appeal with the Minister, at the same time serving a copy of the notice on the land board concerned.

(2) Such notice of appeal shall state—

- (a) the date on which it was lodged;
- (b) the appellant's name and postal address;
- (c) full particulars of the rights which were cancelled;
- (c) the location and extent of the land concerned;
- (e) on what date, by whom and to whom the rights were granted;
- (f) the name of the land board which cancelled them and the date of its decision;
- (g) the date on which the appellant became aware of such decision; and
- (h) the concise grounds on which he appeals.

(3) The district commissioner of the area concerned may, where his assistance is required, personally or by an administrative officer, assist the appellant in framing the notice of appeal and forwarding it to the Minister, within 30 days of being asked for such assistance, with a copy to the land board concerned.

17. Reasons for decision to cancel to be furnished

(1) On receipt of a notice of appeal the land board shall furnish the Minister with the reasons for its decision and shall serve a copy of such reasons on the appellant.

(2) Within 30 days after receipt of the land board's reasons the appellant, assisted if necessary as provided in regulation 16(3), shall be entitled to supplement or amend his grounds of appeal by notice served on the Minister and the land board.

PART IV
Grant of Common Law Land Rights and of Customary Rights under section 33 (regs 18-30)

18. Application for common law land rights under section 23

(1) Before entering, under the provisions of section 23 of the Act, into any lease for agricultural or horticultural purposes to a person other than a citizen of Botswana or the Government of Botswana a land board shall inform the Minister in writing of—

- (a) the name, postal address, age and sex of the applicant for the lease;
- (b) the citizenship of the applicant;
- (c) the applicant's marital status, and the name of the applicant's spouse, if any;
- (d) the ward in which the lease is sought;
- (e) the location and extent of land concerned, with a clear description of its boundaries; and
- (f) full particulars of the lease applied for and the proposed terms and conditions thereof, including the rent.

(2) Without the prior consent of the Minister a land board shall not enter into a lease of the type referred to in subregulation (1).

19. Application for common law land rights under section 24

(1) An application for a common law right to land under section 24 of the Act shall be addressed to the secretary and shall specify—

- (a) the name, postal address, age and sex of the applicant;
- (b) the citizenship of the applicant;
- (c) the applicant's marital status, and the name of the applicant's spouse, if any;
- (d) the full particulars of the right sought;
- (e) the location, description and extent of the land concerned,

and the applicant shall attach to the application the form of agreement which he seeks and a sketch plan of the land concerned.

(2) Applicants shall also be required to produce their national identity cards in the case of citizens, or in the case of non-citizens their passports, residence permits and, in the case of companies, their certificates of incorporation.

20. Consideration of application under section 24

(1) On receipt of an application for a grant of land under section 24 of the Act a land board

shall consider whether and, if so, on what terms and conditions, including the appropriate consideration to be paid by the applicant, it is disposed to grant the land applied for.

(2) If, in the case of an applicant who is not a citizen of Botswana, the land board is disposed to grant the land applied for by way of lease, it shall submit to the Minister the application and a draft agreement of grant including the proposed terms and conditions together with the sketch plan submitted to it by the applicant.

(3) When submitting the draft agreement of grant as provided in subregulation (2), the land board, having examined the register kept under section 16(2) of the Act, shall certify whether or not customary rights in respect of the land concerned subsist and shall state whether or not the owner of such rights has been informed of the proposed agreement and has consented to it and whether or not the proposed grant will in any way affect such rights.

(4) As long as customary rights in respect of a piece of land subsist no grant of that land shall be made which would conflict with such right without the consent of their owner.

(5) If the land board decides to make the grant, and, in the case of an applicant who is not a citizen of Botswana, the Minister consents to the proposed grant, the land board shall inform the applicant that it proposes to execute an agreement in his favour, shall supply him with five copies of the proposed agreement and shall request him, if he accepts the proposed agreement, to sign and return to the land board all five copies thereof.

(6) If the applicant accepts the proposed agreement and returns all five copies duly signed, the chairman or secretary of the land board, if duly authorized thereto by resolution of the land board, shall thereupon execute the five copies of the agreement, with a sketch plan attached thereto, granting the land concerned to the applicant.

(7) On execution of the agreement the land board shall—

- (a) retain one signed copy;
- (b) transmit a further signed copy to the applicant; and
- (c) transmit the remaining three copies to the Director of Surveys and Lands who shall deposit two copies in safe custody for issue to the applicant in the event of registration under regulation 21.

(8) If the land board decides not to grant the land applied for or if in the case of a proposed grant referred to in subregulation (2) the Minister withholds his consent, the land board shall inform the applicant accordingly.

21. Registration of grant under section 24

(1) If a land board requires that a grant should be registered under section 24(5) of the Act, then the board shall serve notice on the grantee in Form 2 set out in the First Schedule.

(2) If the grantee wishes to register the grant or if he is served with a notice under subregulation (1), he shall at his own expense obtain a diagram or plan of the land concerned certified by the Director of Surveys and Lands that the diagram or plan properly represents the

land subject to the grant.

(3) On receipt of the diagram or plan certified in terms of subregulation (2) the grantee shall obtain from the Director of Surveys and Lands the two signed copies of the agreement deposited in terms of regulation 20(7) and shall submit such copies, together with the certified diagram or plan and the prescribed fee, by registered post or in person to the Registrar of Deeds who shall register the agreement and return one copy of each of the aforementioned documents to the grantee by registered post.

(4) The Registrar of Deeds shall notify the Director of Surveys and Lands and the secretary of the land board concerned of any grant registered in terms of this regulation.

22. Form of grant under section 24

An agreement for the grant of a lease in accordance with section 24 shall be in such form as the Minister may approve.

23. Appeal against refusal of consent under section 38

(1) Within a period of three months from the date on which he became aware of the decision of a land board not to grant its consent under the provisions of section 38, any person aggrieved thereby may appeal to the Minister by serving on him a notice of appeal in which he shall state—

- (a) his name and postal address;
- (b) the name of the land board which decided not to grant its consent and the date of its decision;
- (c) full particulars of the transaction to which the land board decided not to grant its consent;
- (d) full particulars of the rights which it was proposed to transfer and the location and extent of the land over which such rights had been granted;
- (e) full particulars of the appellant's interest in the transaction and his rights, if any, in respect of the land concerned; and
- (f) the date on which he became aware of the land board's decision.

(2) The appellant shall at the same time serve a copy of the notice of appeal on the land board.

(3) Within 14 days after receipt of the notice of appeal the land board shall furnish the Minister with the reason for its refusal and shall serve a copy of such reason on the appellant.

(4) Within 14 days after receipt of the land board's reasons the appellant shall be entitled to supplement or amend his grounds of appeal by notice on the Minister and the land board.

24. Applications under section 27

An application under section 27 of the Act by the grantee of any land under the provisions of Part IV of the Act for authority to change the user of any land shall specify—

- (a) the name, postal address, age and sex of the applicant;
 - (b) the marital status of the applicant, and the name of the applicant's spouse, if any;
 - (c) the location, description and extent of the land granted to the applicant;
 - (d) particulars of the right granted to the applicant and the date of the grant;
 - (e) full particulars of the proposed change of user and the land to be affected thereby,
- and shall be accompanied by the registered grant issued to the applicant.

25. Consideration of application under section 27

(1) On receipt of an application under section 27 of the Act a land board shall consider whether and, if so, on what terms and conditions, it is disposed to allow the application.

(2) If the land board is disposed to allow the application, it shall submit to the Minister for his consideration—

- (a) in the case of an application to change the user of land leased under section 23 of the Act, the application, the existing lease and a draft amendment thereto to reflect the changed user;
- (b) in the case of an application to change the user of land granted under section 24 of the Act, the application, the existing agreement of grant and a draft endorsement thereto to reflect the changed user.

(3) When submitting the aforementioned documents to the Minister, the land board, having examined the register kept under section 16(2) of the Act shall certify to him whether or not customary rights in respect of the land concerned subsist in favour of any third person and shall state whether or not such person has been informed of the proposed amendment or endorsement, and has consented to it and whether or not the proposed amendment or endorsement will in any way affect such rights.

(4) If, in the case of an application made by someone other than a citizen of Botswana or the Government of Botswana to change the user of land to agricultural or horticultural purposes, the Minister consents, and if in any case the land board has considered the Minister's comments and is satisfied that its proposed amendment or endorsement is in order, the land board shall inform the applicant that it proposes to execute an amendment or endorsement, as the case may be, in his favour, and shall in a case referred to in subregulation (2)(b) request him, if he accepts the endorsement, to sign and return it in quintuplicate to the land board.

(5) If the applicant accepts the proposed amendment or endorsement the chairman or secretary of the land board, if duly authorized thereto by resolution of the land board, shall thereupon execute the said amendment or endorsement.

(6) Three copies of every such amendment or endorsement shall be transmitted by the land board to the Director of Surveys and Lands who shall deposit two copies thereof in safe custody for issue to the applicant in the event of registration.

(7) If the land board decides to refuse the application or if, in the case of an application made by someone other than a citizen of Botswana or the Government of Botswana to change the user of land to agricultural or horticultural purposes, the Minister withholds his consent, the land board shall notify the applicant by registered post that his application is refused.

26. Registration of endorsement in pursuance of section 27

(1) Where an application referred to in regulation 25(2)(b) has been allowed and the relevant endorsement has been executed on behalf of the land board, the land board shall deliver one executed copy of the endorsement to the applicant.

(2) If the endorsement refers to a grant which has been registered in the Deeds Registry, the applicant shall obtain from the Director of Surveys and Lands the two signed copies of the agreement deposited in terms of regulation 20(7) and shall tender both such copies to the Registrar of Deeds, together with the fee prescribed in the Deeds Registry Regulations, and his copy of the registered grant.

(3) On receipt of the documents specified in subregulation (2) the Registrar shall register the endorsement and return one copy thereof, together with the applicant's copy of the grant to the applicant by registered post.

27. Appeal against refusal under section 27

(1) Within six weeks of receipt of notification given in terms of regulation 25(7) of the refusal of his application an applicant under section 27 of the Act may appeal to the Minister by serving on him a notice of appeal in which he shall state—

- (a) his name and postal address;
- (b) full particulars of his application;
- (c) the location and extent of the land concerned;
- (d) what his rights in respect of the land are;
- (e) the name of the land board which refused the application and the date of its decision;
and
- (f) the date on which he received notification of the refusal.

(2) The appellant shall at the same time serve a copy of the notice of appeal on the land board.

(3) Within 14 days after receipt of the notice of appeal the land board shall furnish the Minister with the reasons for its refusal and shall serve a copy of such reasons on the appellant.

(4) Within 14 days after receipt of the land board's reasons the appellant shall be entitled to

supplement or amend his grounds of appeal by notice served on the Minister and the land board.

28. Service on Registrar of Deeds of certain orders obtained under section 28

(1) Whenever the secretary of a land board obtains, under the provisions of section 28 of the Act, an order of court having the effect of cancelling or rescinding a grant registered in the Deeds Registry, he shall cause such order to be served, within 14 days after it was made, upon the Registrar of Deeds who, when satisfied that there will be no appeal in the matter or that there has been a final determination thereof, shall amend his registers in accordance with such order or determination.

(2) Where an order is obtained in respect of a grant which has not been registered, the secretary of the land board concerned shall notify the Minister and the Director of Surveys and Lands who shall endorse their copies of the grant accordingly.

29. Registration of grant executed under section 32

Where a land board decides to grant land to the State under the provisions of section 32 of the Act, the procedure for registration shall be as for a grant made under section 24 of the Act.

30. Grant of customary rights under section 33

(1) Whenever a land board in accordance with section 33 of the Act grants under Part III of the Act customary rights to use land, the provisions of regulations 8, 10 and 11 shall *mutatis mutandis* apply.

(2) Before executing in favour of the occupier of land granted to the State a certificate of grant of customary rights in respect of other land, the land board shall require the said occupier to surrender any certificate of grant made in his favour in respect of the first mentioned land and shall cause the fact and date of the supersession of such certificate to be endorsed on it and on the duplicate kept in terms of section 16(2) of the Act.

PART V

Treasurer and Audit (regs 31-34)

31. Treasurer of land board

A land board may with the consent of the district council engage as its treasurer the treasurer of the district council at a rate of remuneration to be agreed between the land board and the treasurer subject to the approval of the Minister.

32. Accounts and audit

(1) Every land board shall cause true accounts to be kept in accordance with such instructions as may from time to time be issued by the Minister.

(2) Within three months from the end of each financial year, every Land Board shall cause its accounts for the preceding financial year to be balanced and an annual statement or abstract of

such accounts to be prepared and presented to the Auditor-General.

(3) Such accounts with all books, vouchers and papers relating thereto, with a copy of such annual statement or abstract shall be audited by the Auditor-General, who shall carry out his duties in accordance with the provisions of section 124(2) of the Constitution of Botswana and section 38 of the Finance and Audit Act.

(4) The Auditor-General shall complete the audit of accounts within twelve months of their submission to him.

(5) The Auditor-General's report and the audited statement shall be submitted to the—

- (i) Minister;
- (ii) Minister responsible for finance and development planning; and
- (iii) Chief Executive Officer, who shall cause the report and the audited statement to be tabled before the Land Board.

(6) Every land board shall permit the Board Secretary to check any cash and verify the existence of any assets in its possession and to have access to all its accounts and all books, vouchers and papers relating thereto.

33. Disallowance and surcharge

(1) The Board Secretary may make objection in writing to any item of expenditure, and shall report such objection to the Permanent Secretary.

(2) The Board Secretary shall disallow any such item of expenditure or any part of such item on the ground that the expenditure is wrongful or unreasonable or on any other ground, and the Board Secretary may by order in writing surcharge any person as the person responsible for the payment of any such item having been made.

(3) If it appears to the Board Secretary that any failure to collect money due or any loss of money or damage to the property of a land board has occurred through the wilful or negligent or wrongful act of any member or employee of the land board, he shall by order in writing surcharge the amount thereof on any member or employee who, in the opinion of the Board Secretary, is so responsible.

(4) On ordering such surcharge, the Board Secretary shall forthwith report in writing to the Permanent Secretary the details thereof, and the Permanent Secretary may confirm the surcharge or remit all or any portion thereof as he may deem fit.

(5) Any sum so surcharged on any person shall be deemed to be a debt due to the land board.

34. Financial year

The financial year of every land board shall extend from the first day of April to the 31st day of March, in every year.

PART VI
Fees (reg 35)

35. Fees

The fees payable in respect of—

- (a) the inspection of any register kept in terms of section 16(2) of the Act;
- (b) an application for a lease under section 23 of the Act; and
- (c) an application for a grant under section 24 of the Act,

shall be those prescribed in the Second Schedule.

FIRST SCHEDULE

Form 1
CERTIFICATE OF CUSTOMARY LAND GRANT

REPUBLIC OF BOTSWANA

(under reg. 11)

TRIBAL LAND ACT

(Section 16)

To whom it may concern:

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

.....

.....

of

.....

has been granted for

purposes the use of an area of land estimated at approximately

acres in extent and situated at

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

.....
.....
.....
.....
.....

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

.....
.....

by

on the 20 in the presence of

.....

This grant is subject to the undermentioned conditions

.....

.....

.....

Chairman/Secretary

.....

Land Board

..... 20

Form 2
ORDER FOR REGISTRATION UNDER SECTION 24(5)

REPUBLIC OF BOTSWANA

TRIBAL LAND ACT

(Reg. 21)

IN EXERCISE of the powers conferred by section 24(5) of the

Tribal Land Act, I,
Chairman/Secretary of the
land board hereby call upon you
to register the grant, subject of an agreement between the
land board and you.

DATED this day of, 20

.....
Chairman/Secretary

**SECOND SCHEDULE
FEES**

REPUBLIC OF BOTSWANA
TRIBAL LAND REGULATIONS
(Reg. 35)

1. For the inspection of any register kept in pursuance of section 16(2) of the Act 20t
2. For an application for a lease under section 23 of the Act P1
3. For an application for a grant under section 24 of the Act P5

TRIBAL LAND (SUBORDINATE LAND BOARDS) REGULATIONS

(under section 37)
(15th June, 1973)

ARRANGEMENT OF REGULATIONS

PART I
Preliminary

REGULATION

1. Citation
2. Application

PART II

Subordinate Land Board

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

PART III

Grant of Customary Land Rights

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

Schedule - Certificate of Customary Land Grant

S.I. 48, 1973,
S.I. 62, 1973,
S.I. 93, 1984,
S.I. 97, 1989,
S.I. 65, 1994,
S.I. 90, 1999.

PART I

Preliminary (regs 1-2)

1. Citation

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

2. Application

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

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

PART II

Subordinate Land Board (regs 3-9)

3. Election or appointment of members of subordinate land boards

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

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

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

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

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

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

4. Composition of Subordinate Land Boards

Each Subordinate Land Board shall consist of 10 members comprising—

- (a) 4 members being representatives of the tribe elected publicly at the kgotla;
- (b) 4 members of the tribe appointed by the Minister of Local Government and Lands;
- (c) one member being the representative of the Minister of Agriculture;
- (d) one member being the representative of the Minister of Commerce and Industry.

5. Co-option

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

(2) Persons so co-opted may attend any meeting of the subordinate land board, and at such

meetings may speak but may not vote.

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

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

6. Vacation of office

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

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

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

- (a) has been absent from meetings of the subordinate land board without leave of absence granted by the land board for a period exceeding six consecutive months; or
- (b) is unable to exercise the functions of his office by reason of illness, absence or other cause and has been, or is likely to be, so unable for a period exceeding six months; or
- (c) is otherwise unfit to discharge the functions of his office.

7. Procedure of subordinate land boards

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

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

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

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

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

votes, a casting vote.

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

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

8. Chairmen of boards

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

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

9. Clerk of board

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

(2) The records of a subordinate land board shall be kept by the clerk who shall also record and preserve the minutes of all its proceedings, receive all applications and other documents addressed to the board and conduct correspondence on behalf of the board.

PART III

Grant of Customary Land Rights (regs 10-17)

10. Application for customary land rights

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

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

- (f) the ward affiliations of the applicant; and
- (g) what other land rights the applicant possesses in Botswana.

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

11. Procedure on receipt of application

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

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

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

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

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

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

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

12. Procedure before grant of customary land rights is made

(1) The subordinate land board shall satisfy itself—

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

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

13. Decision of board to be communicated

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

14. Demarcation of land over which customary rights are granted

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

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

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

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

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

15. Certificate of grant of customary land rights

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

16. Appeals against decisions of subordinate land boards

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

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

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

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

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

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

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

17. Cancellation of customary land rights

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

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

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

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

**SCHEDULE
CERTIFICATE OF CUSTOMARY LAND GRANT**

REPUBLIC OF BOTSWANA

TRIBAL LAND ACT

(Cap. 32:02)

(Reg. 15)

To whom it may concern:

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

.....

of

.....

has been granted for

purposes the use of an area of land estimated at approximately

acres in extent and situated at

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

.....

.....

.....

.....

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

.....

by

on the 20 in the presence of

.....

This grant is subject to the undermentioned conditions—

.....

.....

.....

Chairman/Clerk

.....20

.....

Subordinate Land Board

TRIBAL LAND (ESTABLISHMENT OF LAND TRIBUNALS) ORDER

(under section 40)

(22nd September, 1995)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Establishment of Land Tribunal
3. Composition of Land Tribunals
4. Procedure for lodging appeals
5. Witnesses
6. Determination
- 6A. Costs
7. Appeals lodged prior to commencement of Order

S.I. 59, 1995,
S.I. 43, 1996.

1. Citation

This Order may be cited as the Tribal Land (Establishment of Land Tribunals) Order.

2. Establishment of Land Tribunal

There is hereby established a Land Tribunal for the purposes of section 40 of the Act.

3. Composition of Land Tribunals

(1) A Land Tribunal shall be comprised of the following members—

- (a) a President appointed in accordance with the Public Service Act, who shall be a qualified attorney or advocate, of not less than five years standing, employed in the

public service; and

(b) two other members appointed on contract in accordance with the Public Service Act;

(2) When the President of a Land Tribunal is unable, by reason of illness or other sufficient reason, to perform the functions of President, another person qualified in terms of subparagraph (1)(a) shall be appointed in accordance with the Public Service Act to act as President until the substantive President is able to resume duty.

(3) When one of the members of a Land Tribunal appointed under subparagraph (1)(b) is unable, by reason of illness or other sufficient reason, to perform the functions of such member, another person shall be appointed in accordance with the Public Service Act, to act as a member in his place until he is able to resume duty.

(4)(a) In respect of cases heard by a Land Tribunal, the Land Board Selection Committee may, where the President of the Land Tribunal considers it desirable, co-opt two additional members to the Tribunal from among suitably mature, qualified and knowledgeable persons from the district within the jurisdiction of which the lands or matters in dispute lie, and where either of such additional members is unable, by reason of illness or other sufficient reason, to continue to perform the functions of such member, the Land Board Selection Committee may, at the request of the President, appoint any other similarly qualified person to act as a member in his place until he is able to resume duty.

(b) Members co-opted in accordance with paragraph (a) may be asked to tender advice in respect of any matter before the Land Tribunal, but shall not be entitled to vote in respect thereof.

(5) The members appointed under subparagraph (1) shall hold office for such period of contract as maybe determined in accordance with the Public Service Act unless they earlier terminate their contracts, or their contracts are terminated in accordance with that Act; and such contracts may be renewed for such further periods of contract as are permissible in terms of that Act.

(6) The persons co-opted under subparagraph (4) shall be paid such allowances as may be determined by the Minister.

(7) Any person who is declared insolvent or adjudged or otherwise declared bankrupt under any law in force in Botswana or elsewhere and has not been discharged, or has made a composition with his creditors and has not paid his debts in full, or is convicted of any offence involving dishonesty, shall not be eligible to be appointed as President or a member of a Land Tribunal, or if already appointed, to remain as the President or a member of a Land Tribunal, and his office as such shall become vacant with effect from such declaration or adjudgment or failure to pay or conviction, as the case may be.

4. Procedure for lodging appeals

(1) Any person wishing to appeal against a decision of a land board shall—

(a) lodge notice of appeal, in the form prescribed, with the clerk of the Land Tribunal

concerned, together with the fee of P10;

- (b) submit written reasons on the basis of which the appeal is lodged;
- (c) give the names and addresses of the appellant and the respondent, and indicate the district and the area within which, or in respect of which, the dispute arises; and
- (d) cause a copy of the notice of appeal to be served on the respondent.

(2) An appeal should be brought within four months from the date on which the appellant becomes aware of the decision of the land board, but an appeal lodged outside the period of four months, shall be accompanied by reasons for the late delivery, and the Land Tribunal shall determine whether it will entertain the appeal, or whether, in all the circumstances, it should be rejected.

(3) If, in the opinion of the Land Tribunal concerned, the points at issue in the notice of appeal are not clearly enough defined to enable it to hear and determine the matter, it may remit it to the parties or the land board concerned, with such directions or advice as it deems appropriate or necessary.

5. Witnesses

(1) The parties shall inform the Land Tribunal concerned of any witnesses that they wish to be called at the hearing of the appeal, and the Land Tribunal shall cause subpoenas to be served on such witnesses and any other witnesses that it considers should be called, specifying the place, date and time when they are required to attend to give evidence or produce documents.

(2) Witnesses attending before a Land Tribunal shall be entitled to be paid fees or allowances on the same scale as are applicable in a magistrate's court.

(3) Any person subpoenaed to attend before a Land Tribunal who, without reasonable cause, fails to attend or to produce a document he is required to produce, shall be guilty of an offence and liable to a fine of P100 and to three months' imprisonment.

6. Determination

(1) Subject to the provisions of this Order, a Land Tribunal of appeals shall regulate its own procedure, and the frequency of its meetings.

(2) For the purpose of determining any matter before it a Land Tribunal may order any witnesses—

- (a) to give evidence on oath or otherwise;
- (b) to produce any relevant document;
- (c) furnish, in writing or otherwise, such particulars relating to the matter in question as it may require.

(3) In hearing and determining an appeal, a Land Tribunal shall have exclusive jurisdiction in

respect of every matter properly before it and shall not be bound by the rules of evidence or procedure applicable in civil or criminal proceedings, and may disregard any technical irregularity which does not, and is not likely to, result in a miscarriage of justice.

(4) Matters before a Land Tribunal shall be determined—

- (a) in the case of matters involving questions of law, by the decision of the President alone; and
- (b) in the case of matters involving questions of fact, by the decisions of a majority of the members thereof appointed under paragraph 3(1).

(5) The provisions of section 7(5) of the Act shall apply to meetings of a Land Tribunal as they apply to meetings of a land board, and in such event another person shall be appointed in accordance with paragraph 3(3) to act as a member of the Land Tribunal in place of the member concerned for that meeting or for the determination of that matter.

(6) Any interested party to the proceedings before a Land Tribunal may appear by advocate or attorney, or be represented by any other person so authorized by the party.

(7) Proceedings before a Land Tribunal shall be open to the public, unless the Tribunal, for good and sufficient reason, decides otherwise.

(8) A Land Tribunal may, from time to time, adjourn the hearing of an appeal, and shall inform all the parties concerned of the date and time when the hearing will be resumed.

(9) If one of the parties fails, without sufficient reason, to prosecute or defend an appeal after being properly notified of the date, time and place thereof, judgment in default may be entered for the party which does attend, in such manner as the Land Tribunal concerned deems fit, and if neither party appears after being given due notice, the Land Tribunal may, in its discretion, dismiss the appeal or adjourn it to another date.

(10) When a Land Tribunal has determined whether an appeal shall be upheld or dismissed, the judgment, and the reasons therefor shall be recorded in writing, signed by the President, and copies thereof delivered to all the parties.

(10A) A person who is found guilty by the Land Tribunal of an offence referred to in section 39 of the Act shall be liable to a fine of P10 000, or if the offender is a corporate body, to a fine of P20 000.

(10B) A land board, or any other party to an appeal before a Land Tribunal that, without reasonable excuse, fails to enforce any determination made by the Land Tribunal in relation to an appeal under this Order shall be guilty of an offence and liable to a fine of P10 000, or if the offender is a corporate body, to a fine of P20 000.

(11) There shall be a right of appeal from a decision of a Land Tribunal to the High Court, on a question of law, within eight weeks of the delivery of such decision.

6A. Costs

A Land Tribunal shall, where it considers it appropriate to do so, award to a party to the proceedings before it such costs as the Tribunal may determine.

7. Appeals lodged prior to commencement of Order

Any appeal lodged with the Minister or a district commissioner, as the case may be, prior to the commencement of this Order may be heard and determined by the Land Tribunal concerned in accordance with the provisions of section 40 of the Act and this Order.

Endnotes

1 (Popup - Popup)

Delete if inapplicable.

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