



**Republic of Botswana**

**Ministry of Lands, Housing and Environment  
Department of Lands**

## **BOTSWANA NATIONAL LAND POLICY**

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### **ISSUES REPORT (revised)**

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# PREPARATION OF A COMPREHENSIVE NATIONAL LAND POLICY FOR BOTSWANA

## ISSUES REPORT

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## Abbreviations

ADR	Alternative dispute resolution
AG	Attorney General
AGOA	Africa Growth and Opportunity Act (US)
APA	Acquisition of Property Act
ARCA	Agricultural Resources Conservation Act
BLIS	Botswana Land Information System
BMC	Botswana Meat Commission
CBNRM	Community Based Natural Resource Management
CHA	Controlled Hunting Area
CL	Common Law Lease
CLG	Customary Land Grant
COR	Certificate of Rights
DBPRS	Draft Botswana Poverty Reduction Strategy
DL	Department of Lands
DLUPU	District Land Use Planning Unit
DO(L)	District Officer (Lands)
DRA	Deeds Registration Act
DSM	Department of Surveys and Mapping
DTRP	Department of Town and Regional Planning
DWNP	Department of Wildlife and National Parks
EIA	Environmental Impact Assessment
FPSG	(Deed of) Fixed Period State Grant
GCC	Gaborone City Council
GDO	General development order
GP	Government Paper
HIV/AIDS	Human Immuno-deficiency Virus/Acquired Immuno-Deficiency Syndrome
JV	Joint Venture
LB	Land Board
LCA	Land Control Act
LGSC II	(Second) Local Government Structure Commission
LSA	Land Survey Act
MCI	Ministry of Commerce and Industry
MFDP	Ministry of Finance and Development Planning
MoA	Ministry of Agriculture
MLG	Ministry of Local Government
MLGL	Ministry of Local Government and Lands
MLHE	Ministry of Lands, Housing and Environment
MPPA	Married Persons Property Act
NAMPAADD	National Agricultural Master Plan for Agriculture and Dairy Development
NEPAD	New Economic Programme for African Development
NSP	National Settlement Policy
RAD/RADs	Remote Area Dweller(s)

RADP	Remote Area Dwellers Programme
SHHA	Self Help Housing Authority
SLIMS	State Land Information Management System
T&CPA, TCPA	Town and Country Planning Act
TCPB	Town and Country Planning Board
TGLP	Tribal Grazing Land Policy
TLA	Tribal Land Act
TLIMS	Tribal Land Information Management System
ULGS	Unified Local Government Service
VAT	Value Added Tax
WMA	Wildlife Management Area
WUC	Water Utilities Corporation

## **SUMMARY AND OVERVIEW**

### **PURPOSE OF THE REPORT**

1. This report contains a review of land policy issues. The TOR for the Consultant conducting the National Land Policy Review are in Appendix B.
2. This report will be discussed by the Reference Group at 14.00 hrs, 24 September 2002, in the Conference Room in the Ministry of Lands and Housing.
3. The findings of the report will be presented in a series of stakeholder workshops to be conducted during the last week of September and the first two weeks of October 2002 in Francistown and Gaborone.

### **FURTHER WORK ON LAND POLICY FORMULATION**

4. Following the workshops, the consultants will meet the Reference Group again to discuss the Land Issues report further in the light of comments made at the workshops. This will enable the Reference Group to give the Consultant guidance on the general thrust of the prescriptions to be incorporated in the Draft Land Policy document. This Reference Group meeting should be held on 22<sup>nd</sup> October 2002 at 0900hrs.
5. When the findings of the Land Issues report have been accepted (or amended) by the Client, the consultant will start to draft the administrative, social, economic and legal prescriptions of the Land Policy.

### **INTRODUCTION TO THE ISSUES**

6. The Terms of Reference identify over twenty discrete topics and issues to be addressed by the consultant. In this summary, they have been assembled under eight main headings.
7. The dominant theme is the need to adjust the land policy and land laws, administration and management to the changes being brought about by economic development and associated urbanisation in Botswana. These changes are reflected in the rapidly emerging land market, where the buying and selling and leasing of land and property are increasing very rapidly as a result of rising demand.
8. The land market is both a consequence of national development and a contributor to it. Growth in the land market has been made possible by the development of public and private sector services to support the property sector. The evolution of policy and legal reforms extending the scope of permissible land transactions has been a major contributor. Overall, there is an acceptance that the development of a land market is good for Botswana, but that it has to be regulated and controlled.

9. The Government is concerned over the twin evils of landlessness and land hoarding by speculators. It is clear that either through lack of will or through inadequate legal provisions, existing laws restricting amounts of land persons may acquire or hold have not been effective. At the same time, the number of people without land, especially in urban areas is increasing. The land policy issues report considers a series of measures to tackle urban landlessness and the anti-social conduct of land hoarding and land speculation.

#### **LAND RIGHTS ISSUES**

10. **Land rights of the poor** Suggested policy prescriptions include the following:
- Strengthen the planning and implementation capacity of land boards and councils to ensure that poor people have access to land.
  - Relieve the severe urban land shortage by:
    - amending policies and existing legislation for the free transferability of customary land rights in certain areas;
    - setting aside more suitably-located, demarcated and surveyed land for low-cost housing under SHHA or other schemes for poor people.
  - Design and implement a low-cost housing scheme for the very poor that is neither subject to distress sales nor speculation (e.g. Council retains the land and/ or structures).
  - Re-introduce the Certificate of Rights on state land in urban areas.
  - Ensure that the fencing of communal rangeland does not run ahead of the capacity of district councils and RADP to accommodate evictees.
  - Ensure that evictees and others displaced by implementation of the Fencing Component receive adequate and just compensation.
11. **Land rights for women** Government could support policies which:
- Educate women and raise their awareness of their rights so that they are conscious of existing opportunities and can make informed choices.
  - Remove all official barriers that make it difficult for women to acquire land.
  - Remove discrimination, either direct or indirect, in determining the occupation or use of land; attendance at, or participation in, decision-making forums regarding the occupation or use of land; or membership of any structure involved in the administration and management of land rights.
  - Recognise that differential treatment of women and men, and of different groups of women, may be necessary to ensure equal outcomes in land tenure.
12. **Land rights of minority groups** The policy should aim to give RADs more control over land management arrangements, as other citizens already have. Appropriate actions following from this principle might include:
- Upholding the rights of minorities to pursue a different life style and maintain a distinct culture from that of the majority,
  - Promoting economic and social empowerment of all citizens, addressing the plight of the rural poor, etc.
  - Promoting sustainable use of land and conservation of natural resources, and
  - Diversification of both the rural and the national economy.



Within the land sector:

- In those localities where RADs or other minority groups form a majority, new sub-land boards or related structures could be established to regulate the use of the land.
- New water development in RAD settlements should be put under the control of the RAD residents themselves.

13. **HIV/AIDS and land rights:** The land policy should address the plight of the poor and the landless, especially those who have been thrown into deeper poverty by HIV/AIDS. Appropriate actions following from this principle might include:

- Conducting a special investigation of the impact of HIV/AIDS on land rights, land use and occupation in urban and rural areas.
- Strengthening property rights for women to reduce the negative impact of surviving dependants in both rural and urban areas.
- Prompt allocation of land and shelter for the very poor, especially in urban and peri-urban areas.
- Ensuring that affected households can draw on their capital assets in a time of need by renting /leasing or transferring potentially productive land, which would otherwise lie idle.

#### **LAND MARKETS AND LAND TAXATION ISSUES**

14. **Promoting land market efficiency** Measures might include:

- Ensuring better access to information about parcels of land without inconveniencing the land boards or Deeds Registry officials or undermining the integrity of the land rights in question.
- Identifying ways of speeding up transfers, especially, but not only, those that must pass through the land boards.
- Identifying other transactions costs (surveying, travelling to offices, etc.) that can be reduced.
- Providing efficient, low-cost ways of surveying plots and issuing title deeds.
- Providing more clarity and certainty as to the conditions according to which fixed period state grants (FPSG) are to be renewed.
- Devising low-cost methods to resolve land disputes in urban areas as an alternative to using the courts.

15. **Extending land markets** Particular areas for attention might include:

- Permitting leases/sub-leases of customary land grants and common law grants.
- Re-examining the prohibition on the transfer of undeveloped plots, in conjunction with a re-examination of the principle of allocating plots for free.
- Ensuring that, if the transfer/sale/lease of tribal land is to be allowed, it must also be possible to do so without undue cost and delay.
- Reviewing procedures to ensure that they are not prohibitively time-consuming or costly.

16. **Illegal and extralegal land transactions** Illegal land transactions are those transactions that are conducted in violation of the law, while extra-legal transactions are those that are conducted without the benefit of legal recognition

but which may not be explicitly forbidden. Illegal transactions thwart land policy and force government to reinforce measures to prevent such transactions from taking place. Extra-legal transactions leave one or both parties insecure because neither can have recourse to the law in the event of a dispute. The persistence of illegal and extra-legal land transactions calls for three types of measures:

- addressing the conditions that make non-legal transactions so likely and tempting;
- careful reconsideration of which type of transaction should continue to be restricted or banned; and
- more vigorous enforcement of rules that still apply and the introduction of new rules where necessary.

Subsumed within these points could be the following measures:

- Accelerate the pace at which land of different categories is made available, especially unserviced land on which self-help housing can be erected.
- When engaging in compulsory acquisition, improve compensation to *masimo* holders according to the open market value of their land.
- Revise the functions of the land boards, especially in relation to operations in peri-urban areas, so that they acknowledge and monitor the many land transactions that are taking place, including land rentals.
- Close loopholes that are presently being exploited to transfer ownership to non-citizens without the oversight of the Deeds Registry (e.g. through sub-division into lease areas and via property companies).
- Ensure that the capital gains tax is properly applied in cases of land sales, especially where there have been windfall gains arising from change of use.
- Provide for standard types of lease and develop pre-printed proforma documentation to enable people to enter into these classes of lease agreement.

17. **Strengthening the property tax system** The land policy should provide regulatory arrangements for the efficient, sustainable and equitable occupation and use of land. This requires that users pay for the services they receive. It is therefore necessary to:

- Review the proposed amendments to the Town Council Regulations, and determine if Local Government and/or the Department of Lands can now champion them;
- Make valuation rolls easily available to the public, inform the public as to their publication, and allow ample time for objections to be lodged;
- Examine the possibility of extending liability of rates to all 'built-up' areas, including those that fall outside township boundaries;
- Devise a system for the collection of rates in non-township areas, either by capacitating district councils or co-operative arrangements with town councils;
- Determine criteria for when a private township should fall within the taxing jurisdiction of the adjacent town council, and what rates would apply;
- Establish a valuation tribunal to hear all disputes/grievances/appeals arising from property valuations.
- Review the Transfer Duty regulations to ensure all "proper" transfers are assessed for and pay duty, including transfers on tribal land and sales camouflaged as leases.
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- 18. Land information** Parcel-related land information (topography, size and location, building structures, names and number of occupiers, tenure arrangements, etc), is essential for land administration and management in the broader sphere as well as for assessment of rates and for tax collection.
- The Tribal Land Information Management System (TLIMS) should be extended to obtain the information needed to ensure that it is economically justified by focusing initially on high market value and problem areas.
  - Information should be shared between land boards, and between land boards and urban authorities to limit the unproductive hoarding of land. The capture of land information and maintenance of the TLIMS data base should be an integral part of the work processes.
  - Digital maps should be developed at appropriate scales for ‘urban’ villages, peri-urban areas, other locations such as areas targeted for commercial arable development and DTRP planning areas, etc.
- 19. Access to land by non-citizens** Similar principles and policies relating to access to land by non-citizens should apply to urban and agricultural land.
- The Land Control Act (LCA), which applies to agricultural land, should also apply to urban land. Criteria for the grant or refusal of consent to transfer FPSGs appropriate to urban land should be developed taking as the starting point s.7 of the LCA.
  - It might be appropriate to require a prior residency qualification in Botswana or even in the local authority area where an FPSG is to be obtained so as to help prevent absentee landlordism and fronting.
  - The LCA should be amended to provide for appeals from the Minister’s decision on an application for consent to a Land Tribunal.
  - Land boards should apply s.7 LCA criteria to consent for transfers of land to non-citizens under s.38 of the Tribal Land Act.

#### **URBAN AND PERI-URBAN LAND MANAGEMENT ISSUES**

- 20. Regularisation of peri-urban settlements** Three guiding policy principles are suggested: (i) land use planning should precede development; (ii) all citizens should benefit and be empowered equally from land developments and (iii) regularisation of land rights should be just, equitable, transparent and efficient in order to avoid non-compliance practices, unnecessary demolition of ‘illegal’ developments, and protracted legal challenges between field owners, land boards and the government. These may require:
- Developing a working partnership between landholders (including customary land rights holders), district councils and land boards in order to realise full potential of partly developed land without compromising national, local, institutional and rights holders’ interests.
  - Granting customary land rights holders the choice to apply to respective land board and council (individually or as a group) for a planning permit for a change of use and subdivision of their holdings.
  - Applicants paying prescribed fees to their land board and satisfying all provisions of the Town and Country Planning Act (TCPA) and other relevant regulations including approval from the council.

- All plots to be serviced to urban development standards before disposal.
  - Land boards consult with rights holders, if any, in the early stages of the planning and land regularisation process.
21. **Land use planning framework for Gaborone and other urban areas** The aim is to provide for an institutional framework that will facilitate the planning and design, construction and maintenance of urban infrastructure across different tenure categories: tribal, state and freehold land.
- The ideal situation would be a single administrative and planning authority (e.g. creating a Greater Gaborone Metropolitan Council). This is, however, likely to be resisted by interests fearing loss of identity and political influence.
  - Another possibility would be a planning council with all authorities as equal partners. The consultative council would, therefore, have to operate by consensus. This would probably result in less than total commitment by those unhappy with some decisions.
  - Probably the more practical approach would be to establish a legally constituted Metropolitan Council charged only with matters of common interest e.g. public rail and bus transport, road and other infrastructure networks, sanitation and waste disposal sites. The Metropolitan Council would have a budget and capacity to implement projects within its portfolio.
  - The issues arising from the growth of Gaborone are likely to arise in other urban areas, as they continue to grow and expand.

#### **RURAL LAND MANAGEMENT ISSUES**

22. Failure to tackle land-use and management issues will allow land use problems to restrict economic growth and impose costs in other areas of the economy; e.g. the landless and jobless poor moving into the towns; slower growth in the tourism industry and continuing decline in wildlife populations and biodiversity.
23. **Rural property rights** Greater flexibility in the allocation of rights to use land would enhance the ability of rural households to diversify their domestic economy in response to the rapid economic changes now taking place in society. The Draft Revised Policy on Rural Development proposes that people should be permitted to lease out residential and arable land held under customary grant or common law lease, and should be able to use a single parcel of land for multiple uses. In addition, arrangements such as sharecropping and share farming should be encouraged. Greater flexibility in the interpretation of the customary land law in respect of minority groups would assist them to retain their rights and use them to generate livelihoods.
24. **Conversion of arable land to other uses** Within planning areas, the Town and Country Planning Act could provide an adequate basis for the protection of high potential arable land. Depending on their scale, proposed changes in land use would require sanctioning at different levels of government. Within planning areas, unless planning permission is obtained, land subdivisions cannot be registered in the land registry. Even where land subdivision may not be required, building construction has to be cleared with the local authority.

25. **Communal grazing** An overarching principle must be that all citizens should have the opportunity beneficially to occupy and use the land. Privatisation and enclosure has already taken place at a pace too rapid for the welfare of many rural people. However, it is imperative that the communal area should be better managed, which requires that communal rights are made more secure.
- Rural communities must be involved in decisions that have a direct bearing on their livelihoods. This is an essential pre-condition for the realization of participatory development.
  - Securing communal grazing rights entails giving legal recognition to the existence and validity of community-based property rights.
  - The over-centralization of communal area management has undermined local institutions and the organic evolution of customary land law in accordance with changing land availability and local needs. The process should be reversed to place resource management in the hands of resource users.
26. **Dual grazing rights** Frequent policy pronouncements have been made about the abolition of dual grazing rights. Legislation is unlikely to have the desired effect in the absence of profound changes in economic orientation, animal husbandry and even social and cultural life.
- Legislation could perhaps require that persons wishing to move livestock from a fenced ranch to a communal area be required to obtain permission from the body responsible for that area's management. At present this will be the land board, but in future it could be a communal grazing committee.
  - The Draft Revised National Policy on Rural Development proposes that leases for fenced ranches should be allocated by tender or auction. This should ensure that successful applicants have an appropriately commercial approach.
  - The policy further proposes that rents for fenced ranches on tribal land should be charged at commercial rates. This would serve to compel inefficient farmers and speculators to review their management practices and tenure arrangements.
  - Provision should be made to allow those who do not wish to continue as ranchers and pay a commercial rent to do one of the following: to surrender their lease and allow the land to revert to communal status; to surrender the lease for re-allocation by the land board; or to sell the lease.
27. **Change of use of TGLP ranches** Some ranch holders would like to diversify land use to include game farming and tourism related activities. In some districts, land boards have been reluctant to sanction such changes of use as they appear to conflict with the District Land Use Plan. Land should find its most profitable use.
- Holders of TGLP leases should be permitted to manage their farms profitably and not be subjected to unnecessary restrictions.
  - Land zoned for commercial use should be used in a commercial manner and leaseholders should be free to select the most appropriate sustainable use.
  - Subsidies, if given at all, should enhance economic returns rather than the financial returns of one class of producer at the expense of others.

28. **Land for wildlife development** Botswana has suffered a major decline in its wildlife resources over the past 30 years. Large tracts of land that were occupied by large and productive populations of wild animals in 1970 are now largely occupied by livestock and only contain relict populations of wild animals. The only region to avoid this outcome has been Northern Botswana where land use planning policy has prevented the loss of wildlife critical habitat. Appropriate policy principles to be introduced and followed might include:
- according competing land uses similar treatment in policy terms,
  - extending more favourable treatment to desirable land uses which have been at an historic disadvantage,
  - promoting the economic and social empowerment of all citizens, addressing the plight of the rural poor, etc.
  - promoting sustainable use of land and the conservation of natural resources, and diversification of both the rural and the national economy.
29. **Land for tourism development** Like land for other uses, land for tourism requires transparency; rules which secure interests once land is allocated; a level playing field for all participants; balance between public and private interests. Despite the intentions to distribute concessions widely, a concentration of control over concessions is taking place due to fronting at the application stage and subsequently.
- The development of monopoly power in the industry needs attention. Action might be needed to reduce the market share of the largest service provider.
  - There is need to educate the public in their rights and responsibilities and to ensure that concessionaires neither assume rights to which they are not entitled nor neglect the duties assumed under their leases.
  - Land boards need to have a more positive approach to concessionaires and joint venture partners – a good landlord/tenant relationship should be the aim.
  - Good monitoring and a supportive attitude by the landlord will materially assist the concessionaires and communities to manage their enterprises better and enhance the social and economic benefits to society. The time, manpower and money invested in the monitoring function should be commensurate with the high value of these leases to the land board.
  - Longer concession periods might encourage more investment in infrastructure and in training and capacity building of community partners.
30. **Management of land and natural resources**
- The Ministry of Agriculture and the Department of Wildlife and National Parks are currently reviewing policy on CBNRM.
  - The policy should encourage the further democratisation of the allocation and management of land and natural resources.
  - Consideration should be given to involving local community-based institutions in the allocation and management of land and natural resources.
  - The nature of the appropriate institution, the powers and rights to be given and the issues they should address all merit further detailed discussion with all stakeholders.

## LAND USE PLANNING

31. Recommendations are based on three assumptions. First, separation of power is essential for good governance. It is, therefore, improper for any institution to prepare and approve its own plans. Checks and balances are critical for effective land use planning. Secondly, local authorities and land boards are better placed to appreciate community needs than central government departments. Thirdly, participation of community members in plan preparation and decision-making is essential for effective implementation. Recommendations point to the need to:

- streamline land use planning process;
- improve co-ordination;
- minimise overlaps between national and sub-national institutions; and
- promote co-operation between local authorities on issues of common interest.

In tune with the principles of good governance and, in particular, to enhance trust and accountability, there is need to:

- Accelerate the decentralisation of land use planning and related activities in order to foster efficiency, transparency and accountability.
- The Department of Town and Regional Planning should be primarily concerned with (i) national guidelines and land use planning policies; (ii) and serving as a secretariat for national land use planning matters including preparation of national physical plans.
- Cabinet should approve all national land use planning policies and plans on the advice of the Town and Country Planning Board (TCPB).
- The TCPB should approve all regional, village and other large-scale land use plans.
- District Councils should (i) prepare village structure or development plans for the approval of The TCPB; (ii) prepare local land use development guidelines, policies etc.; (iii) and approve detailed plans submitted by landowners. It is improper to make and approve own plans.
- Land boards, as land lords, should (i) prepare detailed land use plans for approval by council; (ii) assist customary land rights holders to obtain planning permit and approval from council; (iii) and keep proper land records on applications, allocations and transfers.
- An independent tribunal should determine disputes related to town and regional planning issues.

32. **Land use planning processes and plans** Two overriding principles: Increased efficiency in the use of land and resources used in planning; and making plans that are realistic, acceptable and possible to implement. Options available for achieving the above principles include:

- First, declare the whole of Botswana a planning area. This will require preparing a land use plan for all land in the country. All construction works and change of use would require planning permission.
- Second, declare planning regions for critical areas, e.g. the 'hard veld' or '200m along highways', 'greater conurbation' and progressively increase critical areas until the entire country is covered.

- Introduce administrative regions as proposed in the NSP
- Sector plans should follow land use plans - that is, land use plans should play a co-ordinating role and serve as a spatial expression of national, regional, district and sub-district or village plans.
- Sector plans should be prepared before land use plans while national and regional plans should be prepared before district and village plans.

#### **LEGAL ISSUES**

33. The context for this group of issues is the land market. Two perspectives impel this context. First, the irrefutable evidence that land markets exist in Botswana. That is the reality on the ground. The second perspective of land markets is the many official statements and inquiries that recognise the reality of land markets and the need to accept this reality.

34. **Institutional/legal reforms** The following priority actions are suggested:

- develop a national legal framework to allocate land planning and approval to appropriate planning authorities and land administration and management to the land authorities (e.g. land boards);
- put in train a fundamental thorough and rapid review of the governance of land in Gaborone with a view to creating a unified and coherent legal and administrative framework for same;
- develop a dedicated system for the handling of land disputes embracing a specialised Land Court or Tribunal, Alternative Dispute Resolution procedures and legal assistance for the poor;
- establish a commission to review the present private law and practice of land transactions and registration with a view to the creation of a land law and practice apt for the needs of all Botswana in the 21<sup>st</sup> century.

35. **Land tenure and transactions** Land markets must be enabled to work for the benefit of all and all must be enabled to participate on an equal footing in the land market. To apply these to principles to Botswana, Government should:

- set out the content of rights of FPSGs and the criteria for their renewal in law;
- recommence the use of CORs;
- develop a simplified locally based system of recordation of CORs and Customary Land Grants (CLGs) and of transactions in them;
- recognise the existence of a land market in peri-urban areas; validate existing transactions and create a legal framework for the future operation of the market;
- create a range of 'permitted uses' for CLGs and common law leases on tribal land;
- create a more user-friendly and pro-poor legal regime for secured loans and leases;
- re-order and limit the discretion of land boards to regulate tenure and transactions.

36. **Land planning and control** In line with the principles of enablement and equity, proposals involve:



- a fundamental rethink of the objectives, scope and powers of the Town & County Planning Act, so as to reorientate it to become a more development-friendly law with fewer restrictions on development especially small-scale housing and commercial developments;
- to do the same for the land control powers of the Tribal Land Act;
- limit the scope of developments for which EIAs may be required;
- establish by law co-operative arrangements between local planning authorities and LBs to ensure a complementary, simplified and participatory system of land use planning and controls exists at the local level;
- while vesting the Minister with backstopping and guidance powers to ensure that national interests and policies are implemented, allocate appellate functions throughout the system to a dedicated appellate body;
- involve the private sector and civil society in reviewing land control systems;
- stop demolition of ‘illegal’ homes pending above reviews.

37. **Equity, land and power** The principles involved on these matters are:

- the principle of non-discrimination;
- the principle of international law and dictates of social justice that distinctive minorities within a country have a right to preserve their own way of life and culture and should be assisted to achieve this;
- the principles of administrative justice;
- the principle of the protection of private property.

Applying these principles involves choices since they do not always point in the same direction.

- **Women’s land rights:** equity and efficiency in both land use and land markets will be enhanced by a resolute attack on discrimination against women’s rights to acquire, own, use, dispose of and succeed to land in all legal systems in Botswana.
- **RADs:** Government must be seen to be complying with international law, its own laws and the growing global emphasis that tackling poverty is the prime focus of development. It must be prepared to re-assess its policies and practices in relation to RADs (and other minorities) and their land rights and at the same time mount a legal rebuttal of allegations made against it in international fora.
- **Compensation:** compensation for compulsory acquisition, in respect of the reversion of FPSG, common law leases and in other situations needs to be reviewed as a whole in the light of principles above. Alternative forms of compensation need to be provided for in the law.
- **Dual grazing:** customary tenure is not unchanging. Justice requires that where one obtains a benefit from a reform which may disadvantage others, one cannot at the same time retain rights, now diminished because of the reforms, which one had before the reforms.

#### **INSTITUTIONAL ISSUES**

38. The essential land sector institutions are in place but they require some considerable adjustment to cope with the demands of the evolving land market.

- First, actions are required to consolidate the institutional restructuring following the separation of the MLHE from the MLG.
- Second, actions are needed to clarify the roles and responsibilities of the land sector agencies and to reassess the institutional relationships, both internally and with local government. The uncertainties relate to the efficiency and applicability of the current land use planning system and the respective roles of the land boards and the DTRP/district councils.
- A choice needs to be made between: either bringing the land boards into a clear and direct line of authority and control under the MLH, or decentralising decision making and making them more accountable to citizens in the areas they serve. If this later option were taken, land boards would have a similar relationship to the MLH as the councils have to the MLG, except that land boards must be apolitical bodies.
- Thirdly there is need to improve the operational efficiency of bodies (land boards and DLUPU) at district level and below which are involved in land administration and management through decentralisation and devolution of power, training and capacity building.
- Once these roles and responsibilities are clarified, there still appear to be some gaps remaining. There is need to broaden the scope of the Land Tribunal to cover disputes and appeals relating to the Town & Country Planning Act and the Land Control Act and land valuation; there is need to cater for the planning and implementation of infrastructure of greater Gaborone; and to provide for community-based management of land and natural resources.

#### **FINANCIAL ISSUES**

39. Allocation of public funds for the land sector requires that:
- expenditure represents a justifiable use of the government's resources;
  - it should be allocated on the basis of legitimate mandates,
  - and to those programmes and projects for which subsidies can be justified in terms of the public interest, social welfare, etc; in other cases, public expenditure in the land sector should be recovered from the users.
40. A review of expenditure and revenue in the land sector in terms of these principles indicates that there is ample scope for improving performance.