

**LAND – TENURE, GRABS, GENDER AND THE LAW:
REPORT ON A MOKORO SEMINAR
By Robin Palmer**

On 22 November 2011 Mokoro hosted a seminar on Land – Tenure, Grabs, Gender and the Law. It attracted an audience of around 40, a mix of individual consultants, small consultancy firms, NGO workers (from Oxfam and ActionAid), academics and researchers. There was very positive feedback from many participants, which was good to hear, since I had organized and chaired it! I had decorated the room with cartoons, press cuttings and T-shirts illustrating land grabbing, arranged the chairs in circles rather than rows, and asked the 4 speakers to talk to the audience rather than show powerpoints. The consensus was that this ‘intimacy’ worked very well. The audience was very receptive and there were lively discussions.

I introduced the seminar by saying that next year will be significant, as it will mark the 20th anniversary of the signing of a peace agreement which brought an end to a bloody civil war in Mozambique, the 30th anniversary of the founding of Mokoro and the 70th of the founding of Oxfam. So it was appropriate to have a focus on Mozambique in the first session, that Oxfam’s Legal Adviser would be talking in the second, and that 2 speakers were Mokorons. What follows are brief summaries of the 20-minute presentations of the 4 speakers.

Martin Adams spoke on FAO’s support for tenure, rights and access to land and natural resources: lessons from Mozambique. Martin had recently led a major evaluation of FAO’s tenure work and an earlier one on promoting land and natural resources laws for equitable development in Mozambique. On the first, he mentioned the lack of coherence between FAO’s Land Tenure Team’s normative and field operations and the scarcity of financial resources for regular programme work. On future directions for FAO’s tenure work, he stressed the need to build a shared awareness of what must be done, to develop a strategy to move ahead with the next phase of the Voluntary Guidelines process, that funds for regular programme work were shrinking, hence the need for more extra-budgetary funds, and that there were important gaps to fill, e.g. post-emergency work.

Turning to Mozambique, Martin noted the separation of mapping and cadastral services, the lack of harmonisation of municipality cadastres and of formal local land administration bodies, and weak inter-ministerial coordination. He stressed FAO’s quite exceptional involvement in Mozambique from 1994 to the present and concluded by hoping that FAO in Rome take greater notice of this kind of holistic approach and adopt it elsewhere in sub-Saharan Africa, in Latin America, and in South and South-East Asia, thereby shifting the current balance of work, which has seen half of all land tenure resources going to Eastern Europe and Central Asia in the past 15 years, reflecting post-Cold War priorities.

Joseph Hanlon, a long-time Mozambique specialist and renowned scourge of NGOs, donors and the Mozambican government, spoke on The Mozambique land grab myth. He began by noting 6 widely reported media stories which claimed that millions of hectares of Mozambique had been given away to foreigners – yet none of them were true. In fact, 2.5 million hectares (of the country’s 80 million) had been granted to investors (mostly domestic) between 2005-10, but 37% of this was lying idle. Why the need to exaggerate? He felt this derived from NGO needs for funding and for making careers – ‘land grabs’ were the new starving black babies. On the other hand, speculators and hedge funds also had a vested interest in exaggeration. He cited some hyped investments which were in

trouble. There had been no jatropha successes and it was a myth that jatropha could be grown profitably on marginal land. There were many local conflicts between investors and communities. Since December 2009 there had been an almost total freeze on new large concessions. New open pit coal and titanium mines raised important resettlement and environmental issues. He joked that according to northern agendas, trees and game parks were good, dams, biofuels and foreign investment were bad, and coal was OK.

Joe concluded by saying that Mozambique remains very poor. It needed incomes and jobs (forestry provided 1 job for every 20 hectares, biofuels 1 for every 7 hectares). Poverty was not falling; neo-liberalism had failed. Agriculture and agro-industry must be the way forward. The country has significant under-used land and water and needed a sensible mix of food, specialised export crops (tobacco, cashew, sesame), forestry and biofuels. In a shift away from the previous donor driven, neo-liberal agenda, the new agriculture policy denoted a move to smaller, locally-based commercial farms, downplayed foreign investment, although this was still needed for trees and sugar, and restored research and extension and marketing boards. But old habits die hard: there is an entire generation with neo-liberal ideologies who believe that World Bank money brings the end of poverty, and it is difficult to remove this ideology from policy-making. Agriculture requires substantial long-term capital, but where will it come from? Irrigation was key, but expensive. Higher intensity requires mechanisation (90% of farmers currently work without any form of mechanisation) – but who will provide the money for smallholder farmers? These ideas are all developed further in Joe's country report on Mozambique, published on 6 December (along with studies of Tanzania, South Sudan and Zambia) by the Oakland Institute: <http://www.oaklandinstitute.org/understanding-land-investment-deals-africa-mozambique>

Elizabeth (Liz) Daley spoke on Current issues around gender and land. She noted that it was possible to detect a gradual shift towards a more nuanced understanding of gender differences around land, including projects and programmes which at least notionally addressed gender, and more talk of gender mainstreaming. This was a constructive step and likely to lead to more pragmatic policies for improving gender equity in land relations.

Understanding gender differences in relation to land grabs was essential. Current research by the International Land Coalition (which published its global synthesis report Land Rights and the Rush for Land on 14 December www.landcoalition.org/sites/default/files/publication/1205/ILC%20GSR%20report_ENG.pdf) shows it was a key variable and that the implications were heterogeneous and differentiated but more likely to be negative for women than for men, though it is not always clear cut. It was important for activists to get and keep gender on the agenda in all discussions about land grabs and also to consider how land policies and laws are implemented on the ground and how they can support institutional capacity building and processes of governance at all levels to ensure these are gender-equitable. Despite paper gains in many countries in terms of legislation, there remains a justification for supporting continuing efforts to achieve equity in access to, ownership and control of land for women and men. There also remain strong human rights arguments for supporting equitable land access for women and men regardless of the impact on production.

The struggle for equality in rights between men and women needed to be re-oriented to be more equitable and not to alienate men. Perhaps a dual strategy was needed – some activists should keep pushing the women’s rights agenda to keep it on the table, while others offer a moderating view and try to carve out a middle pragmatic path between these activists and policy-makers and land administrators who have to deal with realities on the ground. It would also help if activists could more readily acknowledge that women’s gains do sometimes mean losses for men, and also that women sometimes have to give something up to ensure equity with men. Liz concluded that gender relations were really fundamental to land relations and it was critically important to be aware of gender issues in all debates on land.

Finally, Oxfam GB’s Legal Adviser and Company Secretary Joss Saunders spoke on Engaging in strategic litigation and working with lawyers on land, gender and access to justice. He cited the examples of current cases in Uganda and Tanzania, where Oxfam is ‘working under the radar’ with lawyers to explore the role of litigation in contesting land grabs. Joss also mentioned the Endorois case, where after 40 years the Endorois community won a case in February 2010 when the Government of Kenya was guilty of violating their human rights by evicting them to make way for wildlife reserve in the 1970s. The case had been filed by the Centre for Minority Rights Development Kenya with the help of Minority Rights Group. Subsequent developments include recognition of the land rights of minorities in the Kenyan Constitution.

Joss stressed that much of Oxfam International’s work on land was directed by Oxfam Novib in the Netherlands, including work with the International Land Coalition on the Land Matrix Partnership, which in a recent Oxfam report Land and Power. The growing scandal surrounding the new wave of investment in land www.oxfam.org/en/grow/policy/land-and-power announced that up to ‘227 million hectares – an area the size of Western Europe – has been sold or leased or licensed since 2001, mostly over the past two years.’

Oxfam was focussing on land and gender in East Africa, in Malawi and other countries in Africa, Asia and Latin America and the Caribbean. Joss is now exploring the idea of setting up a legal unit within Oxfam. He felt that international development NGOs working on legal strategies for land rights work needed to catch up with agencies such as World Wildlife Fund, Global Peace Index, Human Rights Watch, and Minority Rights Group.

On the role of litigation in legal strategy, he stressed that this was only one part and made an analogy with Oxfam’s Raising Her Voice programme on the African Women’s Protocol – the need to ratify, implement, communicate and litigate. There were different venues for litigation - international (especially on human rights), domestic and transnational. They can sometimes be high profile, campaigning issues, e.g. the Treatment Action Campaign in South Africa, and the Nestle social irresponsibility case in Ethiopia, which Oxfam exposed in 2002. He asked what can international NGOs bring to the table? Perhaps a combination of technology, access to funding and campaigning, which was key.

I closed the seminar by recalling that I had once attended a conference of the South African Legal Resources Centre held near Cape Town. It was actually held on Robben Island – and there could be no finer place from which to contemplate issues of law and justice.