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Botswana land policies, colonial legacy, socio-economic injustice and the politics of populism

Political rhetoric or does Botswana have a problem of land ownership?

By Sheila Khama
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Political rhetoric or does Botswana have a problem of land ownership?

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Executive Summary

This briefing highlights the key challenges and policy recommendations related to Botswana's land tenure system, with a particular focus on the government's recent acquisition of land from the Tati Company and its implications for land governance and socio-economic justice.

Historically, Botswana's land tenure system evolved through pre- and post-colonial eras, divided into three categories: communal (tribal), state (formerly Crown), and freehold land. Despite minimal white settler presence compared to other African nations, land ownership by former colonial settlers remains a sensitive issue, raising questions about socio-economic equity.

A 2023 government purchase of 45,000 hectares of freehold land from the Tati Company reignited debate on land ownership and absentee landlords, as well as urban land shortages. The transaction, while symbolic, was criticised for failing to address deeper land access issues. The purchase underscored ongoing tensions around land rights and the state's need to ensure equitable land distribution and effective use.

Recommendations

1. **Prevent self-disenfranchisement:** Introduce measures to prevent citizens from entering long-term leases that may leave them landless, particularly in communal areas.
2. **Address urban land shortage:** Implement policies to increase the availability of serviced land in both rural and urban areas to curb urban migration and meet the growing demand for residential plots.
3. **Disincentivise absentee landlords:** Introduce taxes on unutilised land and a "use it or lose it" policy for all landowners, preventing land sterilisation and promoting economic development.

Cover photo: Monirul Bhuiyan / AFP

Introduction

An announcement by the former Minister of Lands and Water Affairs, Dr Kefentse Mzwinila, prompted the question I pose in the sub-heading above. Briefing Parliament on November 9, 2023, the former Minister said, "This land has not been in our hands or in the hands of Batswana for 153 years, thus it was imperative for us to ensure that we maintain our integrity as a nation and our sovereignty as a nation to return this land to Batswana,".[1] The former minister was referring to a decision by the administration to purchase land owned by Tati Company and suggested a flaw in current land arrangements in the country. Notwithstanding the former minister's tone, it turns out that the transaction followed an offer by the company (and not a proactive and deliberate policy decision by the government) to sell land first acquired during Sir Cecil Rhodes' time. The land was a portion of property that was part of former Rhodesia. Nevertheless, the outcome of the 2023 negotiations following the offer for sale resulted in the State's decision to purchase land covering 45,000ha for BWP1.4b (roughly US$1m). The sale transaction was subsequently concluded at the end of 2024.

Interestingly, the tone of the Minister's statements differed from those of a technocrat and former Director of Lands under his Ministry, Mr Odirile Mabaila. Going by the letter of the law in 2022, the official is quoted acknowledging the inherently sensitive nature of the issue of land ownership by white settlers while nevertheless explaining that "Tati Company holds freehold land rights. When we (Batswana) took over independence as a country we enshrined in our constitution protection of property rights. For us to acquire any freehold land there must be compensation to those who hold those land rights".[2] This made me wonder whether, as with other former colonies, Botswana's adoption of colonial laws, without interrogating their long term implications, coupled with poor administrative systems, is not more material than white settler land rights alone. So, though not intended to be a comprehensive look at Botswana's land tenure history, to contribute to public debates, I provide some highlights of the evolution and structure of the country's land tenure systems.

A snapshot of Botswana's land tenure system

Unlike former colonies including Kenya, South Africa, and Zimbabwe, as a protectorate, Botswana had very few White settlers during colonial rule. Unsurprisingly, therefore, the country has so far avoided challenges of land-based conflict and controversial calls for mass land redistribution policies. The question is, will Botswana maintain this harmony or have 50 years of self-rule simply been a calm before a storm? The answer lies in the effectiveness (or lack thereof) of post-colonial land policy interventions in fostering socio-economic justice. As a starting point, it's worth noting that the genesis of modern-day Botswana's land tenure system straddles pre-and-post colonial rule. Before the colonial era, land was demarcated along tribal lines and controlled by traditional chiefs. However, in time, administrators of the colonial era demarcated the 582,000km2 landmass into three categories to be subjected to three separate systems of land rights. This evolution is marked by major milestones, some of which I discuss briefly in the paragraphs below.

The first system pertained to land that was classified as 'tribal territories' and covered 71% of the country . The land was held communally, controlled and administered by chiefs based on traditional methods of land rights. As a legislated system, the tenets of the relevant law can be traced to the Colonial Tribal Territories Act of 1933. Post-independence, the law has been amended several times. Most scholars agree that the 1968, 1983, 1992 and 2017 changes were the most significant, each with its hallmark. A major feature of the 1968 amendment was the replacement of the Tribal Territories Act with a new law known as the Tribal Land Act, which introduced 'Land Boards'. The new law provided that 'all powers vested in the chief under customary law in relation to land shall be vested in and performed by a land board acting in accordance with the provision of this Act'. That said, the basic principles of this law are still largely borrowed from traditional customs. As such, the creation of the land boards shifted authority, and harmonised institutions and administrative procedures, leaving the chiefs largely as figureheads.

Another comprehensive review was carried out in 1983 following the Balopi Commission, whose recommendations focused largely on aspects of land as an economic asset with commercial value rather than being a mere means for subsistence as had traditionally and

1 Moshe Galeragwe. Government acquires 45,000 hectares of Tati land (2023). Available here.
2 Obusitse Kologwe. In Defence of Tati Company: No land was stolen, so says Govt (2022). Available here.

historically been the case. One of its main features was a provision for commercial and industrial leases on tribal land to be modified and allow for a duration of 50 years. Common law leases for residential plots, for the purpose of mortgaging residential buildings, were left at 99 years. Another significant change to the law was the introduction of common law grants, the ability to register a lease and apply for a change of use from subsistence to commercial activities. The 1983 Commission established significant economic development opportunities in rural areas by sanctioning the granting of registrable land leases, which may be utilised as collateral (a practice that had previously been considered taboo). An automatic right of inheritance was also permitted.

Nearly 10 years later in 1992, the Kgabo Commission made an important recommendation being to replace the term 'tribesman' with 'citizen.' The effect was two-fold. Firstly, it eliminated gender undertones and potential biases. This paved the way for land allocation to women as well as men based on identical principles of individual property rights. Another noteworthy change was doing away with the need for ministerial consent for a non-tribesperson to claim customary land rights in tribal jurisdictions outside one of his/her lineages. This specific change detribalised important aspects of land rights. Access and right of use to this category of Tribal land, however, remained a birthright for citizens to this day.

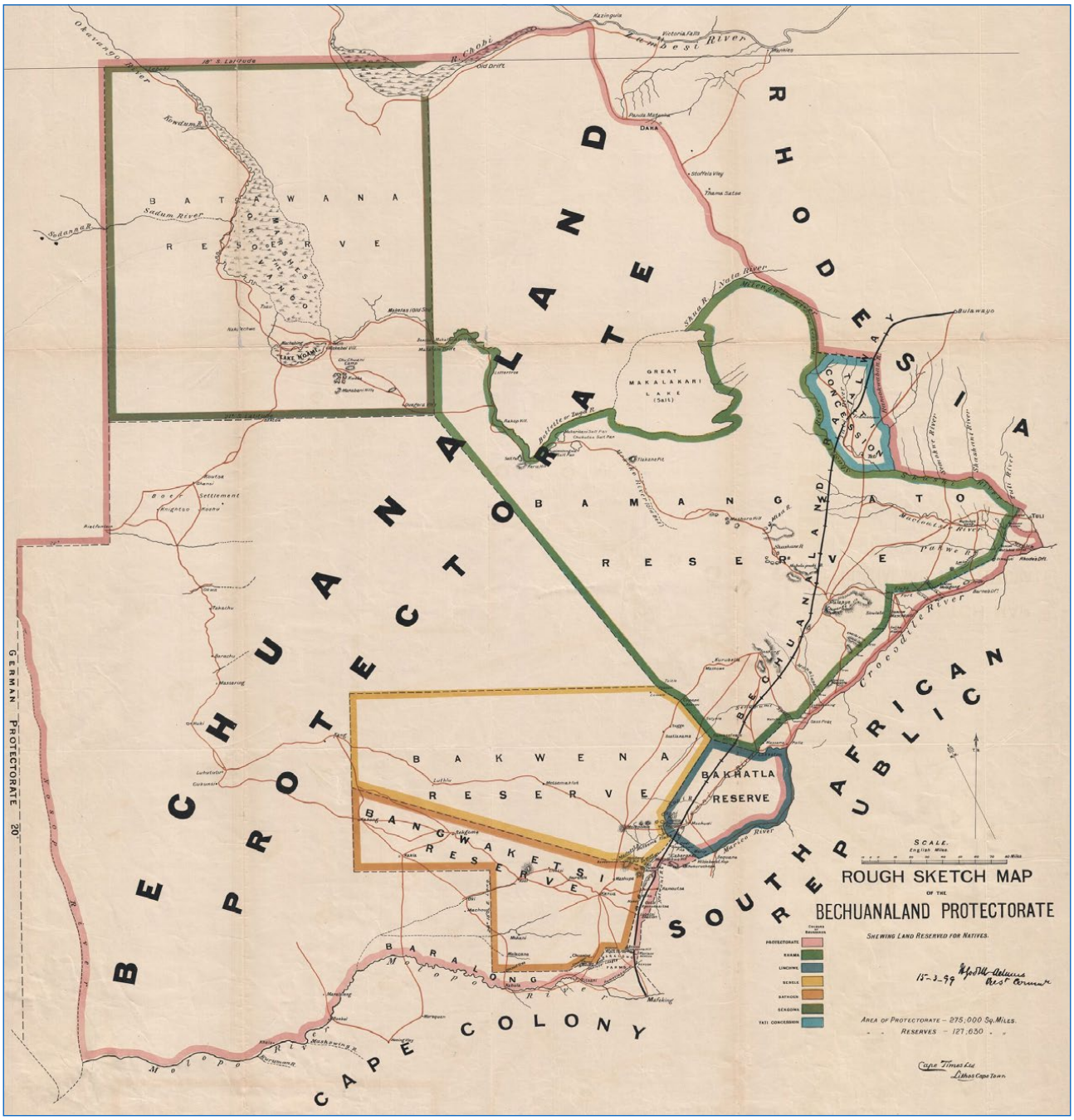
Importantly, though not spelt out, the outcome was to eliminate the exclusion of the rights of members of the San population. This is because, historically, the San have no tribal affiliation as envisioned in tribal laws. However, based on the new law, this specific position of disadvantage became immaterial because taken at face value, like all other Batswana, this law meant their status as citizens took precedence over ethnicity or lack thereof. Therefore, in the event of the nomadic group of citizens opting to leave the protected area to pursue other forms of existence, they too would be able to acquire land for subsistence and other purposes. These rights are the bedrock of communal land practices whose more traditional aspects are largely understood by many citizens and can, therefore, be deemed inclusive and participatory.

Collectively, the changes to the law were important for ensuring that Botswana's land tenure kept pace with evolving national development needs and international norms. However, many aspects of the law remain rooted in Tswana customs. From a governance viewpoint, keeping the laws on communal rights grounded in culture bodes well for social inclusion because knowledge of the law is essential, as it is the foundation of public participation. From the perspective of the economics of land resources, the 1983 amendment enhanced the value of customary land. Maintaining the right of citizens to acquire such land nationwide for domestic and subsistence agriculture purposes free of charge, on the other hand, while removing a requirement for proof of tribal affiliation, augers well for nationhood and a common identity. Based on developments to date, some scholars say that through the balance of economics, culture and social norms, Botswana's modernisation of cultural land systems has been effective. For instance, Martin Adams writes, 'in no other country in the region has land been so judiciously administered as an essential component of good governance.[3]

The second category of land tenure policy pertained to pieces of land called 'Crown Land.' These lands were owned and controlled by the colonial Government based on British legal systems. At independence, the land was transferred to the State and covered about 26% of the country and is today known as 'state land' following the passing of the State Land Act of 1966. Among other things, the law conferred on the President the power to provide for its disposal. Of this area, about 52,000km2 accommodates the San nomadic people in a game reserve and the rest is developed as urban centres, public infrastructure and used as wildlife parks. The colonial administrators created the 52,000km2 Central Kalahari Game Reserve (CKGR) to accommodate San lifestyles at a time when the San did not have rights to communal land. The assumption was presumably that neither their lifestyle nor their needs would evolve or change over time. Hence, the provisions were only confined to hunter and gatherer land use needs. Otherwise, state land can be and has been leased to individuals and companies for 99 years with the possibility, but no guarantee, of an extension.

The third category of land tenure is 'freehold', also derived from British systems of law and equates to 3% of the country. Colonial administrators allocated this land exclusively to European settlers who did not have communal land rights like tribespersons. It comprises blocks found in different parts of the country and was granted for agriculture, mining and other purposes. A unique feature of freehold land is perpetual ownership based on possession of title in contrast to communal rights

3 Adams M. Land tenure policy and practice in Botswana; Governance lessons for southern Africa (2003). Available here.



Source: ibali.uct.ac.za

FIGURE 1: Bechuanaland Protectorate in 1899 showing tribal reserves (University of Cape Town archives)

that are only confined to the right of use. Tati Company's land ownership is a function of this dispensation and hence the helpfulness of Mr Mabaila's comment. Though it changed hands over the years, the concession dates back to 1870 when that part of the country was under a Ndebele Chief in Zimbabwe's modern-day Matabeleland. In 1893, Tati Land was detached from Matabeleland and placed under the jurisdiction of the British Resident Commissioner of the Bechuanaland Protectorate (now Botswana). The rights were later acquired by a new company known as Tati Company. Part of the land was donated to the State at independence, while some was sold.

The controversy of freehold lands and white settlers

The differences in the three systems notwithstanding, before and after independence, the State occasionally acquired land from title holders and traditional lands for the common good, including public infrastructure and mining. The difference is that in the case of communal land, the land is appropriated with minimum compensation, while in the case of freehold land, the State negotiates a price based on the condition of the market to acquire the titled land from its owner. This occasionally sparks debate based on two questions. The first is whether

the two systems are equitable. The second is whether land ownership by former colonial settlers is socio-economically justifiable given the way white settlers gained possession of the land. (i.e. by dispossessing tribes as was the case with land in latter-day Matebeleland). A major bone of contention is the very question of the legitimacy of land ownership and disproportionate financial gains between the two modern rights holders and the original owners. This presumably is the basis for comments by Botswana's former Minister.

On the other hand, given experiences elsewhere in Africa, the question of whether Botswana can avoid a colonial legacy based on land access and socio-economic fracture remains pertinent. However, as can be seen above, as a percentage of Botswana's landmass, freehold land owned by white settlers is insignificant. Instead, at an original 71%, land held communally is large. More significantly, the rights of citizens remain fundamentally protected. As such, based on physical mass, economic, social and cultural impacts, it would appear that the administration of this 71% of the country will more materially and directly impact citizens. So, it does seem that the pursuit of land-based economic justice will likely be driven by efficient implementation of the law and systems for administering communal land rights and not the redistribution of a meagre 3% being freehold land.

But the former minister's statement and the tone adopted by national leaders in relation to this transaction suggest a different mindset, albeit inconsistent with reality. For instance, linking the integrity of Botswana's sovereignty to ownership of the 3% of the land by former white settlers or the purchase of a mere 45,000ha from a private company is a bit of a stretch. Though this might stoke emotions among citizens, it can also misdirect policy dialogue through political rhetoric, which has become an art form in regional politics. More important is the fact that the transaction does very little to fundamentally address the very problem the former Minister alluded to - the legitimacy of land rights of former white settlers and land access by citizens. Instead, the statement begs the question of why, having had 50 years to get to what the administration deemed unjust, the authorities did not intervene. Instead, based on national laws and following self-rule, the Botswana Government accepted the legitimacy of the ownership and hence the purchase. By so doing, the Botswana authorities perpetuated the very policy the former minister took issue with. As such, though politically expedient, abiding by the laws all the while faulting them flies in the face of reason.

That said, the former minister quite rightly implied recognition of a fundamental problem of absentee landlords. But absenteeism per se is neither confined to former white settlers nor objectionable if it does not impede investments that contribute to national economic prosperity. What is undesirable is holding onto land resources in perpetuity without any plans to develop them. This economically sterilises the resource, impedes a country's right to realise its value and, therefore, might be a more important policy matter to address, especially in urban areas. But in Botswana, the problem is not confined to white settlers. In the very vicinity of the capital city, the Catholic Church and others continue to own large pieces of freehold land with no objection from the authorities.

Either way, in response to the Minister's statements, some citizens said, 'it is about time.' Others thought it was unjust to compensate a foreign entity for land acquired unjustly in the first place. Some dismissed the announcement as sheer political antics and elitist tendencies to acquire land from former settlers in order to benefit from their own decision. Tragically, neither good governance nor sustainable land resources development thrives in circumstances in which special interests underpin policy or under conditions in which public policy is not fact-based, whichever might be the case this time.

Urban land shortage

Implicitly, the former minister also recognised the more pressing matter of urban housing land shortage. Estimates show that, 'in less than 40 years, the proportion of people living in urban areas increased from 4%, in the decade preceding independence in 1966, to about 52% in 2002.[4] Continent-wide, it is estimated that, over the next 40 years, Africa will have the fastest-growing cities in the world. By 2050 Africa's cities and towns will house nearly 60% of the region's projected population'.[5] Botswana's regional planners and urban infrastructure developers have not kept pace with the demand for serviced and affordable land. Apparently in Botswana, 'by July 2022, a waiting list

4 National Land Committee. At the Crossroads: Land and Agrarian Reform in South Africa into the 21st Century (2000). Available here.
5 GreenBook. Our Urban Future: South Africa's settlement growth story (2019). Available here.

for housing land allocation in urban areas dated back to 1990.[6]' So, though an additional 45,000ha may impact the urban property market, it will have a negligible effect on the problem of inadequate serviced and affordable urban and rural land. Importantly, left to market forces, the cost of the land will be prohibitive for the average citizen. But it may benefit a few elite homeowners, speculators, developers, and financiers. Stated differently, when it comes to serviced land access, the land purchased from Tati Company will barely meet demand but might have the unintended consequence of compounding socio-economic disparities among citizens and not between citizens and former White settlers.

Missing link

No doubt there are some flaws to my logic, however, on matters of land rights, it would be hard to dismiss the position of privilege in which rightly, Botswana citizens find themselves relative to non-citizens. There would equally be fewer cases (if any) in which citizens of other African countries enjoy the same degree of guarantee of free lands for a homestead, arable land and pastoral land. From a sustainable development point of view, given a population of only 2.4million people, it should also be easy to preserve the productive capacity of the resources and preserve it for generations to come. Yet easy as it may sound, this cannot be taken for granted.

Conclusion

The real challenge lies in the inefficient administration of communal land and the urban land shortage, impacting citizens more directly than freehold land ownership by former settlers. To foster socio-economic justice, efficient land policy interventions and better-serviced urban land should be the priority.

The government could protect citizens from self-disenfranchisement through long-term leases on communal land, address the shortage of serviced land to curb urban migration and meet demand, and implement policies like taxing absentee landlords and a "use it or lose it" principle to ensure land utilization and reduce socio-economic injustice.

This commentary was reviewed by Mr. Anthony Bashingi to whom I am grateful but take responsibility for any omissions.

Sheila Khama a is a Policy Advisor, Podcast host, NED of FTSE, Nasdaq and Saudi Stock Exchange listed companies and an associate Fellow of Chatham House. She is former CEO of De Beers Botswana, a former NED on boards of Debswana and DTC Botswana. www.sheilakhama.com

6 Obusitse Kologwe. In Defence of Tati Company: No land was stolen, so says Govt (2022). Available here.

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Contact us
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