

**“Land Law and Agricultural Development in the Cabo
Delgado Province of Mozambique and in Swaziland”**

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1. Why Land?

1.1 This may be a silly question, but why do we talk about land reform in the context of poverty alleviation? Certainly land ownership is a political issue, and a cultural value, but this paper will deal with land reform and its relationship to poverty alleviation, and **land as a poverty alleviation issue is an issue of potential**. Having land only means that poor people have the possibility of doing various poverty-alleviating activities; it doesn't mean that suddenly they are not poor. Productive things must still be done with the land in order to alleviate the poverty of its owners. The amount, characteristics, and quality of the land acquired will directly influence the choice and scope of poverty alleviation activities available to be implemented. Thus, in order to talk about land reform and its relationship with poverty alleviation, we must discuss...

1.2 ... **productive activities**, what poor people do with land once they have it. There are a whole range of things people do with land to stay alive. In the north of Mozambique, land is primarily used for subsistence agriculture, with excess production sold when possible. This sort of land use is the norm in Cabo Delgado, with some 95% of the population making a living from agriculture, supplemented by woodcutting, hunting, fishing, and other micro-scale resource exploration activities. In the entire province of 1.1 million people, the number of working farms larger than 100 hectares can perhaps be counted on one's fingers. Due to tsetse fly, cattle do poorly in most of the province. The rural population traditionally depended on goat rearing, but loss of stock during the war means that goats are scarce on the ground; some villages have no goat owners at all. Sometimes it is hard to find a chicken.

The situation in Swaziland is more complex. Rural livelihood strategies depend on a mixture of subsistence agriculture and remittances from family members employed in town. Resource exploration activities such as woodcutting are more limited, due to population pressures and the limitations of the mountain environment. Three percent of Swaziland is arable; most of the rest is climax grassland or savannah from which indigenous game has been largely eliminated. Animal husbandry (especially cattle, but also goats) on non-arable land is a culturally and economically important activity; the veterinary department tells us that Swaziland has more cows than people (human population is about 1 million). While animal production is undoubtedly a good way to exploit the mountain biomes, overstocking and subsequent erosion lead to progressive impoverishment of an already nutrient-poor environment. Commercial farming is common on both private and more recently on common lands. One rural community (Shewula, near the Mozambican border) is setting up a nature reserve on community land.

It is obvious that poor people are likely to have more limited resources (both capital and human resources) than other groups, thus the plethora of government and NGO and private sector development efforts, all with their own values and priorities and strategies and degrees of success, and ways of measuring success, for that matter. Rather than debate developmental theory and practice, I would rather limit myself here to the observation that resolving the land ownership issue, securing tenure for the landless,

creates the correct power dynamic between the land owner and the outside agent. The landowner has both the power and responsibility of land ownership to balance out the economic power of the outside agent and create more equal dialogue and negotiations.

Both countries experience serious land pressures in the peri-urban areas. Though laws in both countries are designed to protect the poor from loss of land to outsiders, mechanisms have been created, in some cases by rural landowners themselves, to work around these, allowing urbanisation of former farmland to occur. All of which points up another poverty alleviation issue, that of sustainability. Poverty alleviation will not occur if livelihoods strategies result in the loss of land or the impoverishment of the resource base upon which the rural poor depend. Thus, we must look at...

- ... **land management**. What must be done to keep lands and resources in a condition to keep their owners out of poverty? It's not poverty alleviation if people use their land to grow dongas. Land may be a right but it is also a responsibility. In northern Mozambique, the rural population traditionally practises slash and burn agriculture, using fields for perhaps three years before the inevitable decline in soil fertility means that new fields must be cleared. While in the past population numbers have been low enough to allow this, the more populous districts (like Chiure) are running out of land for new fields; chronic malnutrition and extreme food insecurity is the result. A recent study (Katashaya, 1999) noted that:
 - Every year the population of Chiure suffers a prolonged food shortage resulting in malnutrition and a worsening poverty situation;
 - There is adequate and nutritionally suitable food for only 4 to 5 months. However, this diet is nutritionally unsuitable for young children;
 - Over the years, people have adopted strategies by which they cope with these shortages and survive starvation. But these have the negative effect of leaving them poorer and so more vulnerable and less able to cope with future food shortages with the result that they do not ever recover completely;
 - inadequate and already exhausted land aggravates poor agricultural production.

In Swaziland, soil erosion due to overgrazing may be the most serious management problem, though annual burning of the veld also contributes to nutrient loss. Field fertility and declining crop yields are also a problem, as progressive impoverishment means that rural families have less money every year to buy fertiliser, and seeds for than matter (Harry Van der Burg, former CEO, Etsala Seed Corporation, Swaziland, personal communication).

- 1.3 All of the above is perhaps a long-winded way to make the point that talking about land reform is an insufficient approach to poverty alleviation. Instead, one must talk simultaneously about **land ownership, its use for economic benefit/ survival, and its management**.

2. These three main themes are brought together in a concept called the *Fogão Africano* in Portuguese, or *Emaseko* in siSwati. Unfortunately in English we can only render it as “those three stones you use to hold up a cooking pot over the fire.” This concept was first articulated by GECORENA, a coalition of development organisations in Cabo Delgado (though I believe similar images have been used by others). It links in a logical manner the above land ownership issues, land use issues, and land management issues:

- Land (and Resource) Ownership. This is the first stone, the starting point. Rural people must have access to/ownership of the resources they need for their own survival. In Mozambique, the new *Lei de Terra*, the new *Lei de Floresta e Fauna Bravia*, the *Regulamento de Pesca Maritima*, and other new legislation all combine to create an enabling environment, though it must be said that implementation lags far behind legislation at this point. In Swaziland, community land rights have been managed through the traditional chieftanship systems for generations, and land rights problems have never reached the crisis levels they have in neighbouring countries.
- Land Use/ Benefits of Land Ownership. This is the second stone, the one that deals most directly with human survival. People must be able to survive using the land and resources available to them. There are a wide variety of possibilities here, ranging from pure subsistence agriculture to partnerships with private sector investors, and everything in between. Land ownership however is the first step, and places the community in a position of power relative to other interested parties such as investors, as noted above.
- Management. This is the third stone. When a rural community owns something that gives them benefit, the motive for land management comes naturally; rural people are no greater fools than you or I. There may be however the need however for two types of external support:
 - ⇒ Technical- the community may not know, for example, that a ‘closed season’ is important for a hunting area, or they may not know when the best time for a ‘closed season’ should be. Or community members may know that their soil is getting worse every year, but may not have money for fertiliser, or may not know what to do to rebuild soil fertility. In northern Mozambique, war dramatically disrupted the transmission of traditional knowledge from older to younger people, and financial limitations have meant that agricultural research and extension services remain limited; note that there is no agricultural research institute in all of Cabo Delgado.
 - ⇒ Organisational- communities in Mozambique particularly often need support in order for village level management structures to function, including village leadership, village tribunals, or producers groups (fishermen or farmers, for example). Traditional structures in the north suffered heavy damage during the various wars and the socialist era, and land management will not occur without structures for decision taking, lawmaking, monitoring, and enforcement.

Only through the consideration of all three themes together will land reform contribute to poverty alleviation. If you remove one stone, the whole land reform and poverty alleviation process comes apart as rapidly as a cooking pot falls into the fire (well, maybe not, but pretty fast anyway).

3. **The *Fogão Africano/Emaseko* as a management tool and an analysis tool;** or how to use the *fogão africano/emaseko*. All of this may be very interesting, you might say, but what good is it, how can it be used, and who can use it? This section will deal with those sorts of questions.

3.1 **Who can use it?** One of the advantages of the concept is that it is a simple (and complex) enough tool for all those involved in land reform and poverty alleviation to use. At the level of the rural population, the individual needs to know how to use the current legal environment to get land, needs to be able to do something with it to survive, and needs to know how to take care of it for his children.

Policy makers need to realise that access to land is not the whole story; those who acquire land need to have the means and knowledge to use it sustainably. Note that this has implications as to what sort of land is acquired. On a December trip through the southern lowveld of Zimbabwe, I noticed that many of the farmlands that had been suddenly occupied by war vets had been just as suddenly abandoned. This is hardly surprising; the area has an annually variable average rainfall of 400 mm or so, hardly the sort of area in which settlement for the purposes of smallholder/ subsistence agriculture should be contemplated. Perhaps a little more attention to Stone 2 of the *emaseko* would have been in order before resettlement commenced. As it was, blessed little poverty alleviation actually occurred. And certainly the apartheid government paid no mind to the principles of the *emaseko* before zoning the homelands.

In between policy makers and rural people lie a *corpus* of development programme agencies, both governmental and non-governmental, and these can use the *emaseko* as a tool for programme planning and management. As project management is my background, I will use a short case study from my own experience to illustrate how the concept may be used in very practical ways to produce a positive impact on poverty in a defined region.

3.2 **The *Fogão Africano/Emaseko* as a tool for programme management:** the story of how Gecorena and Helvetas (a local coalition and an international NGO working in partnership) used the *emaseko* to mount a community development project in the Estuary region of Mazeze.

In 1996, The Swiss NGO Helvetas opened a new project in two administrative posts of Chiure District, Chiure Velho and Mazeze. The project area included the estuary region of Mazeze, where the Lurio and Megarumo rivers empty into the sea. The estuary area at the time was generally considered to be the poorest area of the poorest district of the province, which is the most isolated province in the country, which in 1996 was ranked by the UN as the poorest country in the world (the 1997 Census showed that infant mortality in Chiure was 247 per thousand, while life expectancy was 32.2 years). The estuary has six villages and a population of perhaps 4000 people. It is accessible by vehicles only for the six months of the dry season, though no outsiders had been there

since the end of the war in 1994. The estuary was chosen by the project as a priority area, based on the poverty and isolation of the population.

As so often happens in development, the population had other ideas. We, the project staff, got chucked out on our ears. People had had enough of the outside world; no good had ever come to them from their interactions with it. Soldiers had come with guns, politicians had come with promises, colonists had come to take over, and cheat, and before them all Arabs had come to take slaves. We were called every name from 'Liar' to 'Vampire' and everything in between. We tried five or six times to hold meetings, but it was not until two years later that we made any headway. In the meantime, two things happened. The project had formulated the *Fogão Africano* concept, based on our work in other areas, and the Mozambican government had passed the new Land Law of 1997. The Law itself is a remarkable thing that, for the first time in Mozambican history, guarantees in clear and simple language the legal rights of the rural communities over the land they use. It also acknowledges the role of traditional community leaders in land allocation, and allows for the businessman to obtain a Land Use Title for land to be used for business or commercial farming, though the businessman applying for a Land Use Title is obliged to obtain community approval if he wishes to occupy community land.

In late 1998 Helvetas and its Gecorena partners went back to the estuary to talk about the *fogão africano*. The response was immediate and gratifying. The simple message that the land they used was now legally theirs was enough to convince the villagers that we were genuinely interested in helping them (perhaps no one in the history of the area had ever come there without a hidden agenda). A mapping process was undertaken to define community land limits and identify the resources available. Resources included alluvial soil with seasonal irrigation potential, wildlife (including buffalo, lion, leopard, and hippopotamus as well as a number of smaller species), fish and prawns in the estuary, and ebony and other commercial timber in the forests. Copies of these maps were given to village leaders as well as district and provincial authorities so that officials at all levels knew that the communities were asserting their land rights. Training in land rights and their use was given to community leaders and members. This was stone one. Then it was time for stone two.

The community land and resource maps were an excellent starting point for dialogue about livelihoods strategies and developmental options. Participatory exercises about opportunities and constraints resulted in a list of priorities and the implementation of economic development projects in the following areas:

- goat re-stocking programme
- support to fisheries (loans for fishing equipment)
- community ebony harvesting and sale
- collective marketing of palm leaf (used as grass is for covering houses)
- cashew and sesame production programmes
- a school building programme was also initiated (this is social, not economic development, but was considered an essential investment in human resources; 75%

of the population of Cabo Delgado is illiterate, with the level being higher--88%--among women than among men--60%).

Two specific aspects of these interventions are worthy of note. First, each intervention was accompanied by specific social responsibilities. As all interventions were based on use of communally-held resources, it made sense that the individual beneficiary (if I may be forgiven the word) gave something back to his or her community. For example, goat beneficiaries received three animals and returned four (which animals were passed along to other community members) after an 18 month period. What was most interesting here is that the community itself set up the rules and regulations of the goat intervention and supervised the beneficiaries. Probably for this reason 100% reimbursement rates were achieved. Second, each intervention was also accompanied by management responsibilities which the beneficiaries assumed towards the community lands and resources. These were also defined and negotiated using the techniques of participatory development.

The dialogue about community resource management (stone 3) also opened with a return to the community resource map. All members were invited to a meeting and more detailed resource maps were prepared. This time community members were asked to divide themselves by gender and age. The older men and women were asked to map the resources available when they were children. All other groups were asked to map the current situation. Comparison of the two maps showed up the degradation that had actually occurred in the resource base over the past 30 years or so. Then the youth were asked to make a map of how they thought the resource base might look when they were old. Very long silences ensued.

A problem identification exercise was then undertaken. Problems (declining fish capture, annual burning of the forest, gradual depletion in game numbers, etc.) were identified based on the results of the mapping exercise and possible solutions proposed. As it turned out, community recommendations followed very closely scientific recommendations. To address the problem of a reduction in fish capture, for example, the breeding season for main fish species was declared a closed season. The breeding season was determined by the fishermen themselves, by simply finding out when they caught fish with eggs. A fishing reserve (comprising 10% of the community's fishing grounds) was declared to create undisturbed habitat for fish reproduction. Fishing for fry with mosquito nets was banned.

One of the most critical steps was the assigning of responsibilities for patrolling and implementation of the new regulations. Assigning of responsibilities eventually was done on the basis of "he who suffers." That is, the ones who suffered when laws were broken were the ones charged with patrolling and enforcing them. Thus all fishermen became responsible for the fishing regulations, woodcutters and goat owners became responsible for controlling wildfires and capturing those who set them, and farmers and palm cutters were responsible for preventing cultivation in an area that had been declared a community palm forest reserve. All producers were organised into groups to facilitate

this control, and groups were linked to both traditional and modern governmental structures. Lastly, the new regulations were written down in, and ratified by both traditional and modern governmental agencies.

Results were very encouraging. Fishing with mosquito nets disappeared. Wildfires dropped from 90% of the area burned to less than 50%. Several people setting fires were captured and punished every year. Fish stocks are recovering, and buffalo numbers have climbed from 22 to over 40. Turtles are no longer being killed on the beaches. Instead, their nests are marked with white flags, a sacred symbol for the local population. This year the provincial wildlife department will issue a permit allowing the community to sell a buffalo hunt for the first time. Most importantly, perhaps, the community has been recognised by outsiders as being the true owner of the land. The community has arranged to sell timber to a local sawmill, and is in discussion with a local hotel about the possibility of collaborating on a tourist camp.

All this is not to say that there are no problems. Two years in row, the community was cheated by buyers of ebony; the courts are still resolving the issue. Some village chiefs did not evenly apply regulations against burning when cases to be judged involved members of their immediate families. The police in a neighbouring district issued guns to several hunters, which guns were used for poaching within the estuary. One buffalo was wounded late last year. Uneven rainfall and a plague of rats severely limited sesame yields in the 1999/2000 cropping season. On the other hand, there is no doubt that application of the *Fogão Africano* concept resulted in better livelihoods, sustainable land management practices, and a change in the local power dynamics for the betterment of the local inhabitants.

For the project designer/manager then, the *fogão africano/emaseko* concept provides both a coherent complex of interventions as well as logical order in which to implement them, while remaining flexible enough to be adapted to local conditions. This flexibility will be further explored in the next two sections.

3.3 The *Fogão Africano/Emaseko* as an Analysis Tool. The concept may also be used to monitor and evaluate ongoing land reform and poverty alleviation efforts. It has the particular advantage of being able to identify weaknesses and strengths of a wide variety of approaches.

3.4 *Fogão Africano* Analysis of Land Reform and Agricultural Development Efforts in Northern Mozambique

3.4.1 The context. Much has been said earlier about the poverty and land context of northern Mozambique. However, there are a few additional points worth mentioning. First, in Cabo Delgado, land *per se* is not the hot issue; rights to timber and wildlife resources are. Most of the province is occupied by timber concessions, with timber exploration yielding little or no benefit to the local communities involved, and this

despite the fact that timber resources are extremely rich (Mozambique is the only country in the world that still has commercial quantities of ebony; Cabo Delgado and Niassa are the only two provinces left with significant quantities--ebony has become so rare that CITES has considered including it on Appendix I, which, for *Fogão Africano* reasons, I personally oppose). Licensing laws are such that no management takes place at all; Mozambican registered companies are granted short-term licenses which guarantee that short-term interests rule. Foreign companies in principle receive long-term concessions; in practice they cut deals with government officials or with locally registered companies so they too can cut without any management input whatsoever. Second, land for tourism purposes will become a critical issue in the future (more on this will be mentioned later). Lastly, for all practical purposes, the entire rural population can be said to live in extreme poverty. Average family income in Chiure District in 1996 was estimated at 450,000 MTS per year (60 US dollars). GDP per capita last year was 141 US Dollars, down from 148 USD in 1999; Cabo Delgado currently possesses 10.3% of the land surface of Mozambique and 8.5% of its population, but produces only 5.3% of the country's GDP.

3.4.2 Land tenure in law and in practice. The new land law of 1997 outlined four ways to acquire land, as follows:

- all land used by local communities (including grazing lands and forests) was defined as community land, with immediate effect. No processing or documentation is required (though it is advised in the case of land in areas of potential conflict). The burden of proof lies on the outsider to prove that he is not occupying land against community will. Community land is held in common, and can only be occupied or sold by outsiders through recognised public consultation processes in the presence of relevant officials (the *Auto de Consulte Comunitário*).
- land may be given to individuals by local leaders, though local leaders were not defined in the law (a law of local communities has recently been debated by the *Assembleia de Republica*).
- persons who have occupied a given piece of land in good faith for more than ten years receive a land use title by right of occupation.
- land for business purposes may be acquired by investors, both national and foreign, through land use titles (*Titulo de Uso e Aproveitamento de Terra*), a long term, renewable land lease. A series of community consultations are mandated to insure that community lands are not occupied against community will.

Note that plots in towns and cities are covered by different regulations, and for all practical purposes may be bought and sold on the free market.

There are a number of innovative aspects to this law. First, the methods used to determine the extent of community lands are those of Participatory Rural Appraisal (PRA), perhaps the first time that PRA techniques have been recognised as valid legal procedures. By extension, local tradition about land occupation has also been recognised as legally binding. Second, community rights were seen as superseding all other rights--the burden of proof rests on the outsider, not vice-versa. Third, no zoning was attempted (no 'communal lands' were defined). All land was available for all types of

classification, based on local history and local decisions. There was a very definite reason for this. The intention of the law was to avoid the creation of impoverished communal lands side by side with richer, developed ‘private lands.’ This, combined with the requirement for the investor to receive community blessing for his investment, was intended to bind the investor to the community, to create the sense and the reality that the outside investor was entering the community as a new member, and that the investment contemplated would be of benefit for all. This of course is in the best African tradition, and represents a modern, institutionalised version of the “*kukhonta*” system used for entry into rural Swazi communities. As written, the law is an innovative effort to reconcile historical methods of land tenure with the needs of the modern economy, and the need to sort out the confusions resulting from war and the socialist and colonial periods.

In reality, the new law has not turned out quite as well as planned. While it does defend community land rights, it has not produced the close relationships between investors and rural communities that its designers envisioned. Instead of contracts spelling out ongoing financial relationships between investors and communities, the practice of one-off indemnization payments continues, leaving community members with a short-term flush of cash and long term loss of their lands. This practice is often implicitly encouraged by the attitude of some Mozambican government officials; used to top-down leadership of the socialist era, they sometimes will authorise investments before communities have been consulted. While in principle the communities still have the right of refusal, in practice it becomes difficult to refuse the combined weight of both investor and government. For the present, this is not a terrible problem; there is yet plenty of land in Mozambique. But it will be a problem soon, and already is a problem in peri-urban areas.

This failure to motivate engagement between investors and communities is a loss to both sides. A company with which I am involved personally, “*Arquipelago das Quirimbas Lda.*” was formed specifically as a response to this problem. Over the course of nearly five years in Cabo Delgado, the partners had become extremely frustrated with the ideas and quality of investors visiting the province. The partners also believed that artisanal fishing was not the best use of the marine resources available. It was decided to form a company to create a marine reserve and tourist project on two islands in the Quirimba Archipelago, an area long noted for its biodiversity and historical interest, and recently nominated for World Heritage Site status. A contract was negotiated with the local fishing community that spelled out the following benefits:

- indemnization for fields, fruit trees, and structures affected by the project (note that there were no permanent settlements affected);
- first opportunity of employment for community members;
- first opportunity of secondary employment (contracts to buy fish, fruit, vegetables, cargo transport, etc) for local community members;
- US Dollars 12.50 per tourist entry into the reserve paid into a community development fund, to be used by the community (with the aid of a local NGO) for their own projects as they saw fit.

Another benefit discussed was the increase in fish capture (in surrounding areas) that results when a small reserve is created, due to the creation of optimal conditions for fish reproduction.

Community responsibilities were also negotiated, the most difficult of which was control of migratory fishermen from Tanzania and Nampula who invade the islands in their numbers during the dry season. I am happy to report that the community felt such confidence in the project that this year, the pre-construction phase of the project, migratory fishermen numbers on the islands have fallen from approximately 200 fishermen in 13 boats to zero fishermen in zero boats. Such confidence is both gratifying and frightening. The community is doing its part, now the company must do a responsible job of mounting the tourist project. Of course if the company fails, under law, the islands revert to the local community.

3.4.3 Land use. Much has already been mentioned in this document; much remains to be done. The absolute poverty of rural people severely limits their options. Family sector agriculture at present used no mechanisation, no purchased inputs, and no animal traction. Fields are hacked from the forest, tilled with the short handled hoe, exploited until their fertility drops, and then abandoned. Both food security and commercialisation of excess production are tenuous at best.

In the short term, attention must be paid by NGO's and government to improvements in family-sector agriculture, both for home consumption as well as for sale. The innovative water harvesting, crop production, and soil conservation techniques of Zimbabwean organisations like Agritex and the Intermediate Technology Development Group may be of relevance here. Improvements in cash flow will come about in the areas of goat husbandry, sesame production, and cashew production, these all being crops that are traditional and command a good price per weight in the marketplace. Cotton remains a variable.

In the future, the role of tourism will increase. Whether in tourism or agriculture, long term development depends on the development of the community-private sector interface. Contracts between rural growers and private sector processors of sesame and cashew have been elaborated this year, facilitated by NGO's, and these may point the way for agricultural development in the future. Perhaps the investor-community relationships pioneered by *Arquipelago das Quirimbas Lda.* (which I should add were themselves adapted from earlier efforts in Zimbabwe and Tanzania) may be taken as models for future tourism development.

3.4.4 Land management. Rational approaches to community land management are essentially limited to those areas that have been chosen by Gecorena to implement projects. Fortunately these areas cover something like 1,000,000 hectares of land and nearly a hundred villages. Perhaps the most interesting of these areas is an area along the Montepuez River, where 11 villages are collaborating in the establishment of a national elephant reserve, with a central protected area and buffer zones for various types of

community use around the edges. In other areas, traditional methods of community resource management have been severely damaged by the war and the socialist and colonial periods. Nearly the entire province burns every year. Leaders are no longer able to exert their traditional controls over hunting and sometimes even human settlement. The legal environment is in general an enabling one, though the new Forest and Wildlife Laws created some grey areas; there exist some questions about who owns the wildlife and timber resources on community lands. Without a strengthening of community based resource management programmes, it is likely that short-term resource exploration by outsiders, with no community benefits, is likely to continue. Interventions necessary include support to communities in negotiations with timber operators and other investors, and a continuing spread of the *Fogão Africano* approach throughout the province.

3.5 ***Emaseko* Analysis of Land Reform and Agricultural Development Efforts in Swaziland**

3.5.1 **The context.** Perhaps the dominant fact of the Swazi economy is that it has suffered from a decade long economic slump. Salaries have not kept up with inflation, the Lilangeni (linked to the Rand) has fallen, and unemployment has skyrocketed. Swaziland fell back nearly forty places in the 1996 UN development rankings. Forty percent of Swazis now live below the poverty line; last week a newspaper article complained that prisoners in jails have a standard of living that most people can only dream of; meat and eggs are eaten on a regular basis, and three meals a day are served. Thus more pressure to sustain family livelihoods is placed upon land and upon those family members in employment.

3.5.2 **Land tenure in law and in practice.** Unlike Mozambique, Swaziland has defined nation land and title deed land. This is a result of history. During the colonial period, the Swazi Kings were forced to yield nearly all the entire land surface of Swaziland to white farmers. When it was realised that the Swazi people had nowhere to stay, all concessions were reduced in size by 1/3. Since independence, a land buy-back programme funded largely by the UK (on the basis of willing buyer- willing seller) allowed the nation to recover considerably more land; currently about 25% of Swaziland is title deed land and 75% is nation land.

Title deed land may be bought and sold on the free market under Roman-Dutch Law. History makes itself felt here, too. Those of you contemplating ox-waggon trips to Swaziland will be pleased to know that all freehold title holders are obligated (according to the language of their title deeds) to provide travellers with outspanning facilities for oxen; fodder for your animals should not thus be a problem.

Nation land is held by the Swazi King in trust for the Swazi nation and administered by hereditary area Chiefs. Individual families do not receive titles for their land; rather, land remains theirs for as long as they use it. Married men may change or join chiefdoms by the process of "*kukhonta*," a formal process of petitioning the chief and his council.

Successful applicants usually offer the chief a beast, and are shown land for building and farming. Applicants must be accompanied to the chief by a delegation of the community who support his application. Often the community helps the new member to build the first structure. The successful applicant will be expected as well to participate fully in community life- ceremonial occasions, meetings, community projects, and “*kuhlehla*,” tribute labour in the chief’s fields (I would note here that chiefs neither receive salaries nor impose taxes). Thus, the “*kukhonta*” process is not really a request for land; rather it is a petition to be allowed to join a community.

Individual families who live on private farms may acquire rights under the “Farm Dweller’s Control Act.” This act is an attempt to legislate what amounts to a “chief-subject” relationship between a farm owner and a farm dweller. The farm dweller has the right to land and its use, but he may legally be obliged to labour in the fields of the farm owner. The Farm Dwellers Control Act attempts to be fair but is unsatisfactory to nearly everyone. Farm owners have trouble understanding why farm dwellers for example cannot be forced to pay more than E300.00 for damage they inflict on the farm. Farm dwellers in general resent being forced into a chief-subject relationship with someone who is not a traditional chief. I was present some years ago at a conference between a highly-placed chief (now an Adviser to the King) and a farm owner. The farm owner wanted to resolve his farm dweller’s problem by giving the farm dweller his own piece of land, but the chief refused to accept this as a solution. “If you give him the land, who will be his chief?” was the question. “Everyone in Swaziland must have a Chief.”

There exist some problems. Boundaries between chiefdoms are often a matter for conflict, sometimes outright battle. No real efforts are made to resolve these conflicts, probably for political reasons; there would be no way for the Swazi King to resolve these conflicts without himself making enemies. A recent attempt to replace a local chief with a member of the Royal family also has provoked battle. And women may not “*khonta*,” they may acquire land through their husbands or through their unmarried sons.

Some chiefdoms in the peri-urban areas have been flooded with requests for membership. My wife’s home area of Siphocosini outside Mbabane has grown from four families when she was a child to hundreds. In these areas, local residents ‘sell’ portions of their farmlands to outsiders (often friends or family) and then accompany the newcomer to the chief to formalise the “*kukhonta*” process. It will be interesting to see to what extent traditional tenure systems can adapt themselves to modern and especially peri-urban conditions. For the time being, the Siphocosini chiefdom still functions.

3.5.3 The beauty of the Swazi traditional land tenure system is that nearly everyone who needs a piece of land for subsistence farming can have one; the land tenure system functions as a sort of a social safety net. It remains to be seen how much longer this will be true; the impacts of population growth, AIDS, modernisation, the developing tourist industry, and the extensive soil erosion caused by excessive cattle grazing all must be figured into any predictions, and I fear this is beyond my capacity to do.

There have been problems in the past centred on the use of community land for commercial farming. There are several reasons for this. First, community lands for commercial purposes (irrigation schemes, etc.) have generally been granted to groups (even women's groups) and not individuals, as chiefs rightly enough consider land as a community resource. These groups in general fail to function over time, due to the problems inherent in group production, group marketing, etc. A model which is enjoying some success is the division of irrigation schemes etc, into individual plots. Group functioning is limited to infrastructure maintenance.

Second, lack of transferable land titles meant that financing for projects on community lands has been limited. Bank financing requires collateral which the average Swazi on Nation Land could not provide. Recent efforts are under way by the Swazi Government and partners to develop models for commercial lending on Nation Land (the 44 Million Emalangeni Enterprise Fund is a case in point). These models all share in common the principle of community pressure; loan applications must be approved by community leaders before being considered. Early signs are promising. Also successful have been private sector- community partnerships in cane-growing.

3.5.4 Perhaps the most tenacious land management problem is that of overgrazing. Again, we look to history to find some root causes. Swazis are historically cattle herders, and this remains a key element of the Swazi economy and identity to the present day. The colonial period in Swaziland did not result in such wide-spread disenfranchisement there as it did in other southern African countries, so people could continue to keep cows. There are, however, natural limits to the number of cows the land can support, and Swaziland has been beyond those limits for some time now. Management efforts have been thwarted by the tradition of common grazing on Nation Land. Of course, and in straight agreement with *emaseko* theory, since ownership is poorly defined (even though benefit is derived), little management happens. It is to the individual's advantage to stuff as many cattle as possible onto the common land, before somebody else does, and then do no management whatsoever. I think my university economic textbook called this the 'tragedy of the commons.'

Some communities have managed to define and fence their own community grazing lands. Siphocosini area, for example, maintains a fenced common grazing area, and works with local veterinary officers to control entry of new animals into the community. These are perhaps the beginnings of a sustainable grazing management system for this community. On the whole, however, cattle owners form a powerful lobby, and have been able to block almost any move by the government to enforce grazing management, or to cut industry subsidies (for dipping chemicals), for that matter.

A new trend is community-private sector tourism and conservation initiatives, my own community, that of Mvembili in Hhohho region, under Chief Solani Dlamini, being one that is investigating such a possibility.

- 4. Conclusions and Recommendations.** One could spend hours here analysing the interrelationships between land tenure, poverty alleviation, and agriculture, but I will confine myself to a few of the most pertinent comments:

Conclusions

- a. Both Mozambique and Swaziland in the elaboration of their land tenure laws have made credible attempts to harmonise their own culture and history with the needs of a modern society. It is interesting that both the ancient Swazi Law and Custom as well as Mozambique's New Land Law of 1997 define the landowner as a member of a community, not a stand-alone, isolated individual, an island apart from the rest of society. Both laws require community acceptance of the entry of new members into their midst. It is generally understood that the newcomer is expected to bring benefits to the rest of the community; this is the condition, explicit or implicit, of his acceptance.
- b. Both countries acknowledge the importance of traditional leaders in their land tenure systems. Community lands in both countries are directly administered by traditional leaders.
- c. Both countries use access to land as a safety net, in lieu of the possibility of a formal social security system. As a result, neither country has landless poor. Given the financial limitations of both countries, this is perhaps the only alternative open to them, and is no mean feat.
- d. Both countries have limitations in terms of investment and resources for the benefit of the poor. Swaziland, with greater resources, is investing in enterprise development and entrepreneurship on Nation Land, while Mozambique focuses more on improvements in food production and food security on community lands, and sees private sector- investor partnerships as the way forward.
- e. Neither country has any great success in linking investor and community interests. Swazi law isolates the outside investor on title deed land, while the Mozambican Law as implemented does not guarantee ongoing investor- community relationships.

Recommendations

- a. **For the Swazi Government:** Swaziland is on the right track with its drive for Swazi entrepreneurship on nation land. However, more attention needs to be paid to the investor- community interface. The experiences of the sugar industry may be illustrative here. What other links are possible between nation land communities and the formal economy?
- b. **For the Mozambican Government:** Mozambican Law needs to be implemented in the spirit in which it was written. New investment needs to make formal commitments to host communities, commitments that go beyond on-off indemnizations. Food security remains a key issue in the north, and effort needs to be expended improving agricultural production.
- c. **For Non-Governmental Organisations:** I would say that laws in both countries are adequate though not perfect (gender issues in Swazi land law being a case in point).

Attention should therefore be placed on partnership with government where possible. An essential NGO role is that of the watchdog, to insure laws are implemented as intended, and corrupt officials are identified. Another is to empower communities to defend their own land rights, particularly important in Mozambique. Lastly, communities will also need to be empowered/supported/ coached to interact successfully with investors and the private sector.

- d. **For everyone:** Need I say this? Use the *Fogão Africano*-- ownership, benefit, management—when designing and implementing interventions.

I have one more recommendation for everyone, but don't quite know how to say it. Maybe its best to illustrate it with a story from our family farm in Swaziland, a farm which we bought some years ago which we hold by freehold title. Thus, we have no obligations to anyone (except those passing in ox waggons)—not to the local chief, not to the local community, nothing. We decided however to act as though we had. We reported our arrival to the *Indvuna* of the area, obtained his blessing to be there, and adopted a strong good neighbour policy- repairing the road, building bridges, sending food to hungry neighbours, taking the sick to the hospital.

Last year some local children set a fire and burned quite a number of fruit trees on the farm. We consulted a lawyer, who told us that under Roman Dutch Law we had no recourse- we could not hold the children's parent responsible for the damage, even if they did have any money, which they didn't. However, the chief sent a delegation to the farm to inspect the damage and called us to his kraal several weeks later, together with the parents of the children. There we met with his council, the *Libandla*. It was not really a court case; rather, it was a meeting to decide how to solve a problem. In the end, the parents of the children were ordered to work with us side by side to replant the damaged trees. The *Indvuna's* family, the Masilela family, offered quantities of cattle manure to fertilise the young trees; the farmers among you will realise what a nice gift that was. Everyone was ordered to smile as they worked to repair the damage. That was last year, and so far, we're all still working together, fixing the place up.

The point is that *Indvuna* Masilela didn't have to intervene. There was no obligation on him to do so. But he did anyway. Something in the way that we all had been dealing with each other over the course of the years made him treat us as members of his community, made him use unwritten tradition and custom to solve a problem that modern law could not. So maybe what I'm trying to say here is that you can't legislate everything. Maybe you can't just rely on the letter of the law to redress the injustices of the past and create development in the future. Maybe you have to look a little deeper, to the history and culture and values that underpin that law, that caused some lawmaking body to bring that law into being. And if we do that, what do we find? We find that, in Africa, land tenure is not just about getting land. Its also about building community. Maybe if we all remembered that, we'd find poverty alleviation a lot easier to do.