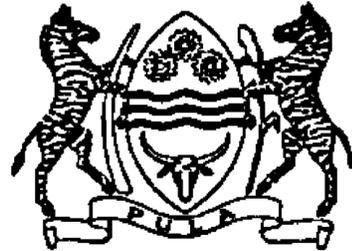


# TRIBAL LAND (AMENDMENT) ACT, 1993

No. 14



of 1993

## ARRANGEMENT OF SECTIONS

### SECTION

1. Short title and commencement
2. Amendment of section 2 Cap 32:02
3. Replacement of section 3
4. Amendment of section 6
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6. Replacement of section 8
7. Amendment of section 10
8. Replacement of section 13
9. Amendment of section 14
10. Amendment of section 15
11. Replacement of sections 17 and 18
12. Amendment of section 19
13. Amendment of section 20
14. Amendment of section 21
15. Amendment of section 24
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18. Amendment of section 33
19. Insertion of new sections 38, 39 and 40
20. Interim measure

### **An Act to amend the Tribal Land Act**

*Date of Assent:* 30th August, 1993.

*Date of Commencement:* To be notified.

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Tribal Land (Amendment) Act, 1993, and shall come into operation on such date or dates as the Minister may, by notice in the Gazette, appoint.

2. Section 2 of the Tribal Land Act, hereinafter referred to as "the Act", is amended —

(a) by inserting in its correct alphabetical order the following definition —

"develop" in respect of the grant of an area of tribal land means to introduce or carry out works or improvements in accordance with the purpose for which the grant was made, and "development" shall be construed accordingly;

Short title  
and commen-  
cement

Amendment  
of section 2  
Cap. 32:02

(b) by substituting for the definition of “diagram” the following definition —

“diagram” means a document containing geometrical, numerical and verbal representations of a piece of land, which has been signed by a land surveyor and which has been approved or certified by the Director of Surveys and Lands or other officer empowered under the Land Survey Act so to approve or certify a diagram, and includes a diagram or copy thereof prepared in the Director’s office and approved or certified as aforesaid, or a document which has, at any time prior to the commencement of the Land Survey Act, been accepted as a diagram in the Deeds Registry;”;

(c) by substituting for the definition of “land board” the following definition —

““land board” means a land board established under section 3, and “the land board” in relation to any area of land means the land board for the area in which that area of land is situated;” and

(d) by deleting the definitions of “subordinate land authority” and “tribesman” therefrom.

Replacement  
of section 3

3. The Act is amended by substituting for section 3 thereof the following new section —

“Establish-  
ment  
of land  
boards

3. (1) There is hereby established in respect of every tribal area set out in the first column of the First Schedule a land board having the name or title set out in relation thereto in the second column thereof.

(2) Subject to the provisions of this section, the membership of each land board and the period of office of members elected or appointed thereto shall be as provided in the third column of the First Schedule in relation thereto.

(3) A person shall be disqualified from being appointed as a member of a land board or from continuing as a member on the following grounds —

(a) he 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;

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

(c) he is certified to be insane or otherwise adjudged or declared to be of unsound mind under any law for the time being in force in Botswana;

(d) he is a member of the National Assembly or the House of Chiefs;

	(e) he holds any public office, or is acting in any public office by virtue of a contract of service expressed to continue for a period exceeding six months.	
	(4) A land board may perform the functions vested in it under this Act or under any other law, notwithstanding any vacancy in its membership.	
	(5) The Minister may, by order published in the Gazette, amend any of the entries set out in the third column of the First Schedule in order to vary the membership of any land board or the period of office of members thereof.”.	
	4. Section 6 (3) of the Act is amended by substituting for paragraph (a) thereof the following new paragraph —	Amendment of section 6 (3)
	“(a) has been absent from three consecutive meetings of the land board without leave of absence granted by the board;”.	
	5. Section 7 of the Act is amended by substituting for subsection (2) thereof the following new subsection —	Amendment of section 7
	“(2) Half of the number of members of a land board shall constitute a quorum thereof, but where the number of members is uneven, a majority of that number of members shall constitute a quorum.”	
	6. The Act is amended by substituting for section 8 thereof the following new section —	Replacement of section 8
“Secretary of board	8. The Minister shall appoint a secretary for each land board.”.	
	7. Section 10 of the Act is amended —	Amendment of section 10
	(a) in subsection (1) thereof, by substituting for the words “tribesmen of that area” the words “citizens of Botswana”; and	
	(b) by deleting subsection (2) thereof.	
	8. The Act is amended by substituting for section 13 thereof the following new section —	Replacement of section 13
“Functions of land boards in relation to customary tenure	13. (1) All the powers previously vested in a Chief and a subordinate land authority under customary law in relation to land, including —	
	(a) the granting of rights to use land;	
	(b) the cancellation of the grant of any rights to use any land;	
	(c) the imposition of restrictions on the use of tribal land;	
	(d) authorizing any change of user of tribal land; or	
	(e) authorizing any transfer of tribal land,	
	shall vest in and be performed by a land board acting in accordance with powers conferred on it by or under this Act.	
	(2) A land board may hear an appeal from any decision of a subordinate land board in respect of any of its functions conferred on such subordinate land board.”.	
	9. Section 14 of the Act is amended by substituting for the word “six” the word “four”.	Amendment of section 14

Amendment  
of section 15

10. (1) Section 15(c) of the Act is amended by substituting for the word "tribesmen entitled thereto" the words "citizens of Botswana".

(2) Section 15 of the Act is amended by substituting for paragraph (e) thereof the following new paragraph —

"(e) that, without sufficient excuse, the land has not been cultivated, used or developed to the satisfaction of the land board for such period as may be prescribed in respect of that land, or has not been cultivated, used or developed in accordance with the purpose for which the grant was made; or".

Replacement  
of sections  
17 and 18

11. The Act is amended by substituting for sections 17 and 18 thereof the following new section —

"Land use  
zones

17. (1) A land board shall, after due consultation with the district council, determine and define land use zones within the tribal area, and may from time to time make amendments thereto.

(2) The land board shall furnish the Minister with details of all determinations, definitions or amendments thereto made under subsection (1), and if the Minister is satisfied therewith, that the descriptions of the land concerned are satisfactory and that the land use zoning is in accordance with any regulations made under section 37 in respect of the types of land use for which the land may be zoned, he shall give notice thereof in the Gazette.

(3) The land board shall not make grants of land under this Part for any land use which is in conflict with the use for which the land is zoned.

(4) After consultations with the district council, village development committees, tribal authorities and any other interested institutions, the land board may determine management plans, and their revision from time to time, for the purpose of assisting or giving guidance on the use and development of each land use zone within a tribal area."

Amendment  
of section 19

12. Section 19 of the Act is amended by substituting for subsection (1) thereof the following new subsection —

"(1) The Minister may, by order published in the Gazette —

(a) establish a subordinate land board for any area within a tribal area;

(b) confer on any such subordinate land board any of the functions of the land board in respect of that area; or

(c) transfer any of the functions of a subordinate land board to any other subordinate land board."

Amendment  
of section 20

13. Section 20 of the Act is amended by substituting for the word "authority" wherever it occurs the word "board" in each case and by substituting for the word "tribesman" the words "citizen of Botswana".

Amendment  
of section 21

14. Section 21 of the Act is amended by deleting therefrom paragraph (ii) of the proviso, and by substituting for the word "tribesman" wherever it appears the words "citizen of Botswana" in each case.

15. Section 24 of the Act is amended —

Amendment  
of section 24

(a) in subsection (1) thereof —

(i) by deleting the words “with the permission of the Minister” appearing in the marginal note; and

(ii) by deleting the comma and word “either” in line 2, and by substituting for all the words after “section 23,” the words “but may only grant land in ownership to the State”;

(b) in subsection (2) thereof by inserting immediately after the word “section” the words “to a person who is not a citizen of Botswana”; and

(c) in subsection (8) thereof by substituting for the number “26” the number “38”.

16. The Act is amended by deleting section 26 thereof.

Deletion  
of section 26

17. Section 28 of the Act is amended by deleting the proviso thereto.

Amendment  
of section 28

18. Section 33 of the Act is amended by substituting for subsections (1) and (2) thereof the following new subsections —

Amendment  
of section 33

“(1) Where land is granted to the State under section 32, and there subsists over such land a right to use such land under a customary form of tenure, the land board shall require the occupier to vacate the land, and on such vacation the provisions of subsection (2) shall have effect.

(2) Any person who is required to vacate land under the provisions of subsection (1) may be granted the right to use other land, if available, and shall be entitled to adequate compensation from the State for the following, if applicable —

(a) the value of any standing crops taken over by the State;

(b) the value of any improvements effected to such land, including the value of any clearing or preparation of land for agricultural or other purposes;

(c) the costs of resettlement; and

(d) the loss of right of user of such land.”.

19. The Act is amended by inserting after section 37 thereof the following new sections —

Insertion of  
new sections  
38, 39 and  
40

“Transfer  
of rights

38. (1) The rights conferred upon any person in respect of any grant or lease of any tribal land, whether made under or in accordance with Part III or Part IV, or made prior to the coming into operation of this Act, shall not be transferred, whether by sale or otherwise, to any other person without the consent of the land board concerned:

Provided that the provisions of this subsection shall not apply in the case of —

(i) land which has been developed to the satisfaction of the land board concerned;

(ii) a sale in execution to a citizen of Botswana;

(iii) a hypothecation by a citizen of Botswana; or

(iv) the devolution of such land on inheritance.

(2) The Registrar of Deeds shall not register any conveyance of tribal land or rights to such land unless supported by a certificate issued by the appropriate land board or by written lease, and, where relevant, he is satisfied that one of the conditions set out in the proviso to subsection (1) applies.

Cap 33:02

(3) For the avoidance of doubt, it is hereby declared that the provisions of section 17 of the Deeds Registry Act shall have effect in relation to the transfer of real rights of land under the provisions of this section as it has in relation to the transfer of any other real rights in land.

Offences and penalties

39. (1) Any person who —

- (a) acquires or takes occupation of any tribal land without having an appropriate lease or a certificate issued by the land board concerned;
- (b) changes the user of any such land without the prior approval of the appropriate land board;
- (c) transfers any such land to any other person otherwise than under and in accordance with the provisions of this Act;
- (d) makes any statement or representation, whether explicit or implied, which he knows or reasonably ought to have known was untrue, for the purpose of obtaining a grant of land, or for the purpose of obtaining any benefit or compensation under the provisions of this Act,

shall be guilty of an offence and shall be liable to a fine of P 10 000 and to imprisonment for one year, or if the offender is a corporate body, to a fine of P20 000.

(2) A court convicting a person of an offence under subsection (1) may order the eviction of the offender from the tribal land which he occupies and in respect of which the offence was committed.

Establishment of land tribunals

40. (1) The Minister may, by order, establish a land tribunal, or land tribunals for the purposes of this Act.

(2) The composition, terms of reference, jurisdiction and powers of any such tribunal, and the period of office of members thereof, shall be as may be specified in the order establishing the tribunal.

(3) Where the Minister has established a land tribunal for any area —

- (a) any appeal which is said to lie to the Minister under sections 14 or 27(2) of this Act shall be referred to the land tribunal for the area concerned for settlement;

(b) any person aggrieved by a decision of a land board made under section 38 of this Act may appeal against such decision to the land tribunal for the area concerned.

(4) Decisions of a land tribunal shall be enforceable in the same manner as decisions of a court of competent jurisdiction.

(5) A land board wishing to enforce any of its decisions may make application therefor to the appropriate land tribunal, and the land tribunal, after giving both parties to the dispute an opportunity to appear before it and present arguments or evidence, may uphold the decision of the land board, reject it or amend it as it deems fit, and shall thereafter cause the decision of the land board, if upheld, or as amended, to be enforced as a decision of the land tribunal.”

20. Pending the establishment in any area of a land tribunal under section 40, disputes or appeals that may be referred to any such land tribunal may be referred to, and settled by, the District Commissioner of the area concerned.

Interim  
measure

PASSED by the National Assembly this 4th day of August, 1993.

T.G.G.G. SEELETSO,  
*Clerk of the National Assembly.*