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ABSTRACT

This paper aims to understand the political and legal dynamics involved in aspects of local government in Botswana as exemplified by legislative enactments. Mawhood (1985) suggests that such structures are charged with specific functions, for which specific scopes of authority are conferred. The land boards of Botswana are one such example. The paper concludes that there is a need to retrace the steps up to the inception of the Tribal Land Act (TLA), and to examine aspects of the act itself, as well as its implementation and consequent effects and flaws. Local government and governance are not achievable only by legislation and rule-making. Legitimation is also a key element. If land tenure transformation, use and administration in Botswana via the medium of the land board system is to continue, it calls for a re-look at the whole question of land and its centrality in development and the lives of the citizenry and, therefore, the role of the land boards.

ACRONYMS

ALDEP	Arable Land Development Programme
CFDA	Communal First Development Areas
DCEC	Directorate of Corruption and Economic Crimes
DLBS	Department of Land Board Services
DLUPU	District Land Use Planning Unit
FAP	Financial Assistance Policy
FPSG	Fixed period state grant
HC	High Court
IT	Information technology
LAPCAS	Land Administration Procedures, Capacity and Systems
MLGL&H	Ministry of Local Government, Land and Housing
MSLB	Mogoditshane Sub Land Board
RC	Resident Commissioner
SLAAC	State Land Allocation Advisory Committee
TGLP	Tribal Grazing Land Policy
TLA	Tribal Land Act

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1. INTRODUCTION

Normally, for purposes of efficient and effective local government, administrative and regulatory structures are consciously engineered by the state and legitimised via the legislative process. In effect, both the legislature and the executive should therefore be accountable for their performance on the ground. However, both the executive and the legislature, collaborating as the state, may be motivated by different environmental and political calculations.

As Carr (1975: 415—416) said, if we wish to get a correct picture of the structure of the modern world, we must think not of a number of individuals 'but a large number of large and powerful groups, sometimes competing, sometimes co-operating in the pursuit of their group interests and a state constantly impelled to increase the strength and scope of its authority in order to maintain the necessary minimum of cohesion in the social fabric'. As such, there must be reasons for the creation of a unique institution, such as land boards within the framework of the state's quest for control of the levers of political and socio-economic power. One reason could be the perceived need to assert political authority by using such a structure to subordinate traditional authority, with its baggage of socio-cultural assumptions, to the state.

In any case, assuming the emasculation of traditional authority was a primary motive, and then the question arises as to whether or not this structure has effectively attained its objectives. In its report (1991), the Kgabo Commission observed that 'the importance of a good and sound land administration system cannot be overemphasised. A land administration system can have economic, social and political implications. Maladministration of land can for example result in the concentration of land in a few hands'. Subsequently, White (2009) observed that problems relating to land administration in Botswana began with the decentralisation of the administration of communally owned land to a local system. He asserts that serious problems in Botswana's land administration arose from poor governance and ill-advised changes to the TLA and its regulations. He states further that service providers designed the system to administer tribal land for their own benefit. As such, more emphasis must be placed on meeting the real needs of system users if the land rights of the poor are to be protected and upheld.

It would seem then, that if transformation of the land tenure system and better land use and management were the prime mover, that these observations suggest a dysfunctional structural innovation. On the other hand, if dismantling traditional control and its implied influence was the goal, then possibly, this was achieved. These sentiments inform and drive this paper. In this context also, the paper wishes to examine how certain regulatory instruments and agents of land administration assist in giving meaning to local government in Botswana.

This paper is structured as follows: The first section describes the terrain and context. This is followed by a section on the legal evolution of Botswana with the intention of tying it up with a premise of continuity between the colonial and post-colonial administrations. The next section deals with the land question regarding perceptions and reality, land use policies and their effectiveness. This is followed by an examination of the TLA in perspective and in relation to the land boards. The following section is an exploratory survey of the land boards on the ground. The conclusion discusses a way forward, makes recommendations, and summarises the important lessons from both the past and the present for the future.

Botswana is a landlocked country. It shares borders with Zimbabwe, Zambia, Namibia and South Africa. Most of the country is covered with layers of sand from the Kalahari Desert, about 120m deep. The total arable land is only 3%, of which a good portion is covered by national parks. The total population is around 2.1 million (Chipasula and Miti, 1984). Therefore, with growth and urbanisation, demand for land was, and still is, a dominant issue of public discourse.

Botswana was known as the Bechuanaland Protectorate from 1885 until independence in 1966. Prior to independence, chiefs controlled the economic resources, including access to land and, as a result, were in themselves individual wealth accumulators. Land use and allocation was in the hands of the chief, who, through a stratified, hierarchical system, ensured allegiance to himself. Compulsory labour was common and the chief could requisition this at any time (Chipasula and Miti, 1984: 7). In essence, the system underscored control, continuity and the quiescence of a population dominated by peasants and commoners. At independence, this situation did not undergo immediate transformation although change was in the offing. Traditional authority was synonymous with land control and therefore socio-political-cum-cultural-power and deference. In effect, the land question had to be resolved quickly because fertile land was finite while demand was expected to grow.

2. THE GENESIS

The function of legal history is to focus attention on how the law has been developed in a given context up to what it is today. According to Justice Aguda, in his seminal work (1973), the intention is to better understand the law and its derivatives as they are at present so that society can be beneficially organised for now, as well as for the future. Moreover, implicit in the movement and development of law is the general movement of the specific material conditions of a particular society (Poulantzas, 1973: 24—25). By implication, the institutions of governance a state creates characterise it and its desired objectives. Botswana is no exception.

Thus, a study of the influence of one dominant group in socio-legal relations on another group implies, or should imply, a study of how the law has been fashioned and used to mould and buttress this relationship. Law and law-making are therefore reducible to policy choices, objectives and modalities for implementation. Since the law often provides the coercive mechanism, it necessarily facilitates the functional interaction between the organs of state on one hand and the allocative constituencies such as traditional authority and the generality of citizens on the other (Sandbrook and Cohen, 1975: 305).

Realistically therefore, the law provides the nexus between these institutions. *Ipsa facto*, this paper asserts that contextually, there is primarily, in terms of rule-making and administration, a semblance of continuity between the post-independent and colonial states in their attitude towards traditional authority and political dominance. Secondly, as in the past, the state establishes structures for local government and empowers them via robust legislation. This is done to legitimise the fledgling state and to anchor it. However, once stabilised and secure, it uses the same legislative process to emasculate those very structures (Onoma et al, 2009). Given that Botswana is a *de facto* one-party state where the executives come from elected members of parliament, juridification by consensus as a tool of subjugation is not seen as an aberration of governance nor as an abnegation of any principles of the rule of law.

Before independence, it was natural for the colonial power to endorse forced labour as practised by the chiefs and to legislate the externalisation of indigenous labour to the farms and

mines of South Africa through proclamations. Such laws, it could be said, were sometimes beneficial for both natives and the said colonial power (Damachi et al, 1979). This functional web of interdependence is one level at which one can subsequently demonstrate the application of influence of the colonial regime over the other (Dale, 1974: 120). Although the trajectory of local government in Botswana did not need to follow this path, immiserisation continued and there arose the need to dismantle, reorganise and subordinate traditional authority to the centre. This demonstrates the influence of the past on the present. Influence is the perceptible effects of a person's actions on another, either positive or negative, or both.

The paper also takes into cognisance that according to Schapera (1984), there were laws such as that of obligations before the Protectorate. But it is noted that these were fragmented, tribe-specific, cultural and normative interpretations of socially desirable conduct, not legally demanding issues to grapple with, unlike those confronting modern day institutions such as the land boards. As such, only 'less primitive' practices such as the conscription of males and the custodianship over land by the chiefs were recognised incrementally per proclamation.

Pre-capitalist society had no structures or mechanisms that institutionalised contractual relations of ownership and legally defensible rights. There were no economic activities that could have warranted the introduction of statutes covering areas, such as property, master and servant, even in the area of farming. Formal legislation existed only to give form and coercive substance to the power differentials between natives and colonial masters who obviously were anxious to stamp their authority on the land and its peoples (Chandler and Morse in Chipasula and Miti, 1984). This, it is submitted, appears to characterise the new state in its relationship with the traditional elite.

Thus, from 1885 onwards, the regime of laws that applied in the Bechuanaland Protectorate was foisted on a simple, pastoral and agrarian society with a wide range of results. Historically, external influence emanating from British colonial experiences existed, such as the indirect rule *in tandem* with the subordination of chiefly power under the 1934 proclamation. One major reason was that in 1885, while grudgingly agreeing to offer protection to Bechuanaland, the colonial authorities indicated that 'we have no interest in the country north of the Molopo except as the road to the interior. We might therefore confine ourselves for the present to preventing that part of the Protectorate being occupied by either filibusters or foreign powers, doing as little as possible in the way of administration' (Chipasula and Miti, 1984).

The Proclamation of 1909 (No. 7) subsequently raised the hut tax, deepening reliance on the externalised sale of labour power. It also compelled the collaboration between the chiefs as commission earners or salaried supervisors, the colonial government and the mining industry. It is noteworthy then that the subsequent transformation of the *Dikgosi* into salaried 'civil servants' was not an act of benevolence. Having transformed the Protectorate into a labour pool, the colonial government then proceeded to utilise legislation to sustain the *status quo*. This strategy survived the transition into independence.

Legislation thus provided the coercive engine for the implementation of the process with the chiefs and their elders as the traditional elite, assisting the colonial master to ensure peace, order and stability, a function they still perform under the post-colonial master. The 1893 Concessions Commission had earlier demarcated the Protectorate into tribal reserves consisting of 40% of the most unproductive parts of the territory and the rest into Freeholds and Crown land (Chipasula and Miti, 1984). The physical delimitation of tribal reserves resulted in curtailed

traditional chiefly authority by 1934. The judicial system was also overtaken by social change, and the first dent in the dual policy was made when, in 1919, a provision was made for appeals from the Court of the Chief (*Kgotla/Traditional Law Court*) to go to the General Courts. Again in 1934, a series of proclamation excluded certain matters such as serious crimes from the jurisdiction of the Customary Courts, for example, treason, murder, etc. In the Protectorate, Tribal Courts were allowed to impose sentences of imprisonment, which are served in government jails. In addition, the Witchcraft Proclamation No. 1 of 1927 made it a penal offence for doctors to practice divination.

The African Administration Proclamation (1956) formally recognised tribal councils as chiefly advisory bodies and established, within each chiefdom, subordinate councils under local headmen. The first chieftainship law came in 1935 to regulate the recognition, suspension or removal of chiefs and their representatives, deputy chiefs and headmen. Unwittingly therefore, the functional web of collaboration between the chiefs and the colonial power which, according to Tlou and Campbell (1984) may have been initially conceived by the traditional elite as an alliance that could protect them, turned out not to be so. If this led to their prominence, then subsequent events in the post-colonial era were to change that. In all this time, the colonial state did not accord the traditional elite the right of absolute ownership of any part of the Protectorate which could have been a sustainable right or claim at independence.

On 14 September 1959, an Order in Council (S.1 No. 1620) conferred sole administrative powers on the Resident Commissioner (RC) who was appointed by the High Court (HC) in Pretoria. In 1960, the Bechuanaland Protectorate (Constitution) Order in Council established the Legislative and Executive Councils. On 20 January 1965, an Order in Council established the office of Prime Minister and Cabinet portfolios as a prelude to the promulgation of the Constitution of 1965. On 30 September 1966, eight decades later, the Bechuanaland Protectorate finally became the Republic of Botswana (Aguda, 1973).

3. THE LAND QUESTION AS A FACTOR OF LOCAL GOVERNMENT

The new administration emerged with the lessons of colonialism, one of which was the need for a system of public administration via local government machinery. This called for the creation of structures to implement local government at the grassroots level away from the centre. These were created by statutory enactments. For the purpose of this paper, reference is made to the Local Government (District Councils) Act (Cap 40:01) which created district councils, gave them powers, including that of making by-laws subject to parliamentary oversight, formulating developmental policy and generating revenue from services rendered. The TLA created the land board, gave it powers and parameters of operation with regulations and vested in them custodianship of tribal land use and administration (Cap 40:01). The Chieftainship Act provided a forum for the chiefs to play the ceremonial role of advisors where legislation might interfere with tradition or customary law (Cap 41:01). The Customary Courts Act (Cap 04:05) initially provided for chiefly participation in the processes of adjudication under tribal law within specific jurisdiction in relation with and in contradistinction to the Civil Court structure.

3.1 Traditional authorities, notions of land rights and future implications

As one of the first areas of administrative action, the relationship of the traditional authorities with the land and the potential impact on the political and administrative authority of the state

needed to be addressed. As said earlier, the colonial government did not ascribe ownership right in land to any chief apart from enclosing them in the tribal reserves, while the rest of the land was whimsically allocated to white farmers or declared as belonging to the Crown in England. The question then arises as to where the notions of private ownership and accompanying land rights originate from, which have encumbered the performance of the land board's tasks.

Ownership in modern terms is the most extensive right a person can have over a corporeal thing such as land since it confers the most comprehensive control. This differs from limited real rights such as pledges, leases and servitudes (Van der Merwe and de Waal, 1993: 103—106). It connotes the power to use (*ius utendi*), the right to the fruits (*ius fruendi*), the power to consume the proceeds (*ius abutendi*), the power to possess (*ius possidendi*), to dispose of (*ius disponendi*) and to assert such ownership by claiming to return the thing expropriated or taken unlawfully (*ius negandi*), all within the limitations of existing law (Van der Merwe and de Waal, 1993: 103—106). This is not to say that the colonial state owned the land either. They called themselves 'trustees', but their conduct with regard to the land was not questionable, equitable or judicious.

It follows then that the one who asserts ownership should be capable of enjoying these rights. Realistically, the era of absolute ownership ended with the Roman Empire and the French Revolution. If indeed the owner actualises his powers, he can retract them and thus retain a reversionary interest in his property (Van der Merwe and de Waal, 1993: 106—107). The definitive question then is whether the chief or a tribesman enjoyed and exercised these attributes. However, there is no conceivable requirement that these bundle of rights must be exhaustively utilised for one to assert a form of 'ownership' particularly in as much as absolute ownership is a fiction (Schapera, 1984).

It is in this context that Schapera's observations become both instructive and contradictory. This paper is not intended to unravel the myth of the tribe that informed the TLA at its inception, or the dialectics of the disjuncture between customary and 'received' laws. A tribe in this context is a loose, amorphous, heterogeneous grouping defined by accepted common language, norms and practices, not the single political unit as Schapera would want accepted (1984: 62). Further, he considered the chief as 'head of the tribe, symbol of tribal unity, ruler, judge and maker and guardian of the law. He dominated tribal life and was at the apex of the land administration system' (1984: 62). Schapera then cautioned that in reality, the chief could not be called the absolute owner of the land in as much as he did not have comprehensive reversionary powers over the land, so the impression of absolute authority created is factually incorrect. For this paper, a chief without the acclamation of his tribesmen has no legitimacy and thus he rather owes allegiance to the tribe and should therefore not be labelled 'head, ruler, judge, law maker, enforcer, and land overseer' all combined.

Schapera's suggestion that it was more correct to refer to the chief as 'a trustee, holding land for his tribe' could, inferentially, be considered to mean that the chief was accountable for the judicious and equitable land administration, which is not what he implied earlier. In any case, for the purposes of this paper, a chief is a hereditary appointee, accepted as the leader, the *primus inter pares*, the integrational integer, assisted by his ward heads as counsellors in the enunciation of customary beliefs, norms and practices collectively called 'law', and in the resolution of disputes. He was, therefore, not an absolute leader capable of unilateral decision-

making. By that recognition, he is assigned the responsibility of custodianship of the communal land as opposed to it being a birth right to dispense gratuitously.

The next issue is whether the tribal land is communally owned or, under specific conditions, can be privately owned. This is best summarised in the case of *Amodu Tijani v Secretary, Southern Nigeria* (1921) as follows:

The notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual. All members of the community have an equal right to the land but in every case the chief or headman of the community or village, or the head of the family, has charge of the land and in a loose mode of speech is sometimes called the owner. He is to some extent in the position of a trustee, and as such holds the land for the use of the community or family.

Firstly, the community and family are not synonymous neither are the family head, headman and chief. At the level of the family, where land, particularly residential and arable are allocated, the rights thereto become inherent over time and are thus transferable and inheritable by the members of that family. Thus, ownership claims can be made arising from uninterrupted possession, occupation and use of right and not by invoking any grounds of acquisitive prescription. This is not to say that death, gross misconduct and other serious moral infractions cannot result in deprivation and repossession of the land so allocated. Secondly, there is no basis for a legitimate expectation of equitable land allocation say to both the unmarried young man and a big family with extended relatives within the same coterminous enclosure.

As Ng'ong'ola (1992: 145) sees it, the assumptions in the Tijani case are too simplistic, overly generalised and without analytical basis. Such generalisations resulted in notions that informed the establishment of the land boards later and compounded the problem with subsequent contradictions that came with judicial intervention. Again, according to Ng'ong'ola, the latter case of *Kweneng Land Board v Kabelo Mathlo and Others* (1992) testifies to this confusion. In that case, the land board had alleged that one Kabelo was a squatter and ought to be evicted from the land he occupied with one Pheto, who had resided there since 1960 prior to the creation of the land boards. Further, Pheto countered that the land was an inheritance from his father who got it from the grandfather.

However, the land board was invoking the power of 'ownership' supposedly conferred on it by the TLA (Section 10 (1)) which, by their understanding, conferred 'absolute, real right akin to ownership'. At that time, Section 10 (2) (since deleted) had exempted land held in a personal and private capacity from the ambit of the land board's claims. The land board interpreted the sub-section as having conferred only reversionary, usufructuary rights or *ius in re aliena* in the tribesman and not ownership. The Attorney General and the court rejected this argument and ruled that land could be held in absolute ownership by an individual as per the provisions of Sub-section 2 of Section 10 of the TLA.

A major flaw in the basis for this conclusion was that if indeed the land board were clothed with authority to allocate land and dictate its use and by whom, and can repossess such tribal land, by implication, the individual tribesman could not be said to be an owner (Ng'ong'ola, 1992: 160). Stretching the argument further, it can thus be deduced that the state has, by law, arrogated to itself the rights of ownership and trusteeship which, it has then devolved to its agents in the field. It is not surprising therefore that the ruling in the *Matlho* case was

subsequently set aside in the case of *Kweneng Land Board v Mpofo and Another* (2005). In this case, the court said (Ng'ong'ola, 1992: 9):

... under the customary law, there was no tribal land which could be held by anyone in his 'personal and private capacity', in other words, in which he had a right of ownership. It did not matter how long the land had been held. Acquisitive prescription was unknown to the customary law

The question of ownership therefore ought to have been laid to rest with the inception of the land boards, had the enabling act been very clear in what its policy framework sought to achieve, which is divesting the chiefs of power or transforming the traditional land tenure system into an engine of growth and development.

3.2 Laying the foundation for local government in Botswana

Local government is understood variously as a situation in which the central government undertakes policy formulation resulting in the process of structural designs that accentuate the access of the periphery to resources generated by or allocated from the centre. It is also said that the role of local government is viewed in the context of the overall role of government *per se*. A particular advantage of local government lies in its ability to arrange for the provision of local public goods in line with local tastes and preferences. A number of arguments suggest that local governments should be assigned adequate powers of local taxation to finance their expenditure responsibilities rather than having to rely on central government grantor subventions (Wett, Year unknown: 4—10).

There used to be four different theories of government: the force theory, the evolutionary theory or rule, the divine right theory, and the social contract theory. The force theory was when one person, or a group of people, gained control of the area and made others submit to their rule. The evolutionary rule implied that the state would develop or be distilled naturally out of family, clans and tribes. The divine right theory said that the state was created by God and God gave people of royal birth the 'divine right to rule'. The social contract theory was created by Thomas Hobbes; he believed that before the state people lived poorly and to improve their lives, the people assigned their fate and security to a higher authority in the land (Akira in Janney, 2010).

In the context of Botswana, it can be said that local government began with the colonial state. At independence, there was the need to effect radical changes in conformity with the general expectations from a government of the people as stated above. However, there was the undercurrent of an urgent need to consolidate the political authority of the state which, in simple terms, transformed the social contract into a structured stratification of society.

Decentralisation, de-concentration and devolution in local government

These processes of consolidation became the legitimate, accepted modalities for putting in place efficient local government machinery. The first focus of the post-independence transformation was the traditional authority. With the enactment of the TLA, the chiefs were swiftly divested of access and control over the areas of land, which were the so-called tribal reserves. Incidentally,

this tribal land nomenclature is a hangover from the tribal reserves as designated by the colonial government. Similarly, curtailing chiefly authority was in keeping with the same objectives of the proclamation of 1934 that re-defined the authority of the chiefs mainly as tax collectors and labour providers. The legal basis this time became the Chieftainship Act, which expected the chiefs to swear an oath of allegiance and then put them directly under the oversight of the Minister of Local Government, who endorsed their selection and effectively transformed the institution into one of salaried civil servants (Akira in Janney, 2010).

To placate the chiefs, a House of Chiefs (*ntlo ya dikgosi*) was established, comprising those from the supposed principal tribes: Bamangwato, Batawana, Bakwena, Bangwaketse, Bakgatla, Bamalete, Barolong and Batlokwa. Incidentally, again, these form the basis of the district council structure. This was followed by the Customary Court Act, which, as mentioned earlier, sought to give the chiefs some residual roles in adjudicating within a severely restricted jurisdiction.

Having taken care of the chiefs by law and fact, the state then turned its attention to, among others, establishing district councils, who, in conjunction with the land boards, were charged with formulating policy for District Land Use Planning (Akira in Janney, 2010). These district councils and the land boards as agents of decentralisation by devolution, are the most expressive of the local government system in Botswana.

Needless to say, the bedrock of a local government system is its ability to enable first the legitimisation and internalisation of government policy, and then the actualisation of qualified socio-economic and political expectations. In short, delivery is expected and must be achievable from the state's agents in the field. There is a need for a normative platform of local government by developing an ethical justification on the local level. The rationale is that individual moral autonomy constitutes the normative cornerstone of both democracy and the right to local autonomy. As such, the ethical values of field officers must help accentuate popular participation rather than doubt, suspicion and rejection, the causes of which may at times not be attributable to the field agent, such as a land board employee. The implication of this argument is that if we value democracy, we must also value strong local government (Erligsson et al, 2014), which is attainable through sound policies and efficacious legislation.

There is continuity in administrative practice between the colonial and post-colonial states, though not to the same degree. The colonial regime sought not only to emasculate local government structures but to render them completely subservient. The post-colonial state, having established local government by law, that gave meaning to participatory democracy at the grassroots, is apparently now embarking on rendering these very structures symbolic and dysfunctional by denuding them of their endowed authority. The state appears to be inclined to re-concentrate of decentralised authority, which can only result in responsibility without corresponding discretionary authority, as is the inherent expectation of local government law norms and practice. Molaodi (2014) claims that the state is currently in the process of reconstituting district, town and city councils so as to remove powers they hitherto enjoyed.

The changes envisaged include the tenure of office by Mayors and Chairpersons and the dissolution of such bodies by the Minister responsible. As creatures of law and subject to democratic processes by the constituencies, such developments appear as a further inroad of the executive into legislative territory and a slap in the face of the principles of separation of powers (Molaodi, 2014). Given that the service consumers are hostile to taxation, regulation and control, enforcement by a demoralised council, for example, would be impossible. The net result will be the further de-legitimisation of these structures. In the next section, the paper

briefly surveys previous land policies that will subsequently form the comparative background to examine the TLA and the land boards.

3.4 A brief survey of land use policies

As per the Botswana land policy document, one of the key objectives of the policy is equitable access to land and natural resources coupled with the protection of rights that flow from this access. It does not mention equality of access. All Batswana are entitled to a customary grant: one arable field per household, differing in size and according to district holdings of land, one residential plot per household and a fixed period state grant (FPSG) allocation (Ministry of Local Government, Land and Housing (MLGL&H), 2006: 11). It follows then that the land boards are mandated to allocate land on the basis of priority of application and determination of need. This invalidates any claim to tribal or primordial entitlement, a fact subsequently buttressed by the deletion of 'tribesman' from the TLA. A few key measures are examined below.

The Tribal Grazing Land Policy (TGLP)

It is accepted that land management has become a priority in Botswana. Land development, rights and management have all contributed to finding the best solutions to the land problem (MLGL&H, 2006: 6). Whether or not the policies formulated and implemented have been successful and beneficent is another issue.

This paper observes that legislation cannot prescribe artificial parity between the centre and periphery particularly where salaried remuneration replaces rural agrarian activity. Therefore, if by 1975 there were signs of overgrazing and soil depletion leading to poor fertility, this should call for better strategic harnessing and management of land. The TGLP was therefore conceived as a method of addressing the rural-urban migration trend through rural agricultural development and rehabilitation, and possibly land redistribution.

Prior to the TGLP, there was the Arable Land Development Programme (ALDEP), which aimed to offer an extension service through the decentralisation of Agricultural Demonstrators into the rural areas. This failed. Then came the Communal First Development Areas (CFDA), which was a concentrated integration of all policies into the Financial Assistance Policy (FAP), which also failed. The productive development fund was supposed to energise the process but arable land was scarce. The TGLP was then seen as the panacea. It intended to prevent overstocking and overgrazing in line with the Chambers and Feldman Report (1973). It aimed to give cattle owners complete access and control over specific areas including the few viable water-points. Theoretically, the rent accrued from these ranches would then be used to drill more boreholes to feed other smallholder farms.

Structural distortions and poorly conceived policy resulted in retardatory consequences. Firstly, only 5% of the population who owned 40% of the cattle could access the Commercial Ranching Policy. Secondly, only the same group qualified for loans with a three-year moratorium on repayment. Thirdly, the rents were so low that 6 400 hectares of scarce land attracted only P256 per annum (Chipasula and Miti, 1984: 49). Fourthly, such skewed access to land led to further expropriation of the rural poor whose condition was exacerbated by the fact that commercial ranching was not that labour intensive. Fifthly, and most importantly for this paper, the unrealistic rents meant that revenue accruing to the land boards at that time was so paltry that more boreholes could not be drilled as envisaged for the smallholder farmers. In this instance, the land board was made to withstand the worst of the anger of those who saw

ranching as a conspiracy by the rich to make the poor even poorer, yet this was a policy dysfunction on the ground.

In 1985, the Policy on Land Tenure was formulated with the intention of reviewing the existing system (Botswana Land Policy Document, 1.3.4). However, the Commission so appointed suggested the retention of the system with few modifications. These modifications included amending the TLA to extend common law lease to residential plots in respect of citizens, making such leases more beneficial for businesses and the operations of the State Land Allocation Advisory Committee (SLAAC) for urban land.

The National Policy on Agricultural Development created more problems for the land boards instead of having the intended effects. It pitted the ranch owner against the ordinary farmers with the affected land boards in the middle. As said, this policy was 'intended to provide a secure and productive environment for agricultural producers' by providing extended determination of land for cattle ranching by giving prominence to farmers with boreholes (Botswana Land Policy Document, 1991: 8). To do this, the land boards proceeded to reduce ranch sizes from 6 400 hectares to 3 600 hectares, declaring the remainder as tribal land, together with any borehole thereon, on the understanding that the water points were also allocated by the land board.

The excess portions of land would be tribal communal grazing land under the control of the land board. The initial allocation had been under a certificate of customary land grant as per Section 16 of the TLA. The change was to be effected as common-law leases. It transpired subsequently that an apparently simple administrative procedure, actually implementing government policy, had far wider legal and quasi-judicial implications. For example, in the case of *Boikago Syndicate and Others v Ngwato Land Board* (2004), the court held that since the ranch owners were going to be directly affected, it was only natural that they be individually consulted as prescribed by the principles of natural justice if Regulation 15 was to be strictly interpreted. Admittedly, the staff could not have anticipated this by virtue of the scope of their training.

The epic land furore in Mogoditshane and other peri-urban areas epitomises the confused state of affairs regarding the implementation of the TLA then and now. Firstly, the statement that the TLA was violated through unauthorised land allocation is incorrect, as this would suggest a blatant, wilful disregard for the law and its institutions rather than illiteracy, ignorance and misunderstanding of the functions of land boards (Botswana Land Policy Document, 1992: 8).

The problems in Mogoditshane, Gabane, Metsimotlhabe, Mmokolodi and Kgaphamadi were due to a constellation of factors that have come to dog the operations of land boards today. Before 1970, land had been allocated by chiefs. Post 1970, the land boards took over. Because of inheritance and other modes of transfer including 'purchase', a mistaken assumption of 'ownership' took root even though such sales were illegal. The net effect of these developments was that the residents of these areas operated a land market that attracted outsiders in need of accommodation, as well as land speculators, all of whom engaged in illegal transactions that resulted in the fragmentation of farmlands, virgin land, abandoned land and repossessed land.

These lands ought to have been under the management of the Kgatleng Main Land Board and the Mogoditshane Sub Land Board (MSLB), who were located right in the middle of the storm. The puzzle therefore was, and still is, what action was taken during this land grab and the development into residential structures. Based on the ramifications of this question, the parties did seek to justify their actions. Some of the reasons adduced were that the land boards delayed

processing applications (*see the Mpofo case*); the peri-urban areas were literally inside the farmlands already, the land was no longer suitable for farming and, in any case, the land boards were reluctant or slow in paying compensation for land handed over to them.

In effect, the land boards had ceased to be seen as legitimate, effective and competent public institutions. The commission in its report remarked that the Secretary to the Kweneng Land Board was quoted as saying the land board was just a 'spectator' (MLGL&H, 2006). It transpired, among other things, that the MLGL&H failed to 'provide proper guidance to the land board' (MLGL &H, 2006: xi). The commission observed further that the problems were compounded by a complete lack of law enforcement by all the local government structures. They failed to tap into judicial intervention with its accompanying punitive capacity resulting in a situation that got out of control. These 1991 observations are important as a benchmark for today.

The commission found that both the board members and the admixture of technical and administrative staff had little or inadequate educational backgrounds, given the nature of the work, and there was evidence of a lack of administrative experience. Further, they had a poor public relations approach to the general public, and tended to be autocratic, often exceeding their statutory powers and discretionary authority (MLGL &H, 2006: xv).

As shall be seen in the TLA, the Minister is clothed with administrative and quasi-judicial authority, thus depriving the Permanent Secretary of his role. As a political supervisor, the Minister is likely to view issues with politically tinted eyes, from membership appointments to administrative recruitments. It is not surprising that this intrusion into the domain of the land boards and councils forms part of their grievances (MLGL&H, 2006: xvi).

Although there have been other land-related policy measures, they are not critical for the purposes of the paper. The following section looks at aspects of the enabling legislation that created the land boards as agents of local government in Botswana.

The TLA and the Land Boards

Between 1968 and 2008, the TLA underwent 26 amendments indicating both the dynamics of tribal land use and management and the imperfections of the act itself. There have since been some other changes, which are essentially by-products of the act. These include discontinuing the electoral process for land board membership, replaced by individual applications and interviews, a Land Board Service Commission, and directly recruiting the Chairman of the Land Board without any transparent criteria.

The Department of Land Board Services

This department is headed by a Director (SI, 2011: 19). It has been suggested that the strategic foundations upon which the Department of Land Board Services (*DLBS*) intends to develop the strategic plan are the mandate, vision, mission and values. The mandate clearly defines the role of the department as providing advice on tribal land policies, guidelines and regulations, and acquiring skilled manpower for the land boards. The vision provides the department with aspiration for the future and encompasses excellence in human resource management and sound advice on tribal land policies, its regulations and guidelines, while the mission statement defines why the department exists. The values provide the guiding principles that the department and its employees must adhere to as they go about delivering the strategic plan. The mission is to move from the present state to a better future, as captured in the vision. This will involve providing skilled manpower to the land boards, a common and clear understanding of

the concepts used in both the Mission and Vision. The concepts are defined as sound advice on tribal land policies, regulations and guidelines, acquiring and securing land, administering and allocating land and enforcement and compliance with development covenants.

The core values of the department are stated to be recruitment and retention of competent staff and the development of competencies of staff through training. Further, these include 'botho' (being respectful and considerate in dealing with clients and co-workers), accountability through commitment to taking and owning responsibility for our decisions and actions, impartiality and the treatment of all clients equally irrespective of nationality, race, religion, political affiliation or status. It will apply rules and regulations without fear or favour.

Other proposals reacting to the inadequacies of the land boards arising from the rigidities of the TLA include the suggestion that Certificates of Customary Grant be registered directly with the Deeds Registry once a proper survey was undertaken without converting to a Common Law Grant, and also that Appeal Courts be created for the Land Tribunal adjudicatory system.

Coming into effect in 1970, the purpose of the act in general terms, was to establish tribal land boards, to vest tribal land in such boards; to define the powers and duties of such boards and to provide for matters incidental thereto. Specifically, the act states that all the right and title to land in each tribal area as designated, shall vest in the respective land board 'in trust' for the benefit and advantage of the citizens of Botswana and to promote the economic and social development of all the peoples of Botswana (Section 10 (1)). This means that in arrogating to itself ownership of the lands in question, the state now delegated the responsibility of use and management to the land boards.

This assumption is based on the fact that a trustee is someone who holds or administers property on behalf of another (Honore and Carmen, 1992: 2). A trustee must be deemed suitable to fill the vacancy or be judicially removable (Honore and Carmen, 1992: 2). This introduces the question alluded to by the Kgabo Commission regarding the lack of direction in the verbiage of the act. We thus need to question whether or not technically relevant and adequate preparations were ever made to equip those to be charged with interpreting and implementing the act with sound training and skills for the job. If so, which is obviously not the case, the chiefs also ought to have been given some rudimentary training so that they could help explain the policy changes at the *Kgotla* and thus assist in legitimising government policy, being public servants anyway.

Regarding the question of trusteeship, firstly the owner must have handed over control to the trustee, perhaps with a reversionary right (Honore and Carmen, 1992: 4). Secondly, the owner must divest himself of a part or all of his legal power over the trust property (Honore and Carmen, 1992: 4). In describing the land boards as trustees, holding land in trust for Botswana, it is clear that the citizenry did not collectively, procedurally, electorally or by acclamation create any land board with which they could subsequently have been at loggerheads, as is now the case. In effect, the creation of the land boards as agents of change occurred without due consultation which, in itself, became a fundamental flaw in their operational efficacy.

Part 1 of the act provides the framework of interpretation. In this regard, 'development' is defined as the carrying out of works or improvements in accordance with the purposes for which the grant was made. These activities were supposed to exclude fencing, slabs or toilets in the case of residential or business plots (MLGL&H, 1994: 2). However, from interacting with some officers, it appears each land board has its own concept and practical rendition of

'development', which in itself suggests a critical lack of uniformity in interpretation. At least the Kgabo Commission (2006) had suggested 'a habitable hut and a pit latrine'. On the other hand, Mathuba, even by 1994, had excluded a 'toilet' in the definition, thus further perpetuating the uncertainty. A more contemporary, uniform and realistic standard specification should have been in place by now.

Section 13 of Part III states that hitherto, a chief was vested with the power to grant rights to use any land, cancel any grants of use, impose restrictions on the use, authorise any change of user, or order any transfer of tribal land. In keeping with Schapera's observations, this gives a distorted picture of the reality of custom, norms and practice. It is emphasised here that the chief was not an absolute ruler in contemporary terms. He acted in concert with the elders, a practice that lent credence and legitimacy to his position. In similar vein, the land boards are not supposed to dismiss the contributions of the tribal elders particularly with regard to allocations prior to 1970. In Sub-section 2 of the TLA, the main land board could hear appeals from any decision of a sub land board just as much as it endorses such. Effectively, a decision by the sub land board becomes that of the main land board as affirmed in the *Malebogo Syndicate v Ngwato Land Board and Another* (2001) in which the plaintiff sought to have a decision made by the sub land board and confirmed by the main land board reversed by the sub land board.

Part III deals specifically with Customary Land Grants. This covers usage and change of user, repossession and cancellation, transfers and the hearing of appeals from the subordinate land boards (*Katleg Land Board v Linchwe*, 2009). Non-citizens are not eligible for any grant under customary law except by ministerial approval in writing. It is common cause that non-citizens provide financial backing for developing residential plots and that citizens front for them, bearing in mind that though a lease is not a transfer it can, nevertheless, be financially rewarding.

Section 15 of Part III relates to grounds justifying cancellation of customary rights. Again, the question of administrative discretion crops up in terms of what amounts to satisfactory development and the ethical issues this raises. In the absence of specific guidelines, the section relies excessively on subjective interpretation. The check to this is Regulation No. 15, which lays down the procedures for cancelling customary rights. This includes respect for the principles of natural justice in the exercise of such discretion, as was clearly underscored in the *Boikago Borehole Syndicate and Others v Ngwato Land Board* (2004) and other cases referred to earlier.

Section 38 (1) is one of the most confusing provisions in the act dealing with transfer of rights and the sweeping powers of the land board to transfer rights. It says that no land rights of any description granted before or after the commencement of the act shall be valid without a land board authorisation. Literally, it should mean that land holdings before the inception of the land boards was to become ineffective. Obviously, that could not have been the intention of the act, being a recipe for socio-political upheaval and dismantling of the socio-cultural fabric. The act further inserts a proviso that worsens matters by attempting to exempt some land rights. These will be treated independently.

Firstly, allocations are made after the Land Overseer and the Ward Head/Headman have confirmed a piece of land as unencumbered. This could no longer be workable if the past ceases to be of any relevance. The land board might even end up allocating shrines and sacred grounds of the tribe. This suggests that the construction of this paragraph in the section is particularly dense and obtuse; unsuitable for its consumers. What should have been directly conveyed is

that the land board must ascertain if it has any record of such land, then record it and regularise the transfer. It is not mandated to invalidate such regularisation or confirmation once properly made or acquired.

The proviso deals with land that is satisfactorily developed. This again presumes the exercise of discretionary authority in the absence of specific parameters and is subject to abuse. The section then categorises sales in execution to Botswana without pre-conditions, hypothecation by a citizen and devolution of such land. The question of inheritance is a thorny issue and source of disputes, which land boards are called upon to adjudicate. To pre-empt such situations, rather than exclude their involvement, the land board must make the beneficiaries testify to the authenticity of their claims prior to being issued any documentation. Essentially, the section makes more sense read together with Sections 13 and 16. This presents a holistic tapestry historically and administratively from a contemporary perspective. The land boards are taking over where traditional authorities stopped. To do so efficiently, they must discover, ascertain and regularise previous allocations and then systematise the process, not nullify earlier forms of land administration.

If one agrees with Mathuba (1993), what the act sought to do, but did not make clear, was to declare that all transfers of any type should have the blessing of the respective land board. The reasons are that the land board needs to know who owns which parcel of land under their jurisdiction. Further, transferees would need new certificates issued in their own names, be they legatees or others, and all landholders owe a duty to their beneficiaries to ensure they become the actual possessors and occupants. In effect, the land board exercises an oversight and regulatory authority.

The Land Tribunal

The Land Tribunal was established under Section 40 of the TLA on 22 September 1995, and officially commenced operation on 13 October 1997. The Land Tribunal is not a normal Civil Court but a specialised tribunal presided over by a qualified lawyer employed as a civil servant as per the Public Service Act (2008). It designs its own procedure and is not supposed to be circumscribed by the rules of court and the formal rigidities of procedure. As a result, it is not empowered to undertake judicial reviews and its decisions can be challenged before an HC. This position was amplified in *Katleng Land Board v Linchwe* (2009) where the land tribunal assumed the powers of a formal court. Its core functions are quasi-judicial adjudication. The Land Tribunal was established to hear and determine appeals emanating from decisions of the land boards in Botswana on issues of tribal land. The land tribunal's principles are: to promote fair adjudication of tribal land disputes and appeals, and to promptly and justly adjudicate on tribal land disputes and appeals to the satisfaction of its customers. In order to achieve these, there must be teamwork, transparency, accountability, integrity, 'botho' and excellence (MLGL&H, 2009). Initially, there was only one tribunal, then operating from Gaborone. In April 2005 the Land Tribunal expanded by setting up another branch in Palapye. It is expected that establishing an Appellate Court would enable the formal judiciary to relinquish its intervention in land board affairs.

The Land Boards in Perspective

A fair examination of the land boards must be done within the context of local government, a key part of which is the accessibility to land by the poor, widows, children who are victims of cohabitation and members of minority groups. This takes into account the fact that most of the land boards are located in the original eight principal enclaves encompassing the usable parcels of land. This must necessarily be juxtaposed with the overarching goal of socio-economic

development of and for all Botswana (Ditshwanelo, 2014). The obvious question, therefore, is whether or not the land boards, given current realities, are not overburdened with multi-faceted responsibility, perhaps without corresponding power.

Firstly, the TLA as crafted does not lend itself to easy application as an administrative tool. The constant, random and ad hoc or piecemeal adaptations to societal demand and reaction are not the best way to make the act user-friendly. Unless it is intended as an instrument for the perpetuation of inequities and possibly as a weapon of emasculation, then it calls for a complete overhaul that will take into account the past, present and future.

The DLBS is currently faced with a critical shortage of key personnel in the areas of human resource management and development, financial and technical services, manpower planning and management services. It is accepted that from its inception, there were no staff trained specifically in anticipation of implementing the TLA. Currently, staff are drawn in block releases for certificate courses in public and office administration, diploma and ultimately degree qualifications, which are new. In the interim, there are no replacements, thus overstressing those left on the job. Whether this is what results in inexplicable backlogs of applications is yet to be tested. What is clear, however, is that this paucity of skills results in avoidable errors requiring unnecessary litigation over mainly administrative matters.

Effectively it defies logic to expect such a certificate holder to grapple with the TLA; and they cannot seek clarification from the chairman, for obvious reasons. Thus, there is a need for more hands on deck so that training can be less hectic for the participants who, in most cases, draw only a portion of their salaries while on training. This in turn would reduce the workload and make for better organisational management and delivery. In line with this, office space and staff accommodation ought to be improved.

A corollary of this could be firstly, the outright challenges to the land board authority, and secondly, a high demand for land and the resultant graft, corruption, discrimination, bribery and all the other unethical forms of conduct. Since the Kgabo Commission of 1991, the problems identified in the MSLB have not only become permanent, but they are compounded by other abuses and misdemeanours. In an audit by the Directorate of Corruption and Economic Crimes (DCEC) in 2011, it became clear that since 1994, only 25 362 allocations were made, leaving a backlog of 129 065 with available land virtually finished. Land 'grabbing' by the economically and politically well placed continues. 'Developed' land is still being 'sold' to non-citizens without ministerial approval and family allocations are being lost for a pittance.

There is much pressure on this particular sub land board (Mogoditshane) to make allocations both legally and illegally as most applicants would rather stay close to Gaborone. This inevitably results in the bribery of officials. Furthermore, close contact between the public and officers leads to unsavoury contacts, with occurrences of certificate forgery and tampering with electronic data regarding land records (Mmegi, 2013: 13).

There have been allegations of collusion between land board officers, including those in the adjudicatory tribunal, resulting in dispossessions and undeserved allocations at the Kgalagadi land board. Allegedly, the rewards include vehicles, houses and other sundry items, such as shirts and handkerchiefs (Mmegi, 2013: 4). The concern now should be what happens when the other towns develop and begin to attract salaried and private entrepreneur residents and how these land boards can be cushioned against such inescapable future.

Erligsson et al (2013) observed that:

... reforms weakening the power of local units, such as municipal amalgamations, have been high on the agenda in many European countries for some time. The political rationale for this trend is often cast in terms of administrative efficiency. As Chandler (2008, in Chipasula and Miti, 1984) points out, if the justification of local government is purely expediential, it is quite legitimate for the central government to control and arrange the local level in a way which makes it most efficient in fulfilling its expediential aims. In contrast, ethical justifications of local government value this institution because it fulfils some morally desirable purpose in itself, regardless of its value to the central government. If there are any valid ethical justifications for local government they would put restrictions upon the justifiability of the central government to interfere in the activities of local government ...

It is hoped that rather than centralise power, the state would review the current dysfunction of the land boards and create the necessary space for empowering them.

Other problems, such as misallocations due to unlawful conduct are evidenced in a 2004 Commission of Inquiry into Allocation of Land in Gaborone report (DCEC). Although the land boards are to collaborate with the district councils in formulating policy, this is not always happening. As a result, the lack of input by the Department of Town and Regional Planning with regard to the District Land Use Planning Unit (DLUPU) activities serves to ignore the role of environmental impact assessments in the siting some allocations.

According to Ditshwanelo (2014: 2), some land use plans have been in the making for 23 years, while disputes around them emerge and need solutions. The inadequacy of adjudicatory bodies also results in inordinate delays, as there are only two land tribunals. The designation of some staff as 'adjudication officers' is not a serious attempt to address the problem and the possibility of attaching a full complement of legal service to all land boards is a wishful impossibility given the present terms and conditions in the public service. Neither have the representatives of the tribe been reliable. The position of Land Overseer is, apparently, an overture to traditional authority. However, their terms of engagement are undefined, most are illiterate or at best hazily knowledgeable about land matters and, in fact, compound the land board authentication processes, as they are vulnerable to persuasive influences.

4. THE WAY FORWARD

It can be concluded with a fair degree of correctness that the land boards as unique engines of growth and agents of decentralisation by devolution were not properly conceptualised. As a result, they are the creatures of a legislative process, which they do not understand and applicators and custodians of substantive issues over which they have no mastery. The past leaves its traces and flaws for the present, which must be addressed for tomorrow. In this context therefore, the paper makes certain suggestions prior to its conclusion.

With regard to skills acquisition, specific attention should be paid to workplace contextual issues, which would impact on the future if the TLA is retained. This should outweigh dogmatic, doctrinaire and theoretical issues. The TLA should be a guide, a working tool and reference material, not a document for regurgitating substantive legal texts. While familiarity with general themes is important, syllabi must focus on core subjects that enrich and equip the learning process for going back to work. To this extent, the Land Administration Procedures, Capacity and Systems (LAPCAS) project might be a frame of reference.

Improving the LAPCAS project started in 2009. Given its scope, one can only assume that it is intended for those studying at degree level in geomatics, land administration and estate management. Its scope includes developing national standards for land parcels and addresses of locations, improving land administration processes such as the role of the land boards, computerising the Deeds Register, systems adjudication, and registering tribal land. These improvements would ultimately result in introducing a new Certificate of Customary Grant with survey plan or diagram approved by the Department of Surveys and Mapping, which can then be registered with the Deeds Registry so as to transform it into a rights bearing document such as the Common Law lease.

Obviously, being an agent of such changes will require technical knowledge. The other aims of the LAPCAS project are improving information technology (IT) operations and maintenance, exchange and dissemination of relevant information, and capacity building. The indicators suggest that land administration will be moving from the current, semi-traditional to a scientifically based orientation that will require radical adaptation in service processing and delivery. This is not to downplay the need to reorganise and re-categorise intra-organisational task distribution, for which various levels of skill acquisition can still be matched and attained.

Adjudication involves determining legal rights and liabilities flowing from a particular relationship (Wade and Forsyth, 2000: 808). As part of the process of alternative dispute resolution, it should be distinguishable from litigation, the formal process of adjudging cases in the formal courts. The word itself connotes any form of judgement relating to any particular matter involving the determination of the positions of two or more competing claims. As earlier stated, the Land Tribunal took over from ministerial intervention in land board decisions. Given their often quasi-judicial nature, land board decisions were subjected to a tribunal oversight with a fair degree of legal expertise. One by-product has been the necessary referral of land tribunal rulings to the HC. This subverts the non-litigant character of the tribunal, which, as noted earlier, is not a formal court and not considered as such. It would therefore be more beneficial to the cause of specialisation if a superior tribunal were established to hear appeals rather than the formal courts of law. It is also advisable to increase the number of land tribunals and add to them conjoining units of Legal Services and a Deeds Registry Unit. To achieve these aims, the terms and conditions of service must serve to entice and retain recruited staff.

There is a need to demarcate the physical and operational boundaries between state land and tribal land and the role of the land boards therein, for example, with regard to the Land Control Act (Cap 32: 11). In this context, agricultural land is defined in Sections (2) and (3) as outside the purview of tribal land involving the sale, transfer, and lease capable of running for five years or more, among others, therefore the relationship of the land board with other state agents must be properly clarified. Water, water points and streams or rivers within the jurisdiction of the land board and its role under the Water Act, Cap 34: 01 must also be clarified.

There is an alleged indifference by the state to Botswana's land shortage. As a result, in 2012, a youth movement was formed to debate the land question. While a 'comprehensive' land audit is required, the state keeps promising to mount land tenure reforms to promote land and property rights, a slogan repeated annually since 2006. It is further alleged that 400 000 Botswana are now awaiting land allocation out of a population of 2.1 million, including non-citizens (*Botswana Guardian*, 2014: 7). This reflects badly on the land boards that may in fact be victims of poorly articulated government policies on land. They must therefore find ways of being heard, bearing in mind the parameters of their employment terms and conditions.

There are indications of conflicting statements emanating from the various land boards regarding the interpretation of the TLA. While sub land boards differ with their main land boards, the land boards in general also differ from each other. The problem is compounded by mixed messages from the centre, with a net result that the receiving public become confused and antagonistic, believing that preferential treatment is being given when in fact there is not.

The TLA is in need of a holistic review, updating, amending and, *in extremis*, replacing. The Director of Land Board Services must liaise with the proper stakeholders and, in collaboration with the attorney general's department, make presentations to the state for this purpose. In default, the radical structural transformations envisaged under projects such as LAPCAS may not be achievable without reference to an enabling act.

The role of the land boards in local government with regard to land use and administration is an important vehicle of local governance delivery. Involving the peripheral population in such affairs is an example of participatory grassroots democracy; regular interfaces at the Kgotla with land board officials would play a large role in creating an understanding of their functions and mandate, legitimising the land boards and, thus, accommodating their shortcomings.

5. CONCLUSION

The land boards have come a long way from 1970. Through trial and error, they should have evolved with a better track record by 2014. They now stand between the past methods of land use and administration and the challenges of the future. What is clear is their inherent inability to cope with the present and its challenges. Largely, they are the victims of a concept without proper planning and preparation for the challenges of post-parturition, which involve demanding nurturing. Not retarded, they are however embroiled in the travails of growth, legitimacy and an assertion of relevance.

Growth, development, legitimacy and relevance are all achievable for the land boards as local government structures, provided the creative machinery of state is employed in an objective, accountable and consensual manner. The state should move away from its perception as a rule-conscious, pervasive executive authority and assume the status of a collaborative role player in the processes and challenges called for along the unique path chosen for the radical transformation of tenure and property rights in Botswana.

From all indications, there is an exciting future ahead for the land boards should the state address itself to the qualitative inadequacies of land policy formulation and implementation. It is thus premature to write off the land boards as a failed experiment.

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