PDAAY-571
ISN: 58575

CUSTOMARY LAND DISPUTE MANAGEMENT IN SWAZILAND

Project report prepared for the Ministry of Agriculture
and Cooperatives, Mbabane, Swaziland
and the Land Tenure Center, University of Wisconsin-Madison

by

Laurel L. Rose
SSRU/UNISWA and University of California-Berkeley

April 1987

CUSTOMARY LAND DISPUTE MANAGEMENT IN SWAZILAND

Laurel L. Rose

E X E C U T I V E S U M M A R Y

This study, which comprises one part of a larger USAID project entitled, "Changes in Agricultural Land Use: Institutional Constraints and Opportunities," aims to contribute data regarding the following: the historical and political background of the Swazi customary land tenure system; the structure and organisation of customary courts responsible for land dispute management; and the content and outcome of land disputes heard in the above courts.

Until this study, the customary legal institutions responsible for land dispute management in Swaziland had not been a subject for concentrated academic study. Moreover, such institutions have not been required by government decree to report publicly their operations (procedures, case loads, actions taken). For this reason, the nature and prevalence of land disputes have remained largely unknown. The dearth of authoritative information regarding land disputes and land dispute management is problematic: land distribution and utilisation policies cannot be easily formulated or implemented without such information.

The customary land dispute data, which was obtained in this project through interviews and visitation of chiefs' courts, demonstrate the operation of land law: how land disputes arise; the processes according to which they are settled; and the impact they have upon disputants and communities. The cases, particularly those appearing in chiefs' courts, also provide the clearest picture of changes in land law: nature of trouble spots in customary land law; how people actually behave as opposed to how customary legal rules dictate they should behave; and how chiefs formulate new rules in order to change practises or promote new practises.

Land disputes are classified in this paper according to dispute typologies. The typologies are based upon six disputant dyads (e.g., family member vs. family member). Disputes within each dyad are summarised in the form of case studies. The organisation of cases in each disputant dyad is as follows: family member vs. family member dyad (cases 1-5); subject vs. subject dyad (cases 6-9); subject vs. chief dyad (cases 10-12); chief vs. subject dyad (cases 13-15); chief vs. chief dyad (cases 16 and 17); and Central Authority vs. chief dyad (case 18).

resettlement: chiefs are compelled by development interests and fears about land shortages to assert their perceived rights (Case 17). Few chiefs are content to overlook transgressions for an extended period as did the chief in Case 16.

My research indicates that land disputes have become increasingly problematic because of several social, political, economic, and technological developments: population growth, population redistribution (caused, among other things, by resettlement projects and by new employment opportunities), and new agricultural and livestock management technologies. These developments necessitate structural changes which would promote a more "efficient" (in terms of economic expenditures and manpower hours) land dispute management process. Such changes might be: standardisation of selected rules and procedures of customary land dispute management; improved communication to the public about these rules and procedures; and improved communication within and between responsible government agencies about land dispute management procedures.

TABLE OF CONTENTS

I. INTRODUCTION 1

A. The Problem 1

B. Methodology 1
1. Data Collection 1
2. Aims of Study 3

II. HISTORICAL AND GEOGRAPHICAL BASIS OF LAND TENURE RELATIONS 4

A. History 4
1. Historical Phases 4
2. Impact of Concessions 4

B. Geography 5

III. POLITICAL BASIS OF LAND TENURE RELATIONS 6

A. Dualism of National Land Tenure Administration 6

B. Hierarchy of Political Authority for Swazi Nation Land 7

C. Allocation of Swazi Nation Land 8
1. Historical Background 8
2. Methods of Land Allocation in a Chiefdom 9

IV. LEGAL BASIS OF LAND TENURE RELATIONS 10

A. Legislative Background of Customary Law 10

B. Structure of Customary Law Forums: Land Dispute Management 11
1. Traditional Forums 11
a. Family Council 12
b. Chief and Councils 13
c. King and Councils 20
2. Modern Forums 23
a. "Ndabazabantu" 23
b. "Tinkhundla" 25

V. LAND DISPUTE TYPOLOGIES 29

A. Family Member vs. Family Member 29
1. Background 29
2. Case Studies 30

B. Subject vs. Subject 33
1. Background 33
2. Case Studies 35

C. Subject vs. Chief 39
1. Background 39
2. Case Studies 39

D. Chief vs. Subject 41
1. Background 41
2. Case Studies 41

E. Chief vs. Chief 43
1. Background 43
2. Case Studies 44

F. Central Authority vs. Chief 46
1. Background 46
2. Case Studies 49

VI. CONCLUSIONS 50

NOTES 54

REFERENCES 55

APPENDIX 58

G L O S S A R Y

bandlancane	- chief's inner council
bandlankhulu	- council of community members
imisumphe	- long-term residents of an area
indvuna	- (pl. tinvuna) - Chief's deputy, lieutenant chief, local commander of age regiments, head of Inkhundla
Inkhundla	- (pl. Tinkhundla) - regional committee comprising several chiefs
kubekwa	- placing of person on land
kuboleka umhlaba	- land loan from one individual to another
libandla	- council
lincusa	- representative
lusendvo	- family council
Ndabazabantu	- official created by British bureaucracy who links chiefs to customary hierarchy of national councils
Ndlovukati	- Queen Mother
Ngwenyama	- King of the Swazi
sikhonti	- man who pledges allegiance to chief, is accepted as subject, and may receive land
sikhulu	- clan chief
umgijimi	- chief's runner
umntfwanenkhosi	- prince who is granted an area

CUSTOMARY LAND DISPUTE MANAGEMENT IN SWAZILAND

Laurel L. Rose

I. INTRODUCTION

A. The Problem

Upon arrival in Swaziland, I was told by some members of chiefs' councils that land disputes do not even exist. As one elder put it: "We Swazis are not permitted to fight over land because it belongs to the King." This stated ideal of non-confrontational attitudes about land matters does not correspond with reality: my research revealed that land disputes constitute a major and prolonged type of litigation coming before customary legal institutions.

Until the present study, the customary legal institutions responsible for land dispute management in Swaziland had not been a subject for concentrated academic study. Moreover, such institutions have not been required by government decree to report publicly their operations (procedures, case loads, actions taken). For this reason, the nature and prevalence of land disputes has remained largely unknown. The dearth of authoritative information regarding land disputes and land dispute management is problematic: land distribution and utilisation policies cannot be easily formulated or implemented without such information.

This study examines customary land disputes through cases obtained in interviews and chiefs' courts. Such land dispute cases demonstrate the operation of land law: how land disputes arise; the processes according to which they are settled; and the impact they have upon disputants and communities. The cases, particularly those appearing in chiefs' courts, also provide the clearest picture of changes in land law: nature of trouble spots in customary land law; how people actually behave as opposed to how customary legal rules dictate they should behave; and how chiefs formulate new rules in order to change practises or promote new practises.

B. Methodology

1. Data Collection

Although many land dispute studies carried out in various locations around the globe have been aided by a wealth of written court case summaries, a similar situation does not exist in Swaziland: chiefs' councils and the King's council, which reportedly began recording cases only in the last decade or so, do not open their records to the scrutiny of ordinary Swazis or

investigators. Consequently, data about land disputes on customarily tenured land in Swaziland can only be obtained through observation at customary legal institutions or through interviews with court personnel and case litigants. Such data reveals the historical and sociological depth of individual land disputes, but unfortunately, quantitative and qualitative aspects of land disputes (e.g., regional distribution of dispute types) cannot be determined.

Despite numerous calls for customary law research in Swaziland (Armstrong 1985; Meyers 1983; Nhlapo 1982), little work on the topic has been done--with the exception of a Judicial Commissioner's recording of principles of customary law (Fannin 1967), several legal scholars' summations of customary law (Khumalo 1977; Khoza 1975; and Rubin 1963), and several anthropological analyses of the social bases of customary law (Marwick 1940; Kuper 1947a, 1947b; Hughes 1962, 1964, 1972). As far as Swazi customary land law is concerned, several comprehensive studies have been carried out (Hughes 1964, 1972; Nkambule 1983). Unfortunately, no study of customary land law makes much mention of land disputes.

Hughes, in particular, makes a strong plea for research into the nature of land disputes:

> It would be highly desirable for an extension agent working in a Clan Chiefdom, for example, to know the details of how the people of that Chiefdom first came into their "special relationship" with the Swazi Central Authority; and to know the history of any disputes which there may have been in the past regarding the powers held at different levels in the land community hierarchy in that area.
>
> It may be necessary to carry out land-use planning for large areas occupied by several different land communities, or parts of these. There will have to be settlements of all boundary disputes in that whole area; or at least agreement to continue to disagree while accepting (perhaps only for a specified number of years) some machinery for the control of land use in the disputed areas (1972: 328).

If land disputes are to be researched in depth, a major problem concerns the methodological approach to be taken. Armstrong (1985: 2) notes several problems of studies of Swazi customary law undertaken to date: they have focused upon interviews with Swazi authorities rather than upon case observation and analysis; they have forced Swazi informants to conceive of customary laws in hypothetical rather than real contexts; and they have implied that customary laws are static when in fact they are in a constant state of flux. The doctoral dissertation research project in anthropology, upon which this project paper is based, involved, over the course of eighteen months, both regular observation of cases coming before two Chiefs' Courts in the middleveld as well as extensive interviewing of informants from approximately twenty chiefs' areas in all parts of Swaziland. This approach avoided some problems of past customary law studies pointed out by Armstrong, but it could not completely overcome one potential problem--i.e., the reliance upon foreign concepts and terminology.

The eighteen case studies presented in this paper have been selected such as to represent a wide range of land disputes (e.g., resources, boundary, fencing, resettlement), as experienced by various members of society (e.g., men and women, young and old, materially disadvantaged and advantaged). Twelve cases occurred in the central middleveld, three cases occurred in the highveld, and three cases occurred in the southern lowveld. The cases are drawn from ten chiefs' areas. The descriptive sections presented in this paper derive data from two sources: published and unpublished literature and my interview data from the twenty chiefs' areas. Although the case studies and interview data portray land problems in all regions of Swaziland, Cases 11-13 describe problems of building rights and road development which are probably most characteristic of the crowded urban peripheries in the middleveld.

Several constraints determined the particular research methodology chosen for the present study. The most important were: sensitivity of land issues in Swaziland; cooperativeness of chiefs and councils; and geographical proximity of potential research sites to the author's home base at the University of Swaziland. The first constraint persuaded the author to avoid or handle circumspectly delicate issues (e.g., banishment and succession disputes). The second constraint forced the author to limit customary court attendance to courts where chiefs were tolerant of research and to limit interviewing to educated or known informants. The third constraint influenced the selection of two areas in the middleveld of Swaziland.

Data collection proceeded over three separate trips to Swaziland. The first trip in summer 1983 served as a feasibility study. Archival research and preliminary interviewing of scholars, government officials and members of the customary and Western courts were initiated. During the second trip from January 1985 to August 1985, sessions of several chiefs' courts were attended. As many land disputes were heard, data about the nature of disputes, the socio-economic statuses of disputants, and outcomes of disputes could be collected. The third trip from October 1985 to July 1986 served to deepen understanding of land disputes. Trust and communication with informants and disputants had been established, and extensive structured and unstructured interviewing with people in the research communities was possible. Moreover, ranking government officials could be asked to provide information about the national administrative structure for land management and official policy on land disputes.

2. Aims of Study

The present study, which comprises one part of a larger USAID project entitled, "Changes in Agricultural Land Use: Institutional Constraints and Opportunities," aims to contribute data regarding the following: the historical and political background of the customary land tenure system; the structure and organisation of customary courts responsible for land dispute management; and the content and outcome of land disputes heard in the above courts. In the concluding section of this paper, the findings of the research are summarised.

This paper is divided into six sections. Section one explains the research problem and methodology. Section two provides historical and

geographical background information. Section three covers the political basis of land tenure relations, whereas section four covers the legal basis of land tenure relations. Section five examines land disputes according to disputant dyads which arise at different levels of the political hierarchy, as discussed in section three. Section six offers concluding comments.

II. HISTORICAL AND GEOGRAPHICAL BASIS OF LAND TENURE RELATIONS

A. History

1. Historical Phases

Hughes (1972: 33) has divided Swaziland's complex land tenure history into four phases: (1) the period of the clans and the emergent state (fifteenth century up to 1839); (2) the Concessions Period until the Partition of 1907; (3) the post-Partition Period until 1968; (4) the Independence Period after 1968.

During the first period of the clans, Bantu-speaking people, who were predominantly Nguni in language and culture, fled from invading Bantu and European armies and settled in present-day Swaziland under the leadership of King Ngwane III. Under the leadership of Ngwane's grandson, Sobhuza I (d. 1839), disparate clans were united under the dominance of the Dlamini clan within a stabilised and centralised Swazi state.

During the second period, King Mbandzeni (1875-1889) granted Boer and British concessionaires large tracts of land for grazing and mining purposes in exchange for revenues. This exchange proved so problematic that Sobhuza II, after being made King in 1921, immediately initiated a long series of protests aimed at regaining land which Swazis believed had been expropriated from them.

During the third period, the High Commissioner's Partition Proclamation of 1907 served to give formal recognition by the British administration to the concessionaires' claims but also to reserve approximately one-third of Swaziland's territory for occupation by the Swazi majority. As many conflicting land rights existed during and following the concessions, extensive legislation was required to clear up inconsistencies and contradictions. The Swazi never accepted the validity of this legislation and consequently set up buy-back schemes when appeals to the British failed.

Since the beginning of the fourth period, or Independence (1968), buy-back initiatives have continued rather than expropriation of European-owned farms (Jones 1977).

2. Impact of Concessions

Interactions between Swazi rulers and European powers have been dominated by the historical reality of the concessions. Swazis, having witnessed tumultuous developments regarding land--most of which were beyond their

control--are wary of potential changes in customary land tenure. They argue that extensive changes could result in an undesirable erosion of the traditional way of life (e.g., decline in power of traditional, hereditary rulers) and the creation of a class of landless people (Hughes, 1962, 1964, 1972). This general conservatism of Swazis has tended to preserve rather than modify, as in much of Africa, the ideal rules and procedures underlying customary land management (see Bonner 1983; Crush 1980; Fransman 1978; Mashasha 1977; Whittington and McDaniel 1969).

Swazis attribute many of the current ills of the land tenure system--including land disputes--to the arrival of Europeans and the imposition of a Concessions-based land policy. Although most Swazis report in interviews that land disputes are endemic to the traditional land tenure system, they also commonly argue that the privatisation of large land tracts, a practise promoted by European land policy, has stimulated land disputes by encouraging individual and chiefly grabbing for increasingly scarce land areas. Moreover, they argue that the introduction of foreign-supported development projects as well as a cash economy--however beneficial--have frequently stimulated chiefly rivalries for land control and associated tributes.

B. Geography

Swaziland, a small, landlocked country of 17,364 sq km, is perched on the edge of the Southern African escarpment. It is bounded on three sides by South Africa and on the fourth by Mozambique. Four distinctive north-south topographic steps largely determine the characteristics of its natural environment. First, there is the highveld which has grassy hills and averages 1,219 m above sea level. It has a cool, moist climate and soils mostly not adequate for arable farming but well-suited for afforestation and summer grazing. Second, there is the middleveld which is also hilly and averages 610 m above sea level. It has a warm and sub-humid climate with palatable grasses suited for livestock and rich soils good for agriculture. Third, there is the lowveld which averages 274 m above sea level. It has a hot, dry climate and tall grasses suited for grazing but usually not dry-land agriculture. Fourth, there is the Lebomba mountain range which is a narrow plateau averaging about 610 m above sea level. It has a warm, sub-humid climate and basaltic soils suited for arable agriculture.

Swaziland's potential for economic development, in terms of water and mineral resources, is considerable. Several rivers, the Mbeluzi, Ngwavuma, Great Usutu, Pomati and Lomati, cut through the highveld, middleveld and Lebombo mountains. Although seasonal rains limit the potential water resources of these rivers, construction of hydroelectric storage dams encourages irrigation in the drier middleveld and lowveld. The main irrigated crop for export is sugar. Other major crops include cotton, maize, tobacco, rice, vegetables, citrus fruits and pineapples. Swaziland's mineral wealth consists of iron ore, coal, and asbestos which have been mined for export (see Fair, Murdoch and Jones 1968; Leistner and Smit 1969; Maasdorp 1975; Murdoch 1977).

Swaziland's geographical features influence both population distribution and associated land utilisation patterns, which in turn influence the nature and frequency of land disputes. A good example is provided by the physical

and demographic characteristics of the middleveld, where the bulk of the present research project was conducted. In the middleveld nearly one-half of the Swazi population resides in a patchwork pattern; rural homesteads are interspersed with densely populated settlements around employment centres. These employment centers (particularly the Matsapha Industrial Complex) and rich soils enhance employment opportunities and agricultural prospects. Unfortunately, high population concentrations also reduce the availability of unused land and natural resources. Conflicts frequently arise over land allocations by family and chief's councils for residential and agricultural purposes, over boundaries, over fencing and cattle transit paths, over irrigation rights, and over exploitation of scarce natural resources such as trees. These conflicts and others appear in the sample of cases collected by the author in several middleveld research sites.

III. POLITICAL BASIS OF LAND TENURE RELATIONS

A. Dualism of National Land Tenure Administration

Swaziland's land tenure system is characterised by dualism. On the one hand, there is customarily tenured land which is regulated by customary land law and administered by customary chiefs' courts/the King, and, on the other hand, there is freehold tenure land which is regulated by Roman-Dutch land law and administered by the Deeds Registry Office.

In the more precise legal terms of legislation passed at the time of the infamous Concessions, there are three types of land tenure in Swaziland: Private Tenure Land, Crown (Government Land) and Swazi Nation Land. Private Tenure Land may be held by freehold title or by concession. Crown Land is land owned by the Government, but technically speaking, also by the King. Swazi Nation Land has never been defined by legislation but consists of the former "Native Areas," i.e., "Swazi Areas," of the colonial era.

A "Swazi Area" has been defined in the Natural Resources Act 71/1951 as follows:

> "Swazi Area" means any land set apart for the sole and exclusive use and occupation of Africans under the Concessions Partition Act No. 28 of 1907 and land set aside for African land settlement in terms of the Swazi Land Settlement Act No. 2 of 1946, and shall include any land registered in the name of the Ngwenyama in Trust for the Swazi Nation.

The term "Swazi Area" is no longer used, and has been replaced by the term "Swazi Nation Land." The latter was introduced into common usage by A.J.B. Hughes as a result of his doctoral land tenure study (1964). Some confusion arises regarding the current administration of Swazi Nation Land. It may be administered by chiefs in a traditional manner, by chiefs as repurchased land, and by national corporations, Tibiyo and Tisuka, or government agencies as agricultural projects.

As Armstrong writes:

> The confusion arises because under the "Lifa Fund" and under the British Land Transfer Program (which still continues and is administered by the Ministry of Natural Resources), the Swazi Nation has purchased more than 1/2 of the land lost to concessionaires in the 19th century, and this repurchased land is registered in the name of the Ngwenyama in Trust for the Swazi Nation. Sometimes this land is given to chiefs and administered by them according to Swazi law and custom. More often, the land is used by Tibiyo or Tisuka as agricultural projects, industrial projects or housing projects. The land may also be administered by the Ministry of Agriculture as an agricultural project. Working farms acquired in this way generally remain farms, worked by hired labour, rather than reverting to the traditional tenure commonly considered synonymous with Swazi Nation Land (1985: 5).

In the present author's research project, two types of Swazi Nation Land were considered: land administered by chiefs on the basis of long-standing hereditary rights and land administered by chiefs under recently acquired rights (through repurchase schemes). In any case, all kinds of Swazi Nation Land are under the direct control of the King. This final point is critical for an understanding of the organisation and administration of authority for land dispute resolution.

B. Hierarchy of Political Authority for Swazi Nation Land

Customary land law applies to Swazi Nation Land. The basic principle underlying customary land tenure on Swazi Nation Land is embodied in "kukhonta" bonds, i.e., bonds of allegiance which tie chiefs to the King and commoners to chiefs (Kuper, 1947a; Rosen-Prinz, 1976). The "kukhonta" bonds entail reciprocal rights and obligations. Thus, the chief must demonstrate allegiance to the Dlamini rulers by performing in national ceremonies and attending meetings of the national council. He, in turn, has the right to exact tribute labour from his subjects, but he has the obligation to control political, economic and ritual matters in his community as well as distribute land among his subjects. The subject, in turn, has the right to receive a land allotment from the chief as well as the protection and representation of the chief, but he has the obligation to respond to the chief's and King's formal summons to work in fields or build/repair royal homesteads.

Although the King is said to "own" the land, chiefs exert a certain degree of autonomy in their areas. They are entrusted by the King with the day-to-day maintenance of law and order, including the distribution of land to headmen and the resolution of land disputes.

In exercising their land administration duties, chiefs necessarily delegate responsibilities to others. A chief may entrust his deputy ("indvuna") and council of elders with the supervision of minor land matters. At a micro level, he entrusts individual male homestead heads with the reallocation of family holdings to individuals (usually married sons). Wives

of the sons, including wives of polygamous men, will be granted access to common land.

Questionnaire studies and interviews performed by the present author indicate that land administration duties are undergoing transitions at all levels of the "traditional" socio-political hierarchy. For example, many chiefs are employed at urban or industrial centres and therefore increasingly entrust numerous and significant administrative responsibilities to their "tinvuna" and council members. The same is true of male homestead heads who migrate in ever-greater numbers to employment centres. As many such men report back to their homesteads only on weekends, they entrust major land administrative responsibilities to their wives (i.e., senior wife in a polygamous union) or elderly mother.

Although women have probably long exercised greater land administration responsibilities than the normative socio-political structure would account for, it seems possible that women are currently exercising even greater responsibilities with more openness and legitimacy. Numerous women who were interviewed claimed that they have represented their homestead group at public chief's meetings, argued land disputes before the chief's court, and independently made important decisions about land use (e.g., crops to be planted or land distribution patterns). Often they carried out these duties in the presence of adult male sons and even disinterested husbands. For example, one woman forcefully presented a land dispute (land claim of her husband's family) before the Chief's Court because her husband was ailing; another woman decided how land plots would be distributed among her husband's wives and what crops would be grown because her husband claimed to have little interest in agriculture.

C. Allocation of Swazi Nation Land

1. Historical Background

Legitimate patterns of allocation on Swazi Nation Land (SNL) differ radically from those patterns prevailing on freehold land in the juxtaposed Roman-Dutch system: land is not a saleable commodity. Land access rights on SNL are held by the community as a whole, and the King, representing the entire Swazi Nation, is responsible for its allotment. In effect, land rights on SNL are derived more from a political than an economic basis.

Membership in a political community underlies land access. In the early days of the clans (see section 2), members of the Dlamini clan and several others pledging allegiance, the "Bemdzabuko", "true Swazi", entered west-central Swaziland. They found loosely organised groups of Nguni and Sotho whom they destroyed or incorporated. Those who were incorporated became known as "Emakhandzambili", or "those found ahead". When King Mswati came to power (1839-1875), he placed chiefs over some groups and gave asylum to others who became known as "Emafikawuva", or "those who came late".

Three types of "chiefs" have acquired control over land: "sikhulu", the clan chief, "mntfwanenkosi", the prince who is allotted an area and following of his own, and the "indvuna", the governor of a royal village. The clan chiefs are permitted to exercise considerable local autonomy (e.g., land

distribution rights and performance of clan ritual) but must recognise the King as the ultimate owner of the land. The princes are placed in various locations around the country for the purpose of indirectly supporting the monarchy, symbolising Dlamini authority, and diffusing potential rivalry for central control. The "tinvuna" are selected to administer royal residences as rewards for special ability. (See further explanation of chiefs in Section 5.)

Historic differences in clan incorporation within the Swazi State influence the types of relationships forged between chiefs and the monarchy. Thus, each type of chief (clan, royal, lieutenant) exercises land rights in a different way because of his unique relationship with the monarchy. For example, some informants indicate that a strong clan chief, as head of a clan which entered into an early treaty relationship with the Dlamini monarchy, is more likely to exercise control over subjects without appeal to the monarchy, (e.g., in banishment case), than a lieutenant or prince, who as an appendage of the monarchy, is more likely to defer continually to the monarchy.

2. Methods of Land Allocation in a Chiefdom

The land allocation methods practised in a chiefdom must be analysed within the context of local and national political communities. The local political community involves a bond between chiefs and their subjects, and the national political community involves a bond between rulers and chiefs. Both local and national political communities are incorporated within a complex spatio-political pyramid consisting of ruler-chief-subject relationships.

At the apex of the pyramid begins the land allocation process: rulers distribute land and associated responsibilities to each of the three types of chiefs. At the middle level of the pyramid, chiefs directly oversee their own land responsibilities or those of subordinate "tinvuna" in sub-wards. At the lowest level of the pyramid, chiefs allocate land to homestead groups, which in turn assign plots to family members.

There are standard ways by which a subject can pledge allegiance to the chief and rulers and thereby obtain land. The land acquisition methods are: (1) direct grant by the chief; (2) direct grant by another individual; (3) inheritance; (4) being "lent" land by another individual. The first three lead to ownership rights, whereas the last leads only to the right of use (Hughes, 1972). Disputes involving each of the four acquisition methods appeared in the case sample collected by the present author.

The first method comes into play when a newcomer approaches a chief seeking acceptance in the area. This newcomer is described as a man, "sikhonti" who wants to "kukhonta", i.e., offer allegiance and be accepted as a subject. Ordinarily, a close relative or friend residing in the new area and pledging allegiance to the chief will introduce the newcomer to the chief's deputy. The deputy will then take the applicant and his envoy to the chief who will inform his council of the application and further present the newcomer to the community at a public meeting. The next step is for the chief to assign his own envoy to go to the present chief of the newcomer and investigate his reputation. If his reputation proves favourable, then the applicant will be accepted and will formally "bid farewell" to his present chief. Initially the applicant may be given a temporary residential site.

When he is formally placed, the boundaries of the homestead site and the arable land will be indicated. Sometimes he receives an additional land grant from the chief at a later point in time.

The second method, land grants, usually involves land transfers within kinship groups; this process is known as "kubekwa", placing. According to Nkambule (1983: 42), "placing" methods are commonly relied upon when a new settler in a chiefdom has been allocated insufficient land or completely virgin land and his relatives compensate for the deficiency with an additional grant. In both situations, the grantor forfeits all usufructory rights over the land. Land grants may also be made to current residents of a chiefdom (e.g., neighbours); however, my data (obtained in a densely populated area) indicate that landholders prefer not to give away land. In addition to land grants made to newcomers and neighbours, grants are also made within a single homestead group, although such a grant represents a "division of labour (more) than a land alienation exercise".

The third method, inheritance, occurs when a homestead head dies and land rights are normatively passed down in the male line. When the family council of agnates (including full and half brothers of head, his own and brothers' senior sons, etc.) discuss the disposal of a man's estate upon his death, it primarily considers the household divisions prevailing within the homestead group during the life of the homestead head as well as the land allocations he made during his life. In monogamous families, the largest land allocation and administrative responsibilities usually go to the oldest son, whereas in large polygynous families, the same allocation and responsibilities usually go to the oldest son of the senior wife.

The fourth method, a land loan from one individual to another, i.e., "kuboleka umhlaba", serves to supplement an insufficient land grant awarded to a newcomer in a community. A land loan may also take place between community members when one party, the borrower, wishes to expand his subsistence farming or engage in cash crop farming. The borrower requires a land loan because he cannot obtain additional or suitable land from the chief for any one of several reasons: land shortage in the area; no available land in the immediate vicinity of his homestead; disinclination of authorities to grant land to someone who has sufficient land for subsistence needs. More research needs to be done on why land is loaned, but it appears that the lender may want to aid a relative or neighbour, to repay or incur a debt, or to receive some compensation--such as part of harvest from loaned land.

IV. LEGAL BASIS OF LAND TENURE RELATIONS

A. Legislative Background of Customary Law

Although Swazis long resisted foreign legal impositions (Amoah, 1978; Armstrong and Nhlapo, 1985; Bonner, 1983), Swazi customary legal procedure has been increasingly drawn into the more formal structure of the West. While the Swaziland Order-in-Council of 1903 declared that the High Commissioner must respect native laws or customs, the General Law and Administration

Proclamation No. 4 of 1907 made Roman-Dutch common law (including legislation) the general law of Swaziland. This meant that chiefs and other traditional leaders could hold courts and administer customary law among their people as they had done for ages, but they had to do so in the shadow of a legal system which applied to the general population, not just Swazis.

With the passing of the Native Courts Proclamation No. 80 of 1950, now the Swazi Courts Act, the foreign legal presence became even more evident. This act provided for the formal composition of customary courts (e.g., clerks provided for but lawyers excluded), the type of law they may apply (customary law), the procedure to be followed, and the limits of the courts' jurisdiction over persons. In terms of jurisdiction over causes of action, the Swazi Courts (currently over 25), two Courts of Appeal and Higher Swazi Court of Appeal which were instituted by the 1950 act, were ordered not to administer any Swazi law or custom which is "repugnant to natural justice or morality . . ." (e.g., witchcraft), not to apply Roman-Dutch law, and not to hear any matters originally contracted under Roman-Dutch law such as a civil or Christian marriage.

Customary land law--only one of many domains of Swazi customary law--is kept so exclusively within the jurisdiction of the customary legal structure that even the Swazi Courts, which were formalised by the 1950 statute for the purpose of administering Swazi customary law, may not hear land matters. Rather, only chiefs together with their "libandla" (council) hear such matters. If a chief reaches an impasse in a land matter, he can appeal directly to the King and his council (see section B below).

A chief's control over land matters is regulated by the vague and incomplete terms of the Native Administration Act No. 79 of 1950. In essence, the nuts and bolts of a chief's land administration is left up to his own interpretation of unwritten customary law provisions.

Cases involving customary land law are rarely referred to the Western court system. This system consists of Subordinate Courts (first, second and third class) which were defined by the Magistrates Court Act No. 66 of 1938 and the High Court which was defined by the Swaziland Constitution Order. In the sample of cases presented in section V below, one case (no. 12) involved the futile appeal of a land case occurring on Swazi Nation Land to a Magistrates Court.

B. Structure of Customary Law Forums: Land Dispute Management

1. Traditional Forums

One informant, when asked by the author about the traditional hierarchy for land dispute management, commented as follows:

> Before 1950 there were family courts at the lowest level of the traditional structure. They were located on every homestead and were under the authority of the family headman. This type of court was the "lusendvo". The headman could arbitrate family disputes. The next type of court was the chief's court, the "libandla". All cases arising under some

chief could go to the chief's court. From there cases could be sent to one of three appeal courts--at Zombodze, Lobomba or Lozitha (royal kraals). The final court was the King's Court. This is the way the traditional structure was before 1950. There was no Swazi National Court at that time.

The District Commissioner only heard a case under the Subordinate Court's Act . . . the District Commissioner operated in cases between Swazis if they drew up some kind of contract between themselves which was only known to Roman-Dutch law. Before 1950, the Lozitha, Zombodze and Lobomba appeal centres didn't enforce their decisions always . . . for this reason and others, the District Commissioners--even though they were really administrative officers--were also supposed to settle disputes arising between Swazis. They had to settle them according to Swazi law and custom.

A case on appeal would go to Zombodze, Lozitha or Lobomba depending on where it had originated. For example, an appeal from the Shiselweni District would go to Lobomba. An appeal from Siteki would go to Lozitha. An appeal from Hhohho would go to Zombodze. According to the Swazi traditional administration, Swaziland was divided into three areas.

As a result of the 1950 Swazi Courts Act, there came to be some confusion about the traditional courts. Some people say that the Chiefs' Courts were abolished, but others say that they still exist. Some people maintain that as a result of the establishment of the Swazi Courts, Mandanda ("indvuna" at Zombodze Royal Kraal) ceased to have the powers of appeal (from Chiefs' Courts). I know of a case in which Mandanda gave judgement in a case, but a Swazi Court President said that he has no right to try the case.

a. Family Council ("lusendvo")

The family council ordinarily hears land cases arising between members of the same homestead unit. Such cases involve inheritance rights to land, rights of avail to land or common resources, and land rights of women who have married a member of the homestead unit. The council, consisting of the homestead head, his brothers, his adult sons and brothers' sons, among others, must hear a case arising between its own members before the Chief's Court will entertain it; if a litigant brings such a case to the chief's council before the family council has attempted a settlement, the litigant will be instructed to return to his/her family elders.

One informant described the operation of the family council in a land case:

> . . . if only a family is involved (in a case), then the case doesn't go to the chief at all. The members of the family just discuss it . . . All the family and maybe the neighbours,

i.e., neighbours who are relatives, are called . . . The case is heard and the homestead head tells the people what they should do.

b. Chief and Councils

As far as customary legal procedure is concerned, the literature is most explicit on the operation of the Chief's Court. This Court will be discussed at length since most of the land disputes heard by the present researcher were handled by a chief and his council.

Procedure

Marwick describes the basic procedure of the Chief's Court as follows:

> Every married man is really a judicial officer since he has the power to adjudicate in matters disputed by his children. If the disputants are not satisfied they may appear to the village head, and thence to the local chief and finally to the paramount chief.
>
> If a man has a case he will report it to the chief's "indvuna" and the latter will deal with it if he can. If not, he will inform the chief and the complainant will be given an opportunity of enlarging upon his complaint. The "indvuna" [chief's deputy] will thereupon be sent to call up the "libandla" [council consisting of community members] and respondent with his witnesses if any. When these people have foregathered the complainant opens his case and is followed by the respondent. They each have the right to reply, after which the members of the "libandla" are entitled to cross-examine them. Other witnesses are now heard, usually those of the respondent before those of the complainant. Each witness after making his statement is liable to cross-examination. The parties and their witnesses withdraw after the evidence is closed and the cross-examination has been concluded. The "libandla" then discusses the case, each member dwelling upon the important points which appeal to him. The chief then sums up and the parties are recalled and the judgement is pronounced by the chief. Everyone "bonga's" (i.e., says the praise name of the chief) and departs . . . In trials of this nature there is no sworn testimony and the cross-examination is relied upon to sift truth from lies. There are no rules of evidence and hearsay and irrelevant evidence may be tendered without any objection being taken. The extra time involved is of no concern. There are no advocates, each party relying upon his own wits and those of his witnesses. If anything, the members of the "libandla" are the advocates because in their cross-examination they may adopt an extremely partisan attitude. Evidence is not obtained in the form of question and answer except under cross-examination. Each witness is allowed to tell his own story practically uninterrupted before questions are put to him.

The tribunal consists of the chief, his "indvuna" and his "libandla", i.e., the adult males of his following. For the ordinary run of cases the whole "libandla" would not be summoned.

When the complainant and the respondent come from different areas of different chiefs, there should be a trial by a joint tribunal. The complainant goes to this chief and makes a complaint. The chief will then take or send him with his witnesses to the other chief to have the case tried. If the other chief agrees, the first chief will be present at the trial and assist the "libandla" in coming to a decision.

If the respondent's chief refuses to have the case tried in this manner, the alternative is for the case to go direct to the "Inkosi" [King] for trial.

If a man wishes to appeal against a chief's judgement, he should go to the Lozita, Lobamba or Zombodze village (depending upon to which village his chief is attached) to lodge his appeal. He should be accompanied by the chief's messenger, who would be able to give details of the case and the judgement of the chief's court. Cases at the royal villages are heard by the "indvuna" of that village. The conduct of the trial is similar to that in the lower court, except that the "Inkosi" or "Indlovukati" [Queen Mother] respectively are not usually present. When the Lozita or Lobamba counsellors have come to a decision, it is confirmed by the "Inkosi" or the "Indlovukati" as the case may be. If the case is an important one, the "Inkosi" or the "Indlovukati" may take part in the trial or at least be present during the hearing of the evidence.

Appeal cases really amount to a complete retrial. Cases heard at Lobamba and Zombodze have to be reported to Lozita as soon as judgement is given. There is an appeal from these two courts to the "Inkosi".

Judgements are executed by a messenger called an "inxusa". He is sent off as soon as possible after judgement has been pronounced to make an attachment and to hand the judgement debt over to the judgement creditor, depending upon the amount of the judgement debt. Usually the "inxusa" deducts something from the judgement debt before he hands it over (1940: 285-7).

One informant indicated to the present author that a dispute between a chief's subjects can be reported to any one of a number of officials:

Usually the people (disputing) would go to the "indvuna" (chief's deputy) first. But sometimes they would go directly to the chief. It is not a rigid rule that a dispute must be reported first to the deputy. Also, some people go to the

"umgijimi" (messenger) or even to the secretary. Or, sometimes, a "lincusa" (personal representative of disputant) will be sent to report a dispute. But the most common method is for a deputy to be approached first. But it is also common for the messenger to report to the chief. The messenger is like a police officer. He even has handcuffs to take a person to the police.

Councils: "Bandlancane" and "Bandlankhulu"

At the apex of the formal political structure in a chiefdom is the chief. He usually assumes his position through hereditary right, although, as my interview and court data indicate, succession formulations are not always clear and heated disputes arise. All my informants state that a chief is the ultimate authority in a chiefdom, but he may not rule as an autocrat.

There are two important councils which assist a chief: the great council ("bandlankhulu") and little council ("bandlancane"). The former is an open forum where every adult in the chiefdom is entitled to attend and express his views. The latter is a smaller, select council consisting of 10-15 influential men whom the chief has chosen from among his subjects to serve as his personal advisers. The members of "bandlancane" may consist of the chief's brothers, princes resident in the area, or accomplished commoners.

One informant described the differences between the "bandlancane" and "bandlankhulu" as follows:

> "Bandlancane" (little council) is the most important council of the chief's. A chief can't take any case without "bandlancane." He needs this council for everything. This council can deal with cases in the absence of the chief and then report to him. It can handle "kukhonta" (land acquisition). A person consults with the "bandlancane" about land; the "bandlancane" can even give a person a right to "khonta" in the absence of the chief and then report back to the chief.
>
> "Bandlancane" is responsible for the whole area--how many people in the area, newcomers, people with trouble or sickness, schools for children.
>
> "Bandlankhulu" (big council) consists of every man and woman under a chief. They (council members) are supposed to bring all complaints to the chief. For example, they may complain about the [operation] of the "bandlancane". They could also complain that there are no clinics in the area. The chief knows where he stands [i.e., job evaluation] by the continual report of [individual members of] the "bandlankhulu".

Most of my informants initially stated that the influential "bandlancane", which is headed by the chief's deputy, only debates issues and cannot reach decisions without the formal ratification of the "bandlankhulu". However,

after extensive questioning, these informants indicated that minor matters will be disposed of privately by the "bandlancane". Some chiefs with whom I spoke--particularly if employed at a distant centre--said that they relied upon their "tinvuna" (deputies) or influential council members to dispose of matters at their own discretion. All informants agreed that the chief must be informed about the operations of the "bandlancane".

A member of a chief's "bandlancane" described the procedure followed after a case has been initially heard by the "bandlancane" and subsequently brought before "bandlankhulu":

> After the "bandlancane" has had a preliminary discussion about the case, it meets with the community, "bandlankhulu", to talk over the problem. The chief and "bandlancane" will [privately] reach a decision as to who is right and who is wrong. If the chief or a faction of the "bandlancane" are dissatisfied with the proposed solution, they send representatives to the area to investigate further [particularly true in a land case]. Then, the case must be heard again. The chief is not involved in the [initial private] "bandlancane" discussion about the case but is involved in the [public] "libandla" meeting and [subsequent private] decision-making and sentencing by "bandlancane".

Personnel

Chief: Most observors of Swazi customary land tenure comment that a chief is the ultimate authority on land policy in his area--whether the matter involves land distribution, land utilisation, or land dispute adjudication. His authority derives from the powers entrusted to him by the King.

In clarification of this prevalent view, one well-educated, young chief emphasised to this author that his primary roles do not centre around land matters per se. Nor, in his view, is the chief primarily concerned with administrative matters, such as collection of taxes. Rather, this chief, along with many others who expressed similar views, believes that the most fundamental duties of the modern-day chief centre on the implementation of development initiatives, i.e., land utilisation policies which will better his subjects' standard of living. As he explained:

> The most important (role) of the chief is to look after the welfare of his people. Welfare means a lot of things. It means making sure that your people have enough land to plow, making sure that development is taking place . . . The chief must look after social services which are required generally--roads, schools, etc. A chief must be forward thinking in regard to his people . . . He follows the wishes of his people.

A chief exerts considerable control on policy formulation and implementation by virtue of the fact that he selects the members of his influential "bandlancane". In essence, he is expected to implement policy

after consensus is reached by his "bandlancane" and general approval is granted by his subjects. His office is hereditary, but his powers are exercised according to prevailing realities (e.g., development interests of area residents, population pressures, and land availability). Many chiefs commented in interviews that they do not receive salaries but nonetheless feel compelled and honored to perform duties.

Deputy: When one chief was asked to state who has more contact with the subjects of a chief--the chief or his deputy--the chief responded immediately by saying "the deputy". He claims that this structure of power delegation is traditional:

> According to Swazi law and custom, only very important cases are to be reported to the chief or King. Most of the cases are reported to the deputy. Even when the chief comes in, he will assign the deputy things to do on his own initiative. That way the deputy has more direct contact [with the subjects of the chief] than the chief. According to Swazi law and custom, the chief should not have to handle every petty thing. If he had to, there could be negative effects. If things go through the deputy, people will feel freer to say whatever they want to say. If things go through the chief, people are bound to be a bit reserved.
>
> The deputy [is assigned] important responsibilities in order to protect the chief's time but also in order to give room for the democratic process.

Since the deputy must be selected from a clan other than that of the chief, an important check on the powers of the chief and his agnates is provided. The deputy's duties are varied: he assists the chief in ruling the chiefdom; he attends and organises all meetings and courts; he screens all business, complaints and requests that individuals wish to bring to the chief. Clearly, the deputy's role in land disputes, in particular, is significant: he hears the initial complaints; he chairs the "bandlancane" debates about the merits of a case; he schedules a land dispute for hearing before the "libandla" (community council); he chairs or co-chairs, along with the chief, the public hearing of the land dispute; he leads the "bandlancane's" decision-making process regarding the outcome of the land dispute, providing the chief with background information to the case and emphasising salient points.

Secretary: The secretary assumes an important role in some customary courts. In connection to land matters, he provides records which are used by the chief or council members to verify disputant/court actions or case circumstances. Until the recent past, such actions or circumstances were only supported by witnesses' memories or conjecture: for example, regarding placement of boundaries at an initial land allocation or regarding a decision reached in a land dispute.

In several cases in my sample, court secretaries aided in land disputes by reading to the assembled "bandlankhulu" documents which verified that the King had granted individuals permits to build at specified locations in their

respective chiefs' areas. At other times secretaries read letters from the District Commissioner which verified circumstances in question, for example, the marital status of a woman (i.e., regarding whether her separation from her husband was official and, consequently, whether she had the right to obtain land without his authorisation).

A well-educated, influential secretary in one chief's area, which was recently engaged in a heated land dispute with a neighbouring chiefdom, took a very important role in handling paperwork generated by various court sessions (e.g., Chief's Court, King's Court, High Court). This secretary, who takes his responsibilities as secretary very seriously, describes the role of the chief's secretary in sophisticated terms:

> The chief's secretary must receive correspondence. The chief will inform the "libandla" about the correspondence. The chief responds to some letters directly, but the secretary drafts all correspondence. Circulars coming from ministries are read by the secretary since they are written in English. [note: not all secretaries are fully bilingual and able to perform such functions.] He interprets for the chief. Government gazettes about new laws would be read by the secretary. He prepares statements by the chiefs and also special announcements--these are signed. The secretary prepares documents for projects--drafting and presenting to the chief for work with the libandla. If approved, the documents are given to a representative of the chief to Tinkhundla--this regards a proposed project. Through Tinkhundla the projects are directed to the Regional Administrator and on to the appropriate ministry.

Messenger: One chief's "umgijimi" (messenger) told the author that his responsibilities primarily involve announcing meetings to the subjects of a chief and summoning disputants before the chief's council. In the situation of a land dispute, the messenger might act as a local police officer by separating disputants, by dissuading disputants from violent measures, by summoning the police if violence erupts, and by informing higher authorities such as the chief or deputy and the officials of the Swazi Nation Court about the situation. Once the land dispute has become a formal case before the chief's court, the messenger may be asked by the chief and his council to investigate boundaries or other dispute-related problems.

One messenger explained his reasons for assuming his unpaid position:

> I am "umgijimi" because I am proud of the job. The only times I am paid are when I provide a service like taking someone to town. Then I get a gift for my services. In the old days the "umgijimi" didn't pay taxes but now he must pay. He used to be excused from them because of his service to the community.

"Lincusa": One informant defined the role of the "lincusa" in land allocations by the chief as follows:

> A "lincuga" is a person who is sent by someone to go do work for him. Or the "lincusa" will go and approach the chief or "indvuna". Say a friend of mine wants to "khonta" [i.e., pledge allegiance to chief and obtain land]. I will approach the chief on his behalf (as "lincusa"). As "lincusa", I will speak to the "bandlancane" and "libandla" about him. I will say that he is a good person and should be accepted.

Several influential citizens said that they would not serve as a "lincusa" in land allocations because of the difficult position they would be in should a land dispute arise. One man explained:

> There can be problems. If the person whom you help to obtain land causes a dispute about the land or otherwise misbehaves, then the council ["bandlancane"] will come to you and blame you. They ask, Why did you say that this man would be ok? The problem is that you can never know a person well enough. Even if you think you know someone well, he can still act up in ways you didn't expect.

"Imisumphe": A very important role in land disputes--albeit an informally defined one--is played by "imisumphe", the long-term residents of an area. Most "imisumphe" are elders, but young men who arrived early in a recently settled area could be "imisumphe" (particularly in absence of older men). The "imisumphe" of an area may be called upon by the chief's council to testify at a public meeting about boundaries or about the nature of land transactions; i.e., they serve as "expert witnesses" in land cases. They are believed knowledgeable about land matters by virtue of their residence in an area dating back to the days of its original (or earlier) settlement.

The most interesting question in regard to "imisumphe" concerns the impact of their "imisumphe" status upon their recruitment to a chief's "bandlancane" (inner council). As recognised "imisumphe", they can indirectly influence the outcome of land disputes by "restating" history in accordance with current political realities, but as members of a chief's council, they can directly decide upon land matters, including land utilisation policy and land dispute resolution. "Imisumphe" who want to influence land policy directly will desire membership on a chief's "bandlancane".

All my informants stated that any long-term resident of an area may be asked to testify before the community about land matters--his memory serving as a substitute for or complement to written land records. These informants also indicated that only those long-term residents possessing exceptional abilities and high social standing will be asked by a chief to serve as members of his council. One chief explained:

> If a person is appointed to "bandlancane", he can be an "imisumphe". But it doesn't stand to reason that if a person is an "imisumphe", he is on "bandlancane". It might be advisable that the "imisumphe" should participate in "bandlancane" proceedings.

c. King and Councils

Structure

The literature on Swazi customary land law says very little about the procedures followed by the King and his council in processing land disputes. My own investigations were only minimally successful since national officials either were unfamiliar with some new procedures introduced following the former King's death in 1982 or were knowledgeable but unwilling to divulge "State secrets".

Several scholars (Hughes 1972; Kuper 1947a; Posen-Prinz 1976) state that the national administrative structure is headed by a dual monarchy--the "Ndlovukazi", Queen Mother, and the "Ngwenyama", King. The two figures ideally try to operate in harmony with one another, reaching decisions which are mutually acceptable. The Queen Mother's centre is the larger national headquarters where ritual matters are handled. The King's centre is the seat of the principal traditional court where the semi-traditional Higher National Court of Appeal has now been established. Both capitals, as part of the central Swazi political organisation, will hereafter be referred to by Hughes' term--the "Central Authority" (1972: 161; see Figure B).

Royal villages (e.g., Lozitha, Lobomba, Zombodze) serve as centres for the coordination of national activities and as "referral agencies". By means of the royal villages, information is channeled up and down the authority structure. For example, a land dispute between chiefs or between persons belonging to different chiefs may be referred to the "indvuna" at the linking royal village who will hear initial complaints and refer the case either to a local council or to one of the high courts at the national capital. The "indvuna" in all cases acts as a mouthpiece of the King. Informants report that in the past the "indvuna" at a royal village heard land cases between chiefs but now he only hears land disputes between sub-tinvuna under his own jurisdiction.

Hughes describes in some detail the national administrative structure which is controlled by the Central Authority through various councils--some of which are responsible for land dispute management:

> . . . there is an entity known as the National Council (libandla lake Ngwane) which, together with the Monarchs, is the supreme indigenous ruling body. In theory this consists of two parts, the General Council (libandla lomkhulu) and the Executive Committee (libandla lencane), while the older Inner Council (licoco) is available to deal with specialised problems. The last mentioned may also play the role of a "party caucus", as it were, which can influence the decisions of the Executive Committee. In practise, it is the Executive Committee which is recognised as the "Council" by the central government. Nevertheless, the members of this Committee are well aware that many Swazi regard the General Council as the superior body; as the National Council. They are, therefore, careful to avoid taking any action which might unduly antagonise the latter.

Swazi informants (particularly if they are of the Dlamini clan and closely connected with the National administration) usually argue that land matters such as boundary disputes between Chiefs, do not strictly fall within the purviews of any of these bodies; but should be settled by the "Ngwenyama" (King) himself, in consultation with yet another Council (or selected body of advisors). However, as we shall see, "land matters" impringe on many fields in which these Councils, and the local-governmental authorities in the Chiefdoms are concerned (1972: 166-7).

Procedure

When informants were asked about the procedure for appealing land cases from a Chief's Court to national authorities, the role of "Ndabazabantu" was usually mentioned (see the following section for an explanation about the origins and functions of "Ndabazabantu"). "Ndabazabantu" is an official created by the modern bureaucracy introduced by the British, but he serves to link customary Chief's Courts to the customary hierarchy of national councils.

When a case between a chief's subjects is transferred to the national authorities, a chief must provide authorisation. When a case between chiefs is transferred, one chief must either refuse to meet with "Ndabazabantu" (usually at Regional Administration offices) or otherwise refuse to accept the recommendations of "Ndabazabantu" after a hearing. In most situations, an appellant will be assisted by an official who acts as his "lincusa" (i.e., official representative. Sometimes "Ndabazabantu" is bypassed and the King's councillors are approached directly.

One chief described in theoretical terms how a land dispute between subjects might be appealed to higher authorities:

> After a (chief) has heard a dispute, he may (authorise that it be taken) to "Ndabazabantu" [located at Regional Administration offices]. After the matter has gone through all the (required stages . . . like a preliminary hearing before "Ndabazabantu"), then it will go to Lusaseni [King's royal kraal]. The two disputing parties will be called.
>
> The case is heard for the first time when everybody is present . . . all persons who are knowledgeable may be present. (On the Lusaseni side), the councillors will be present. Maybe not all of them will be there. Those present sit together with the King's "indvuna" (deputy) and exchange opinions. The "indvuna" and councillors are all (equally) the King's advisers, but the "indvuna" assumes the role of chairman.

Another chief who recently appealed his own land dispute with another chief described how a land dispute between chiefs might be appealed:

If I were to have problems with a particular chieftaincy, I would approach the other chief. Let's say that I have land here but there is no river which is usually the boundary. Or a boundary could be trees and stones. But if there is no clear, marked boundary like a river, and somebody messes with, say, boulders which are serving as the boundary so that he can claim the area as his, then the procedure would be for me to lodge a complaint against this chief at his royal kraal. We would sit down and discuss the matter.

Usually the chief and his closest family members will first discuss the case--there has to be someone listening to the case when it is discussed. If the two chiefs and their groups (when they meet) fail to reach an understanding about the matter, then they would approach "Ndabazabantu". This is the person who is responsible for disputes between two chiefs. It is possible that the two chiefs would expand their private meeting to include members of whole communities, but if one of them just doesn't want to listen to (preliminary discussions), then the two chiefs and their followers would be called before "Ndabazabantu". The chief brings his supporters and the people who have knowledge of the area . . . that is, where the boundaries should be. Usually the chief will have around thirty or forty followers with him. Everybody will listen to the discussions and there should be some kind of solution proposed.

The meeting will take place at "Ndabazabantu's" office. He will act as chairman. Someone will take minutes. After a lot of discussion, a verdict will be reached either for one or the other chief.

Say "Ndabazabantu" decides for one chief and the other one thinks the decision is unfair. The (latter) will go to the King--actually the King's "indvuna". "Ndabazabantu" must first (authorise) him to take the dispute on to the King. The King's "indvuna" will set up a date for the hearing, and both chiefs as well as "Ndabazabantu" will be present.

(On the assigned day), "Ndabazabantu" will state the case. The (disgruntled) chief is allowed to stand up and explain his case. He states that he is dissatisfied with the decision of "Ndabazabantu" and he says what he thinks the proper outcome of the case should be. He also says why he thinks the land is his. Then the other chief is called upon to give his side to the story. The councillors will ask questions. Everyone asks questions (of opposing parties).

When all has been said to the satisfaction of the "indvuna" and his councillors, they send everyone away while they decide the case. Or maybe they will tell everyone that they must come back another day. When the King's councillors do announce their decision, they may go along with the earlier

finding of "Ndabazabantu" or they may come up with a new decision. They will give reasons why the land belongs to one party or another.

When the same informant was asked if the King is involved in these proceedings, he stated:

> I'm not sure. (I think the King is only involved) if one of the (litigants) is dissatisfied with the decision of the councillors. The King may be informed about the case from some of the councillors. (In any situation), the King will eventually be involved in the case.

2. Modern Forums

One area of transition in land administration duties involves the creation of agencies associated with the modern political/bureaucratic order. These agencies, when operationalised during the days of colonial government (ca. 1930s and 1940s), operated in a dual system of administration: first, a team of expatriate officials headed by a Commissioner appointed by Britain, and second, a tribal administration appointed by and functioning under the control of its acknowledged leader, the Swazi King. Following Independence in 1968, a complex administrative system was fused together from parts of the dual hierarchy: the colonial-era authorities (Tinkhundla, Ndabazabantu, Swazi Courts) and the traditional Swazi authorities (King and chiefs). Despite this general administrative merging, two separate systems of land administration continue to operate.

A fundamental problem, which requires further research, concerns, first, the powers of chiefs and their councils over customary land matters, and second, the impact which modern administrative officials have on chiefs' and councils' authority over customary land matters. My interviews indicate that many Swazis are confused regarding the origins of various modern authorities as well as their current roles and functions. For example, nearly all my informants agree that the Swazi Courts and Tinkhundla cannot handle customary land matters, and yet my observations at Regional Administration offices indicate that Regional Administrators, Tinkhundla officials, and Swazi Court Presidents are usually well-informed about customary land disputes which come before customary chiefs and modern Ndabazabantu (see discussion below). More information about points of interface between the customary and modern authorities will likely reduce confusion about operational realities as well as encourage the development of a more efficient system.

a. "Ndabazabantu"

A "Ndabazabantu" was appointed in the pre-Independence period to each district office. A Ndabazabantu represented the King in his district and acted as a liaison officer between the district commissioner or district officer and the chiefs in the district whom he had the power to summon to his presence. As Europeans had little understanding of Swazi customary law, a Ndabazabantu was charged with hearing criminal and civil cases involving

Africans. This duty was transferred to the Swazi courts when these were constituted.

Today, a Ndabazabantu exercises many roles (e.g., settlement of quarrels involving customary marriage or loaned money), but his most important, confusing, and controversial role is that of "messenger" between chiefs and the King in land dispute situations. He works in conjunction with the Regional Administrator and is paid for his services. Interview data collected by the author indicate that Ndabazabantu's power to summon chiefs disputing over land is frequently rejected as illegitimate. One chief, using words typical to many informants, rejected the possibility that "Ndabazabantu" can legitimately play a role in land disputes between chiefs:

> "Ndabazabantu" is inferior to a chief and has no right to summon a chief. If I were involved in a land dispute, I would only answer to the King.

Another informant, an urban land supervisor in a regional administrator's office, described "Ndabazabantu's" role:

> "Ndabazabantu" doesn't deal with land disputes; this is the King's responsibility . . . "Ndabazabantu" is supposed to be like a chief in the urban areas. He is not a part of the traditional court of law. He has no involvement with affairs of rural land.
>
> Chiefs can talk about minor land cases with "Ndabazabantu"--like where boundaries are supposed to be located.
>
> In the rural areas criminal cases--like theft and bloodshed--can be reported to the police and the chief takes no role at all. The chief may even take cases--civil--like "Ndabazabantu" does in town. "Ndabazabantu" handles cases of people in town which involve people owing allegiance to different chiefs. So, "Ndabazabantu" is like a chief in an urban area.

When asked how a chief who rejects "Ndabazabantu's" role in land disputes can be forced to report, one chief stated:

> "Ndabazabantu" has the powers to have this person fined or put in jail. He could bring (the chief) before the traditional court. This would also happen if the chief refused to go to the Regional Administrator or a meeting of Tinkhundla.
>
> The law provides for anyone who fails to report when summoned by the proper authority. If a subject fails to report to the chief, then the chief will report to "Ndabazabantu" who, in turn, summons the police. That has happened in my area. One person was called to answer to a certain charge, but he

didn't turn up. After three calls, we reported to "Ndabazabantu" who sent a message to my "umgigimi" [messenger] who said that this person had to report to the royal residence.

In one case I witnessed a chief who was disputing with his neighbouring chief about boundaries refused to report to "Ndabazabantu" after several summons. "Ndabazabantu" finally travelled to the area in dispute, accompanied by several police officers. When they finally tracked down the recalcitrant chief, they requested that a meeting involving the disputing chiefs, their core supporters, and "Ndabazabantu" be held on the spot. The chief made excuses about conflicting responsibilities.

b. "Tinkhundla"

Another modern agency, the "Tinkhundla" (sing. "Inkhundla"), are first officially mentioned in colonial government annual reports in 1954, although archival evidence suggests that "Tinkhundla" are a pre-World War II system. Forty Tinkhundla are organised nationwide at the district level for the purpose of grouping chiefs into administrative units. The leader of an "Inkhundla" is called the "Indvuna" of the "Inkhundla" and, like "Ndabazabantu", has the power to summon chiefs to meetings. At Inkhundla meetings chiefs often discuss development issues; at one Inkhundla meeting I attended, the constituent chiefs called together their subjects to hear talks by government nurses regarding inoculation and other health concerns.

In some ways "Tinkhundla" resemble the royal homesteads in that "tinvuna" are appointed by the King to oversee their operations. However, the comparison doesn't go very far since no territories are under their jurisdiction and no subjects come under their direct control.

Although the "Tinkhundla" were originally not granted executive authority and served as convenient organisations through which district commissioners could meet and talk to chiefs (see "Tinkhundla . . .": n.d. and "Ministry . .": 1978), it appears that they, again like Ndabazabantu, sometimes have assumed controversial roles in land dispute situations. Some informants stated that "Tinkhundla" occasionally refer land disputes to proper authorities. Some informants also report that "Tinkhundla" offices occasionally handle minor land disputes; however, no data are available on the nature of the disputes, the type of proceedings followed, or the disposition of the disputes. Several chiefs noted that they are confused about powers which "Tinkhundla" may assume over land matters (particularly land disputes), about types of land control which they (chiefs) retain, and about the role to be played by the Central Authority.

Swazi Nation Courts

The approximately twenty-five plus Swazi Nation Courts (see section A) are not expressly prohibited from hearing land disputes, but all my informants stated that these courts may not play a direct role in land disputes. The Swazi Nation Court can only handle land cases on other pretexts. For example, a person may destroy the crops of a person whom he claims is improperly using his land. Or, he may assault this same person. In these situations, the case

must go before the Swazi Nation Court as either a destruction of property case or an assault case. Questions about customary land rights cannot be heard.

Although the Swazi Nation Court may not decide upon land cases per se, it does have an impact upon land matters heard by other customary law forums. In other words, when questions about land rights are heard by other forums (e.g., Chief's Council), following a judgement which the Swazi Nation Court has pronounced on a matter unrelated to land, council members may be influenced by the Swazi Nation Court's earlier interpretations of case merit and disputant reputation. In any case, the Swazi Nation Court does not have overlapping jurisdiction (along with Chief's Court) and does not serve as a court of appeal in land cases.

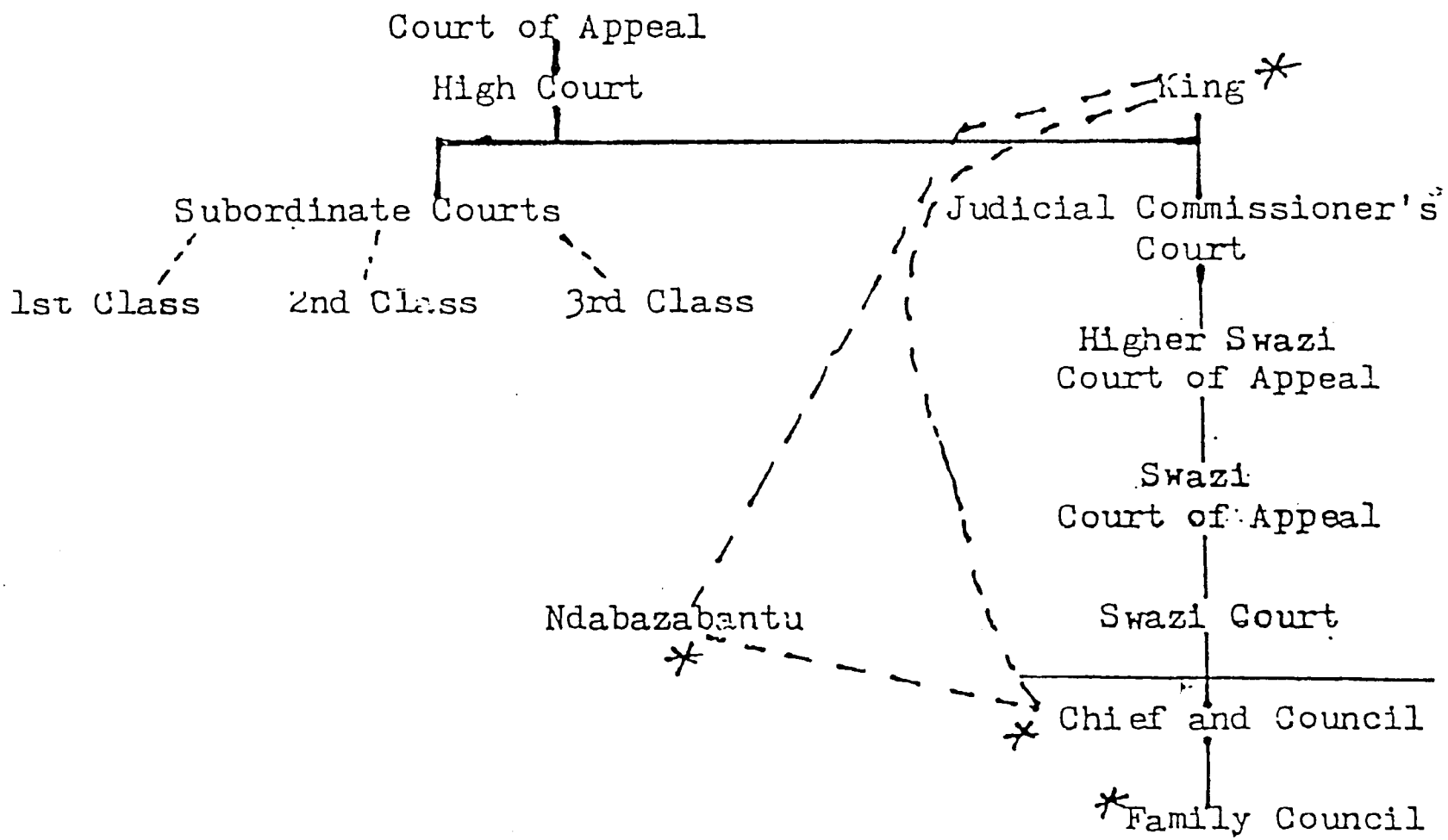
One informant, a formally educated chief, explained why "Ndabazabantu" but not the Swazi Nation Court is empowered to handle land disputes:

> I don't know if there is an (official) reason (for the separation of powers regarding land control), but I do know what makes sense to me. "Ndabazabantu", as I have been trying to explain, has no authority to judge a case but can reach an opinion. He must report to that person who has authority to judge . . . the King. The only person who can rule on land issues is the King.
>
> If you got the Swazi Nation Court mixed up in these (land) matters, there would surely be a lot of confusion because they (Swazi Nation Court Presidents) are used to judging. The law agrees that they should judge, but on this matter (land), they have no jurisdiction. They cannot even try it (land matters) as a case because it is a dispute. "Ndabazabantu", being used to listen to and looking into (land matters) fully as a neutral person on behalf of the King, can give an objective opinion on what he has heard about the dispute.

More research needs to be done on the relationship between "Ndabazabantu" and the Swazi Nation Court. Relevant research questions might focus upon the role, if any, of Swazi Court Presidents in land disputes heard by "Ndabazabantu", and the possibilities for referral of land disputes from Swazi Court Presidents to "Ndabazabantu". In addition, the role played by chiefs after customary land disputes have been referred to modern institutions needs to be better understood.

Figure A shows Swaziland's dual court structure and Figure B shows Swaziland's land administration structure, including forums responsible for land dispute resolution.

FIGURE A

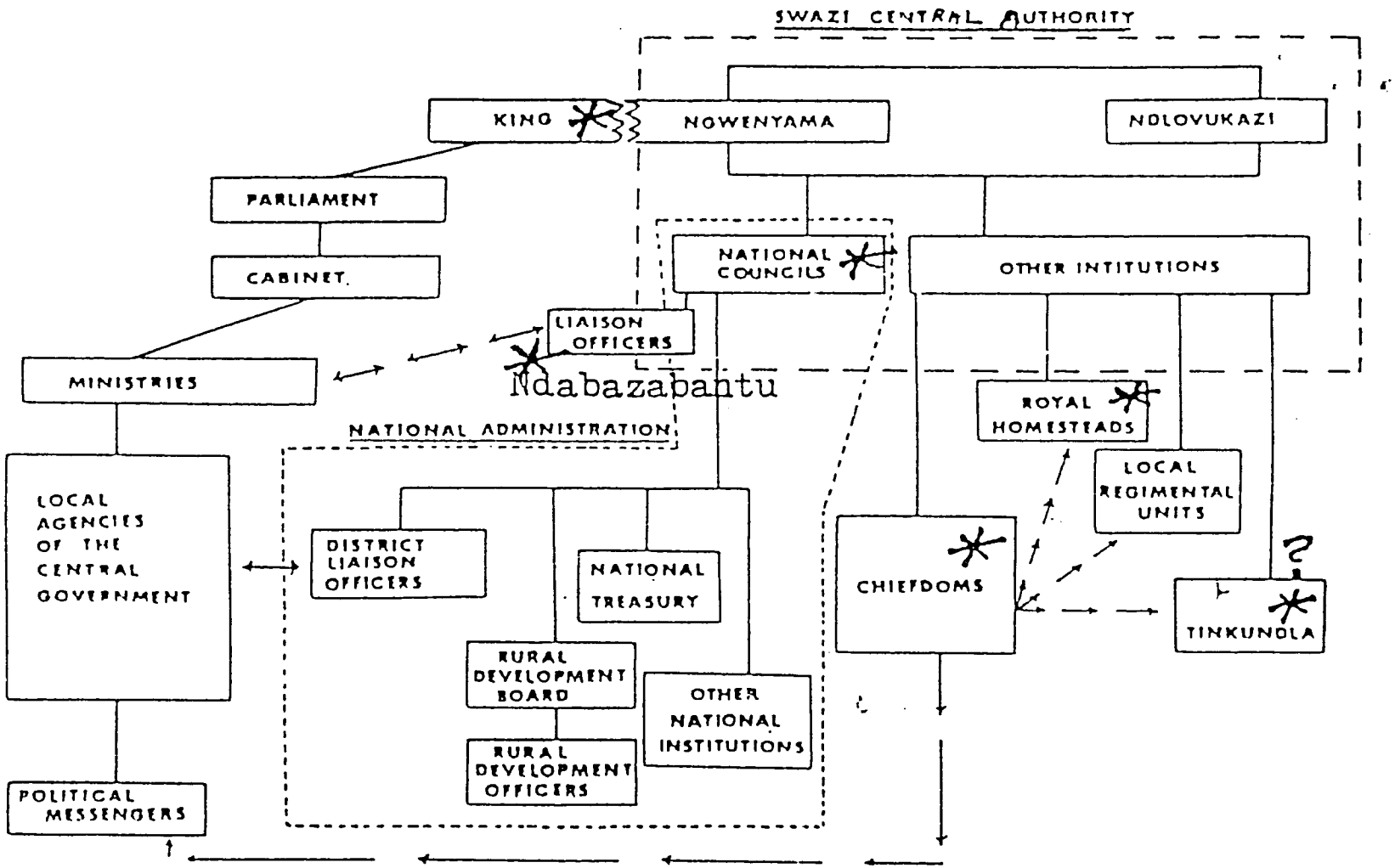


*Agencies responsible for customary land dispute management

FIGURE B

Territorial and National Administration

(Post Independence)



* Agencies responsible for land dispute management.

Source: Hughes 1972: 159.

V. LAND DISPUTE TYPOLOGIES

The extensive literature on land tenure in Swaziland makes very little mention of land disputes. Hughes discusses the historical background of boundary disputes between chiefs (see section III and section E below) and cites a couple of cases. He also describes how a land dispute between a chief's subjects can erupt when a migrant labourer returns and tries to lay claim to his reallocated land. This research paper aims to provide additional background information and field data about land disputes.

In this section, actual land disputes are described according to dispute typologies. The typologies are based upon six disputant dyads (e.g., family member vs. family member). Disputes within each dyad are summarised in the form of case studies. The organisation of cases in each disputant dyad is as follows: family member vs. family member dyad (cases 1-4); subject vs. subject dyad (cases 5-9); subject vs. chief dyad (cases 10-12); chief vs. subject dyad (cases 13-15); chief vs. chief dyad (cases 16 and 17); and Central Authority vs. chief dyad (case 18).

Disputes have been organised primarily according to disputant relationships within the political hierarchy (e.g., subject vs. subject) and secondarily according to subject matter (e.g., boundary dispute) for four reasons. The first two reasons involve informants' data presentation to anthropologist: (1) informants describe cases in terms of disputant relationships rather than subject matter of disputes, and (2) informants describe most cases in terms of several issues under dispute (i.e., succession rights and boundaries) which makes classification of disputes according to subject matter difficult. The second two reasons involve the anthropologist's preferred style of written data presentation: (3) classification of disputes within disputant dyads clarifies disputing in terms of Swazi political structure, and (4) classification of disputes within dyads avoids heavy concentration of disputes within one subject area (e.g., boundary) and in disregard of variant political circumstances.

Cases representing a wide range of problem areas are selected for presentation (total sample consists of about 200 cases). Some details are missing in case descriptions when informant was unclear or unsure, when informant provided details which seemed inaccurate, and when case was in progress at time of anthropologist's departure from field. Other details have been omitted from case descriptions in order to protect the confidentiality of informants.

A. Family Member vs. Family Member

1. Background

Disputes between family members involve several dyadic configurations. The most common disputing dyads revealed in the course of this research project are: brother vs. brother; son vs. mother; son of homestead head vs.

family elder(s); married woman vs. husband or affinal kin; married woman vs. co-wife; woman vs. consanguineal kin (usually brothers). The most frequent causes of dispute are: land inheritance (i.e., size or location of land allotment), boundaries of fields or residential sites, right to oversee land management on homestead, or right to exploit commonly held resources on land.

Disputes within the family are usually handled privately by the family council. Occasionally a dispute between brothers over land divisions or succession becomes so heated that the Chief's Council is asked to intervene. Disputes involving a woman who has married into a homestead unit are usually not referred to the Chief's Council; in fact, a woman's husband's family council often will not deal with such a dispute since it claims that married women have no right to dispute about land. Women who wish to dispute about land rights on their natal homesteads find themselves in poorly defined positions; some resort to their own family council or Chief's Council about their grievances, whereas others resort to modern institutions like "Ndabazabantu".

2. Case Studies

A common kind of inter-familial land dispute involves dissension over inheritance rights. Brothers, in particular, fight over land distribution following the death of their father, the homestead head.

Case 1 (data from case before Chief's Court):

Two brothers dispute over rights to a plowing field which was part of a larger land plot inherited from the grandfather. After the land had been divided among the heirs, the older brother (X) had begun erecting his homestead. The younger brother (Y) returned later and began erecting his homestead.

X maintains before the Chief's Court that the original boundaries were violated by Y who encroached upon his land. He accuses Y of pulling out the wire fence and moving it into his land; this act diminished the size of his fields as well as cuts off an access path. Y argues that he is only assuming rights to land according to the original plan.

The two brothers approach their mother, an influential woman of royal background. She decides in favour of her younger son (Y). At this point X takes the case to the Chief's Court. The chief's council then summons Y to a public meeting, but as he fails to appear after three summons, a group of about twenty men go to the disputed area to investigate. Y is aggressive toward the delegation. He refuses to answer questions and is armed. The delegation calls in the police.

When little progress is made as far as getting Y to cooperate, the delegation approaches the mother to inquire about the land rights originally designated by the family council. The mother speaks out in favour of Y. The delegation is puzzled about how to proceed since they believe that X is in the right. They deliberate upon the matter privately, and after some days, return to the mother and ask that she recommend other witnesses. She refers them to the father's brother and several other individuals. The father's brother

seems to favour the younger brother, Y, but fails to speak conclusively. He also does not appear before the public meeting of the Chief's Council when summoned.

The Chief's Council ultimately decides in favour of X. They justify their decision based on the substantive facts of the case as well as the credibility of the litigants and their witnesses. First, X had apparently been designated heir by his father. Second, Y had begun building without introducing himself to neighbours (i.e., legitimating his arrival in the area). Third, Y, the younger brother, had been aggressive towards X, his older brother, moving the wire fence without consulting him, and in the process, destroyed his banana crops. Fourth, Y had been aggressive towards the chief's council and had ignored summons to attend meetings. Fifth, the witnesses of Y had been unreliable and unclear. His father's brother didn't come to the public meeting, and his mother had admitted that she had not been present when the land was originally divided. Rather, she "knew" where the boundaries were supposed to be.

Several cases in the sample involved one family member trying to evict another family member in assertion of inheritance rights. In disputing dyads involving men, a son of the deceased homestead head would try to evict another brother and thereby assume sole control over the land. Or, as a second example, a son of the deceased homestead head would try to evict his father's brother. In disputing dyads involving women, a son of a deceased homestead head would try to evict his mother. Often such an action was instigated by the son's wife who wanted sole control over land and other matters within a nuclear family unit. Or, as a second example, the affinal kin of a woman would try to oust her from the homestead after the death of her husband or would otherwise limit her land allotment so severely that she would be forced to seek land elsewhere. As a third example, the consanguinal kin of a woman (usually her brothers) would try to oust her from her natal homestead following the death of the parents. In one disputing dyad involving a woman and a man, a woman, who had contracted a Western civil marriage, successfully evicted her husband from the land which he had "khontaed" for; members of the Chief's Court stated that they would not uphold his appeal to them since the divorce case brought before the Western Magistrates Court had complicated matters.

Case 2 describes the attempted eviction of a deceased homestead head's brother by the head's son and Case 3 describes the successful eviction of a deceased homestead head's daughter by his sons (i.e., her brothers).

Case 2 (data from case before Chief's Court):

A man (X) claims during a hearing before the Chief's Court that his brother's son (Y) has been ordering him to leave the land of his deceased brother. X says that after the death of his brother, the heir to the land, his nephew (Y), had been too young to keep the homestead running so he (X) had assumed that responsibility.

The young man (Y), in his own defense, argues before the Court that the problem lies not with disputed residential rights but rather with disputed plowing fields. According to him, he had plowed a particular field for five

years until the present year when his uncle suddenly announced that he was going to plow it. The uncle proceeded to do so and told his nephew that if he (Y) tried to plow the field in the future, he (X) would let his cattle trample the crops. After this threat, Y ordered X, his father's brother, off the homestead; he justified his action on the grounds that he was heir to his father's land. In opposition to this action, X argued that as "father" he should be accorded due respect and deference.

The Chief's Court decides in favour of X and reprimands Y for disrespect of his elders, including members of the Chief's Court and X, his "father". They warn the younger man that he will be asked to leave the land if he doesn't treat his father's brother respectfully. They also cite examples of the young man's general aggressiveness towards members of the community in justification of their harsh sentence.

Case 3 (data from informant X):

One woman had borne children by a man who deserted her. She stayed at her parents' house, supporting herself and her children through making and selling handicrafts. She bought some cattle with her savings. She needed land only for a residence but not for cultivation--other than a garden.

After her parents died, her brothers inherited control over the land. They informed her that since bridewealth had never been paid for her as she had never married, she would have to relinquish her own cattle to them or leave the homestead. She refused to accept their ultimatum. Instead, she sought out a sympathetic distant clan "brother" who lived in another area and begged him and his wife (X) to take her and her young children into their homestead. They agreed, letting her build a temporary dwelling and giving her garden space. She borrowed land elsewhere to plow and used her earnings to buy other food products. She is waiting for her oldest son to reach adulthood, at which time he can "khonta" for her.

This woman believed she had no redress to her family council nor the right to lodge a complaint with the Chief's Court which usually orders that families settle "domestic" disputes on their own. As she was never married by customary or Western rites, she couldn't approach the District Commissioner or the Magistrate for child support from her former husband. Her only viable option was to mobilise her kinship networks for support.

One common type of case which develops within the extended family unit involves rights to scarce resources on common land.

Case 4 (data from case before Chief's Court):

A man, X, chops down a wattle tree which his brother, Y, claims belongs to him. X claims that the tree is located on community property and can't legitimately be claimed by Y. Y becomes furious and says that X chopped down the tree because he is jealous of his children and resents the fact that he has no children himself. Y accuses X of witchcraft. The brothers are (and have been) on such hostile terms that they attempt no reconciliation. Brother Y reports the case to the chief's deputy.

X presents his case before the chief's "bandlankhulu". He claims that he thought no one owned the tree. No witness can verify who planted the tree or when. X then utters a counter-witchcraft accusation against his brother. The chief becomes furious about this implied threat and comments angrily that X will be fined a cow if he ever makes a threatening-witchcraft accusation again. A "bandlancane" member notes that X will also be held responsible if sickness or death should befall Y.

X is asked if he has any questions to pose to Y. X then asks Y why he is denying that he threatened him (X). Y refuses to answer. The chief announces that the case will be abandoned for the moment, but everyone present knows that after many years of bitter disputes between the brothers, no solution can be easily reached. Land rights may have been the original source of disputes between the brothers, but at present such disputes represent the pretext for initiating confrontations about other grievances.

B. Subject vs. Subject

1. Background

Disputes between subjects involve neighbours or fellow members of the same land community. They are attributable to several land issues: land acquisition (land grant from chief/neighbour or land loan); field and residential site boundaries; individual land use (e.g. fencing); community land use (e.g., cattle paths, grazing areas, resources such as water); or redistribution of land (e.g., resettlement for development purposes or reclamation of unused land from individual "owner"). According to my informants, rising land shortages occurring over the last two or three decades in densely populated areas have resulted in a new kind of dispute: community members force a long-time resident to relinquish "excess" land. In past days, vacant land could be found for newcomers or residents with insufficient land.

Disputes between subjects are encouraged by the constant layering over and contradiction of land rights in the customary land tenure system. When an individual acquires rights over land, all requirements of his tenure are usually not specified. Moreover, circumstances can crop up during the course of his own or his descendants' tenure. In essence, customary land "ownership" is not static; it is continually remolded by individual and societal forces such as: actual occupation of land by owner; use of land by owner; standing of "owner" in community; or land requirements of larger land community.

The major inhibitor to land disputes is a prevailing standard of good neighbourliness and sharing within the community. Land is believed to be a common good. Disputing is frowned upon as disruptive to this standard; moreover, it emphasises individual rather than group interests.

Hughes describes a typical dispute between a chief's subjects which arises when the unused land of one subject is reallocated to the other. Such disputes are common in my own sample and reflect the impact of modern developments--e.g., urban employment opportunities--upon rural land rights. Hughes' analysis demonstrates the variety of considerations which local authorities must entertain when deciding about disputed land rights.

For example, a man may have acquired Bantu-Ownership of a field, and subsequently gone for many years as a migrant labourer. The Chief may have placed another man on the same land in the interval, without consulting the migrant labourer's agnates. If this labourer then returns, and establishes the fact that he has never relinquished his membership of the community, he is, according to the strict letter of Swazi customary land law, entitled to resume Bantu-Ownership of the field he abandoned. But the second man has also acquired Bantu-Ownership of the field, by virtue of the fact that he was placed on it by the Chief.

This might seem to be one of those "impossible" situations to which the traditional rules of tenure could give rise, and which could undermine the whole system if they occurred too frequently. In practise, such a situation is not uncommon, and does not cause any undue upheaval. What would probably happen in such a case is that the Chief would offer the returned migrant new land elsewhere in the Chiefdom. If the man refused and demanded his old field, he would be expected to give good reasons for his intransigence. In the last resort, if he insisted on evicting the later arrival against the wishes of the community, it might be suggested that his claim to have retained his membership of that community should be re-examined.

Normally, before it came to this, the Chief and his Council would have discussed the relative "weight" of the rival claims and made a decision which they would expect both parties to accept.

Factors which can affect the "weight" of any person's right to a particular parcel of arable land are his relationship to the previous cultivator, the previous history of the land, the present use to which the land is being put, and each claimant's status in the community. A man will have a particularly strong claim to a piece of land if it was once cultivated by his own mother; that is, if it was allocated to his own house within his father's Homestead. He has a weaker claim to land which was formerly cultivated by another house, or by some more distant agnates. If there have been many Bantu-Owners in recent years, his Preferential Right to Re-Occupy will be "lighter" than if it has remained in the hands of the same agnatic Group for as long as can be remembered. It is easier, obviously, to assert a Preferential Right to Re-Occupy land not being currently cultivated. It is accepted that a person of high rank should, if possible, have an arable holding large enough to maintain the large family, and the dependants, that he is expected to acquire (Hughes 1972: 151-2).

2. Case Studies

The land dispute described above involves acquisition rights, i.e., legitimate access to land which a chief has allocated to two different subjects at different points in time. My data confirm Hughes' assumptions: individual circumstances determine whether the chief will side with the previous "owner" of the land or with the newcomer. In one case reported to the present author, the chief sided with the former owner who had been performing labour in South Africa for a short period. In another case, the same chief sided with the newcomer since distant agnates of the former owner, who had never resided on the land, were trying to lay claim to it. In one case I witnessed, a member of the chief's council allocated to a newcomer a portion of land which was currently being used. As the council member was influential, the complaints of the current occupant were suppressed.

The following case demonstrates how a woman fought to recover land rights when her mother's plot was reassigned by the Chief's Council after several years' abandonment.

Case 5 (data from interview with X):

X (a woman) was in Johannesburg working when a man (Y) noticed that her family's land was unused. He approached the chief's council and asked to be granted the land through "kukhonta" for the use of his brother's son. The authorities agreed.

X notices one day while she is in her home area that someone is using the land. As she has no brothers or interested mother's brothers to help her lodge a complaint against the authorities who reallocated the land, she approaches the royal kraal on her own. She tells the assembled crowd that she wants to maintain land rights on behalf of her ailing mother. Toward this end, X engages the assistance of a princess who initially received the "kukhonta" gift for the land from her mother's father. The princess testifies that in earlier years X's grandfather had tilled the land and regularly contributed ground nuts in tribute to her. According to her account, the land had come into disuse as X's mother was ill and had no sons to plow the land. As X's mother was old, she reportedly needs the land for retirement.

Y also secures the assistance of a member on the chief's council (a royal) who states that Y has performed the required acts of "kukhonta", including transference of "kukhonta" tribute. The council decides in favour of X.

Following the decision of the council, X returns to her land and cuts poles for a traditional fence. In this way she has stated to the community her intention to erect a homestead site.

Land disputes involving a grant from one community member to another community member cannot exist, according to one chief, since land can only be granted by the chief in council or by one family member to another family member. However, even when land is granted within a family, the chief's council should be informed (in the event of subsequent disputes). As evidence

of this rule, this researcher witnessed many cases in which a father approached the council to inform the members that he had allocated a plot of land on the family holdings to his mature son.

Disputes about land loans normally arise when the borrower refuses to return land upon the request of the "owner". Sometimes the borrower or his descendants deny that the land was merely loaned to them. Rather, they insist that they have acquired ownership rights over the land through "kukhonta" or a permanent land grant. In cases in which the land has been loaned for many years and the original witnesses to the transaction are dead, such contentions are difficult to prove or disprove.

Several disputes over land loans reported to the researcher had resulted in violence, including a killing and destruction of crops. The following case demonstrates an interesting principle of customary law which was discovered in two cases in different chiefs' areas.

Case 6 (data from informant who is member of chief's council):

A man who has loaned a field to a neighbour informs him directly before plowing at the opening of the summer season that he wants to resume use of his field. When the neighbour seems reluctant to relinquish the land, the lender then informs the authorities that he wants to initiate proceedings before the Chief's Council to insure that his land loan is returned. The authorities tell him that he has come to them at a busy season and they are not willing to handle the case until the winter season. They also inform the borrower that he might be plowing the land for the last season.

The lender is angry that the council has given the borrower a year's grace. He states that the council members have taken this action since they favour the borrower. In assertion of his perceived rights, the lender waits until the borrower's maize crop has nearly matured and then arrives with a span of oxen and plows it down.

At this point the borrower approaches the authorities for redress. The lender is fined five cows for disobeying the orders of the chief's council. The borrower is further instructed to plow the land next year. Once again, when the maize has grown almost to maturity, the lender plows it down. This time the chief's council is furious and informs the lender that because he has shown disrespect in violating their instructions regarding the land, he must relinquish all rights to the land--in fact, he is banished from the area. He is also fined an additional five cows.

The case demonstrates that no individual owns the land. Every individual must submit to the instructions of the local authorities or risk serious repercussions. In this case, most informants admitted that the lender was right in his claims that the land had originally been granted by the chief to his family, but they also maintained that he lost his rights by ignoring the ultimate authority of the chief (and council).

Disputes involving boundaries arise when a person accuses his/her neighbour of violating the boundary demarcations originally established by the chief and his council. Informants say that two neighbours should ideally

confront one another and seek settlement. If no agreement can be reached, they should approach the chief's council for settlement.

Several members of chiefs' "bandlancane" explained to the researcher how boundary disputes usually arise. First, a long-term resident in an area may extend his boundaries, even erecting a fence, when a newcomer is assigned land next to him. It would appear that he does this to protect himself from encroachment by his neighbour as well as to lay claim to additional land in case of future needs. He knows that as long as the land was empty before the arrival of the newcomer, he could request additional land from the chief; however, with the settlement of a neighbour, he fears he will have no opportunity to expand in the future. Second, a person may begin plowing the unassigned strip of land which separates his field from that of his neighbour. This action, although not constituting an encroachment on the neighbour's fields, is viewed as the first stage of trespass. Third, a person may begin plowing part or all of a neighbour's field when he cannot meet his subsistence requirements or when he wants to expand cultivation, such as to plant cash crops. He hopes to get away with trespass. Fourth, a person may plow land which his neighbour believes incorporates part of his own fields. In such cases, each disputant argues that members of the chief's council pointed out conflicting, overlapping boundaries.

Case 7 describes an interesting variant of the fourth kind of boundary dispute; the boundaries of subjects as well as chiefs are in dispute. In such a case, one person plows part of his neighbour's fields, stating that Chief X assigned him that land. His neighbour, on the other hand, says that Chief Y assigned him a portion of the plowed land. The subjects refer the matter to their respective chiefs. This kind of dispute is extremely difficult to solve since neither chief can claim authority to adjudicate a dispute involving the subject of another chief; in addition, the Central Authority is unwilling to intervene.

Case 7 (data from case before Chief's Court):

A man, X, erects a homestead on the advice of a man whom he pledges allegiance to as chief. After he has built his homestead, a man, Y, who claims allegiance to another chief claims that X has cut off the ancestral graves of his clan. The two men dispute over boundaries. The case goes before the chief of Y since he is an "indvuna" (lieutenant chief) at an important royal kraal. The situation remains unsettled for some years; numerous "imisumphe" who know about earlier land transactions involving a nineteenth century Swazi King are called upon.

One of the most common disputes between community members over land use rights involves fencing. The problem lies not in obtaining the permission of authorities to erect a fence but rather in defining boundaries where fences have been or will be placed. When fences are erected, latent boundary disputes often flare up and new ones arise. One chief told the author that fencing was not allowed traditionally but now is open to people of sufficient financial means. He commented that people who want to fence must inform the authorities of their intentions--i.e., the kind of fence they plan to erect and the exact location. This chief believed that such action would prevent disputes.

Most fencing cases in the sample involved fields. The following fencing case involved a cattle path.

Case 8 (data from case before Chief's Court):

A man (X) settles in area, demarcating his field boundaries with a fence. One of his neighbours (Y) comes to him and complains that the fence cuts off part of the cattle path. X inquires about the legitimate boundaries from the man who had granted him part of his land, i.e., the court messenger, and is told that the fencing was properly placed.

When Y continues to complain, X takes the matter before the Chief's Council. He tells the Council that he placed the fence on his boundary and not on the cattle path. Y, in offering his own testimony to the court, complains that he had been at work when X's boundaries were pointed out and thus had not been properly given the opportunity to confirm them. A witness for Y says that several men pointed out to X where he could properly erect the fence. The messenger informs the Council that he went and investigated the land a second time. In his view, X had moved the fence over the boundary even more than after his first investigation. X denies the messenger's accusation. He claims that he had not finished erecting the fence when the messenger first investigated the spot. The chief notes that the main problem arises from the fact that Y was not shown the boundary when X was first granted the land. He notes that all parties will have to reach a settlement about the boundaries.

A second common kind of dispute involving land use rights centres upon the movement of livestock over community paths to community grazing areas. Disputes arise when cattle stray into fields adjacent to paths and damage crops.

Case 9 (data from case before Chief's Court and interview with X):

A man's (X) cattle stray into the fields of another man (Y) who resides about one-half mile from him. X searches for the twenty missing cattle for two days. When he hears nothing about them, he decides to report the apparent cattle theft to the town police. At this point, X's children inform him that Y has impounded the cattle. X goes to Y and discovers that his cattle have not been fed or given water while missing. He asks Y to return the cattle to his custody, which Y does, but Y says that he will take the matter before the local council. Y, who is the brother to the council chairman, attempts no private settlement.

At the first hearing of the case before the council, X is fined 50 Rand. Some weeks later, the council chairman announces that X and Y must reach a private settlement about the damage caused by the cattle, including the fair compensation to be rendered. The public is not informed why the council reneged on its assessment of damages and persuaded the litigants to reach a private settlement.

C. Subject vs. Chief

1. Background

Most of my informants stated that a subject is technically at the mercy of his chief and cannot complain officially about the chief's exercise of his hereditary powers over land. However, disgruntled subjects do have various means for condemning the actions of their chiefs: complain to the King (this can be difficult since a chief usually authorises transference of a subject's case to the King); protest a perceived wrong before a public meeting of the Chief's Council; bring a case before a Western court; inform the media about the problem or otherwise discuss it in private meetings. The first two approaches are viewed by the traditional authorities as legitimate whereas the latter two are not.

Most land-related complaints raised by a subject against his chief which were discovered in the course of this project involved land acquisition or maintenance rights: improper land allocation by authorities in connection with the Rural Development Board's plan to achieve optimum land utilisation through resettlement (e.g., local authorities allegedly display favouritism in new land allocations); improper land allocation by chief in ordinary land settlement process (e.g., authorities allocate currently occupied land); unfounded eviction from land; or implementation of unpopular development initiatives. The research revealed several instances of ultimate sanction against a chief: a significant number of subjects denied allegiance to unpopular or "illegitimate" chiefs and threatened violence.

2. Case Studies

Numerous newspaper accounts report that individuals have protested resettlement and accused the authorities of favouritism in land allocation.[1] Sometimes the same plot of land is allocated to two persons.[2] Or, people protest that land designated for resettlement is unsuited for agricultural or grazing purposes. One person commented in a questionnaire study that the chief failed to allocate land during resettlement to a migrant worker, and the worker brought a complaint against the chief.

In the following case, a man abandoned his fields because his chief told him that they were needed by the King for a development project.

Case 10 (data from case before Chief's Court):

A man (X) brings a case against his chief to the "indvuna" at a royal kraal. He claims that his chief told him to abandon his fields since they were needed for a development project to be undertaken by the King. Three years after he relinquished control over his fields, he discovers that homesteads are being erected in his former site. He is told that his chief has reallocated the land.

The "indvuna" at the royal kraal informs him that the case can't be tried since the chief who settled the disputed homesteads is not present. He informs X that his chief must be summoned before the case can be settled. (Case unresolved at time of researcher's departure from field.)

When a person discovers that he has been improperly allocated land (e.g., by illegitimate authority figures or by legitimate authority figures under improper circumstances), he is told to abandon the land. He may then attempt to lodge a complaint against the person who authorised his settlement, trying to recover the land or at least the "kukhonta fee" which he paid when the land was pointed out to him. Cases, such as the following one, indicate that a person who obtained land under false pretences of illegitimate "authorities" will not be successful in receiving compensation for loss of land, constructions on land, or "kukhonta fee". (Numerous informants insisted that a person who is deceived in a land transaction cannot bring a case of fraud before customary authorities.)

Case 11 (data obtained from F, a friend of X):

A man, X, asks some people in a crowded area near a town how he can obtain land. He has come from a distant chiefdom and wants to reside in the new area because he is employed in the town. A man, Y, tells him that he has authority to allocate land. Y tells X to give him some money, the "kukhonta" fee, which X does, and Y then grants X a plot of land for a residence. F helps X construct his new homestead.

One day while X and others are working on the new homestead, a man who claims authority in the area, Z, approaches them and asks who gave X permission to build. X tells them that it was Y. When Z and his "libandla" approach Y, they are told that this is untrue. F testifies on behalf of X that he witnessed the land allocation and payment, but Z nonetheless orders X off the land. X is not given compensation for any of his expenditures, including the "kukhonta" fee. Nor can he bring a case against Y for his deception. X's only option is to approach a chief in another area with a request for land, which he does with success.

A chief and his council ordinarily try to insure nearly unanimous approval from the "bandlankhulu" of a development project before implementing it. When a project involves resettlement of subjects or reduction/alteration of land allocations, affected subjects often object.

The next case demonstrates an unusual response to a development initiative by a man of local and national prominence. He resorted to a Magistrates Court to protest the reduction and alteration of his customary land allocation. His son, who is a university-trained lawyer, defended his position.

Case 12 (data from interview with Y and member of local council):

One of the first settlers in what has recently become a semi-urban area protests when the local council informs him (in 1960s) that they are building a road which will cut through part of his property. The committee goes ahead with their plans, and in the process, cuts his fence, damages his wattle trees and destroys part of his standing crops.

After the damage has been done, the man (X) takes the nearly unprecedented action of bringing a case before the Magistrates Court. His son, a lawyer (Y), handles his case. X (according to several interviews

conducted by present researcher) initially complains that the council is acting without the authority of the King. After the King appoints one of his influential advisers to represent the local council, it becomes evident that the King claims direct responsibility for ordering the development of the area. At this point Y argues on behalf of X that his father may indeed be a "tenant at will," as his opponents argue, but a "tenant at will" is nonetheless entitled to compensation (in this case for damage to fence, trees and crops) by a "landlord at will". The Magistrate rejects the arguments of Y.

After the decision by the Magistrates Court, the council informs the King that X is claiming to be an owner of the land which he occupies. The King calls X before him to answer to these charges. X denies that he believes he is an owner and states that he merely wants compensation for the investments he put in the land. The King takes no further action, and Y advises X to abandon the case.

D. Chief vs. Subject

1. Background

A chief may take a subject to task on several accounts: for example, improper acquisition of land; improper land use (e.g., building unauthorised dwellings, allocating part of land grant without official approval, or profiting "excessively" from land); or refusal to relinquish land upon demand. The ultimate sanction a chief may take against a subject is total withdrawal of land rights, i.e., banishment from the area.

A chief has the power to sanction his subject for any action which he considers in violation of the unwritten "contract" binding himself to the subject. He will do so in consultation with his council. Most commonly the reason given for banishment is disrespect of the authorities, but the underlying causes are complex and numerous (e.g., witchcraft, hoarding of wealth, criminal behaviour). The subject may appeal to the King, but frequently he will not be successful since a chief may maintain considerable autonomy in the area under his jurisdiction.

2. Case Studies

In the following case, a woman is sanctioned for improper building activities.

Case 13 (data from case before local council):

A woman in a crowded, semi-urban area builds a kindergarten on the land allocated to her husband. The kindergarten provides the working women of the neighbourhood with daycare for their children. Each woman pays a nominal fee which covers only basic operating costs.

When the local council learns about the kindergarten, they protest that it has been built without their knowledge or authorisation. They also state that they alone can determine where people can build and how land is to be used. They order the women to dismantle the structure. They further inform the women that they will find an alternate location for the kindergarten.

Although the women request that they be granted permission to remain in present location, the council refuses.

In the next case, a man was reprimanded by the chief's council for gradually encroaching upon his neighbours' land.

Case 14 (data from member of chief's council):

A man (X) comes to Swaziland from the Republic of South Africa during the 1940s and "khontaes" under a chief. He is given a residential plot and fields. Adjoining his land allocation is land which has been granted to other people who are not using it. Gradually the people who "own" the adjoining land die. Over time X gradually annexes the land by planting a little bit more of the land each year. He also plants trees.

In the early 1980s the Chief's Council begins searching the area for vacant land. There is little left since the population has grown rapidly. Some elders comment that X is using land which he was not originally allocated. Subsequently, X is told that he should discontinue use of the land since it will be reallocated. X angrily refuses.

The Chief's Council brings a case against X. There are no witnesses who can testify about the original land boundaries; the chief and council members who made the allocation are dead, as are the earlier occupants of the disputed land. X argues that the present Council cannot prove its contention that he has improperly encroached upon neighbouring land. The Council argues, in rebuttal, that he is presumptuous to think that he, a newcomer from South Africa, could be given a much larger land allocation than the long-time residents of the area; in other words, he cannot logically maintain that the huge land area he now uses constitutes his original land allotment.

When the Council informs X that it will begin distributing the land to newcomers, X states that he will appeal the case to the King. He then takes the case to the police at the national capital, where he is informed that he must return to his chief with his problem. His situation is difficult since a chief cannot reasonably adjudicate a complaint lodged against himself.

According to the researcher's informant, who is a member of the chief's "bandlancane", X will be banished from the area if he eventually loses the case before the King. In his view, X cannot possibly win. The only way X will be permitted to remain in the area is if he apologises to the Chief's Council and pays a fine. The fine will be his formal acknowledgement that he was disrespectful of the chief's authority and greedy.

Many banishment cases (including several which occurred within the last decade) were reported in interviews. The following case incorporates common elements of a banishment case, such as a witchcraft accusation and jealousy about prosperity.

Case 15 (data from chief's deputy):

A man (X) took out a bank loan so that he could buy seed, manure and equipment for planting maize and beans. After harvest, he sells most of his

crop in order to repay his loan. He gives a small portion of the harvest as tribute to the chief but virtually nothing to his unsuccessful neighbours. People start gossiping that he is using "spooks" to enrich his fields. They also tell the chief that he gave only a small portion of his crop to him since he thinks that the chief is lazy and merits nothing more. The chief doesn't summon X to answer in his own defense, but notes privately among his councillors that X has assumed increasingly arrogant and disrespectful ways. Apparently, a history of bad relations between X and his community has culminated in current formal grievances. The Chief's Council banishes X on the grounds of witchcraft and disrespect.

E. Chief vs. Chief

1. Background

A.J.B. Hughes, in his monumental doctoral land tenure study of 1964, refers to two types of land disputes which arise at higher levels of the socio-political hierarchy: (1) disputes between one chief and another about jurisdiction over subjects and territory, and (2) disputes between the ruling Central Authority (i.e., royal Dlamini clan) and a chief about allocated territorial rights. The former is the subject of this section and the latter is the subject of the following section.

Probably the most simple explanation for the origin of inter-chieftaincy land disputes lies in the fact that chiefs gain power and prestige by exercising control over large tracts of land and over many subjects. Simply put, the more and better land a chief has, the more subjects he can attract. Although engaging in boundary disputes provides chiefs with one way of expanding or maintaining control over land, chiefs can also expand their territorial claims by placing subjects on land which is not clearly under their jurisdiction. Hughes explains several placement patterns which can potentially lead to inter-chieftaincy land disputes:

> When the Chiefdoms of Swaziland were first established, their boundaries were often, not unnaturally, only indicated approximately. They were up to such-and-such a mountain, or up one stream to its headwaters and then down another which might rise half a mile to a mile away. When pressure on the land was slight, boundaries were not of great consequence. As the density of population increased, there was a tendency to define them more accurately; but in many cases, before this could be done people owing allegiance to one Chief had settled in an area claimed by one of his neighbours. In other cases family groups moved from their own Chiefdom on what they imagined was a temporary basis, were granted a Tenancy on Suffrance of arable land and a residential site by a neighbouring Chief, and then remained there so long, that this was converted (in their eyes) into Bantu-Ownership. One still encounters cases today of Chiefs granting rights over land (sometimes by the process of Placing, which implies a grant of Bantu-Ownership) to Homestead Groups from neighbouring Chiefdoms without insisting that they become their subjects (Hughes 1972: 254).

Disputes about the legitimacy of a group's occupation in an area are extremely problematic. The chief of the area in which they reside cannot expel them by his own edict since they are not under his jurisdiction. Nor can he appeal to the neighbouring chief to whom the group pledges allegiance since the latter would have little incentive to ask them to leave. In all probability, the neighbouring chief is suffering from a land shortage (perceived or actual) and welcomes the opportunity of "draining off" excess population in a nearby area. Moreover, the neighbouring chief may believe that the residence of significant numbers of followers in another area provides him with the opportunity to annex gradually that territory. The only option open to the aggrieved chief is an appeal to the Central Authority for permission to banish the "trespassing" individuals. Unfortunately for the aggrieved chief, such an action requires years to be processed; national bureaucracy proceeds slowly because of a heavy case load and the necessity of carefully scrutinising many extremely difficult cases. In any event, the Central Authority has little incentive to resolve disputes about "trespassing" since it is presumably more concerned with upholding its own authority than that of individual chiefs.

Inter-chieftaincy land disputes frequently fracture social relationships. They rarely resolve into an amiable, lasting settlement. Moreover, they pose significant problems for development interests.

2. Case Studies

Land disputes between chiefs ordinarily involve boundaries. The following case demonstrates a typical pre-disputing situation:

Case 16 (data from interview with Chief X):

Chief X claims that the boundary to his chiefdom is a series of rocks which lie parallel to a road running through his chiefdom--that is what his father and the elders told him. Chief Y, on the other hand, insists that the boundary runs behind the rocks on Chief X's side of the road. In any case, Chief X controls most of the land on one side of the road and Chief Y controls most of the land on the other side.

According to Chief X, the problem began when the road was constructed. At that time the road symbolically replaced the traditional rock boundary. Chief Y instructed a couple of newcomers to build homesteads beneath the rocks on Chief X's side of the road. Chief X says that Chief Y is using uninformed newcomers as pawns in the "Cold War" between himself and Chief X. Chief X also comments that Chief Y has placed his subjects in the disputed area as a way to test his land claim--rather than directly confronting Chief X about the problem.

Chief X admits that the people of Chief Y's chiefdom would have had a right under the traditional boundary arrangement to settle beneath the rocks on Chief X's side of the road. However, modern circumstances create problems. First, the government established a 16 meter ban on building on each side of the road in order to account for future population growth and road expansion. This means that Chief Y's people cannot legitimately build at the base of the rocks on Chief X's side of the road. Second, the soil beneath

the rocks is inadequate for advanced agriculture. Consequently, the newcomers under Chief Y's authority are forced by necessity to cultivate fields in the area which is clearly under the jurisdiction of Chief X.

Chief X has discussed the perceived trespass of Chief Y's people with his councillors and decided to overlook the situation for the present. He is concerned with implementing development objectives and doesn't want to engage in a tiresome land dispute.

According to most informants, land disputes between chiefs are usually provoked by development projects. Such projects, by definition, require that boundaries and chiefly jurisdictions be specified. Since development projects are highly desirable, chiefs will define boundaries in terms of their own interests--often relying on a land occupation pattern which existed generations in the past rather than a current land occupation pattern. Sometimes they fabricate or exaggerate land claims.

In the following on-going case, two chiefs engaged in a dispute over a repurchased area adjoining a dam. Both chiefs were authorised by different government representatives to cultivate the land. When one chief was instructed by a high-ranking official to leave the area, he raised a formal case against that official rather than the chief who opposed his land claim.

Case 17 (data from interview with Chief X):

Several years ago Chief X (clan chief) was assigned land in a repurchased area after a dam was constructed. Officials at the Department of Agriculture gave him a map which designated the areas to be used for irrigated plots, grazing, and residential sites. Soon after the subjects of Chief X began to move into the new area, Chief Y, a neighbouring chief, began to allocate fields but no residential sites in an irrigated area adjoining the dam. Chief X had planned to assign fields in the area, but at that time, it consisted of unused land.

When Chief X discovered the subjects of Chief Y in his area, he approached the District Commissioner of the area asking for clarification. The District Commissioner issued a stop order which denied Chief Y's subjects the right to farm in the area. He explained that if they were dissatisfied, they should obtain an official letter authorising transference of the case to a ranking official responsible for the resettlement program. The subjects of Chief Y ignored the order and continued farming in the area. Chief X then approached a high official of the Central Rural Development Board (CRDB) and asked for assistance. The official confirmed that Chief Y's subjects should not be in the area. He went to the area and ordered them to leave. He also declared that the crops which they had improperly planted in the disputed area did not belong to them and should therefore be sent to the King after harvesting. The subjects of Chief Y were angry about the matter and returned to fight the subjects of Chief X. Blood was spilled and the police were called. The matter was then reported to the national authorities at Lusaseni.

Chief X complains (at time of interview with researcher) that the major difficulty in the case, from his point of view, is that Chief Y never brought

an official complaint against him about the matter. Nor did Chief Y go through lower channels--such as "Ndabazabantu" in seeking an amiable settlement. Rather, he raised a case against the CRDB official with the national authorities at Lusaseni.

In arguing their case before the national council, Chief Y and his subjects maintain the following: first, ranking officials of a government agency authorised them to farm in the disputed area; second, their land has been taken from them by the authorities and their crops improperly seized; third, their ancestors occupied the land before it became freehold land and therefore they had the strongest claim to the land when it was repurchased.

Chief X, on the other hand, argues that he has documents which justify his claims to the land. He states that he has the support of top-ranking officials. He also maintains that Chief Y relies on historical claims to the land and oral arguments of officials.

Chief X further argues that Chief Y should have approached him about the matter. Differences in opinion could then have been discovered and negotiations encouraged. He also says that if both chiefs were supposed to occupy the area (same site or even adjoining sites), then government officials should have approached both him and Chief Y and established a system whereby the two chiefs could cooperate.

Chief X is disconcerted by Chief Y's claim to the land but primarily blames government officials for conducting confusing resettlement operations. He says that officials work at odds with one another. Most important, in his view, government is experiencing considerable reorganisation in terms of personnel and objectives within a short period of time. This results in a confusion on the part of current officials regarding the directives of previous officials. Moreover, contradictions in directives sometimes occur. Such confusion about and contradictions in directives could be alleviated, he says, if operations were conducted openly rather than secretively. For example, when he asked the current project manager to tell him who had previously ordered the settlement of both chiefs in the area, the manager refused to divulge the information, making clarification and confrontation nearly impossible.

F. Central Authority vs. Chief

1. Background

The previous section discussed land disputes between chiefs. This section will discuss land disputes between the Central Authority and a chief as well as land disputes between chiefs which involve the intervention of the Central Authority.

Land disputes which involve chiefs and the Central Authority should be analysed according to the different types of chieftaincy. As mentioned, there are three kinds of "chiefs" ("tikhulu" from Zulu): (1) lieutenants ("tindvuna"); (2) royals ("bantfanabenkosi"); and (3) clan ("emaduna"). According to Hughes (1964: 143-4), Swazis originally had no word which lumped all kinds of chiefs together. Rather, the three types of chiefs were clearly differentiated in terms of origins and functions.

Hughes states that lieutenants are technically appointed as deputies of the Swazi King. They have been given administrative control over royal homesteads and the territories attached to these, but they are never supposed to be drawn from the royal family. Lieutenants receive different kinds of territorial placements and consequently serve a variety of functions: they may take charge of each of the current national capitals, or of the capitals of previous rulers, or of lesser royal homesteads and cattle posts. It is widely believed by Swazis that the land supervised by lieutenants is more directly under the control of the King than the land in other chiefdoms. In fact, it is known that some chiefdoms currently under minor lieutenants will be reassigned to a section of the royal lineage. At that time, the former lieutenant chief will become the chief deputy of the newly placed royal chief.

Royals, the second type of chief, are known literally as "children of the King". Nowadays, the term has expanded to include many members of the Dlamini clan such as persons who are genealogically far removed from the senior line but who have obtained important positions. Royals may be granted land either as an apanage (land which serves to distance potential rivals within the royal clan from the King and also to extend the control of the royal clan to different parts of the country) or as a reward. Royals tend to consider themselves superior both to neighbouring clan chiefs as well as to lieutenant chiefs.

Clan chiefs, the third type of chief, obtained their positions in several ways: by being placed under the early Swazi rulers; by being eventually incorporated under the Dlamini rulers (e.g., Sotho groups); and by being incorporated under the Dlamini rulers after their later migration into the territory.

Clan chiefs claim a signifcant degree of independence from the Dlamini overlords. Some clan chiefs may hold their own rituals of "kingship" and may enforce customary law without the supervision of the King. For example, Hughes (1964: 156) mentions that the powerful Mamba chief formerly had the power of executing his subjects without reference to the Central Authority.

The distinctions between different types of chiefs (lieutenant, royal, clan) appear to be directly correlated with the authority which the King (and royal advisors) can exert in the adjudication of regional land disputes. In particular, the rights which each type of chief possesses in relation to the royal authorities determine how a dispute will be processed. Thus, clan chiefs who claim that they retain any powers which are not clearly vested in the Central Authority are theoretically more likely to instigate land disputes and to resist unfavourable interference by the Central Authority (perhaps this factor, along with other historical pecularities of the Shiselweni District, where clan chiefs predominate, explain why land disputes are endemic in that area). To the contrary, lieutenant chiefs, who are placed on land through the good graces of the Central Authority, are at the latter's mercy. The situation of royal chiefs is less clearly defined since they are, in a sense, appendages of the Central Authority, and yet they tend to resist interference by the Central Authority. [These suppositions must be confirmed by further intensive research; indeed, my informants did not all agree as to the exact correlation between land disputes and powers of different types of chieftaincies.]

Hughes describes the use of envoys by the Central Authority as a means for exerting direct control over land disputes between chiefs or between subjects within a chieftaincy:

> There are nowadays various other devices whereby the Central Authority seeks to exert direct control over, and maintain contact with, the people in the Chiefdoms. One of these is the despatch of special "Envoys" (emancusa sing. lincusa) to any area where a particular problem has arisen. Thus, a special committee of Envoys was sent to Shiselweni District in 1936, to examine a spate of land disputes which had developed there. Envoys are also sent to look into such things as attempted banishments by a Chief, when the individual threatened with banishment has appealed to the Ngwenyama.
>
> Such Envoys are chosen whenever an occasion for intervention by the Central Authority arises. But another category of agents of this Authority who are often styled "Envoys" are those permanent officials whom we mentioned earlier; the District Liaison Officers (Tindabazabantu) and Rural Development Officers (1972:191).

The Central Authority is willing to concede that it should not interfere in day-to-day land management activities within a chiefdom; however, it does maintain that it can legitimately legislate on any matter which has significance to all Swazis. According to Hughes (1972: 253), the King thus ruled that any land which came under irrigation should automatically cease to be under the control of the chief of the area. Hughes further argues that most chiefs, especially clan chieftains, dispute the Central Authority's competence to make such a ruling, and consequently, huge areas of potentially irrigable land remain uncultivated because rights cannot be clearly established. Although the veracity of Hughes' assertion that chiefs do not control irrigated areas may be debated, my research does indicate that chiefs frequently and vigorously dispute rulings by the Central Authority about irrigated areas.

In the context of land disputes or other land matters involving two or more chiefs, the Central Authority claims a more clearly recognised right of intervention. However, when it does enter into an inter-chieftaincy land dispute, there is no guarantee that the chiefs will abide by the rulings (Hughes 1964: 253). Moreover, as several members of different chiefs' councils in the southern Shiselweni District told the present author, the Central Authority (King and National Council) frequently will postpone making a final ruling on a land dispute. The authorities appear to hope that the dispute will die a natural death.

There are several reasons why the Central Authority might opt to ignore an inter-chieftaincy dispute: they want the heat of the dispute to cool down; they want to wait until new local authorities (including a chief) are appointed; and they want to avoid making an unpopular decision. In essence, they hope that the healing power of time and changes in personnel will help resolve disagreements. Regarding their own exercise of authority, they are

caught in a bind about whether to preside over a land dispute: on the one hand, they demonstrate and validate their authority by adjudicating a land dispute, but on the other, they put their prestige and power on the line by undergoing the risk that they will make an unpopular or unjust decision which is disobeyed. By hearing a dispute but not reaching a decision, they validate their authority while avoiding heated entanglements.

In illustration of a postponement tactic, one informant, who is the "indvuna" (deputy) of a chief in the Shiselweni District, described several disputes which, to his understanding, had gone on for several decades. In each of these disputes, repeated appeals were made to the national authorities--without effect. Ultimately the various disputes went into abeyance when the original disputants were dead or the original point of contention was forgotten.

The problem with a dispute resolution method of "death by neglect" is that the dispute never really dies. Years after an initial appeal was made to the authorities and the dispute has cooled, circumstances may change and the dispute again flares up. This sort of situation happens when a desirable developmental project is proposed.

2. Case Studies

A common situation in which the Central Authority interferes with a chief's local authority occurs when a chief's subject appeals a resettlement or banishment order. In a resettlement situation, the chief is normally acting upon the directives of the Central Authority, whereas in a banishment case, he is initiating the directive. (For situations involving the intervention of the Central Authority in a banishment case, see section D, and for intervention in an inter-chieftaincy dispute, see section E.)

The following resettlement appeal demonstrates principles discovered in several similar cases.

Case 18 (data obtained from informant who is uninvolved in case):

An old woman is informed by the chief that she will have to be resettled since the area in which her homestead is situated is slated for a construction project. The woman approaches the King and begs that she be permitted to remain in the area. She explains that she is too old to build a new homestead and she has no children who can help her. The King gives her an official letter granting her permission to remain in the area. She takes the letter to the chief's deputy. Consequently, when the builders come into the area, they are instructed to build around her homestead.

Several possible land-disputing dyads have been omitted from this analysis: Subject vs. Central Authority; Chief vs. Central Authority; and Central Authority vs. Foreign Government. The first dyad was not clearly demonstrated during the course of the research project; the second dyad can be comprehended from the data incorporated in the Chief vs. Chief dyad and Central Authority vs. Chief dyad; and the third dyad is too complex for consideration within this paper (it involves, for example, Swazi ethnics who are resident in South Africa and desire incorporation within Swaziland).

The disputing dyads of chief vs. Central Authority, or alternatively, Central Authority vs. chief, merit further study. Due to recent political circumstances prevailing in the country, it seemed wise to postpone in-depth inquiry.

VI. CONCLUSIONS

Land disputes are of considerable concern to officials entrusted with Swaziland's development. As Butler (1974: 170) states in regard to disputes between chiefs: ". . . the mechanism for settling disputes between chiefs as to the land over which they have power to allocate plots is ineffective, and is disrupting the eight rural development areas selected in 1965."

Chiefs have been admonished by government officials to promote development projects by negotiating rather than disputing over land.[3] Unfortunately, the situation appears to have worsened in recent years since the death of King Sobhuza II in 1982.[4] Disputes at all levels of the land hierarchy--but primarily involving chiefs--continue to be prolonged and resistant to easy settlement.

My research indicates that several types of land disputes are particularly problematic and deserve further attention: those involving women and access/use land rights on the rural homestead; those involving chiefs' subjects and land use rights in the community (e.g., right to fence or exploit scarce resources); and those involving chiefs and territorial boundary disputes (e.g., right to participate in development projects on repurchased land). My research also indicates that land disputes have become increasingly problematic because of population growth, population redistribution (caused, among other things, by resettlement projects and by new employment opportunities), and new agricultural and livestock management technologies. In essence, transitions in Swaziland's larger social, economic and political systems have produced transitions in land disputes.

Transitions in the nature of land disputes are not necessarily detrimental. What is detrimental, if the commentary of public officials is to be acknowledged, is that land disputes are becoming increasingly prolonged and difficult to solve. All disputes which disrupt a chief's management of his area--be they disputes among his subjects or with a neighbouring chief--interfere with local and national development objectives.

Evidence obtained throughout the course of this research project points to increased disputing in the same interpersonal dyads about similar kinds of issues. My observations must be considered speculative since this project made no effort to accumulate statistical data on a nation-wide basis.

Regarding the family member vs. family member dyad, interview and court case data indicate that the most common disputes involve brothers and succession rights (Cases 1 and 4). Such disputes appear to have been exacerbated in recent years by land and resource shortages. Unlike in the past, a homestead head cannot easily divide up homestead land among his sons

or otherwise seek land in the community. Disputes emerge in a variety of circumstances: when a son of a deceased homestead head is dissatisfied with his land allotment (Case 1); when the heir to a deceased homestead head refuses to share land and resources ("adequately") with his brothers, sisters or agnates, such as his father's brother (Cases 1, 2, 3, 4); or when the oldest son of a deceased homestead head, who has migrated to an employment centre in a distant area, returns to reclaim his birthright.

The research data also indicate that disputes involving women are common. The following case studies, which are described more fully in separate publications, demonstrate the variety of disputing patterns followed by women: one woman disputed with her affinal kin about the land allocated to her after her husband's death; one woman went to the District Commissioner to obtain from her husband repudiation papers which enabled her to obtain land from the chief; one woman, who had married her husband according to civil law, divorced her husband and convinced the chief to allow her eviction of her husband from the land which he had obtained for her through the customary "kukhonta" process.

Women's actual role in land disputes is barely understood since Swazis often do not accept women's behaviour as constituting "disputing activity". This misunderstanding seems to arise from the fact that women frequently mobilise informal social networks in support of their land claims rather than appeal to formal agencies such as a family council or Chief's Council. When they do appeal to formal agencies, they often report to officials of the regional administration who are less directly involved with customary land matters than a chief. In essence, people acknowledge only a minimal female involvement in land disputes because of the combined forces of women's informal disputing activities with prevailing ideologies about women's non-involvement in land matters.

Regarding the subject vs. subject dyad, informants claim that the most prevalent and difficult disputes between subjects involve land loans. Informants maintain that subjects are hesitant to loan land because they fear that it will not be returned upon request or that the authorities will not uphold their reclamation demands (Case 6). When they do loan land, disputes frequently arise (e.g., regarding use of land or duration of loan). Sometimes borrowers even insist that they were given land as a gift rather than a loan; this is particularly true when the original land transaction occurred between ancestors of disputants. A second increasingly common dispute between subjects involves boundaries (Case 7) and fencing (Case 8). A third common dispute between subjects involves access paths (Cases 8 and 9). In crowded areas, paths for human transit are frequently cut off by fences, whereas paths for livestock transit are frequently not separated by fences from cultivated fields, resulting in damage to winter crops. A fourth common dispute between subjects involves rights to limited community resources.

Regarding the chief vs. chief dyad, informants stress that disputes between chiefs are the most problematic disputes, i.e., the ones least likely to result in lasting and amiable settlements. Chiefs appear unwilling or unable to negotiate a settlement privately, and the Central Authority often fails to dictate and enforce a settlement. The main issue underlying inter-chieftaincy land disputes, according to informants, centres upon

development projects and associated resettlement: chiefs are compelled by development interests and fears about land shortages to assert their perceived rights (Case 17). Few chiefs are content to overlook transgressions for an extended period as did the chief in Case 16.

The major impediment to resolution of the "land dispute problem," in the present author's opinion, is the formal land dispute management process. In any effort to deal with problems in land dispute management, two basic assumptions must be considered: one, customary land tenure, as a hierarchical system of rights and privileges, cannot be structurally altered within the near future, and two, most drawbacks of technological developments and modernisation processes (e.g., urban growth and population redistribution) cannot be alleviated. In essence, improvements in current land dispute management processes must involve minor structural adjustments.

The structural adjustments proposed in this section incorporate three aspects of customary land law: one, rules of customary land tenure; two, institutional structure for land dispute resolution; and three, government administration of land affairs.

1. Some rules of land tenure have been changing in accordance with regional needs. For example, in the urban peripheries, renting of dwellings, a practise which was forbidden by customary rules of land tenure, has become commonplace. Local authorities overlook frequent transgressions and comment that they are waiting for a national policy to be developed. In rural areas, where few migrant workers seek housing, renting appears to be uncommon. As a second example, fencing was once forbidden by customary rules of land tenure, but is now allowed by chief s councils, provided that the council is informed of intended fencing. These rules of tenure which are changing might be standardised and clarified in written forumlations.

Other rules of tenure have not been changing in accordance with needs; for example, land is not surveyed in chiefs' areas. Surveying would clarify boundary problems which are often involved in land disputes. Chiefs apparently resist surveying since it would reduce their power in land allocation and land dispute adjudication.

2. The structure for land dispute management has been altered in recent years, although not necessarily improved. The most pressing needs currently centre upon clarification and standardisation of institutional responsibilities at various levels of the dispute management hierarchy: i.e., jurisdiction over causes and routes of appeal. Disputants are often unaware about how to effectively process a dispute (e.g., when to approach a chief or when to seek help of "Ndabazabantu"); at other times they use the loopholes in the system to their best advantage.

The addition of new forums such as "Ndabazabantu" and "Tinkhundla" has created confusion; people are uncertain as to which responsibilities for dispute management have been maintained by traditional forums and which ones have been transferred to modern forums. As the comments of several chiefs indicate, "Ndabazabantu" is not always respected as a legitimate figure in the land disputing process. Moreover, "Ndabazabantu" cannot force chiefs to answer his summons or comply with his proposals about dispute resolution; his

ineffectiveness results in a tremendous waste of his own and other people s manpower hours.

"Tinkhundla" are apparently assigned no official role in land dispute management; however, since evidence points to their occasional involvement in land disputes, this involvement should be further investigated. As an Inkhundla is structured to coordinate activities in several chiefdoms, shared control within the Inkhundla over the chiefdoms' land matters (including dispute management) might prove to be a more efficient and fairer system than absolute control by individual chiefs within each chiefdom.

The Swazi Courts and the Western courts, both of which have been created by modern legislation, appear to play an indirect role in customary land dispute management. People who occupy disadvantaged positions in regard to the customary system of land management--such as women--tend to resort to these courts for resolution of matters which have an indirect impact upon customary land ownership.

3. The government administration of land affairs is plagued by several problems: the bureaucratic structure is continually being reorganised (i.e., reassignment of duties to different ministries); government offices work at cross-purposes to one another, often contradicting the instructions of predecessors or contemporaries in other divisions (Case 17); policy is ineffectively clarified on a national basis and further disseminated within the dispute hierarchy.

Considered as a whole, the major structural changes which the government might promote toward the end of a more "efficient" (in terms of economic expenditures and manpower hours) customary land dispute management process are: standardisation of selected rules and procedures of land dispute management; improved communication to the public about these rules and procedures; and improved communication within and between responsible government agencies about land dispute management procedures.

Although the ultimate goal of the government appears to be a reduction in the incidence of land disputes, a worthy interim goal would be to promote a policy which focuses upon improved land dispute management.

N O T E S

1. "Resettled men complain of not enough land", Swaziland Observer, July 5, 1983, and "Meddling land officers hamper resettlement schemes", Swaziland Observer, July 16, 1983.

2. "Man axed woman over land dispute", Swaziland Observer, November 30, 1983.

3. "Excessive Drinking Still a Stumbling Block for Rural Development", Swaziland Times, August 11, 1984.

4. "Every Male Must Pay E5", Swaziland Times, March 29, 1985, and "Fund for Crown Prince Launched", Observer, March 29, 1985.

R E F E R E N C E S

Amoah, F. K. A. 1978. "Some Legal Aspects of the Customary Land Tenure Systems of Botswana, Lesotho, and Swaziland: A Comparative Study." SWADEX 14. Workshop of Rural Environment and Development Planning in Swaziland. Ezulwini, Swaziland, 1-10 May.

Armstrong, Alice K. 1985. Legal Aspects of Land Tenure in Swaziland. Paper prepared for US AID.

Armstrong, Alice K. and L. T. Nhlapo. 1985. Law and the Other Sex: The Legal Position of Women in Swaziland. Kwaluseni: University of Swaziland.

Bonner, Philip. 1983. Kings, Commoners and Concessionaires: the Evolution and Dissolution of the Nineteenth-Century Swazi State. Johannesburg: Ravan Press, Ltd.

Butler, I. E. 1974. "Local Government in Swaziland." Pp. 164-182 in Local Government in Southern Africa, edited by W. B. Vosloor et al. Pretoria: Academica.

Crush, Jonathan. 1980. "The Genesis of Colonial Land Policy in Swaziland." South African Geographical Journal 62/1: 73-88.

Daly, Paul. 1985. "Changes in Agricultural Land Use: Institutional Constraints and Opportunities." A Joint Project of the Ministry of Agriculture and Cooperatives of the Kingdom of Swaziland and the Land Tenure Center, University of Wisconsin-Madison.

Fair, T. J. D., G, Murdoch and H. M. Jones. 1968. Development in Swaziland: A Regional Analysis. Mbabane.

Fannin, J. M. A. 1967. "Principles of Swazi Customary Law." Unpublished paper.

Fransman, Martin. 1978. "The Colonial State and the Land Question in Swaziland, 1903-1907." In The Societies of Southern Africa in the 19th and 20th Century. University of London.

Hughes, A. J. B. 1962. "Some Swazi Views on Land Tenure." Africa 32/3: 253-78.

_____. 1964. Swazi Land Tenure. Durban: Natal University, Institute of Social Research.

_____. 1972. Land Tenure, Land Rights, and Land Communities on Swazi Nation Land: A Discussion of Some Interrelationships between the Traditional Tenurial System and Problems of Agrarian Development. A Monograph of the Institute for Social Research, No. 7.

Jones, David. 1977. Aid and Development in Southern Africa: British Aid to Botswana, Lesotho and Swaziland. London: Croom Helm in association with Overseas Development Institute.

Khoza, A. R. V. 1975. "Swazi Law and Custom." In Politics and Society in Swaziland. Collection of unpublished papers. Kwaluseni: Social Science Research Unit: University of Swaziland.

Khumalo, J. A. M. 1977. Swazi Customary Law Courts: A Supplement to Civil Practice and Procedure in All Bantu Courts in Southern Africa. Cape Town: Juta.

Kuper, Hilda. 1947a. An African Aristocracy: Rank among the Swazi. London: Oxford University Press, for the International African Institute.

-----. 1947b. The Uniform of Colour in Swaziland: A Study of White-Black Relationships in Swaziland. Johannesburg: Witwatersrand University Press.

Leistner, G. M. E and P. Smit. 1969. Resources and Development. Communications of the Africa Institute no. 8. Pretoria.

Maasdorp, Gavin. 1975. "Modernization in Swaziland." Pp. 408-422 in Contemporary Africa: Geography and Change, edited by C. Gregory Knight and James L. Newman. Englewood Cliffs, New Jersey: Prentice-Hall.

Marwick, Brian Allan. 1940. The Swazi: An Ethnographic Account of the Swaziland Protectorate. Cambridge University Press.

Mashusha, F.J. 1977. "The Road to Colonialism: Concessions and the Collapse of Swazi Independence, 1875-1926." D.Phil. dissertation, Oxford University.

Meyers, Phillip. 1983. "Customary Law Research Proposal." Unpublished paper. Kwaluseni: University of Swaziland.

Ministry of Local Administration. 1978. "Tinkhundla National Centres." Paper submitted to SWADEV: Workshop on Rural Environment and Development Planning in Swaziland. CODEC (Ezulwini) Swaziland. Paper No. 18, 1-10 May.

Murdoch, G. 1977. "Past Settlement Patterns Reflected in Present Agricultural Returns and Soil Properties. Examples from Swaziland." Pp. 401-4 in African Historical Demography. Edinburgh.

Nhlapo, R. T. 1982. "Legal Duality and Multiple Judicial Organisation in Swaziland: An Analysis and a Proposal." Pp. 66-76 in The Individual under African Law, edited by Peter N. Takirambudde. Kwaluseni: University of Swaziland.

Nkambule, N. M. 1983. "A Diagnosis of Adverse Effects of Customary Land Tenure on Land Use in the Kingdom of Swaziland: Is a Land Privatisation Policy the Answer?" Master's thesis, University of Wisconsin-Madison.

Rosen-Prinz, Beth. 1976. "Urbanization and Political Change: A Study of Urban Local Government in Swaziland." Ph.D. dissertation, University of California-Los Angeles.

Rubin, Leslie. 1963. "Adaptation of Traditional Law in Southern Africa." In The Development and Adaptation of Legal Systems in Africa. Interdisciplinary Colloquium in African studies. African Studies Center, University of California.

_____. 1972. "Swaziland." Pp. 232-41 in Annual Survey of African Law, Vol VI.

"Tinkhundla System of Government Guidelines". N.d. Booklet for use by Tinkhundla Public Officers.

Whittington, G. W. and J. B. McDaniel. 1969. "16 Problems of Land Tenure and Ownership in Swaziland." Pp. 447-461 in Environment and Land Use in Africa, edited by M. F. Thomas and G. W. Whittington. London: Methuen.

A P P E N D I X

Terms of Peference for Land Dispute Management Study

The Land Dispute Management Study is an addition to the research activity entitled: "Changes in Agricultural Land Use: Institutional Constraints and Opportunities," which will be undertaken by the Ministry of Agriculture and Cooperatives with the assistance of the Land Tenure Center, University of Wisconsin. The purpose of this study is to review the experience of land dispute management in Swaziland within the context of the institutional factors associated with such disputes.

Issues to be examined by the study will include.

1. Existing land tenure structure in Swaziland: evolution of existing land tenure institutions; discussion of these fora; attitudes about existing land tenure institutions.

2. Issues associated with land disputes: concessions experience; banishment; security of tenure; role of women.

3. Nature of disputes: frequency; type (e.g., boundary, ownership, use rights, etc.).

4. Institutional framework for the settlement of disputes: the dispute settlement process; characters involved; nature of evidence/arguments for each side; methods of reaching agreement; nature of settlements; methods of enforcing settlements.