Botswana’s Experience on Recognizing Traditional Land Rights on a Large Scale

Dr Boipuso Nkwae
Department of Civil Engineering – Geomatics Section
University of Botswana, Gaborone, Botswana
nkwaeb@mopipi.ub.bw

Abstract
Like most countries that were colonized, Botswana has inherited dual forms of land tenure, one based on traditional land rights and the other one based on statutory or western tenure system. Botswana has resisted the pressure to replace its customary tenure with statutory tenure (‘the replacement paradigm’). It developed a very robust land administration system which has contributed immensely to its social and economic development as well as good governance. Botswana’s land tenure policy can be described as one of careful and gradual change, responding to the needs of a developing society with specific tenure innovations. Even after 40 years of experimenting with the Land Boards, Botswana still describes its land administration system as ‘work in progress’. It continues to adjust and adapt its land administration based on traditional land rights and cultural values to meet the needs of a rapidly urbanizing economy and growing land market. It has continued to generate solutions to land administration problems that have continued to elude other countries in the region.

1. INTRODUCTION

Since independence in 1966 Botswana has strongly rejected in principle the expansion of the western freehold tenure concept as an inequitable means of distributing both rural and urban land. This stems from the fact that freehold land allocation based on financial ability to purchase residential plots excludes the majority of the citizens from owning land, or alternatively, permits only the urban elite to afford to buy and develop land. In this regard, non-freehold forms of tenure concepts were devised under the Tribal Land Act of 1968 and the State Land Act of 1970 to address the fundamental question of equity in the distribution of land for residential, commercial and industrial investment. Both acts provided the general machinery of land administration of both rural and urban lands, with the Tribal Land Act setting out to provide for the gradual transformation and remodelling of the traditional land rights. This traditional land rights tenure reform facilitated access
to and use of customary land in both periurban and rural areas through new statutory land administration institutions called Land Boards and new land tenure innovations while providing for traditional forms to be retained. This approach to traditional land rights tenure reform predates the de Soto’s arguments by over three decades [de Soto, 2000].

In addition, Botswana established a land tribunal to hear appeals from decisions of the Land Boards that administer customary land tenure and is recently embarking on plans to establish a second tribunal to cover other land forms of statutory tenure. The Botswana tribunal system is exemplary since “it goes out of its way to be user-friendly even being prepared to hold hearings in people’s houses when a litigant is too old or frail to make the journey to court” [McAuslan, 2002: 26]. In many countries in the region, especially in Uganda, these judicial bodies suffer from several defects:

- not truly independent;
- under-resourced;
- treated as second class bodies of dispute settlement; and
- not given adequate premises to operate effectively.

2. LAND ADMINISTRATION IN BOTSWANA

2.1 Land Administration before the Land Boards

About four decades ago, land administration in the tribal areas was in theory undertaken by the chief under very strict customary rules. For example, the chief apportioned blocks of land to the sub-chiefs in the villages, the sub-chief would in turn re-distribute land to ward heads whose duty was to allot land to individual family heads, and family heads apportioned land to themselves and members of their family (see Figure 1). This decentralized land administration system was very tight and efficient because those who were given the responsibility to oversee land could easily manage their areas, which were only small parts of a larger unit [Machacha, 1982]. In cases where there were no ward heads, especially at the cattleposts (meraka), the Chief would appoint as his representative a land overseer (modisa).
The following elements are characteristic of the traditional land rights system in Botswana:

- every person has the right to land for residential, cultivation and grazing by virtue of his or her membership in some social group;
- individuals have security of tenure, i.e., the right to remain in occupation undisturbed;
- land rights are inheritable;
- individual group has the choice to cancel non-members’ rights to land, and can in certain cases, reallocate land not cultivated or underutilized.

Schapera [1943: 44] described the occupation and use of land in Botswana’s tribal territories as being governed almost entirely by customary law. In tribal areas:

…the Chief controls the allocation of land and assigns a residential area, a separate arable tract and grazing land to each of the wards in his capital. The holding of each ward is controlled by the ward head who must provide for all the households under his authority. Every family is entitled to land for residential and agricultural purposes and the head of the family assigns plots to his descendants.

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1 Group membership or tribal affiliation was the determining factor in gaining access to land. However, outsiders also gained access through various ways: marriage, paying tribute to the chief, loan, etc. Another point to note is that since land was administered under customary law which is unwritten, there were no land allocation records were kept.
The land tenure structure common to most ethnic *Tswana* groups followed a concentric ring pattern. In the centre was land earmarked for residential and a considerable distance away from home—the ‘lands’ or arable areas which “may be as far as 30 miles from the village and although generally restricted to certain regions may, in arid conditions, be widely scattered” [Dale, 1976:211]. The grazing and hunting areas would then stretch from the edge of the arable areas to the point where they met the boundary of another village or tribe.

The Batswana², like other traditional societies elsewhere around the world, had no precise set of rules for demarcating the various land tenure categories. The different land uses varied according to the needs of society. For instance, if more land was required for residential purposes, the next step was for arable land to be converted into residential. Similarly, if more land were needed for arable agriculture, land from the grazing areas would be equally appropriated. The same would apply for grazing and hunting areas.

Once individuals were allotted occupation and use rights for residential and arable, they exercised exclusive rights over those land parcels. Individuals did not acquire outright ownership rights (in the western sense) but they enjoyed the use rights in perpetuity and the usage rights. The community³ “retained the reversionary interest in the unlikely event of the land some day falling vacant” [Frimpong, 1993:387]. The right to occupy and use land, despite the fact that it was inalienable outside the group, was nonetheless very secure as it was inheritable, perpetual, and transferable for a consideration amongst group members.

Land disputes arbitration was handled by the same land administration authority structure that handled the land allocation (see Figure 1). In cases of land disputes, an individual would first take the dispute to the family head and if not resolved the dispute would be taken to the ward head or headman (sometimes these two positions would be held by one person), then an appeal would be considered by the sub-chief or section head before being submitted to the paramount chief.

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² People who live in Botswana are referred to as Batswana (plural) and Motswana (singular).
³ Bentzi-Enchill (1965:123): In traditional Africa … the title theory is that the alodial or ultimate ownership of all the land of the community is vested in the State or the community.
**Acquiring Residential Land:** For administrative purposes, a tribal territory was divided into sections and wards. A section was composed of several wards (an equivalent of a sub-district) to be administered by a headman whilst a ward was headed by a ward head.

The ward was a geographically based administrative system, consisting of physically declared boundaries. The ward was laid in a semi-circular arrangement (horse-shoe shape), with the kgotla (traditional assembly), cattle-kraal in the centre and the ward head’s residence in the centre. Individual families would occupy land in a semi-circular fashion. According a prominent scholar on Tswana property law and land tenure, Isaac Schapera:

*In appearance the Tswana village is typically a cluster of small circular hamlets separated from one another by narrow lanes or broad roads. Each hamlet is inhabited by a single ward or sub-ward, and their number varies with the size and organization of the population* [Schapera, 1970: 26].

These sections and wards divided the tribal territory into small physical entities. When settling at a new territory, the chief would choose a centre place for a kgotla (traditional assembly place) and then allocate himself land for residential and cultivation purposes. Then his advisers and close relatives would be allocated residential land near him. The next in line would be allocation of land according to wards. The ward head would in turn allocate enough land to individual heads of households and reserve some land for future expansion. The heads of households would allocate building sites to their wife or wives, sons, grandsons and close relatives.

**Acquiring Arable Land:** Different partitioning rules were applied when demarcating arable land. For instance, cultivation areas were allocated according to soil fertility, clay-loamy soils being the most preferred. The other factor taken into consideration in the allocation process was the ease of cooperation with neighbours. Contiguous fields would be allocated to people of the same blood relations. However, it was common practice for strips of land to left between fields as this was designed to serve several farming strategies [Wynne, 1986: 366]:

- Buffers of land between blocks of land served as a grazing area for cattle kept near the fields in the growing season. This served the dual purpose of grazing the plowing oxen and milk cows.
These undeveloped portions can be used by existing households on a rotating basis, and kept as commons from which to gather wood, building material such as poles and thatching grass, hunting, and collection of veldt products.

The space between the fields acts as a land bank, and could be divided into equal shares to meet future land expansion and helps in terms of coping with unanticipated future land needs of returning daughters after divorce, widows, and other landless relatives.

Acquiring Grazing Land and Access to Hunting Areas: With regards to grazing and hunting areas, there were no exclusive usage rights; land resources here were considered to be common property for the benefit of all group members. Pastoral/hunting areas were generally divided into administrative districts and the chief appointed land overseers, whose permission was needed in order to keep cattle or hunt in an area. This is against the generally held view about Africa tenure that pastoral lands are open access; but in essence they are regulated common property.

In these grazing and hunting areas, individuals established cattleposts (meraka). These cattle posts did not confer any permanent use rights like residential and arable. However, any man wanting to sink a well or build a dam had to seek permission from the chief and would have exclusive right over the water it contains as well as grazing rights around a specified radius (currently set at about 5 mile radius). The reason behind the exclusive grazing rights around a borehole was to guard against land degradation due to overgrazing. The establishment of cattleposts with borehole or water points has led to the individualization of grazing areas to specific individuals as the 5 mile radius is “generally respected to be within the exclusive use of one who holds the cattle post” (Frimpong 1986, p.60, footnote 51). This practice began in the 1930s with the drilling of boreholes funded by the colonial British government [Schapera, 1943].

The new independent government of Botswana in 1966 felt that the system of land administration needed to be ‘modernized’ to promote ‘social and economic development’ of all citizens of Botswana [Ng’ong’ola, 1992].

2.2 Land Administration under the Tribal Land Act
The Tribal Land Act of 1968 introduced fundamental changes in the administration of customary land by replacing the traditional land authorities (chiefs, sub-chiefs, ward...
heads and family heads) with elected district Land Boards (see organisational structure of the Government of Botswana depicted in Figure 2 following page). The Act vested all land in the respective District Land Boards in each tribal territory. The Land Board holds the land “in trust for the benefit and advantage of the tribesmen of that area and for the purpose of promoting the economic and social development of all peoples of Botswana” [Sub-section 10(1), Tribal Land Act 1970]. Thus, the Act ended the exclusive use of all tribesmen and now the word “tribesmen” has been replaced with a gender neutral word “citizen”. The land administration reform was an attempt by the newly independent government to modify the customary land tenure system. As the Presidential Commission on Land Tenure (1983) stated:

The desires of the people are not for new and radical forms of land tenure but rather for easy access to land for citizens of Botswana, their ability to utilize it as an instrument of development and at the same time the retention of such developed land as a family asset to be passed on from generation to generation. Tribal land tenure possesses many of the characteristics meeting such desires. [Government of Botswana, 1983:2]

For instance, the Act now makes it possible for common law interests—freehold and leasehold to be acquired in the tribal areas. These common law interests were unknown in a customary tenure arrangement. Box 1 and 2 elaborates the functions of the Land Boards as allocation of land rights, both customary and common law land grants; settlement of land disputes and hearing of appeals from subordinate land authorities; maintenance of land records; and the cancellation of any grants of land rights.
Figure 2: Botswana Government Organizational Chart [after MFDIP, 2003]
Box 1: Structure and function of Botswana’s Land Boards [from Mathuba, 1999]

The Land Boards were established in 1970 as local institutions, but governed by broader national land policies. There are 12 Main Land Boards and 37 [now 38] Subordinate Land Boards. The latter were created in 1973 to assist the Main Land Boards. Land Boards are of the four local government bodies in Botswana – the others being local Councils, the Tribal Administration and the District Administration. While the Land Boards have sole authority over land, they work closely with other local authorities and relevant departments. The Land Boards fall under the Ministry of Local Government (are now to be relocated to the relevant Ministry of Lands and Housing), which controls and coordinates their activities and other parts of the local administration. The Ministry provides them with financial support, in the form of grants, and provides logistical and technical support.

With the aim of improving land administration, the Tribal Land Act (TLA) 1968 vested in the Land Boards all former powers of the chiefs in relation to land. The powers of the Main Land Boards include the following:

a) granting rights to use land;
b) cancellation of rights to use land, including grants made prior to operation of the TLA;
c) imposing restrictions on the use of tribal land;
d) authorizing any transfer and change of use of tribal land;
e) determining land use zones;
f) hearing appeals from Subordinate Land Boards, and

g) maintenance of land records.

Box 2: Botswana’s customary land tenure under the Land Boards [from Adams et al., 1999]

The Tribal Land Act, 1968, provided for the establishment of representative Land Boards and transferred all the land-related powers of chiefs to these. The functions of the boards include the allocation of land; imposing restrictions on the use of land; authorising change of use and transfer; and the resolution of land disputes. Tribal land belongs to the people. Individuals are granted rights to use some parts of the land. It may be held by the Land Boards, or by individuals or groups as customary grants, or under leasehold. The land may also be allocated to the state for public purposes. Although land holders do not ‘own’ land, they have exclusive rights to their holdings which can be fenced to exclude others. Grazing land and land not yet allocated are used communally. The Land Boards grant land rights under both customary and common law.

The holders of customary rights for residential and ploughing purposes enjoy a variety of rights guaranteed by a customary land grant certificate which are exclusive and heritable. Those granted customary rights are entitled to a certificate of customary land grant. According to Tribal Land Act, once these rights are acquired they cannot be cancelled for any just cause.

Common law leases for non-customary land use (i.e. residential, commercial and industrial) are limited in time and subject to eventual reversion to the community. They can be registered under the Deeds Registry Act and are mortgageable and therefore transferable without the Land Board’s consent. Common law leases are granted for 99 years for residential purposes, for 50+50 years for commercial and industrial purposes in villages; and for commercial grazing and ploughing land.

Key changes which have been introduced since 1970 include: the exclusion of other people’s animals after harvesting and the fencing of arable lands; relaxation of the restrictions on land allocation to allow independent allocations of land to all adults; the replacement of the word ‘tribesmen’ with ‘citizen’ in the Act, the charging of a price (agreed between seller and buyer) for transfer of developed land; the introduction of common law residential leases for citizens, foreign investors (50 years), commercial grazing, and for commercial arable farming (15+15 years).

Although the Botswana Land Board model is often cited as the model for sub-Saharan Africa, it is also heavily criticised by both politicians and members of the public in Botswana as Box 3 illustrates.
Box 3: Botswana’s Land Boards: accountability, criticisms and change [from Mathuba, 1999]

The Land Boards have been criticized by members of the public. Members of Parliament and Members of the House of Chiefs for a number of shortcomings.

- The Act was considered inadequate to deal with the needs of modern society because it enshrined principles of tribal land
- Board procedures are cumbersome and cause unnecessary delays in land allocation, as well as in the settlement of land disputes because of lengthy procedures involving the need for ministerial approval appeals;
- Boards are unable to enforce either their decisions or provisions of the Act.

Originally, each Main Land Board had six members representing the District Council (Councillors), in the Tribal Administration (Chief) and the Ministry of Local Government, Lands, and Housing. The composition of membership has varied over the years and the numbers have increased. In 1989, both chiefs and councilors were removed from membership under an amendment to the Tribal Land Act in order to make the Boards have twelve members while Subordinate Land Boards have had ten. Five are democratically elected by the people at the Kgotla (traditional assembly or meeting place). Another five members are nominated by the Minister of Local Government, Lands and Housing. The members elect the chairperson amongst themselves on a yearly basis. The two additional members on the Main Land Boards are ex officio members who represent the Minister of Commerce and Industry and the Minister of Agriculture. Their role is to advise Board members on matters related to their respective Ministries.

The Minister of Lands is responsible for the overall operation of the Boards, and is answerable to Parliament. As the Minister nominates five of the Board members, so can he dismiss them.

The Tribal Land Act was further amended in 1993. The wording has changed such that land rights are now vested in the Boards for “the benefit of Citizens of Botswana” rather than for the “Tribesmen of the area”, to the effect that they are now required to manage land in the national interest rather than more local tribal interests. The duties of the Boards have now been expanded to include authorization of change of use and land transfers, and Ministerial consent is no longer required. The amended Act has also made it possible for the Land Boards to cancel customary land rights they have granted, in cases where land has not been developed within the prescribed period or in accordance with the purpose for which it was granted.

Those who feel aggrieved by a decision of the Land Board may now either take their case to the new Lands Tribunal system set up in 1997, instead of the lengthy process of appeal to the Minister as before.

2.3 Land Allocation under Customary Law

The Tribal Land Act provides for the issuing of three basic forms of tenure in customary land in all settlements other than the townships: a grant of customary land rights to all citizens of Botswana (irrespective of color or gender) residing in towns and villages; the grant of land rights under the “received” Common Law (Anglo-Roman-Dutch Law of South Africa) for residential and commercial purposes in such villages; and a grant in ownership or freehold. Figure 2 shows an example of simplified land allocation process under customary tenure. The grant of Common Law leases was designed for the innovative section of the society wanting to deal in their land rights as well as to cater for foreigners. Since the Land Boards have never allocated land in ownership, two basic

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4 The grant in ownership has never been issued to any individual since the inception of the Land Board system and it can now be allocated to the State only.
forms of tenure are generally provided for under customary land in all settlements apart from the townships.

Although the reform was not meant to transform the customary tenure pattern, it has indeed altered the procedures of land allocation as well as the nature and pattern of land occupation in the rural and periurban areas. First, the statutory Land Boards in the administration of tribal lands replaced the chiefs and the ward heads. Secondly, the act introduced the democratization of land allocation and its control.

The objective of the act was to preserve customary tenure principles with the exception of replacing its administration by chiefs with statutory administrative bodies. However, the customary tenure was thoroughly transformed. Under the Land Board

![A simplified land allocation process under customary tenure](image)
system, an applicant is expected to identify land and to submit an application indicating its particulars which involves the preparation of sketch plan. This implies that the Land Board “may not be in a position to allocate on the basis of existing local knowledge of land occupation in the area” [Ng’ong’ola, 1992:153]. That has been found to encourage unplanned land development, overcrowding of wards in the villages, multiple or excessive land allocations. But since the Land Boards did not have knowledge of the nature and pattern of land occupation within their areas of jurisdiction, they were forced to rely on the knowledge or sometimes memory of the ward heads in land allocations. In addition, land is allocated to the individual as opposed to the customary allocations to wards and families. The land allocations are confirmed and evidenced by a Board resolution and a certificate of customary land grant. The only situation under which the Boards exert their full allocative authority is when demarcating unoccupied land in the periphery of the expanding settlements to accommodate new households or reassigning of abandoned plots to applicants to avoid the village from degenerating.

The grant of customary land rights is heritable in accordance with the customary law of inheritance and is granted in perpetuity; thus this form of tenure provides a secure tenure for private investment and development (see Figure 4 showing recently constructed modern houses built by indigenous villagers in Mogoditshane village). In addition, the Tribal Land Act stipulates the following rules for the cancellation of the customary land grants:

- when the holder is no longer eligible to hold land under the provisions of the act;
- failure to observe land use restrictions;
- land required for public use;
- ensure fair and equitable land distribution;
- use of land in contravention of the customary land law;
- failure to cultivate or develop land within a specified period.

In reality, the Land Board almost never cancels any land grant such as for residential or arable allocation.

The replacement of the chiefs’ political authority with statutorily elected bodies has had advantages and disadvantages. The benefits of the new land administration system are that it introduced clarity and certainty in the allocation of traditional land rights.
For instance:

- It provides an express grant of a clearly demarcated parcel of customary land confirmed and evidenced by a Board resolution and a certificate of customary land grant issued to the applicant and a record of the grant kept at the Land Board registries.
- It provides for security of tenure with no ambiguity and certainty on the part of the holders that they will be able to enjoy, bequeath, or assign their investment in improved housing.
- The grant allows for the voluntary transfers of individual customary holdings and sales amongst citizens\(^5\).
- The relatively egalitarian distribution of customary land has been maintained, since land allocations are free. At the same time, the act allows for the conversion into a Common Law lease, which is fully negotiable.

One of the objectives of any land tenure system is equity. Under customary tenure, access is granted equally, fairly and freely to all socio-economic groups. The benefits of certainty and clarification of the terms of customary land transfers has accelerated the emergence of periurban land transactions in terms of the rental market alleviating the housing shortage in the cities which could not be met by government and private markets. However, due to the low economic base, lack of infrastructure and services and the

\(^5\) The Land Board is informally involved in such transactions.
functional simplicity of the periurban settlements, the size of the rental market is not fully developed.

The adoption of the Land Board system in other jurisdictions with rapidly urbanizing areas and periurban settlements similar to Botswana could offset the need and future expense of land adjudication, cadastral surveying and land use planning. Since the demarcated plots are on planned and surveyed layouts future land registration is inexpensive. The advantage of this approach is to further pre-empt the need to convert customary tenure into other forms of tenure as the only means for eliminating the ambiguities and uncertainties, boundary disputes and the insecurity associated with the lack of recording of traditional land rights.

Despite the success of the Land Board system in Botswana, there are many problems and the model needs constant adjustment and adaptation to meet the social and economic demands of rapidly urbanizing areas.

- It has failed to eliminate the misconceptions associated with customary tenure such as tenure insecurity.
- Like other land administration systems, it is beset with capacity problems. Apart from legal innovations, the system requires professionals such as land surveyors, land economists, physical planners, computer technicians, and lawyers who are conversant with customary and statutory land laws. In addition, financial, technical, administrative, logistical and other resources required by the Land Board to carry out its responsibilities are badly under-estimated\(^6\).
- The Land Board system suffers from lack of legitimacy and authority which, the chiefs and other tribal authorities enjoyed by virtue of their political positions.
- There is need for land information management. Because of inadequate land records on land allocations the Land Board still relies on the knowledge of the ward heads for information about local land occupation. The Boards members are also forced to undertake costly site visits, which could mean spending several days away from the office. Many of the periurban land problems have as their root

\(^6\) See, for example, Republic of Botswana [1983]. Also Land Boards have budget ceilings on how much money they are allowed to spend.
cause, lack of information on the extent and nature of the land allocation prior to the Land Board system. As Ng’ong’ola asserts:

*One problem that severely undermined the Botswana system was the failure to provide, initially, for the recording and capturing under the system of all subsisting customary land rights. This meant that land boards started operating without full knowledge of the extent of their powers and duties and jurisdiction* [Ng’ong’ola, 1999:16, emphasis added].

Furthermore, in the periurban areas,

*The land boards have difficulty in identifying the genuinely needy from among the many applicants and of finding land to allocate to them. Time and resources are wasted and illegal activities go unchecked* [Adams et al., 2003].

- With increasingly high land values in the periurban areas, the integrity of the Land Board members is often called into question.\(^7\)
- Failure to adequately compensate customary rights holders for arable land has been identified as one of the root causes of the land management problems facing the periurban areas [Adams et al. 2003:63]. There have been calls for over two decades for the law to recognize the market value of periurban land.

### 2.4 Grants of traditional land rights under Common Law

Under the “received” Common Law of Botswana, the *Tribal Land Act* also provides for grants of ownership and leasehold interests. To date, no individual has ever been issued with a freehold interest on customary land and only leases have continued to be issued.

The act provides for two types of Common Law leases. The first is a short lease terminable on a month’s notice for land not exceeding five acres. The second type is a long-term lease granted for any type of interest including residential, commercial, and industrial uses. The long-term lease is registrable at the Deeds Registry Office if accompanied by an approved survey plan and is fully negotiable. This part of the act is in line with the land legislation’s objective of “modernizing” customary tenure.

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\(^7\) In the 1990s the government was forced to institute a Presidential Commission of Enquiry into periurban land problems and revealed rampant corruption among members of the Land Board.
The introduction of Common Law leases in customary land formalizes the trend throughout sub-Saharan Africa and other developing countries of converting traditional land rights into individual private property rights. Figure 5 shows an example of simplified process for converting customary tenure into Common Law leasehold. Prior to this land tenure innovation, developments in periurban land markets were fraught with problems because of the incidence of “redeemable sales” and the ambiguity and uncertainty surrounding customary tenure. Land investment and development in urban housing by both strangers and foreigners was a precarious undertaking because the terms of the sales were not usually specified. This tenure innovation has made it possible to allocate to citizens and foreigners land for residential and commercial purposes breaking down the tradition that leaseholds can only be issued under a statutory tenure regime.

A grant of land rights under Common Law can be issued for both undeveloped and developed land on customary land. However, the act stipulates that transfers cannot be made to foreigners without the consent of the Land Board, restricting the development of a free land market in the periurban areas. But such stipulation should not be viewed as unnecessary since the Land Board still retains the residual title to the land, and therefore they should have a say in future land sales or change of user. With transactions involving citizens such as mortgaging, pledging, change of user, and the use of such land as other forms of collateral, the Land Board consent is not required.

On termination or if the lease is not renewed on expiry of the lease period, all improvements and immovable property on the land including the buildings reverts to the Land Board as trustee of the land without compensation.
Figure 5: A simplified process of converting from traditional land rights into common law leasehold

3. CONCLUDING REMARKS
It would be very difficult to justify the social benefits of converting traditional land rights into freehold and state land tenures in Botswana. These types of tenure options would be
rejected on the basis of equity in land distribution and on cost-benefit analysis terms. As Stamm asserted:

... from an economic point of view, customary methods of managing land are not so disadvantageous as often asserted, so that all attempts at land reform should be examined with great caution, all the more so when switching to a ‘modern’ system of management, based on property owned by individuals, not least because the ensuing costs might be more than those incurred by maintaining the existing forms of tenure. [Stamm, 1994: 716]

Stamm further pointed out that:

There are various direct costs involved in the introduction and enforcement of new rules, including expenses in drawing up a land ownership register, in delivering and controlling land titles, and in establishing the necessary mechanisms for solving conflicts. ... By way of contrast, transaction costs in the traditional system are extremely low because of the transparency of clearly defined and long established rules of land management. [Stamm, 1994: 716]

In addition, analyzing the economic efficiency of non-capitalistic customary tenure regime using neo-classical economics has been questioned on whether it can yield any useful insights into the operations of customary tenure in traditional societies. However, Stamm argues that economic arguments, when not limited to neo-classical abstractions, may provide valuable information into the “rationale and functioning of traditional social structures” [Stamm, 1994: 717].

All the land tenure options have proved to be culturally feasible in Botswana, the preferred one being the leasehold approach due to its relative simplicity. Lending institutions, being western institutions, are more familiar with this form of tenure, and they have quickly responded to it as evidence from Botswana has shown. This, however, does not suggest that a customary land allocation is inferior to leasehold; on the contrary, it is not. It is because banks being western institutions are much more likely to respond to what they know and understand; and also it has been noted that in southern Africa, commercial banks tend to be overly conservative in their lending practices [e.g. Bruce, 1981; Atieno, 2001; Mosha, 2003]. But the option of mortgaging traditional land rights is also an attractive one since it would represent an evolution of traditional land rights in periurban land markets rather a superimposition of western property rights concepts. This
would be a good policy as long as there is no contemplation by government of replacing customary tenure with statutory tenure systems in future. However, there are several drawbacks with this land tenure option:

- The mortgaging of customary tenure might prove too complex in practice.
- It might require expensive and time-consuming legal adjustments before being implemented.
- Banks being so conservative might feel very uncomfortable with the new arrangement.

REFERENCES


