

Statutory Instrument No. 48 of 1973

TRIBAL LAND ACT, 1968
(54 of 1968)

TRIBAL LAND (SUBORDINATE LAND BOARDS) REGULATIONS, 1973

(Published on the 15th June, 1973)

IN THE EXERCISE of the powers vested in him by section 37 of the Tribal Land Act, 1968, the Minister of Local Government and Lands makes the following Regulations: —

PART I

PRELIMINARY

1. These Regulations may be cited as the Tribal Land (Subordinate Land Boards) Regulations, 1973. Citation

2. (1) These Regulations shall apply to all Subordinate Land Boards established by order of His Excellency the President under section 19 of the Tribal Land Act, 1968. Application

(2) In any matter not expressly provided for in these Regulations the Tribal Land Regulations, 1970, shall, *mutatis mutandis*, apply.

PART II

SUBORDINATE LAND BOARDS

3. (1) On a date and at a time and place to be appointed by the Minister by notice in the Gazette, the electoral college or kgotla meetings for the election of members of Subordinate Land Boards as specified in any Order made by His Excellency the President under section 19 of the Tribal Land Act, 1968 shall assemble for the purpose of electing members of the Subordinate Land Board. Manner of election of elected members of Subordinate Land Boards

(2) Members of the Subordinate Land Board other than ex-officio members, shall be appointed or elected, as the case may be, as soon as practicable after the publication of these Regulations and thereafter during the sixty days following the election of the Tribal Land Board in the tribal area concerned.

(3) On the appointment or election of members under sub-regulation (2) the members previously so appointed or elected shall unless reappointed or re-elected, as the case may be, cease to hold office.

(4) No person shall be appointed or elected as a member of a Subordinate Land Board if he —

(a) has been declared insolvent or adjudged or otherwise declared bankrupt under any law in force in Botswana or elsewhere and has not been discharged, or has made a composition with his creditors and has not paid his debts in full; or

(b) has been sentenced to imprisonment without the option of a fine for any offence whether in Botswana or elsewhere.

(5) A Subordinate Land Board may perform the functions vested in it under these Regulations or by other law, notwithstanding any vacancy in its membership.

Temporary members

4. (1) If any member of a Subordinate Land Board, other than an ex-officio member, is temporarily unable to exercise the functions of his office, whether by reason of illness, absence or other cause, the person or authority who appointed or elected such member may appoint or elect a temporary member to exercise such member's functions during the period of his incapacity.

(2) An appointment or election made under the preceding sub-regulation shall cease to have effect if the person or authority who made the same notifies the temporary member of the revocation of such appointment or election, or if the member in whose place the temporary member has been appointed or elected notifies such person that he is about to resume or has resumed his functions, or that member vacates his office by virtue of the provisions of regulation 6.

Co-option

5. (1) A Subordinate Land Board may, with the approval of the Tribal Land Board, co-opt not more than two persons with suitable knowledge or experience to assist the Board in the discharge of its functions.

(2) Persons so co-opted may attend any meeting of the Subordinate Land Board and at such meetings may speak but may not vote.

(3) The chairman of a Subordinate Land Board may invite not more than two persons to a particular meeting to assist the Board in the discharge of its functions. Persons so invited may attend the meeting of the Board to which they have been invited and at such meeting may speak but may not vote.

Vacation of office

6. (1) A member, not being ex-officio member, may at any time resign his office by notice in writing to the Chairman or Secretary of the Tribal Land Board of the tribal area concerned, and, on receipt of such notice by the Chairman or Secretary of the Tribal Land Board, the office of the member shall become vacant. Such vacancy shall immediately be reported to the Minister.

(2) The office of a member other than an ex-officio member shall become vacant if—

(a) circumstances arise under which, if he were not a member of a Subordinate Land Board, he would be disqualified in terms of regulation 3.

(4) from being elected or appointed as a member of the Board; or

(b) he is required to vacate his office under regulation 3 (3).

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

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

7. (1) Subject to the provisions of the Tribal Land Act and any regulations made thereunder, or to any directions made by the Tribal Land Board, a Subordinate Land Board may regulate its own procedure: Procedure of Subordinate Land Boards

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

(2) The quorum of a Subordinate Land Board shall be three members.

(3) Any member or administrative officer of a Tribal Land Board in the tribal area concerned may attend any meeting of the Subordinate Land Board and may speak but not vote at such meeting.

(4) Decisions of the Subordinate Land Board shall be taken by a majority of votes of members present and voting, the chairman having both an original and, in the event of an equality of votes, a casting vote.

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

(6) The Tribal Land Board may issue special or general directions to Subordinate Land Boards regarding their procedure or administration.

8. (1) The chairman of Subordinate Land Board shall be elected by the Board from among the members of the Board.

(2) Should the chairman for any reason be unable to act as such at any meeting of a Subordinate Land Board the other members present shall elect one of themselves to act as Chairman.

9. (1) The Tribal Land Board shall appoint a Clerk for each Subordinate Land Board in its area of jurisdiction. Clerk of Board

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

PART III

GRANT OF CUSTOMARY LAND RIGHTS

Revocation
of regulation
6 of S.I.
7/1970
Application
for customary
land rights

10. Regulation 6 of the Tribal Land Regulations, 1970 is hereby revoked.

11. (1) An applicant for a customary law right to the use of land shall furnish verbally or in writing to the Clerk of the Subordinate Land Board within whose area the land falls the following particulars which the Clerk shall record —

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

(2) An applicant may also produce to the Clerk a letter from the ward-head concerned or his local representative stating whether he has any objection to the granting of the right applied for, which letter the Clerk shall file.

Procedure on
receipt of
application

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

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

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

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

(4) Any person who without reasonable excuse fails to obey a summons under this regulation which has been served upon him shall be guilty of an offence and liable to a fine of R10 and to imprisonment for one month.

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

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

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

13. (1) The Subordinate Land Board shall satisfy itself —

- (a) whether or not the applicant is a tribesman;
- (b) whether or not the land is subject to rights in favour of any person other than the applicant;
- (c) whether or not the land is available for the use proposed by the applicant.

Procedure before grant of customary land rights is made

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

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

Decision of Board to be communicated

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

Demarcation of land over which customary rights are granted

(2) Any grantee who fails to maintain any mark which has been established to demarcate such land shall forfeit his rights to such land, and any person who without reasonable excuse damages, destroys, moves or otherwise interferes with any mark established by or under the direction of a Subordinate Land Board to demarcate land, shall be guilty of an offence and liable to a fine of R50 and to imprisonment for three months.

(3) Before a certificate of grant of customary land rights is issued, it shall be the duty of the Subordinate Land Board to ensure that the boundaries of the area of land concerned are pointed out to the grantee by a

person designated by it for this purpose, and such pointing out shall be recorded in the certificate of grant:

Provided that the Subordinate Land Board shall make all reasonable efforts to ensure that such pointing out is done in the presence of the ward-head or of two responsible heads of family. Such additional persons as may be present during the pointing out shall also be recorded in the certificate of grant.

Certificate of grant of customary land rights

16. A certificate of grant of any customary right to the use of land issued by a Subordinate Land Board shall specify whatever conditions the Subordinate Land Board has, by resolution pursuant to regulation 13 (2), imposed and shall be in Form I set out in Schedule and shall be signed by the Chairman or the Clerk.

Appeals against decisions of Subordinate Land Boards

17. (1) Any person aggrieved by a decision of the Subordinate Land Board may appeal to the Tribal Land Board by lodging a notice of appeal either verbally or in writing with the Clerk of the Subordinate Land Board or the Secretary of the Tribal Land Board.

(2) Upon the noting of an appeal the Clerk of the Subordinate Land Board shall furnish the Tribal Land Board with the reasons for the decision of the Subordinate Land Board and shall serve a copy of such reasons to the appellant.

(3) On consideration of an appeal against a decision of the Subordinate Land Board the Tribal Land Board may allow such appeal and set aside, or in any manner vary the decision of the Subordinate Land Board. On receipt of the decision of the Tribal Land Board setting aside or varying the decision by the Subordinate Land Board the Clerk of the Subordinate Land Board shall forthwith cancel the duplicate copy of the certificate of grant, if any, issued in the matter and shall call upon the grantee to return the original certificate of grant which he shall cancel forthwith. The Subordinate Land Board shall thereafter issue, if the Tribal Land Board decision so requires, a new certificate of grant which shall conform to the requirements of the decision of the Tribal Land Board.

(4) Any person aggrieved by a decision of the Tribal Land Board on an appeal may within six months from the date upon which he became aware of such decision, appeal therefrom to the Minister who shall have the power to allow the appeal, set aside or vary any decision made by the Tribal Land Board. Any decision made by the Minister shall be final.

Cancellation of customary land rights

18. (1) A Subordinate Land Board shall in no case cancel the grant of any customary right to use land but may recommend cancellation of such rights to the Tribal Land Board. In dealing with any recommendation from a Subordinate Land Board for the cancellation of any customary right to use land, the Tribal Land Board shall follow the procedure prescribed in regulation 16 of the Tribal Land Regulations, 1970.

(2) Any person may appeal to the Minister against the decision of a Tribal Land Board to cancel customary rights following a recommendation from a Subordinate Land Board. The procedure laid down in regulations

17 and 18 of the Tribal Land Regulations, 1970, shall apply to any appeal to the Minister against cancellation of customary rights to use land by the Tribal Land Board.

SCHEDULE
REPUBLIC OF BOTSWANA
TRIBAL LAND ACT, 1968
CERTIFICATE OF CUSTOMARY LAND GRANT
(reg. 16)

To whom it may concern:

This is to certify that in accordance with the provisions of Part III of the Tribal Land Act, 1968, and the regulations made thereunder

.....
of

.....
has been granted for
purposes the use of an area of land estimated at approximately
acres in extent and situated at

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

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

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

by
on the 19..... in the presence of

.....
This grant is subject to the undermentioned conditions —

.....
.....

.....
Chairman/Clerk

.....19....

.....
Subordinate Land Board.

***Delete if inapplicable**

MADE this 5th day of June, 1973.

R.N. MANNATHOKO,
Permanent Secretary,
Ministry of Local Government and Lands.

L2/7/162 II