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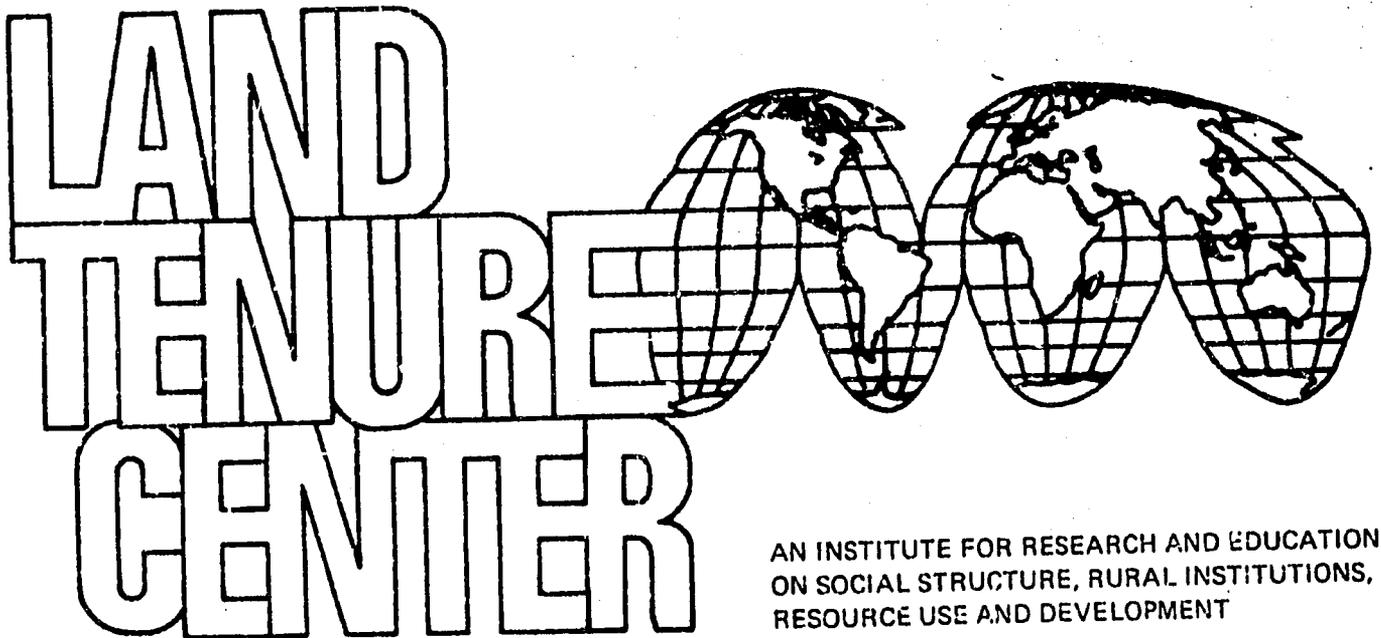
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OBSERVATIONS ON LAND TENURE & HOUSING DEVELOPMENT
IN THE MAJOR VILLAGES OF BOTSWANA

by
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IN THE MAJOR VILLAGES OF BOTSWANA*

by

John W. Bruce**

Madison, April 1981

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1. Introduction

This paper examines residential land tenure as it affects the growth of a supply of improved housing in the major villages of Botswana. Several of these major villages have populations of 20,000 or more, while 15 percent of Botswana's population lives in major villages and 35 percent in smaller villages is presently inadequate and this appears to be at least partially due to a limited access to housing finance from private and public lending institutions. The problem is particularly frustrating because some of those institutions have excess liquidity: commercial banks, for instance, maintain that they do not find adequate opportunities for sound lending in Botswana. It has been suggested that land tenure in the villages poses certain obstacles to the mobilization of that excess liquidity to meet housing finance needs.

Concern over the adequacy of customary land tenure institutions from a credit perspective is common in Africa, and arises in relation to agricultural as well as residential land. This concern is, however, often moderated by a deep respect for what traditional tenure systems have commonly achieved in the past. In a subsistence society, those tenure systems--while not strictly egalitarian--often ensured a minimum necessary access to subsistence opportunities, in the form of land, for all members of the community. This has been perceived as a fundamental value in many African societies, and policy-makers are seeking ways to ensure that access to today's development opportunities is as broad as that to subsistence opportunities in the past.

While many traditional tenure systems worked well enough previously, they may pose certain difficulties in a "modern" economic context. The modern sector institutions for credit and marketing and the received law governing those activities have usually been modeled or institutions and laws developed in societies where freehold tenure prevails. These modern sector institutions and their activities often simply do not "mesh" well with the traditional land tenure system, and as a result the developmental possibilities of neither the land tenure system nor the modern sector institutions are realized. A rough physical analogy would be trying to put a square peg into a round hole. It may be such a problem which stands in the way of bringing the excess liquidity of Botswana's lending institutions to bear upon the lack of adequate housing in the villages.

Botswana has in fact experimented cautiously but regularly with land tenure forms since independence. It has for the most part rejected an expansion of the received freehold tenure and, in placing land in private hands for development, has utilized non-freehold forms. In rural areas the Tribal Land Act (1968) has, while in general preserving traditional tenure principles, regularized use of the common law lease for a variety of specialized land uses. In urban areas, Botswana has developed two new tenure forms, the Certificate of Right and the Fixed Period State Grant.

These tenure changes are interesting responses to the fundamental question of equity in access to the development opportunities represented by land. Any discussion of land tenure developments in the villages must proceed in relation to this broad policy question. Urban land poses a special problem--or at least a particularly acute form of a more general problem--in that it appreciates in value very rapidly and largely as a result of state activities at the taxpayers' expense: e.g., building of roads; installation of water, electrical, and other physical services; creation of schools, hospitals and other social services; and above all, creation by government of major geographic concentrations of job opportunities in the public sector, generating a great demand for housing at those points of concentration. In such a situation fairness requires that the state devise a means of ensuring that this appreciation in value, generated at public cost, accrues to the general benefit rather than providing a windfall for those few individuals with holdings.

In Botswana, for a variety of historical reasons, the state owns most of the land into which urban centers are expanding. The state can thus, by its decisions concerning the use and allocation of this state land, relatively easily control the distribution of the benefits of land appreciation. While this situation poses a happy opportunity for socially sound control, it also poses great temptations to governmental elites. The danger is that these elites of politicians and civil servants will utilize their political power to transfer state land on favorable terms into private hands, their own private hands, and themselves appropriate the benefit of the appreciation, constituting themselves an economic elite as well as a governmental elite. Such processes, while formally legal, are seen in time as a form of corruption, and quite properly so. To date, Botswana has avoided this route, much to the credit of the national leadership.

How can the state, where it wishes to utilize private initiative and capital for the development of land in state ownership, manage its land so as to obtain a fair distribution of the benefits of land appreciation? There are two fundamental approaches. Both eschew alienation of the state's ultimate title to the land concerned and both have been utilized in Botswana, in the urban context. One approach is to limit private land rights in time, so that the title to the land ultimately returns to the state, as in the case of Botswana's Fixed Period State Grant. A lease of state land would achieve very roughly the same purpose. Another approach is to make title to urban land broadly available, even to the poorest members of society, and to include limitations on the marketability of such titles to protect poorer holders from the temptation to sell cheaply and thus prevent the concentration of holdings in a few hands. Botswana's Certificate of Right has accomplished this purpose. The same principles have been honored in tenure change in the rural areas. Where it was desired to provide exclusivity of use for commercial ranching, and where it was desired to provide village land for commercial use or residence by non-tribesmen, the rights conferred were again limited in time and subject to eventual reversion to the tribe, through utilization of the common law lease.

The approach to land tenure taken in Botswana is commendable for its careful selection of particular tenure forms to meet particular needs and its awareness of fundamental distributive issues. This is an appropriate approach to the special needs of different sectors, which are often pronounced in a developing country. It is suggested that this same policy of tenurial "fine tuning" be followed in seeking to achieve an adequate regime of land security for loans in the villages. Such an approach is particularly appropriate when a question of such broad social significance as land tenure is being addressed in relation to one narrow objective, i.e., security for lending in relation to housing needs.

2. Improved Housing in the Villages

In spite of the lack of land security for credit in the villages, a considerable amount of improved housing has been constructed.¹ Most of this housing is modest: a rectangular, one or two room house of cement block, with a sheet metal roof and possibly a pit latrine. There are also some more imposing edifices. There is a clear tendency to move to rectangular housing rather than to improved forms of the traditional rondaval. Improved thatching is sometimes adopted as an alternative to the sheet metal roofing, but because of a shortage of skilled thatchers the cost of such thatching is often more expensive than sheet metal roofing.

There are four overlapping but readily recognizable classes of villagers who build improved housing.

The more modest improved housing has been constructed by persons who have little or no access to credit institutions. There is a lack of cooperative credit institutions in the traditional society, and the resources of these individuals are not such that they have established themselves as customers of modern sector saving/lending institutions. Their purchase of building materials often does not take place at one point in time; particular items are purchased over the years as favorable opportunities present themselves and stored until enough capital has been accumulated to begin construction. That capital is generally realized through sale of cattle, but it may have been accumulated as a result of modern sector employment, particularly in the mines of South Africa and now increasingly in Botswana's own mining industry. It will have been held in the traditional savings account, the herd.

The more impressive improved housing in the villages is built by salaried employees of modern sector institutions, including government employees. These have at least limited access to modern sector lending

¹The term "improved housing" is used for want of a better term. The traditional rondaval is aesthetically pleasing, but there are significant economies offered by rectangular construction and sheet metal roofing when larger-than-traditional structures are constructed.

institutions. Government employees are particularly significant as builders of improved houses. They do not generally invest much in housing in the localities to which they are posted; often government-supplied housing is available at sub-economic prices, and in any case they are transferred very frequently. There is little social pressure upon them, if they are posted to the villages, to maintain a superior standard of housing. The provision of housing to government employees retards the growth of a sale/rental market in the villages; such officials would otherwise constitute the largest part of the market. Attempts to raise rentals on government housing in recent years have sometimes resulted in rejection of the housing in favor of rondavals, confirming the disinclination to spend much on housing in villages of assignment.

But these government employees do build houses in their home villages, as retirement homes and as a hedge against inflation. Their reluctance to spend a major portion of their salaries on housing in villages of assignment is partly due to their giving priority to saving for this purpose. The funds for building their houses will often come from a combination of savings and borrowing. The borrowing is at a modest level, and often takes the form of borrowing against bank deposits. To take an example, a government employee with a deposit of 2,000 Pula at a village bank agency will borrow another 2,000 Pula against that deposit, which is frozen as security. He receives 6-1/2 percent interest on his deposit while he pays 13 percent interest on the loan.² He may realize additional funds for building through the sale of cattle.

A third group, whose members also have access to modern sector credit institutions, are those holding trading licenses in the villages. Many of these are non-citizens or citizens of foreign origin. They usually begin business from residential/business premises, which buildings may be financed in a number of ways: land security in urban property, a guarantee of repayment from a wealthy associate (often a relative), borrowing against bank deposits, or borrowing against the attractive prospects of the business venture.

For the fourth group, the "big men" who are major livestock owners (livestock are unequally distributed even in traditional society), the financing of housing is relatively simple: the sale of a dozen good steers at Botswana Meat Corporation prices will finance a new house.

Three important points emerge. First, the very existence of a substantial amount of improved housing in the villages is the best possible proof that tenure in residential holdings under customary rules is secure, secure in the sense of providing that sound expectation of continued use which encourages investment. This security is examined further in Section

²This would not normally be a very attractive borrowing opportunity; its currency invites careful study of non-economic attractions of the arrangement.

3 of this paper. Second, some of those building houses have access to a limited amount of credit from modern sector lending institutions on bases other than land security. Third, those building improved houses in the villages appear to be doing so for self-occupancy and not as an investment which they expect to generate income. The sale/rental market for such housing is small and uncertain.

The last point deserves to be stressed heavily. Rental returns on investment in housing are not impressive; a two-room rectangular building of concrete block with a sheet metal roof and a pit latrine, which costs something in the neighborhood of 1,000 Pula to build, will in most large villages rent at 10-15 Pula/month. This would be a return of 10 to 20 percent per annum on the investment if the house were rented at all times, but the small and uncertain rental market means that it will remain empty a good deal of the time. A 10 percent return on building costs would be the very most that could be predicted. This is a reasonable investment compared to bank interest rates, but not compared to returns on investment in cattle at present prices.³ The sale market is even more limited. Houses are being constructed in the villages which cost well in excess of 10,000 Pula, but when these are offered for sale (which is unusual) the seller must often wait for years before finding a buyer who will pay him a price which represents a reasonable return on his investment. Demand is limited. These conditions in the sale/rental market in the villages will change only gradually, with the general economic development of the villages. The villages very near Gaborone are an exception: they are really part of the Gaborone sale/rental market, and are dealt with separately in the Addendum to Section 5.

If the sale/rental market is small and uncertain, what is the economic potential of land alone and land with improved houses in the villages as security for loans for building or for other purposes? It was suggested earlier that the rules of customary land tenure might be standing in the way of major lending on land security. Now an alternative possibility must be raised: that the lack of credit based on security in real property in the villages may have an economic basis, which would explain that lack without recourse to tenurial limitations or inappropriate lending policies.

This question can be examined in terms of land alone and land with improved housing. Land in and of itself, it must be emphasized, has virtually no market value in the villages of Botswana. Residential land is

³The prices presently paid to the Botswana Meat Corporation for beef by the EEC under the Lome Convention are well in excess of world market prices. These benefits are passed on to a significant extent to those who sell beef to the Corporation, in the form of higher prices for their cattle. While this has been of substantial benefit to Botswana's balance of payments, one negative result has been to distort the returns on various investment opportunities, making investment in cattle more attractive than other investments.

available to any tribesman for the asking. It is not a scarce resource. Most villages can expand easily onto lands which have no competitive economic use--lands which, due to their proximity to large population concentrations, have been overworked, overgrazed, and generally rendered unfit for production. While there are some factors influencing direction of expansion (e.g., a rock bed not far below the surface may interfere with digging of pit latrines and divert village expansion away from a particular area), no instance was noted where these placed any absolute limit on expansion of the village.

Similarly, the extent of services does not appear to have affected village land values. Nearness to market and shops has had no impact--the Batswana appear not to object to the walk. Nor has ease of access to water standpipes or electricity become an important factor. An applicant for a residential plot will generally prefer a larger plot, such as are available on the outskirts of the village, to a smaller plot at the village center with much better access to services. Everyone assumes that the facilities will eventually spread to his plot, and doing without them in the interim is not viewed as too great a hardship. A further indicator in this regard is the experience with the taking of residential land for public purposes, such as a road, of which there has been some instance in almost all larger villages. Compensation for land taken is given in the form of land, and this commonly involves giving up a smaller residential plot near the center of the village in return for a larger residential plot at the edge of the village. While the larger size of the plots at the edge of the village provides a balancing factor, one does not hear this referred to as a quid pro quo for loss of easy access to facilities. No one appeared to consider the loss of an advantageous location within the village to require compensation.

Lack of credit based on security in land without buildings is thus due neither to tenurial problems nor to awkward policies of lenders. It is due instead to such land having no real market value. No institutional changes, whether in land tenure or in credit arrangements, would in the short term have any appreciable impact on the value of such land or on its usefulness as loan security.

The above applies to residential land by itself, without buildings. A second question is the future of borrowing against security of residential plots with existing or future improved building. This is really borrowing against the market value of the building rather than against the land. These buildings do have a market value, and the fact that lending does not take place against security in them may well be due to a combination of tenurial constraints and inappropriate lending policies of modern sector lending institutions. It must be emphasized again, however, that the sale/rental market for housing in the villages is underdeveloped. A lender's concern is to recover the funds lent, if necessary through disposal of the security. He will loan only a relatively limited amount against security for which there is a limited and uncertain market.

This is worth stressing because a very large part of the demand for credit on security of immovable property in the villages appears to

originate with those who have already invested in housing and now wish to mortgage it to obtain funds for other investments. These individuals see residents of Gaborone borrowing on the security of their freehold to invest in ventures such as commercial ranching, and they reason--incorrectly--that if their land with houses in the villages were under similar tenure, they too could borrow the funds necessary to participate in such investment opportunities. It must be stressed that whatever changes in forms of tenure or credit may be made, such hopes will be disappointed by the small and uncertain market for housing in the villages. If such institutional obstacles were removed, it would be possible to borrow on such security in the villages but only in quite small amounts compared to Gaborone. Even a very substantial house in a village would in all likelihood produce only a small loan. The explanation lies in the state of the market, and will change only in the long run, with the general economic development of the villages.

Another point needs to be made at this early stage concerning borrowing on holdings with improved housing: it is unlikely that funds borrowed against such security would be reinvested in housing. There are more profitable opportunities available. Still, the availability of credit on security in holdings with buildings would indirectly have a positive effect on the housing supply. To build a house is clearly more attractive if one is not faced with the prospect of having all the capital invested tied up in the house indefinitely. The ability to release even a portion of that capital for other investments would provide some encouragement to the construction of improved housing in the villages. In spite of the cautions given above, then, it is not premature to consider what the government might do to make possible lending on such security in the villages.

3. Residential Land Tenure in the Villages

Land tenure in the villages of Botswana has its origins in customary law, as confirmed and to some extent modified by the Tribal Land Act, 1968 (No. 54 of 1968, as amended). This Act transfers the power to allocate Tribal Land (residential, agricultural, and grazing) from traditional chiefs and ward headmen to Land Boards. Title to Tribal Land is vested in the Land Board as trustee for the tribe (s. 10). In addition to allocations under customary law, the Board has the right to make grants under common law tenures (ss. 22-31). A Board may on its own authority lease out land on a month-to-month basis (s. 23). With the written consent of the Minister, it may lease out land for longer periods or make grants in ownership, on such terms and conditions as it determines (s. 24). There is thus scope for tenurial innovation at the local level, subject to Ministerial control under s. 24 and to a requirement that Land Boards consult with District Councils on matters of policy (s. 11). There is also a legal basis for innovation downwards from the national level: the President may give Land Boards instructions of a general or specific character and the Land Boards must "give effect to any such direction" (s. 11(2)).

Under the above legal regime, three basic tenures are utilized in the villages: (a) the traditional residential allocation under customary law; (b) common law leases of tribal land on a month-to-month basis; and (c) long-term common law leases of tribal land entered into with the Minister's consent. The first is the almost universal residential tenure. The second is hardly used, for any purpose.⁴ The third tenure, the long-term lease, has been utilized by Land Boards for non-customary uses of Tribal Land under s. 20 of the Act. It has served primarily as a means of accommodating and obtaining rents on trading premises. It has also been used for residential plots for non-citizens (to whom a Board may not allocate land in customary tenure).

Customary residential allocations have their origins in the establishment of villages. Large villages in Botswana apparently developed to meet a need for security. Large-scale tribal migrations and substantial shifts in tribal territories were common in 19th century Botswana, and inter-tribal warfare and insecurity were concomitants to these processes. These large villages, until well into this century, moved from time to time when water supplies failed or the lands in the vicinity of the village had been exhausted. When a new village was established, the chief would first establish his own residence and then distribute blocs of land to the various wards of the tribe in a pattern determined by the position of the wards in the tribal hierarchy. Ward membership is based on descent from a common male ancestor in the male line. The headman of the ward would distribute the ward's land to ward members. Allocations were larger than required for immediate need, to accommodate subdivision in the next generation. Once this land had been allocated, it passed by inheritance with little interference from the chief or ward headman. The village would usually shift position before overcrowding of wards became a problem, but if the problem did arise, a whole ward might be moved to the edge of the village and other wards would expand into the place left vacant.⁵

With the advent of the Protectorate and British administration, it ceased to be so simple to move villages. There were more substantial buildings, such as administrative offices and schools, and soon more substantial housing built by villagers themselves. Boreholes solved the water supply problem. The villages stabilized and in time overcrowding of wards became a problem. With more substantial houses, it was difficult to move a whole ward to the edge of the village. In recent times a part of this ward or that, rather than the whole ward, would make the move. The result was a gradual fragmentation of wards, and a weakening of the ward system.

⁴One has difficulty imagining a purpose for which such a short-term tenure would be appropriate; possibly for a stall in an open-air market? But as will be seen later in this section, such markets are not significant in the villages of Botswana.

⁵The classic, and still the best, description of land tenure in Botswana is I. Schapera's Native Land Tenure in the Bechuanaland Protectorate (Cape Town: Lovedale Press, 1943).

The larger villages are surprisingly large: five have populations of 20,000 or more (Serowe, Kanye, Mochudi, Molepolole, and Mahalapye) and another five have populations which have reached or will soon reach 10,000 (Maun, Tonota, Palapye, Ramotswa, and Thamaga). (A listing of primary and secondary centers is set out in an Appendix.) As of 1978, it was estimated that 46 percent of Botswana's population resided in villages (15 percent in major villages and 31 percent in smaller villages), while 16 percent lived in towns and 38 percent elsewhere.⁶ It must be remembered that a "town" in the usage common in Botswana is any settlement which has been declared a township under s. 2 of the Townships Act (CAP. 40:02); any other population center, whatever its size and characteristics, is considered a village. There are several villages which are larger than the small towns of Orapa, Jwaneng, and Ghanzi. There are also, of course, many very much smaller villages.

In spite of the great difference in size between villages, they have more elements in common than might have been expected. While the towns are centers of modern sector activities (mining, commercial farming, meat-processing), even the larger villages exhibit a low level of specialization and exchange. These are not the large market villages one finds elsewhere in Africa. Such trading as occurs--and the volume does not appear very large--seems to be conducted by trading stores, with village commerce concentrated in a relatively few hands. The major cash earners, cattle, are if possible driven to towns for sale at Botswana Meat Corporation prices. The bulk of the residents of the larger villages, like those of the smaller villages, are families who tend herds and farm allocations of arable land some distance away from the village.

Each villager has a residential allocation in the village plus a farm allocation on "the lands," and, if he is a large livestock holder, he may have a cattle post as well. The Land Boards have succeeded to the land allocation powers of the chiefs and headmen, but they must not be thought of as engaged in any general redistribution of land. They instead find land for new households when there is not adequate land available from parental holdings in existing wards. The Boards have made allocations on an individual basis, commonly on the edge of the village where requests can easily be accommodated. It is the allottee who chooses the land, and the Land Board makes the allocation if there is no one else with a right to the land. This choice given to the applicant has caused a sudden village sprawl in the last decade, and an increasingly large number of villagers are living outside the ward system. In some villages this is becoming the rule; in Mochudi, for instance, half the village's built-up area is now not based on the ward system.

What precisely are the incidents of the customary residential right? It is heritable under tribal law, and is not limited in time. As regards

⁶B.K. Temane and M. York-Smith, "Towards a National Settlement Policy," Paper presented to International Symposium on Settlements, Gaborone, Botswana, 1980.

security, the Tribal Land Act provides that a Land Board may disturb an allocation on the following grounds (s. 15):

- "(a) that the holder of the grant is no longer eligible to hold land under the provisions of this part" In discussions with Land Boards the only situation cited in which this might arise was where a single woman with an allocation married, in which case she might be expected to share her husband's residential allocation.
- "(b) failure to observe restrictions imposed under section 13(1)(d) or the provisions of any law relating to town and country planning" Section 13(1)(d) refers to the imposition of "restrictions on the use of Tribal Land." The Land Boards said that there had not been cancellations of grants on this basis, at least not so far. The Certificate of Customary Land Grant has a section for conditions, and sometimes Boards will specify the building of a residence, but no one could recall the cancellation of an allocation for failure to comply with that condition.
- "(c) that the cancellation is necessary for ensuring the fair and just distribution of land among tribesmen entitled thereto" This provision reflects the customary right by which a chief moved wards and parts of wards. It would be important today if there were any shortage of land for residential purposes, but there generally is not. The villages have room to spread into surrounding lands. When and if pressure on residential land increases significantly, this provision will assume greater importance.
- "(d) that the land has been used for a purpose not authorized by customary law or that the holder thereof has contravened any customary law relating to the user thereof" Land Boards indicated that this arose only when a resident began significant commercial operations from his residence, which is prohibited under s. 20(2) of the Act. The Board would require him to apply for a common law lease, and in that context cancel his residential grant.
- (e) concerns only agricultural land.
- "(f) subject to the provisions of section 33 that the land is required for public purposes" Like land under any tenure in Botswana, the residential allocation may be acquired for public purposes.

Section 15 goes on to stipulate that cancellation for any reason other than those set out is null and void. The reasons for cancellation are narrowly circumscribed and indeed the Land Boards almost never use their power to cancel customary residential allocations. This has happened to any extent only pursuant to the clause on acquisition for public

purposes, as when a road has been built. When land is taken for public purposes, the Act requires compensation for land in the form of land of equivalent value and, in respect of improvements, compensation for the "value of any improvements affected to such land the benefits of which enure to the State . . ." (s. 33). In fact, the compensation provided has been very reasonable, even in excess of that required by the Act. "Value" has been taken to mean replacement value, and although the statute limits compensation to improvements which enure to the benefit of the state, compensation has commonly been given for traditional rondavals displaced, and, in Mochudi, for land leveling and terracing.

Land held under customary residential grant is thus quite secure. There is no uncertainty on the part of the holder that he will be able to enjoy the benefit of his improvements. There is concrete proof of this security, as both a legal and an attitudinal phenomenon, in the large number of improved houses already being erected in the larger villages.

It now becomes crucial to distinguish between two different senses in which "security" is used in the discussion of investments in land, houses, and immovable property generally. The first sense, used in the preceding paragraph, is "security" in the sense of "security of tenure" (security of holding). This is security as a sound expectation that one will continue to hold the land without dispossession by anyone; one's holding is secure, safe. This sort of security is important from an investment/improvement standpoint because holders with security of tenure are held to be more likely to improve and invest in their landholding. The rationale is that the holder will be willing to incur the costs of making improvements only if he is confident that he will have his holding long enough to reap the benefits of the improvements. This is the sense in which "security" is being used when the question is asked, "Does this tenure provide the landholder with adequate security?"

The second sense in which "security" is used is "security" for a loan. When one must borrow money, the lender will often insist that the borrower provide as "security" some item against which it can proceed if the borrower defaults on repayment of the loan. If that property is immovable property, it will be made subject to a mortgage (the term of Roman-Dutch law is hypotec). The property generally continues in the possession of the borrower but the lender acquires special rights over the property to be exercised on failure to repay the loan. In that case, there will be a court sale of the property and the lender will be repaid his loan with interest from the proceeds of the sale. Such property is given to secure the loan. The lender is said to have a "security interest" in the property and the property is referred to as "the security." When one hears the question, "Can land under this tenure be used as security?", it is this kind of security which is being discussed.

The terminology is confusing at times. A holding which is secure in the sense of security of tenure--that sense in which the customary residential allocation has been described above as "quite secure"--may not be good security for a loan. For land to constitute good security for a loan

it must generally be held in a secure tenure, but it must have other attributes as well. In spite of assertions sometimes heard from lenders that the customary residential allocation is insecure because the ultimate ownership of the land remains with the tribe, it is reasonably clear that those assertions are ill-founded and that there is good security of tenure. But to be good security for a loan, it must have other characteristics as well, and in particular it must be readily transferable. A lender will not accept property as security for a loan unless it can be readily disposed of to recover the funds lent. And it is precisely on this point that the customary residential tenure has been criticized. It is asserted by some, including many lenders, that it is not a tenure which provides good security for a loan because such allocations are not readily transferable.

Customary land law does permit the voluntary transfer of residential holdings. This is a recent development, but not very recent. Already in 1943, Schapera reported that transfer of residential sites with huts on a gratuitous basis was widely accepted, and that there were a few sales of huts for a consideration among the Bangwaketse. Leasing for a consideration had also begun, particularly to teachers. The evolution of a sale/rental market is fairly closely tied to the appearance in the villages of non-tribesmen, including government employees. When Roberts conducted his studies of Kgatla and Maletse customary laws in the 1960s, he noted a development of sales of residential plots, even as between tribesmen.⁷ He attributes this to the breakdown of a traditional prohibition against such transactions, but it is often difficult to determine whether such transactions were "not done" because they ran contrary to positive values in the customary law or because they simply had no usefulness in the traditional society. Before improved houses were being constructed, when construction of traditional housing was quick and inexpensive, and since residential allocations were readily available at no cost, why would a tribesman want to buy residential land?

While Schapera does not mention any approval needed from tribal authorities for such transactions, Roberts notes that in the case of a sale of land with buildings the transferor is expected to consult his neighbors in the ward and obtain the headman's consent to the transfer. The rationale was that wards would not want a stranger thrust into their midst by the transaction, at least not without their consent. This question of consents having to be obtained for transfers, whether consents from ward members or from the Land Boards, is an element which in the eyes of lenders detracts from the usefulness of the customary residential allocation

⁷Simon Roberts, A Restatement of the Kgatla Law Relating to Land and Natural Resources (Gaborone: Government Printer, n.d.), 33 p., at pp. 11-12; and Simon Roberts, Alec C. Campbell, and J.M. Walker, The Maletse Law of Family Relations, Land and Succession to Property (Gaborone: Government Printer, n.d.), 68 p., at pp. 35-36. The two reports appear to have been published in about 1970.

as security for a loan. A lender is concerned over any rule which detracts from the free transferability of his security.

In this matter of consents, the Land Boards consulted distinguished between different types of transaction. They indicated that leases of residences between tribesmen did not concern them and they saw no need for any consent to them by the Board. If a non-tribesman were the lessee, they felt, the situation would be altered and consent required. Where a sale was concerned, even to a tribesman, every Board consulted considered it had a right to be consulted and its consent obtained prior to the transaction. The Boards' position on sales was sometimes explained in terms of preserving ward integrity, but even when this was dismissed as unnecessary (as was commonly the case, an indication of the extent of the decline of the ward system), the Board still asserted a right of control. A sale, it explained, reworked in a fundamental way what it or the chiefs and headmen before them had done in allocating land.

There was, on the other hand, a broad acceptance of sales, and every indication that applications for Land Board consent would not usually face difficulty. In a large village today, one finds a few houses for sale at any given time. One element of uncertainty about Land Board approval should however be noted: it is unclear whether Land Boards approve a sale in general, or a sale to a particular person. Some sellers first consult the Board before a buyer has been identified, others afterwards. The procedures are informal. But the Board does ultimately issue a Certificate of Customary Law Grant to the particular buyer when the transaction has been completed. This clearly indicates the interest which has been transferred: not ownership in a common law sense, but the right to the customary residential grant. A seller was not considered by most Land Board members to be disqualified from applying for another residential allocation.

Given the presence of sales under customary law it is natural to ask why a customary allocation and the house thereon cannot be mortgaged. If sales in general are acceptable, why should sale in execution of a mortgage be objectionable? The question admits no easy answer: customary law simply has not yet had time to come to grips with the question. But the fact that it is "not done" does not mean it could not be done once the need is understood. A mortgage, like a sale, opens the prospect of a fundamental revision of an allocation made by the Land Board or earlier by chiefs and headmen, so it is possible that the acceptance of mortgaging by Boards might be conditioned on the Board's consent to each mortgage. There is a further issue: it was mentioned above that in approving a sale, it was not so clear as might be desired whether the Board approved the sale in general or in relation to a particular purchaser. In the case of a mortgage, an approval might be specific as to the lender/mortgagee, but it must allow him broad latitude for disposal of the property. No lender will accept a mortgage of property under which he must seek the Land Board's consent to a buyer at execution. By doing so the lender would subject himself to clearly unacceptable uncertainties as to whether he will be able to recover the funds lent by disposal of the security.

How could these uncertainties be resolved so that the customary residential allocation could be used as security for loans? The next two sections examine various alternatives.

4. Current Tenurial Alternatives in Botswana

There are other tenure forms which have been adopted or developed in Botswana and which deserve consideration as possible mortgagable tenures for the villages. They offer a considerable variety. The Common Law Lease has already been introduced into the villages for a variety of non-customary uses of Tribal Land, including a Tribal Grazing Land Policy (TGLP) Lease (a common law lease for commercial ranching). It is also worthwhile examining tenures utilized in urban residential areas: the Certificate of Right, the Fixed Term State Grant, and Freehold. As regards these urban tenures a cautionary note should however be sounded at the outset. They are not the product of a tenurial evolution in villages growing into towns. The towns of Botswana have their origins in very particular circumstances: Francistown, Lobatse, and Ghanzi developed on freehold which had its origins in concessions to foreign mining and settler interests before and during the colonial era; Gaborone developed its tenure system on a State Land base created by donation from Tribal Land for the new capital; Selebi-Pikwe, Orapa, and now Jwaneng developed almost overnight, again on the basis of Tribal Land converted to State Land where major mineral deposits were discovered. Urban tenures should thus be approached cautiously as models for utilization in the villages, although as part of Botswana's current inventory of tenures they deserve serious consideration. The nature and incidents of the various tenures are catalogued below.

The Common Law Lease: These are leases under the Roman-Dutch common law of Botswana, their incidents governed by that law insofar as there is no provision by Botswana statute. The typical lease is the right to utilize a piece of immovable property for a specified period of time in return for rent. Leases are an interest registrable under the Deeds Registry Act, and mortgagable under Roman-Dutch law. As noted earlier, under the Tribal Land Act long-term common law leases entered into with the consent of the Minister of Local Government and Lands have been the Land Boards' means of allocating Tribal Land for non-customary purposes, i.e., for commercial purposes and for residential allocations to non-citizens. Such leases are made with respect to Tribal Land over which no individual customary rights exist or where the holder of such rights has consented to the lease. In the latter case he may have received something for his holding from the trader. Tribesmen, however, have had no reason to themselves lease and pay rent for residential land. A customary residential allocation is free to them for the asking. But there is nothing in the Act which precludes the leasing of land to a tribesman for residential purposes.

A common law lease is a secure tenure, in the sense of a "safe" tenure, for the period of the lease. A long-term lease is also good security

for a loan. But it would appear that these common law leases, which are otherwise freely mortgageable, cannot be mortgaged under the Tribal Land Act without the consent of the Land Board. Section 26(1) reads:

26(1) The rights conferred upon any person under any grant made under the provisions of section 24 shall not be transferred to any other person or his agent, trustee, [etc.] . . . without the consent in writing of the land board.

There is a feeble argument to be had that a transfer by foreclosure of a mortgage is not a "voluntary act"; no one wants his property taken to satisfy his debt. But the act of mortgaging which creates the possibility of a transfer is surely voluntary and should be treated as such. The Land Boards with which I discussed the matter considered that their consent was required for mortgage of a common law lease, and the Ministry of Local Government and Lands is apparently of the same opinion: its common law lease form for use by the Land Boards provides specifically in Article 8 that a lessee may not, inter alia, "mortgage, pledge, hypothecate whether directly or indirectly in any manner whatsoever, any of the rights in terms of this lease . . . without the written consent of the Land Board." A common law lease containing such a provision is clearly less attractive security for a loan than one which is not so restricted.

Another noteworthy characteristic of the Ministry's common law lease form is that in article 11 it provides that on termination of the lease all immovable improvements (including buildings) on the leased land will revert to the Board as tribal trustee, without compensation. In so doing it accords with s. 25 of the Tribal Land Act, although the Act permits compensation where it has been specifically provided for in the lease. This lease provision recently was raised in a law case concerning a house in the village of Odi constructed under a common law lease from a Land Board (Barclays v. Rita Montanus). The lessee, a German national, had obtained the Tribal Land under a long-term common law lease on the basis that she would initiate a handicraft enterprise on the site. A building was constructed on the site. The lessee incurred certain debts, including an unsecured loan from Barclays Bank. Later she left Botswana, apparently to avoid creditors. Those creditors, including Barclays Bank, sued and attempted to attach the building. The Land Board asserted that under s. 25 the building had reverted to the Land Board without compensation when the lease was terminated due to the lessee's departure and failure to pay rent. The Board appears to have been on firm legal ground under the terms of the lease and under s. 25. (Roman-Dutch law would be in accord, though there would appear to be no need to resort to the common law given this explicit statutory provision.) It should be noted that the result would have been different if either: (a) the lessee had negotiated inclusion in the lease of a provision for compensation, in which case creditors could have urged their right to the compensation; or (b) if there had been a mortgage, for which the Land Board's consent had been obtained under s. 26 (rather than merely an attachment in pursuit of an unsecured debt), in which case the Board might have been held to have waived its rights or given a prior right to the mortgagee.

The TGLP Lease: This commercial ranching lease differs in important respects from the lease used for other purposes by the Land Boards. It is a variety of common law lease, created like other such leases under the authority of s. 24 of the Tribal Land Act. But the form for this lease was obviously framed to provide a very strong set of rights for the lessee, presumably in order to facilitate the success of the Tribal Grazing Land Policy. It is a lease for 50 years, renewable at the option of the lessee for another 50 years (arts. 4 and 5). Development conditions are minimal, limited to that of demarcation and a vague duty of good husbandry (art. 7). There is no provision for cancellation of the lease or even its non-renewal for failure to fulfill those conditions. It is explicitly mortgagable, and although this like other common law leases can be mortgaged only with the consent of the Land Board, the lease provides that that consent shall not be unreasonably withheld (art. 5). In contrast to other common law leases, it provides no basis for termination by the Board except acquisition for public purposes. Even more striking, on termination or expiration of the lease period, the lessee is to be compensated for improvements on the land. In this lease the Land Board thus exercises its right to deviate by written agreement from the general rule of s. 26(1) of the Tribal Land Act that no compensation for improvements is to be paid upon termination. Where there is termination by the lessee, which may be done by giving six months' notice at any time, the lessee is to receive the "market value of the lease and other incidental expenses consequent upon such termination"; where the lease terminates by expiration of its period, compensation is to be for "market value," apparently meaning market value of improvements (art. 11). (An expired lease itself would of course have no market value.)

Insofar as elements of this tenure might be used as a model for a mortgagable residential tenure in the villages, its strengths appear to be: (1) the strong provision on compensation for improvements, which enhances possibilities for loans on the security of land with buildings; and (2) the security of tenure provided by the very limited grounds for termination (perhaps to an extent which need not be emulated). Its 100-year potential duration is, however, clearly in excess of that needed to provide adequate security of tenure for investment or, were it used as security for a loan, to permit the lender to recover the funds loaned. Nor do the positive terms on mortgaging cope adequately with the uncertainties created by the requirement of Land Board consent.

So far attention has focused on the common law lease forms utilized under the Tribal Land Act, but the Act in s. 24 permits granting of land in other common law tenures as well, even ownership. Section 24 could be used, for instance, to frame village tenures similar to the Certificate of Right or the Fixed Period State Grant utilized in urban areas. So far the Land Boards and the Ministry have not exercised the broad options under s. 24, which are however subject to two limitations: (1) the Ministry must approve the Land Board's use of any new form (s. 24); and (2) any interest in land so created cannot be freely transferable, but may be transferred only with the consent of the Land Board under s. 26(1). Are the tenure forms used for urban residential purposes relevant to the needs of the villages?

The Certificate of Right: The COR was developed in the early 1970s as a means of providing a secure tenure for urban squatters and those who, due to Gaborone's unexpectedly rapid growth, would otherwise have become squatters. Its legal basis is s. 3 of the State Lands Act (CAP. 32:01). It was designed as an appropriate follow-up tenure to squatter upgrading efforts. The purpose was to consolidate those efforts, which consisted of minimal realignment and pegging of plots, laying out of roads, and provision of water from standpipes. The intention was to provide a reasonably secure tenure while not involving the rightholders in the complication and expense of registration. It was therefore framed as a personal servitude rather than a real right in the contemplation of Roman-Dutch law. The ultimate right of ownership remains vested in the State, and the rightholder has the usufruct.

The COR does not terminate with the passage of time, and it is heritable. It may be "pledged, ceded, assigned, transferred or made over . . ." with the consent of the Town Council (art. 1). As a tenure of State Land, it reserves to the State roughly the same rights which a Land Board enjoys over residential allocations of Tribal Land. This tenure has been unfairly maligned. It is, contrary to what has been asserted, remarkably secure. If its terms are surprising, it is because the poorest elements in urban society have been provided with a tenure in perpetuity while urban elites, with the exception of a quite limited amount of freehold, have generally been confined to leases or Fixed Term State Grants. Provision has been made recently which permits conversion of a COR to a Fixed Period State Grant if the development conditions in the COR have been met. The precise terms for such a conversion have not yet been worked out, but might require the holder to do an upgrading of the survey to meet Deed Registry standards, provide a private water supply, and possibly pay a charge for the land itself. Even if the terms as finally settled are not very onerous, it would be surprising if many COR holders chose to convert a right in perpetuity to a right limited in time.

The original COR form provided for termination for either failure to pay levies to cover costs of site and service development or failure to meet the modest development conditions set out in the Certificate. Under a "new" COR, termination has more recently been permitted only for failure to meet development conditions. Initially the SHHA Building Material Loan Program used the COR as security, but it was later argued that there was no legal basis for this and the practice was abandoned. Now new legislation--the State Land (Amendment) Act, 1980--provides a legal basis first for the levies themselves, and second for the State (in the case of levies) and the lender (in the case of building material loans) to sue for repossession of the plot. This is envisaged as a last resort, when they have been unable to recover the sum overdue by attachment of movable property of the defaulter.

Lenders other than the Self-Help Housing Agency have not, however, chosen to lend against the COR. One objection has been to the involvement of a third party, the Town Council. The problem of a consent being required for mortgaging of a COR is analogous to the requirement of Land Board consent to a mortgage under s. 26(1) of the Tribal Land Act. Beyond

this, however, there appear to be real problems with both the banks' attitude toward the general credit worthiness of COR holders and the short-term nature of their lending (see Section 6 infra).

The Fixed Period State Grant: This grant, often referred to as the Fixed Term Grant (FTG), was developed at the end of the 1960s to meet the tenure needs in the mining town of Selebi-Pikwe, then applied in other towns as well. Like the COR, it is a private tenure in State Land, but there is a difference. In the case of the COR, the State transfers only a right to use the land, retaining the ultimate title. But with the FTG, there is a transfer of title with a reversionary interest retained. The State vests title in the grantee through a title deed registrable in the Deeds Registry, but at the end of the period of the grant both the title and the use of the land revert to the State.

The duration of these grants varies, but they have commonly been for periods of between 40 and 99 years, with duration depending upon the value of the development anticipated. At the end of this period there is no right to a renewal of the grant, and on expiration all improvements on the land become the property of the State without compensation (art. I of the grant form). It is by no means clear that such a result will be pursued by the government, which may instead prove willing to negotiate an extension of these grants. Unfortunately, the grants specify no renegotiation point, but it would be well if the parties took the matter up a decade before expiration in order to avoid damaging uncertainty. In addition to being limited in time, this right is generally subject to use conditions (art. II). Until the grantee has built according to the description and value stated in the grant deed, he may neither sell nor otherwise transfer the title to any person other than the State. If it is offered to the State at the purchase price and the State declines the offer, it may then be sold to another buyer. Once the building is completed, however, the grantee is free to "cede, assign, transfer, lease, sell, mortgage and otherwise deal with the property" (art. I). He can, of course, transfer only what remains of his grant period.

The FTG has been readily accepted by private and public lenders. There is no consent requirement for mortgaging once the land is developed. Properties on this urban land have good market value, and the holders are usually credit worthy. Lenders naturally insist that there be sufficient time remaining in the grant period for them to realize the funds lent from the security if that becomes necessary.

In 1977 an Urban Land Policy Advisory Committee recommended that the Fixed Period State Grants be converted to freehold. The recommendation was however declined by the Cabinet.⁸

⁸The recommendation was made in the Report of the Urban Land Policy Advisory Committee, dated 20 April 1977, and addressed to the Minister of Local Government and Lands, at p. 3. That Committee went beyond its urban focus to recommend that, "as a matter of public policy, all residential

Freehold: Most freehold in Botswana, in both urban and rural areas, has its origins during the Protectorate. It is the allodial ownership of land under Roman-Dutch law, a far simpler tenure than the English fee simple with its feudal complications. It has been created when the State has permanently alienated its title to State Land to a private individual, natural or juridical. The title received does not lapse with the passage of time, and is heritable, registrable, freely transferable, and freely mortgagable.

The amount of freehold in Botswana has decreased since independence. In spite of the creation of a certain amount of freehold in Gaborone, a much larger amount has been converted to State Land and Tribal Land through purchase, both on the private market and through acquisition of lands for public purposes. Still, freehold is the third most extensive tenure in Botswana, after Tribal Land and State Land. The breakdown as of 1977 was indicated to be 71 percent Tribal Land, 23 percent State Land, and 6 percent freehold.⁹

5. Three Options for Mortgagability of Village Land

The problem, as stated earlier, is whether customary residential tenure in Tribal Land requires changes to meet current needs for credit for housing and credit based on existing housing in the villages. Such credit might take three forms: (1) mortgaging of the holding with the future building (a loan for building); (2) mortgaging of land with buildings at purchase by the purchaser, to permit him to pay the purchase price; and (3) mortgaging of land with buildings to obtain credit for investment purposes, which may or may not be investment in housing. The first two, if available, have a direct impact on the supply of improved housing. The third has an indirect impact. It makes house construction a more attractive use of funds because the investor's funds are not frozen in the house. A fourth type of mortgage, a mortgage of land alone to secure funds for building on the land, is not feasible in the villages because of the absence of a market in residential land. No tenure change, it has been suggested, would have a significant short-term impact on this last situation.

land in Botswana be converted to freehold." The Cabinet's rejection of the recommendation is published together with the report of an Urban Development Committee, as "Urban Development and Land Policy" (Gaborone: Ministry of Local Government and Lands, April 1980), at pp. 27-29.

⁹B.K. Temane, "Land Tenure Systems and Land Reform in Botswana," Paper presented at the World Congress on Land Policy, held at the Lincoln Institute of Land Policy, Cambridge, Mass., 22-27 July 1980, 15 pp., at p. 2.

Before reviewing three options for achieving mortgagability in the villages, it is worth repeating a caution given earlier: such mortgagability, if achieved, would for economic reasons permit borrowing at a level quite modest compared with what can be borrowed on property in Gaborone. There is every reason to provide an adequate tenurial regime for mortgaging now, but expectations of the immediate impact should be modest. In addition, it is submitted that in framing a response to this problem of mortgagability, general land tenure policy as it has evolved in Botswana should be honored. Two means of social control of distribution were mentioned earlier: (1) limiting titles in time to ensure that land appreciation eventually accrues to the public interest; or (2) preserving a fair distribution of that appreciation by preventing concentration of landownership through control of transactions. Both policies reflect a commendable awareness of distributive issues and this same concern with distribution should help shape the policy on mortgagability. Three options for achieving mortgagability are set out below.

Conversion to Freehold: This possibility must be considered, if only because freehold is the most easily mortgagable of all interests in land. It does present some problems, however. In the absence of a system of controls on land transactions, to prevent new owners from unwisely disposing of their land, it could open the way for the eventual development of a large class of landless renters. Such systems of control are difficult to administer, invite corruption of those who administer them, and are expensive to institute. A precondition of effective control is a good system of records of rights in land, with ready access to data from other localities. Conversion to freehold should be considered only in the context of the introduction of a national program of land registration in the villages.

The present state of the rental/sale market for land and residences in the villages, largely a function of economics rather than tenurial constraints, makes the incurring of such expense at least premature. The benefits derived would simply not be commensurate with the costs. There is no reason to think that the limited objective of mortgagability cannot be obtained through modest and less expensive approaches which are not open to the same concerns about the development of maldistribution.

In addition, it is my impression from discussions with Land Boards that neither they nor their constituents are ready for such a major change in the tenure system. There is a real appreciation of the ready access which the traditional system has provided to land. There was also a feeling on the part of the Boards and Board administrators that their own capabilities should be taken into account. The Boards are relatively new, weak institutions, understaffed and undertrained. Although MLGL is attempting to remedy this situation, it will take time. Moreover, the credibility of the Boards as trustees of Tribal Lands has been strained by the load they have borne as the middlemen between MLGL and the public with regard to TGLP, which is not a universally popular policy. It is doubtful whether, in terms of their sound evolution as institutions, the Land Boards should be given another policy of major land tenure change to implement at this time.

Finally, if a move toward freehold were to be decided upon, a major consultation and public education program would be required. Any such fundamental change would need to be discussed in a context much broader than that of housing alone. Legally, an Act of Parliament would be required. As regards this last, the author respectfully submits that it would be overreaching to rely on the President's power to give Land Boards binding instructions under s. 11(b) of the Tribal Land Act to accomplish such a major tenure change.

Mortgaging the Customary Residential Allocation: As has been noted earlier, the customary residential allocation is a very secure ("safe") form of tenure. It can be leased or sold, subject to the qualification that for a sale the consent of the Land Board is required. Whether or not it is mortgagable at customary law is an open question: customary law makes adjustments gradually in most cases, and the question has not been posed clearly enough nor long enough for the customary law to have reacted with new rules. Given the existence of sales of land with improvements and their acceptance by customary law, it seems likely however that mortgages would ultimately be accepted. As in the case of sales, however, Land Board consent might be necessary. Should the government precipitate this line of development, removing any impediments to mortgagability and instructing Land Boards to facilitate mortgages of customary residential allocations?

One problem with mortgagability of land under this tenure is the apparent need for Land Board approval of the mortgage. This requirement of Board approval need not stand in the way of mortgagability, however. It will not do so if the Board is approached at the time the mortgage is to be concluded and the Board made, in effect, a party to the mortgage. A mortgage form could be prepared by the Attorney General's Chambers and MLGL for residential land in the villages which would include the Board's consent to the mortgage and set out clearly that the consent ensures the mortgagee that the security can be freely disposed of if this becomes necessary to satisfy the debt. The mortgage form could be distributed to Land Boards with appropriate instructions as to its use. This would permit resolution of the "third party" problem, removing the uncertainty at the same time the loan is concluded.

The more traditionally minded in the villages might object to the surrender of control over the destination of the property when it is sold to satisfy the debt. That control would clearly have to be given up if lenders are to loan on this security; the market for such property is already quite limited without limiting it further by the Board's administrative discretion. This objection may be based in part on the ward system and the traditional feeling that a stranger should not without permission be intruded into the ward. The ward system, however, is clearly on the wane. In any case, most improved housing which would have a significant mortgage value is located at the edges of the villages, outside the established wards. It is only there that a large plot can be obtained. In the odd case where the objection did have some validity, the Land Board could in response to objections not approve the mortgage in the first place. I personally doubt that such objections would materialize.

A second objection could concern disposal to non-tribesmen or even non-citizens. It is a sound objection in that such residential land is under the Act generally to go only to tribesmen, and a large part of the small market for any property disposed of to satisfy the debt would consist of non-tribesmen. A restriction of disposal to tribesmen would seriously reduce the value of the holding as security. The Minister might deal with this problem by issuing blanket consent under s. 20(1) of the Tribal Land Act for any person, except perhaps a non-citizen, to acquire such a residential holding on sale in execution of a mortgage. Alternatively the mortgage instrument might specify the Board's consent to acquisition by a non-tribesman. The Attorney General's Chambers would be best situated to indicate the more appropriate manner of proceeding in this regard.

There is a final complication in the provision of s. 20(2) of the Tribal Land Act, which indicates that property under this tenure should not be used for commercial purposes. This would again constrict the market if the security had to be disposed of to satisfy the debt; someone wishing to acquire the property might wish to do so for commercial purposes. This complication could be handled by the mortgage form being drafted so that the Board at the time of the mortgage consents also to a long-term common law lease of the property for commercial purposes, on the terms in effect under Ministry regulations at the time of the sale, if the acquiror should wish to use the property for such purposes. It is difficult to estimate how much this complication, if not attended to, would constrict the market. The solution suggested, it should be noted, could interfere with efforts being made to introduce some semblance of zoning in the villages.

It might not be necessary to amend the Tribal Land Act to exercise the option outlined above. The Attorney General's Chambers should be consulted on this point, but it could be argued that the President's power under s. 11(1) of the Act would be an appropriate means of implementing such arrangements, given that what is involved is the facilitation of a line of development in tribal law rather than a policy which directly contravenes tribal law or the Tribal Land Act. Alternatively, the Act might be amended to provide a section on mortgages of Tribal Land. The application of these provisions might be restricted to residential land or extended to land under other uses and tenures as well. One advantage of this route would be that there is at present no customary general law of mortgages. It might be possible to in effect lay out such a law in the mortgage form itself, as a matter of contract, but this would be awkward. Care should be taken to avoid any application of the Roman-Dutch common law of mortgages to mortgages of residential land in the villages--otherwise, unanticipated alterations in the basic rules of customary tenure might be worked by the courts in applying that common law of mortgages.

Having explored this option, there is a closely related possibility: COR can be viewed as an urban version of the customary residential allocation; and the customary allocation could be converted to the closely related COR, and steps taken to ensure mortgagability of COR holdings in both towns and villages. In part because of the unjustified discredit of

the COR in urban areas, the former course (that described in the preceding paragraphs) would appear preferable. The introduction of what would appear to the villagers a new tenure, when no substantial change in tenure is really involved, might excite concern unnecessarily. It would seem preferable to develop the COR and the customary residential allocation along parallel and converging lines, rather than to unify them at this point in time. (Problems of mortgagability of these two tenures are however virtually identical, and there would appear to be no reason why the mortgage arrangement suggested above for the customary residential allocation would not work in the case of the COR as well, with the Town Council giving the required consents rather than the Land Board.)

Development of an Appropriate Common Law Lease: As indicated earlier, long-term common law leases are utilized by Land Boards not only for commercial purposes but also for residential purposes, in the case of non-citizens. The long-term common law lease is a mortgagable interest, registrable under the Deeds Registry Act. A third option for making village residential land with houses mortgagable would be to extend the use of such leases to the residential holdings of tribesmen in particular cases. It has not been done before, but then there was nothing to be gained from doing it, other than exposing oneself to rent. If it made credit accessible, however, it would be worth a nominal rent.

The use of long-term common law leases, subject to the consent of the Minister, is already provided for in the Act and is not limited to commercial purposes. There is already a law governing the mortgage of leases, the Roman-Dutch common law. To exercise this option, the Ministry would prepare a residential lease form for use by Land Boards only when a tribesman wishes to mortgage his residential allocation. The Ministry should set a rent which is strictly nominal, since the lease is not being made for access to a scarce resource or to gain government revenue. The lease should be for a substantial period of time, perhaps twenty to forty years, to give the lender the time to collect his debt and, if there is a default, execute against the security. It should incorporate Land Board consents to the mortgage and free disposal of the mortgaged property in case of default, along the same lines as those proposed earlier for the mortgage of a customary residential allocation. There should be the same care taken not to constrict the already small market in which the lender might have to recover the funds lent through disposal of the security.¹⁰ Finally, very careful attention must be given to the situation which will come into existence at the end of the lease. Provisions governing this will have to be included in the lease, and different approaches will be required depending on whether the lender has had to resort to his security.

¹⁰The comments made in that context on intrusion of a stranger into a ward also apply here. The objection noted there as regards non-citizens is not relevant here, however: such leases are already made to non-citizens, and are not objectionable because the leasehold interest is limited in time and the use eventually reverts to the tribe.

If the debt has been paid as expected, and the lender has not had to resort to the security, the land will be in the possession of the tribesman lessee/borrower at the end of the lease. There should be a possibility of renewal of the lease on the mutual agreement of the parties, but what if there is no need for a renewal? It would appear simplest to allow the tenure to revert to that of the customary residential allocation. Here a legal problem arises. Section 25 of the Tribal Land Act, it has been noted earlier, provides that at termination of a lease any improvements become the property of the Land Board without compensation. The section permits this presumption concerning compensation to be overridden by specific provision for compensation in the lease, but it does not provide for a similar overriding of the more basic provision that the improvement becomes the property of the Land Board. Compensation would not appear to be enough in these circumstances. Even the access to credit would probably not tempt a villager to place his land under leasehold tenure if he stood to lose the improvements--even with compensation--at the end of the lease.¹¹ We are dealing with homes, not rental properties, and a villager might well prefer to build more modestly, foregoing access to credit, on his customary residential allocation. The Act, it appears, would have to be amended to permit the Land Board to enter into a common law lease which provided for reversion of the lease together with improvements to the lessee as his customary residential allocation at the end of the lease.

What if instead the borrower has defaulted on his loan repayment and the leasehold with building, having been the security for the loan, has been sold and is now in the hands of someone else? If that someone else is a tribesman, it would seem appropriate to allow him at the end of the lease to take the land with building as a customary residential allocation; after all, he has paid for it. But if he is not a tribesman? In that case two alternatives occur to me. First, the lease might in such circumstances confer a right to a renewal for a further substantial period. The non-tribesman considering purchase of the security at a judicial sale would be reassured that he would hold the property under the lease for long enough to derive benefit from it commensurate with the purchase price. Second, the lease might specifically provide that a non-tribesman would be compensated for improvements upon expiry of the lease period.

In the case of this third option, most of the law required would appear to already be in place. The one exception is the apparent need for amendment of S. 25 of the Tribal Land Act suggested above. After public

¹¹In Gaborone, the fixed period state grant is popular even though it provides for improvements to revert to the State with the land without compensation when the grant period expires. This is the case in Gaborone because possession of that land is an income opportunity, one which can pay for the cost of improvements plus a major profit during the grant period. The situation in the villages is very different.

education and consultation on such a change, and with that amendment made, the Ministry could issue the appropriate lease form and instructions.

Finally, would use of the fixed period state grant have any advantages over the common law lease in this context? It would accomplish roughly the same end: provision of a long-term title which is good security for a loan. But it would involve the introduction of yet another tenure form into the villages, rather than the extension of a form already present, and it would not appear to offer greater mortgagability than the common law lease. It would appear advisable to utilize the common law lease rather than the fixed period state grant if an option along these were considered attractive.

The Relative Merits of the Options: As indicated earlier, and for the reasons stated there, it would be difficult to recommend the introduction of freehold tenure. There are both policy objections based on distributive considerations and cost-benefit objections.

Of the other two options outlined, both feasible in my opinion, the primary merit of the leasehold approach is its relative simplicity. It is also to be expected that lenders, being more familiar with this common law form, would more quickly respond to it. This is not to suggest that the mortgage of a lease would be better security than the mortgage of the customary residential right under the second option; it is not. It is simply a matter of the likely initial reaction of lenders, a relevant consideration but not one which should alone control the choice between options.

The great merit of the option for development of a mortgage procedure appropriate to the customary residential right is that it represents a sound evolution of tribal land law rather than an extension of common law forms. This is good general tenure policy unless the government contemplates the ultimate replacement of customary land tenure forms with common law forms. The disadvantages of this option are, first, its relative complexity, though it does not appear to me to be unduly complex; second, that more extensive legal adjustment might have to be made to implement it; and third, that lenders might not initially feel comfortable with the new arrangements.

It should finally be noted that here is no inherent incompatibility between these two options. Consideration might be given not only to either one or the other of them, but also to the possibility of implementing both, giving a broader range of options to borrowers and lenders.

Addendum to Section 5: The Special Case of Villages
Adjacent to Gaborone: Tlokweng and Mogoditshane

Mogoditshane and Tlokweng were until recently small villages lying, respectively, to the northwest and east of Gaborone. They have in recent years been very much affected by the rapid expansion of Gaborone (both now

adjoin the town) and the great surge in demand for housing in Gaborone. Because residents of these villages can easily commute to jobs in Gaborone, residential land there is, while still under customary tenure, suddenly becoming part of the Gaborone real estate market. The incorporation of these villages into Gaborone has been considered on several occasions but rejected, partly in deference to the reluctance of village residents to be so absorbed. Nonetheless, the sale/rental market in these suburban villages will soon be very different from those in even the largest villages elsewhere and requires special discussion.

The effective demand for land in these villages has not come from the poor of Gaborone. The poor have instead clustered in squatter settlements on land which forms part of Gaborone township, areas now being dealt with through a self-help housing program. The demand has instead come from the relatively affluent, those with the money to build. These fall into two categories. First, there are those who are working in Gaborone and would prefer to build rather than rent. They have the funds to build but cannot (or prefer not) to purchase land on the inflated real estate market in Gaborone. If they can obtain land in a suburban village, their housing problem is solved. These are private sector employees or government employees who have for some reason been unable to obtain access to Botswana Housing Corporation housing. The second category consists of an even wealthier stratum, those who already own houses in Gaborone but would prefer to lease them out for the rental income and themselves move to cheaper accommodations in one of the suburban villages.

How do these people acquire land in the suburban villages? Some can assert a right to a customary residential allocation; they are "tribesmen" under s. 20(1) of the Tribal Land Act, as that term is broadly defined in s. 2 of the Act. These of course pay nothing for the land. Others, while citizens of Botswana, are not from the same tribe and have no right to an allocation. They can however apply for an exception under s. 20(1) of the Act, which prohibits allocations to non-tribesmen but continues: "unless that person has been specifically exempted, or is a member of any class of persons who have been specifically exempted, by the Minister in writing from provisions of this section."

The scale of these developments can be seen from figures obtained from the Major Land Board for Mogoditshane. At the time of my visit, there were approximately 600 houses in Mogoditshane. The Land Board had before it 200 applications for allocations for residential land of which 50 came from non-tribesmen to whom exceptions had been granted. It appears that so far most of those seeking land in the suburban villages are doing so through applications for allocations rather than through purchase from allottees. Since the former route provides land free of charge, it is obviously preferred. Inevitably, however, land will be bought and sold frequently in these villages. It was said that there has already been a substantial increase in the number of rentals and a rise in rent levels.

The question of whether these villages should be absorbed into Gaborone will undoubtedly be raised again. It is a question with important tenurial facets. If these villages were incorporated into Gaborone, would

customary residential tenure continue? Or would it be converted to freehold? Or to State Land distributed on the Fixed Period State grant basis? Or to some novel arrangement, such as the Tribe retaining title but giving a COR or FTG-type title to allottees?

It is suggested that these villages should not be incorporated into Gaborone. If customary tenure forms are retained, these villages will over the next decade provide the first real evidence of how customary land tenure can accommodate itself to the development of a major market in land and buildings. There will be no better place to try out the options for mortgageability set out in this report.

Present developments, however, give some cause for concern. The customary system provides broad access to residential land. Both tribesmen from other localities and non-tribesmen have been able to take advantage of this to obtain free of charge land which will shortly appreciate very substantially in value. This is of concern because those acquiring the land are already among the wealthier elements of the society. The access to this potential windfall should be more tightly controlled by the Ministry and by the Land Board. Serious consideration should be given to the development of rental properties by the Board itself, with rental income being used for improvement of community facilities and services. Alternatively, long-term leases with rents at economic levels could be made by the Board to private housing developers, or directly to those non-tribesmen who now seek customary allocations. Plans should be made for the development of the land of these villages which ensure that the benefits of appreciation accrue primarily to members of the local community.

6. Lenders and their Policies

The two commercial banks operating in Botswana are Barclays Bank and Standard Bank. Both have excess liquidity which they attribute to a shortage of demand for credit for viable propositions. Lack of land security for loans is only one factor limiting their lending in the villages. In addition to security, they want credit worthiness; resort to the security is the last resort. But central to their lack of interest in lending for or on housing is the short-term nature of their lending. They lend for up to five years, and this is not adequate where housing is concerned. If money is being borrowed for construction of housing, it will usually be a very major expense in relation to the borrower's income and he will require a good many years to pay off the loan. If he is borrowing using existing housing as security, the bank will first calculate how long it will take him to realize his investment, but it will also ask itself whether it could if necessary recover its money by proceeding against the security. The smallness and uncertainty of the sale/rental market in the villages would probably not prevent loans from being made on such security, but the bank may protect itself by lending only relatively small amounts against it. Even in the urban areas, where land and property values are very high, the short-term nature of commercial bank

lending has resulted in the banks' lending only a relatively small volume of funds to individuals for housing construction.¹²

The commercial banks insist that they must lend only in the short term because their deposits are short-term deposits. They cannot, they say, "borrow short and lend long." But commercial banks elsewhere, as in the United States, carry on very substantial long-term lending operations, lending on mortgages of fifteen and twenty years' duration. While a commercial bank must exercise caution as to how large a portion of its capital it has in long-term lending, it is not irresponsible for it to lend some funds in the long term. Not all bank deposits are borrowed on the short term; the commercial banks have significant time deposits. Even the channeling of a very small portion of the commercial banks' lending into long-term lending on mortgages in the villages would have a substantial impact there. Moreover, the banks have a network of agencies which give them access to the potential borrower in the villages.

In relation to land tenure, the point is this: so long as the banks confine themselves to a short-term lending policy, tenure changes to facilitate mortgagability are not likely to increase commercial bank lending on and for housing in the villages.

The Botswana Building Society, however, clearly has potential for lending on and for housing in the villages. It can lend in the long term, and indeed it is an institution framed with just such long-term lending in mind. By the terms of s. 17 of the Building Societies Act, however, it is restricted to lending on "urban immovable property." Such property is defined as immovable property in the townships, but it also includes "any other land which the President may classify as urban immovable property for the purposes of this Act" (s. 2). Such a classification of village land as urban immovable property would be desirable. It would not alter tenure, since the classification is only "for the purposes of this Act."

This classification would extend the lending potential of BBS to the villages but would not resolve the issue of what tenures BBS might lend against as security there. If the long-term common law lease were used as a mortgagable residential tenure in the villages, BBS could lend against this; it may lend against a cession (s. 17(1)(h)), which is defined as "a cession of a registered lease of immovable property, the unexpired period of which is at the date of cession not less than thirty years" (s. 2). If instead a workable mortgage of the customary residential allocation were developed, the precise legal definition of securities against which BBS may loan would present problems. An amendment of the Building Societies Act would probably be required for the Society to lend

¹²Bank of Botswana figures show 10 million Pula in loans to households, including many purposes other than house construction, out of a total commercial bank lending of a little under 80 million Pula. Bank of Botswana, Annual Report 1979, at p. 43. No further breakdown of lending is made public by the commercial banks.

against a customary residential allocation, just as amendment would be required to permit BBS to loan against the COR in urban areas.¹³

BBS's long-term importance to housing in Botswana is such that any legal readjustments are worth the effort. Serious consideration should also be given to expanding BBS's lending capabilities through an increase in its capital. Since BBS is a share-issuing institution, this might be accomplished through a major new issue of shares, for purchase by the government or an appropriate parastatal.

The National Development Bank is again an institution with the capability for long-term lending. While in the past it made some loans to townships for housing construction, it has not been active in this field in recent years. Its Act, however, specifically charges it with responsibilities in the housing development area. In its lending to agriculture, NDB has set an important precedent with its successful "character loans": small, unsecured loans for agricultural purposes. The "character loan" principle would appear readily applicable to low-cost housing loans in the villages where the security is the holding with future building. NDB should be encouraged to involve itself in this species of lending, as well as lending for public housing development.

7. Land Tenure Options and Public Housing Programs in the Villages

The measures outlined above would go some way to meeting the needs of some residents of the villages, so far as permitted by the economics of the village sale/rental market. Those assisted would be borrowers who meet lenders' general standards of credit worthiness. As noted before, lenders do not lend just because an applicant for a loan can offer security. They must also be convinced that the possibility that they will have to resort to the security to obtain repayment is remote. Credit worthiness is judged on factors such as the applicant's reputation for reliability, a good record of savings, his general prosperity, and his receipt of a regular income. The majority of village residents could not meet these requirements, although they clearly have needs for better housing as great or greater than those who are credit worthy.

Serious consideration should thus be given to extension of a SHHA-type program to the major villages. The program developed in urban areas would require modification in some respects. In the villages, where residents already have or can readily get tenure, it is less the COR than the Building Material Loan aspect of the SHHA program which is required. The need is for both new construction and upgrading of traditional housing. SHHA would need to expand on its expertise gained in upgrading squatter areas to meet needs for improvement of traditional housing.

¹³See the discussion in the Appendix.

In the towns the SHHA program was closely tied to the COR. If a SHHA-type program is introduced in the villages, the legal regime for recovery in case of default will have to be carefully considered. Many village residents do have movable property worth attaching, but SHHA would presumably prefer security in the land and buildings as well. Under the option for mortgaging the customary residential right, this need could be readily satisfied. Every resident would be able to give such security and SHHA could enter into a mortgage agreement along the lines proposed earlier, like any lender. Under the mortgaged leasehold option, adequate security for a mortgage would again be available. Where there is a lease as security, however, SHHA would be well advised to use a mortgage and not to rely on attachment of the buildings, or it may share the fate of the creditors in the Montanus case.

Under such a program, SHHA might find that there is resistance to mortgaging where upgrading of traditional housing is concerned. Here the borrowers may be seriously concerned over the possibility of losing a holding which has been in the family for generations. Where building material loans are for upgrading and relatively small amounts are lent, SHHA might consider relying on attachment of movable property alone for recovery in case of default. If that were considered possible, the complications of a lease and mortgage of a lease could be avoided.

While SHHA has in the past worked to a large extent off "site and service" land in the urban areas, this would not necessarily be the case in the villages. In the center of the village, the exercise would be rather more like squatter-area upgrading, although of course the village houses are more substantial than many squatter dwellings. The village center will already have some roads and services, and my inclination would be that SHHA should restrict itself to Building Material Loans in this area. The availability of such loans might help to reverse a noticeable trend toward deterioration of the housing in the crowded, central areas of the villages.

In other areas, however, a site and service basis might be appropriate. A Land Board might, for instance, allocate for SHHA development an area on the edge of the village, where SHHA could plan, lay out, and arrange for minimum site and service development as in urban areas. The Land Board could then allocate the plots in the area to those villagers who are taking Building Material Loans under one of the mortgagability options suggested. SHHA would then enter into mortgages with the allottees to secure their loans.

These suggestions have focused on the provision of low-cost housing and upgrading of traditional housing, and so have been in terms of the SHHA program. But it is arguable that BHC should also become involved in the villages. Its presence would valuably supplement private lending for housing, and of course government has housing needs in the villages. BHC might proceed along the lines similar to those suggested for SHHA in the above paragraph, but building a slightly more expensive house. The Land Board could set aside an area on the edge of the village for BHC development, with part of that area for government housing and part for housing

to be offered for rental and possible purchase. In the case of private applicants, the Land Board could, once the houses are completed, allocate the plot with house to the applicant under either of the two mortgagability options suggested. In either case, a contract for purchase of the house on installments could be made between BHC and the applicant, with a mortgage of the house and land securing what is in effect a loan of the value of the house by BHC to the householder.

It should be emphasized, however, that in relation to both SHHA and BHC involvement in the villages, careful demand studies should be the first step. Both organizations have been used to working in a situation of seemingly insatiable demand for housing in the urban areas, but the demand in the villages will be smaller. It may be more specifically for lower cost housing, and for different housing styles.

Mention should be made in conclusion of a mode of credit provision which is not considered here at any length. This is credit extension through credit or multipurpose cooperatives. This is an approach which is appropriate in some circumstances, but it does not appear particularly useful in the present context. I have reached this conclusion reluctantly, based in part on the almost universally negative reaction from Botswana administrators to the suggestion. This is apparently due to unfortunate experiences with borehole syndicates and other cooperative ventures, and is reflected in a lack of enthusiasm for group ranching demonstrated in the TGLP Consultation.¹⁴ In addition, such cooperative credit would appear to have its best possibilities where, at least initially, relatively small amounts are being borrowed. It is a system whose major advantage lies in the fact that, if the cooperative can mobilize community sanctions effectively, it can confidently loan small and moderate amounts without security. It thus does not demand mortgagability as do most other credit schemes. In the present context this route would appear to have potential primarily as regards loans for upgrading of traditional housing, rather than loans large enough to finance construction of an improved house or to permit other major investments.

8. Summary and Conclusions

The issue of customary land tenure and mortgagability of land in the villages is best approached by first backing away from it a bit and trying to see it from a broad policy perspective. In addition to the narrow issue of mortgagability, any discussion of tenurial change raises social, economic, and political questions of great importance, and in particular the question of how change will affect access to land and the distribution of benefits from land in Botswana. Botswana's approach to land tenure to date has been commendable for its careful selection of particular tenure

¹⁴Republic of Botswana, Lefatshe La Rona - Our Land (Gaborone: Government Printer, September 1977), at p. 22.

forms to meet particular needs and its awareness of distributive issues. It is suggested that such a tenurial "fine tuning" approach is particularly appropriate when a question of such broad significance as land tenure is being approached in relation to a single objective such as mortgageability. Land tenure for residential purposes in the villages, if any major change were contemplated, would need to be discussed in the context of planning for a coherent tenure system covering all uses of land, both urban and rural.

An examination of the present situation regarding improved housing and residential land tenure in the villages gives a better appreciation, first, of the nature and extent of the problem and, second, of the feasibility of ameliorating the problem by changing land tenure rules or other institutional adjustments. It has been postulated that tenure rules preventing mortgage of the customary residential allocation and houses thereon were in turn preventing the extension of credit from the excess liquidity held by Botswana's lenders to meet the credit needs of the villagers. The customary residential allocation in fact provides the holder with excellent security of tenure; he does not hesitate to invest in his property. Customary rules permit leasing and sale of such allocations. While customary law has not yet evolved clear rules with respect to mortgaging, there appears to be no reason why it would not ultimately be accepted. But sales are subject to Land Board control and so, it would appear, would be mortgages. This involvement of an additional party, and the generally vague legal status of mortgages of customary residential allocations, have contributed to the difficulty in using real property in the villages as security for loans.

But tenurial constraints constitute only a part of the problem. There are also basic economic facts discouraging mortgaging, which will persist even if tenurial constraints are removed. Village land has in itself little or no market value, and even for land with improved buildings, the sale/rental market is small and uncertain. For a lender to consider a piece of property to be good security for a loan, he must be confident that in case of default the security could be disposed of promptly and at a good price, to allow recovery of the funds lent. Given the present state of the sale/rental market in the villages, that confidence is not justified. The situation will change only over time, with the general economic development of the villages and the consequent increased demand for housing for purchase or rental. In the meantime, lenders are likely to be interested in only the most substantial, expensive, improved housing as security for loans and interested in lending only relatively small amounts in relation to the value of that property. To avoid encouraging expectations which would be disappointed, it is important to stress that this will be the case for some time even if all tenurial constraints are removed. It is also cautioned that it is unlikely that funds borrowed against security of land with improved housing in the villages will be reinvested in the housing. As a result of the same market factors, it is not a particularly lucrative investment.

Having made these cautionary points about the extent and impact of such mortgageability as might be achieved by altering land tenure rules or

other institutional change, what alterations might be required? The report examines current tenurial alternatives in Botswana, reviewing tenures such as the common law lease, the TGLP lease, the certificate of right, the fixed period state grant, and freehold, and then outlines three options for mortgagability of village land: (1) conversion to freehold; (2) mortgaging the customary residential allocation; and (3) development of an appropriate common law lease.

It is suggested that a conversion to freehold would present dangers from a distribution standpoint and that a conversion which dealt adequately with those dangers would be expensive and difficult to justify from a cost-benefit standpoint. In this context the relative weakness of the Land Boards as new institutions is also a constraint. More important, any such fundamental change would require very extensive consultation and discussion in the broadest possible perspective. Housing and credit needs would constitute only two considerations among many, albeit very important considerations.

As regards mortgaging of the customary residential allocation, it is suggested that government action could precipitate a development which in any case appears probable--the acceptance of mortgages by customary law. It might do so by evolving appropriate mortgage forms and procedures and by instructing Land Boards to facilitate mortgages. The Ministry could provide Land Boards with a mortgage form which provided for necessary Land Board consents to be given at the time of the entering into the mortgage, both consent to the mortgage itself and consent to free disposition of the security if such security had to be sold to recover the funds lent. These and other provisions would seek to maximize--so far as market forces permit--the confidence of the lender that if necessary the security could be sold promptly and for a price which bears some reasonable relationship to the loan to be recovered.

The third option, development of an appropriate common law lease, would facilitate mortgagability in that such a long-term lease is legally a readily mortgagable interest. It is suggested that MLGL might prepare a lease for use only where a residential holder wishes to mortgage his property, which lease would be long-term (20-30 years), involve only a nominal rent, and permit ready disposability of the security--so far as market forces permit--if this became necessary. Detailed provisions distinguishing between tribesmen and non-tribesmen would be necessary as regards the disposition of the land and improvements after expiration of the lease.

As between the last two options, both indicated to be feasible, the major merit of the leasehold option is its relative simplicity. It is also likely that lenders, being familiar with the common law lease form, would respond more quickly to it. Such a lease is not, however, inherently better security than the customary residential allocation under the option for developing its mortgagability. The great merit of that option is that it represents a sound evolution of tribal land tenure rather than extension of common law forms. But there is no inherent incompatibility

between the two options. Consideration could be given to exercising either option, or both.

The atypical but important case of the suburban villages adjacent to Gaborone calls for special consideration. Their closeness to Gaborone makes their land part of the Gaborone urban land market, while it continues to be administered under customary rules. Relatively wealthy jobholders in Gaborone are increasingly seeking and often obtaining, at no or little cost, land for residence in these villages. It is suggested that such village lands should not be absorbed into Gaborone, but should instead be seen as areas where tenurial development under a situation of increasing demand could be explored and as areas where the options outlined in this report might first be exercised. There is, however, an urgent need for MLGL and the responsible Land Boards to exercise greater control of access to this land, the value of which will be rapidly appreciating, to ensure that the benefits of appreciation accrue primarily to members of the local community.

The policies of existing private lenders and possibilities for publically financed housing in the villages are also explored. The refusal of the commercial banks to lend even a limited amount of funds on the long term for housing in the villages is unduly conservative banking practice, and should be revised. Unless this is done, any institutional or tenure changes will have little or no impact on credit availability from this source. Perhaps the best possibility as a lender for housing, however, is the Botswana Building Society, and it is suggested that MLGL pursue both the necessary legal steps and the increase in BBS's capital which would make it a major lender for village housing construction. The National Development Bank should resume activity in this area of financing, and should consider the potential of its "character loan" program as regards building loans on the security of land with future buildings. Finally, since any discussion of housing in terms of mortgage security excludes the bulk of village inhabitants, who would not be considered credit worthy by most lending institutions, it is suggested that consideration be given to self-help housing and other public housing initiatives in the villages, subject to very careful prior study of the nature and extent of demand.

It remains in closing only to stress again the need for broad public consultation and discussion, following the best of traditions in Botswana, of any tenure changes in the villages. This is important not only to give a chance for objectives to be voiced but also to avoid exaggerated expectations of the impact of such change.

APPENDIX

Populations of Primary and Secondary Centers of Botswana*
(towns indicated by capitalization)

<u>Primary Centers</u>	<u>Population</u>		
1) GABORONE	1971: 17,718	1978: 42,500	1982: 67,500
2) FRANCISTOWN	1971: 18,613	1978: 30,000	1981: 33,600
3) Serowe	1971: 15,700	1976: 23,400	1981: 26,300
4) SELEBI-PIKWE	1971: 6,500	1975: 20,606	1982: 34,100
5) Kanye	1971: 10,600	1978: 19,500	1983: 28,000
6) LOBATSE	1971: 12,000	1979: 19,000	1984: 24,500
7) Mochudi	1971: 6,945	1978: 18,000	1985: 25,000
8) Molepolole	1971: 9,448	1978: 17,000	1982: 23,500
9) Mahalapye	1971: 12,056	1978: 17,000	1983: 23,000
10) Maun	1971: 9,614	1978: 15,000	1986: 18,300
<u>Secondary Centers</u>			
11) Palapye	1971: 5,217	1979: 11,000	1981: 16,000
12) Ramotswa	1971: 7,991	1978: 8,800	1982: 9,300
13) Tonota	1971: 6,321	1978: 8,000	1982: 10,000
14) Thamaga	1971: 3,651	1978: 7,000	1983: 9,500
15) Mosopa	1971: 3,114	1978: 4,700	1982: 6,000
16) JWANENG	1971: --	1980: 3,000	1982: 6,000
17) Bobonong	1971: 2,000	1981: 3,000	1986: 4,000
18) KASANE	1971: 1,987	1978: 2,600	1982: 3,000
19) Hukuntsi	1971: 1,531	1977: 1,933	1982: 2,350
20) Tsabong	1971: 1,319	1979: 1,665	1982: 2,000
21) GHANZI	1971: 1,198	1978: 1,700	1982: 1,800
22) Gomare	1971: 681	1972: 1,000	1982: --

* These figures have been compiled from two draft volumes prepared by the Ministry of Local Government and Lands, Department of Town and Regional Planning, in 1980: Primary Centers of Botswana and Secondary Centers of Botswana.