

**EXPLORING THE IMPACTS OF LAND TENURE SYSTEM CHANGE ON THE  
SUSTAINABILITY OF COMMON RESOURCES IN SWAZILAND**

by

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## ABSTRACT

Current customary tenure has negative implications for the sustainable environmental management of common resources in Swaziland in that it perpetuates free-for-all scenarios that result in unabated environmental degradation by all and with none held responsible. The lack of a land policy to provide a framework for land use regulation is a significant driver of common resource destruction, as is the inability of customary tenure to evolve with the times. The cleavage between customary and statutory tenure has led to informal land markets which, if uncontrolled, could wreck not only the environment but the integrity of the traditional Swazi community.

The study calls for inclusive politics which would encourage democratised public participation. After all, it is only after this fact that relevant and acceptable environmental policy can be synthesised. It also calls for the regulation of customary tenure and suggests that there is advantage in mono-ethnicity that can be exploited in trying to chart a more sustainable and morally fair management of common resources in the country.

*Key words:* Common resource governance, property rights, customary land tenure, population growth, migration, sustainable livelihood, Swaziland

## OPSOMMING

Huidige tradisionele grondbesit het negatiewe implikasies vir die volhoubare omgewingsbestuur van gemeenskaplike hulpbronne in Swaziland omdat dit scenario's vestig waar almal volgens eie voorkeur optree. Dit kan tot knaende omgewingsaftakeling deur almal lei sonder dat iemand daarvoor verantwoordelik gehou word. Die gebrek aan 'n grondbeleid wat as raamwerk vir die regulering van grondgebruik kan dien, en die onvermoë van tradisionele grondbesit om oor tyd te ontwikkel is belangrike dryfvere vir die vernietiging van gemeenskaplike hulpbronne.

Die gaping tussen tradisionele en statutêre grondbesit het informele grondmarkte laat ontstaan wat tot die ondergang van nie net die omgewing nie, maar die integriteit van die tradisionele Swazi-gemeenskap kan lei as dit nie beheer word nie. Die studie bepleit inklusiewe politiek wat gedemokratiseerde openbare deelname sal aanmoedig. Dit is per slot van sake net hiervolgens wat 'n relevante en aanvaarbare omgewingsbeleid daargestel kan word. Die studie pleit ook vir die regulering van tradisionele grondbesit en suggereer dat die ontginning van mono-etnisiteit voordelig kan wees om 'n meer volhoubare en moreel regverdige bestuur van gemeenskaplike hulpbronne in die land te verkry.

*Sleutelwoorde:* Beheer en bestuur van gemeenskaplike hulpbronne, eiendomsregte, tradisionele grondbesit, bevolkingstoename, migrasie, volhoubare lewenswyse, Swaziland.

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**ABBREVIATIONS AND ACRONYMS**

AFP	Agence France-Presse
CIA	Central Intelligence Agency
CDP	Chiefdom Development Plans
CDPs	Chiefdom Development Planning
CRDB	Central Rural Development Board
EIA	Environmental Impact Assessment
EISA	Electoral Institute for Sustainable Democracy in Africa
EU	European Union
FAO	Food and Agricultural Organisation
IFAD	International Fund for Agricultural Development
IMF	International Monetary Fund
INM	Imbokodvo National Movement
IPCC	Intergovernmental Panel on Climate Change
JICA	Japanese International Cooperation Agency
MOAC	Ministry of Agriculture and Cooperatives
NGO	Non-governmental Organisation
NNLC	Ngwane National Liberatory Congress
SADC	Southern African Development Community
SCF	Save the Children Fund
SEA	Swaziland Environment Authority
SFTU	Swaziland Federation of Trade Unions
SNAT	Swaziland National Association of Teachers
SNC	Swaziland National Council
SNL	Swazi Nation Land
SNTC	Swaziland National Trust Commission
TDL	Title Deed Land
UNCED	United Nations Conference on Environment and Development
UNDAF	United Nations Development Assistance Framework
UNDP	United Nations Development Programme
UNISWA	University of Swaziland
UNPED	United Nations Population, Environment and Development
WFP	World Food Programme

YNEAG

Yonge Nawe Environmental Action Group

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## CHAPTER 1: INTRODUCTION

### 1.1 PREFACE

There is a growing body of scholarship that suggests that the environment would significantly benefit from clearly defined property rights, that when people have a sense of ownership over a resource they are likely to use it sparingly (Stroup & Baden, 1983:8; Hatcher & Bailey, 2011:3; Mabuza, Sithole, Wale, Ortmann & Darroch, 2012:71). The most valued resource in African societies is land. It is after all a form of actualisation and being part of a community is still revered, particularly in rural settings.

Rural settings are predominantly customary land tenure and residents rely heavily on the environment and ecosystem services as they cannot access remote resources. Ecosystems are invaluable to rural residents and the State alike. The former benefits from direct and inexpensive access of ecosystem services, and the latter benefits by alleviated expenses as they do not have to subsidise these services for the rural folk (Monadjem & Nkosi, 2001:3). However, the rural poor continue to experience harsh environmental conditions caused by rising consumption, even though they are minority consumers as set out in the United Nations Human Development Report Overview (UNDP, 1998:4).

At the crux of the poverty and environmental degradation dilemma is population growth. As people live longer, with family planning being sporadic and reverse migration occurring, the rural population expands. As a result natural resources come under strain for farming stands, grazing and in some cases deforestation to create more space for people to live in (UNDP, 1998:5). Clay and Reardon (1998:1) point out that this presents an enormous challenge because sustainability and population growth are inextricably linked and therefore require a simultaneous solution.

There is general consensus that land tenure reform that promotes sustainable resource use and ensures access to land could be the panacea for environmental degradation (Ostrom, 2010:1). There is, however, uncertainty in tenure systems that hinder this. The Swaziland Environment Authority (SEA) has identified this problem, saying that unclear tenure results in non-existent enforcement to protect biodiversity. Residents, bereft of exclusive rights to their resources,

are unable to keep others away from the limited resources to ensure sustainable use of natural resources (Monadjem & Nkosi, 2001:60).

Also, customary land tenure is often mistaken for communal ownership as both tenures require a formal admittance of new members and land acquisition in both can be through inheritance. But chiefs are the true powers that be in customary tenure versus all members in communal ownership. Stroup and Baden (1983:7-8) say that the fallacy usually is that all residents gain from public land when in actual fact decision-making usually rests with certain individuals who promote their self-interests. Politicians and bureaucrats are infamous for using institutional discretion for personal benefits.

In Swaziland, tenure is broadly divided into three types, namely crown land, freehold and customary tenure (Mabuza *et al.*, 2012:71). Crown (government or state land) and freehold (where people buy land and get title deeds issued) are of least interest to this study. Customary land, the bulk of Swaziland that accommodates the rural population, is the focus of the study, and how its reform could impact the sustainability of common resources.

## **1.2 BACKGROUND AND RATIONALE**

According to the United Nations Population, Environment and Development: The Concise Report, (UNPED, 2001:15), global ecosystems are under pressure. In 2007, the Fourth Assessment Report, compiled by the Intergovernmental Panel on Climate Change (IPCC), reinforced the fact that there was a rise in global temperatures as a result of human activities driven by incessant consumption (Swilling & Annecke, 2012:31). This consumption is, according to the United Nations Human Development Report Overview (UNDP, 1998:1-5), skewed towards the wealthy and statistics show that the wealthiest 20 per cent of people consume up to 86 per cent, and the poor are left to suffer with 20 per cent of the latter, accounting for only 1, 3 per cent of the total global consumption.

It then follows that the growing population in rural areas across developing countries continues to magnify the scale of environmental management challenges. This growth is due to a typically higher rural fertility rate (Irin News, 2012) and reverse migration, a phenomenon where people emigrate from urban areas either because of high living costs or,

for the financially fit, a change of scenery, as Connell and McManus (2011:27-28) assert. The result of this is a rural population expansion that shrinks available land (Coleman, 2011).

Although evidence suggests that communities can devise robust systems to manage their resources, especially when the affluent among them support the cause (Ostrom, 2010:6), the elite rural immigrants alluded to by Connell and McManus (2011:27-28) can disintegrate prevailing institutional arrangements (Brown & Wardwell, 1980:51-53; Stroup & Baden 1983:9; Falk, Schulman & Tickamyer 2003:340). Ostrom and Hess (2008:5) and Stroup and Baden (1983:23) agree that leaders may receive incentives from the wealthy to bias decisions in their favour and add that others may deliberately water down efforts geared towards change because it may be divorced from their self-interest even if such change is for the collective good of the community. This raises the question of whether land tenure can be used as an instrument to ease poverty and protect the poor's livelihoods by giving them a voice and defending the resources on which they solely depend.

It is against this background that the study endeavours to assess whether changes in the Swaziland land tenure system promote the sustainable use of common resources or not.

### **1.3 SOME POINTS OF DEPARTURE**

According to the Food and Agricultural Organisation (FAO, 2002:7) land tenure can be described as the set of rules outlining the rights and responsibilities in natural resource allocation. It specifies who owns what, to what extent and in what capacity.

There are varying interests associated with land tenure, namely:

1. Overriding – when the State makes and enforces the final decision with regard to a resource.
2. Overlapping – when different groups have rights to the one area, but for different purposes.
3. Complementary interests – when different groups share the same rights to a resource for the same use.
4. Interests can also be competing, like when different groups all lay claims to an area for the same utility (FAO, 2002:7-8).

The FAO further classifies land tenure into four, namely:

- a. Private – where an individual or a corporation or specific family have exclusive rights to a resource.
- b. Communal – where the community has rights to a resource, for example to a pasture. Community members are authorised to prohibit unacknowledged people from using their resources.
- c. Open access – free for all and no one has a right to keep the next person away from that resource.
- d. State-owned – where rights to property are given to the Government (FAO, 2002:8).

Land rights under customary tenure include but are not limited to: the freedom to build and continuously improve on a dwelling place; to farm and lay the dead to rest; to bequeath land to descendants and to protect it from intruders. Governments are needed to uphold and administer these rights (Adams, Sibanda & Turner, 1999). Adams *et al.* (1999) describe land tenure reform as an attempt to alter the rules and provisions of land allocation with intent to protect people's claim to land and curtail landlessness. This is a prerequisite for local investment and sustainable use of land. This exercise must contend with overpopulation of communal areas, linked rights to land, abuse of the system by traditional leaders and politicians and non-existent budgets to facilitate reform.

#### **1.4 POPULATION GROWTH**

Growth in population compromises quality of life as it accelerates damage to natural resources and decreases biodiversity and, by extension, ecosystem services on which human kind, especially rural dwellers, significantly depend. According to Hinrichsen and Robey (2014) population growth is overtaking food supplies in 64 out of 105 countries. Two billion hectares of cultivable land has already been degraded. Freshwater, a finite resource is projected to be scarce sooner rather than later. In 2025, when the global population will be an estimated 8 billion people, about 48 countries – home to about 3 billion people – will deal with freshwater scarcity (Hinrichsen & Robey, 2014).

Combined with improved technologies, population growth exerts pressure on the environment (Stroup & Baden, 1983:8). A link between population, development and environment was declared at the 1992 United Nations Conference on Environment and

Development (UNCED) and reiterated two years later at the International Conference on Population and Development. Following the declaration of this link, developing countries created frameworks for preventing poverty-induced environmental degradation. Environmental policies continually engage a participatory approach to indigenous people and states in South America, Southeast Asia and South Central Asia have pioneered this movement (UNPED, 2001:16-18).

Although population growth is a significant factor in deforestation and influences overall per capita consumption and pollution, commercial logging surpasses it by far. However, when overpopulation occurs next to a protected area, it becomes significant, in which case governmental institutions are needed to limit settlement. This is not without its complexity as some of the people occupying the land may be indigenous to the area and possess some use rights to that resource (UNPED, 2001:16-18, 25-26). Wenner (2013) asserts that overpopulation is the principal ecological dilemma.

## **1.5 PROPERTY RIGHTS**

Property rights are the rules and regulations governing the relationship between people and property (Investopedia, 2014). They can be held in private, be communal or public or there can be state ownership. When private, property rights are specific, exclusive, transferable and enforceable (Hodge, 1995:32-39). Public property or open-access resources are, by contrast, characterised by absent ownership and non-existent regulation. Open-access resources are typically overused because all users tend to overharvest and pollute the resource in the absence of any form of regulation (Monbiot, 2003:374). Hardin (1968:1243-1248) foretold of a tragedy of the commons, a situation that arises when people possess property rights to a common resource. In his example of a common pasture he said that the pastoralists would in no time start adding their number of livestock, quickly overtaking the carrying capacity of the common pasture. The pasture would eventually collapse under the pressure of extra livestock to the peril of all pastoralists. From this narrative he erroneously concluded that privatising property rights and entrusting their regulation to the State were the only ways to avert the tragedy. At the core of his argument Hardin (1968:1243-1248) said that people were inherently self-serving at the cost of co-owners to a resource. His main flaw, however, was in likening common property resource to open access when it is in fact an aspect of private property (Hodge, 1995:32-39).

Common resource management has also been frowned upon by traditional economists because of its low productivity and high transaction costs (Ostrom & Hess, 2008:6). However, the view that privatising property was the only remedy to the common resource management problem, was vehemently denied by, among others, Cox (1985:49-61), Monbiot (2003:373-374) and Ostrom (1990:14-16; 1999:1; 2010:1-9) for the reason that the premise of his argument, a commons and not an open-access area, was wrong.

Although these authors concede that where there is a lack of social mechanisms to control resource use, environmental degradation occurs, Stroup and Baden (1983:20) assert that setting up clear property rights in previously misused resources controls the problem of overuse.

Examples of property rights are:

1. The right to manage, indicating how and to what extent a resource may be used, clarifies the terms of use.
2. Exclusion rights, which allow deserving property rights owners to keep away or remove from their resource people who are not mandated to benefit from that resource. This right also encompasses the procedures on how to cede or transfer rights to other individuals should the need arise.
3. Alienation rights provide steps to how a property owner can lease or sell his or her property, although this does not include inheritance (Schlager & Ostrom, 1992:251).

Extensive work by the likes of Ostrom challenged Hardin's conclusions. It became clear that where people had access to a resource but had no relationship with each other, they would most likely create a tragedy as opposed to when they had some camaraderie and were thus driven by group interests. Patriotism alone, however, cannot yield collective best interest. This realisation exposes the need for collaboration of affected communities and external institutions in containing elitism and maintaining order (Ostrom, 1990:8-9). Generalising in common property governance, as per Hardin (1968:1243-1248), remains unwise as all communities are unique and therefore require diverse management arrangements (Ostrom, 1999:1; 2010:1-9).

## **1.6 MIGRATION**

Although population growth by percentage has declined, absolute rural numbers are still significant, rising from 2 billion in 1960 to 3,2 billion in 2000 worldwide. In Africa the rural population rose from 225 million to 487 million during the same period. (UNPED, 2001:27). As of 2011 the African rural community was estimated at 552 million and it was forecast that by 2025 this number will have grown by 98 million. A large number of these people (will) live in unfavourable customary tenure conditions (Alden Wily, 2011a:7).

When faced with scarcity, humans migrate to areas that provide better environmental conditions than where they are currently resident. This is, of course, counterproductive because while it provides relief to the place of origin, it immediately strains the host resources. Rural to rural migration is very common in countries with higher rural contingents. Natural disasters and environmental degradation have been identified as push factors for this type of migration although there is not much empirical evidence to corroborate the claim as environmental factors are usually intertwined with socio-economic and religious factors. Where rural population growth is prevalent, environmental degradation issues abound and the rural population growth, migration and environmental degradation nexus has been around since the 1950s (UNPED, 2001:29-34).

## **1.7 RESEARCH PROBLEM**

The study focuses on the evolution of the Swaziland land tenure system and its impacts on the sustainable management of common resources namely land. Customary land tenure is the norm in most African countries and often possesses cultural and mystical connotations. These factors lend to the complexity of land tenure systems. This study investigates how sustainable environmental management is enhanced or worsened under the current dispensation. It interrogates the land tenure system readiness to deal with matters of population growth and socio-economic inequality. Lastly the study gauges the flexibility of the system to evolve into a vehicle of sustainability and social justice.

The research problem is that the Swazi land tenure reform does not promote responsible and sustainable use of resources. Therefore, there is a need to do a review or carry out a study that will give an insight on the promotion of responsible and sustainable use of resources.

## **1.8 RESEARCH QUESTION**

What has been the impact of land tenure change on the sustainability of common resources in Swaziland?

## **1.9 RESEARCH OBJECTIVES**

1. To compare and contrast a communal governance system and traditional governance (chiefdoms) and explore how the Swaziland land tenure system has responded to the growing population.
2. To establish whether environmental management concerns inform land tenure strategy in Swaziland.
3. To make recommendations for sustaining common resources under the existing system.

## **1.10 THEORETICAL FRAMEWORK OF THE STUDY**

Hardin's theory (1968:1243–1248) on the inability of individuals to collectively self-govern their common resource is the point of departure for this study. Ostrom's later view (1990:14–16; 1999: 2; 2008:3), supported by extensive experimental work, challenged Hardin's view and concluded that common resource governance was not only possible but that it could also flourish. She articulated that for that to happen, it was imperative that property rights be explicit on whom the owners were so that they could legally keep unintended beneficiaries away from the resource.

Land tenure (in) security has been said to affect people's relation to the resource, in the sense that a secure tenure translates to a meaningful and sustainable relationship between man and his environment. Likewise, insecure tenure encourages recklessness in dealing with the environment as man wants to capitalise his benefit within an unknown time frame.

In her conclusions Ostrom (1990:14) admitted that no one governance system surpasses the other in resource management. She, instead, admitted to the complexity of resource management and encouraged collaborative governance. The study therefore explores governance in terms of complexity and the need for collaboration in present times.

Lastly the study looks at how livelihoods can be improved and sustained by a secure land tenure and collaborative governance.

### **1.11 RESEARCH DESIGN**

The research design is qualitative. Sampling was non-probability and purposive. Key informants were identified – from Central Rural Development Board (CRDB), SEA, Land Management portfolio of the Ministry of Agriculture and Cooperatives (MOAC), Swaziland National Trust Commission (SNTC), Yonge Nawe Environmental Action Group (YNEAG) and the University of Swaziland – and in depth individual interviews were conducted using structured interview questionnaires.

### **1.12 RESEARCH METHODOLOGY**

An extensive review of literature predominantly meets the research objectives. It gives a theoretical background of the underlying concepts, i.e. common resource governance, sustainable livelihood, population growth, migration and customary land tenure in the global, African and local contexts.

Structured interviews with identified key informants gave an indication of the readiness and flexibility of the present tenure to respond to the need for sustainable management in view of the growing population.

### **1.13 LIMITATIONS OF THE STUDY**

Because of the uniqueness of the characteristics of land tenure the conclusions of this study cannot be generalised to other countries.

## 1.14 OUTLINE OF CHAPTERS

The chapter outline will be as follows:

- Chapter 1 is the introduction.
- Chapter 2 covers common property rights and land tenure systems.
- Chapter 3 unpacks the policy and institutional framework for land tenure in Swaziland (Land tenure in Swaziland).
- Chapter 4: Findings.
- Chapter 5: Evaluation and recommendations.
- Chapter 6: Summary and conclusions.

## 1.15 SUMMARY

This chapter contends that the reason scholars are calling for defined property rights, especially with regard to rural communities, is because this would likely result in responsible environmental management of resources. As elaborated, various studies have shown that the rural poor become severely dependant on the environment for sustenance of their livelihoods. The burden on the environment has increased in recent years owing to population growth, which exerts pressure on resources and is exacerbated by such factors as migration. The rural poor have no means to effect large-scale consumption, but suffer the most excruciating effects of a degraded environment, often residing in marginal lands.

The next chapter unpacks how the poor remain tenants on their indigenous lands and are incapacitated from affecting activities going on in their communities because they are not owners of the land on which they reside. The commons and the on-going assault meted by the State and elite, using slightly modified or fundamental colonial laws to enrich themselves at the cost of the rural poor, are reflected on.

## CHAPTER 2: COMMON PROPERTY RIGHTS AND LAND TENURE SYSTEMS

### 2.1 INTRODUCTION

This chapter gives an overview of the composition and property rights in the commons and how the land tenure system is weakened to facilitate capture by the State and elite (Stroup & Baden, 1983:23), who then lease it to investors at nominal prices. It traces the colonial endeavour to dismantle the commons from Europe to Africa. The composition of the elite and the way it disintegrates existing communal institutional arrangements, using its (acquired) status to influence leadership on issues from which it stands to massively benefit (Brown & Wardwell, 1980:1-53; Falk *et al.*, 2003:340; Connell & McManus, 2011:27-28), is also discussed. It is argued that indifference to customary tenure propels poverty (FAO, 2002:3; Monbiot, 2003:374).

### 2.2 THE CURRENT STATE OF THE ENVIRONMENT

The dried springs and rivers, bare mountains, crowding and extinguished habitats are all telltale signs of resource degradation around the world. Forests, necessary for soil binding, erosion prevention, water regulation, carbon sequestration, climate stabilisation and biodiversity enhancement, are shrinking (UNDP, 1998:4; Ostrom, 1999:1). A larger proportion of this deforestation, the report says, is prevalent in developing countries while the produce is consumed by first world countries. This trend – that the poor suffer and lose livelihoods for the luxury of the affluent – is no longer sustainable. In fact, it defeats the very purpose of a morally reliable sustainability defined by Turner, Pearce and Bateman (1994:32–33).

Archaic environmental management methods have been overtaken by modern challenges and sustainability has become a vital variable to any transformation that seeks to change the reality of over two billion human beings already living in dire straits (World Bank, 2007:227; Swilling & Annecke, 2012:11). In order to realise the sustainable future hoped for, the focus should be on restraint and no longer on technological advance, as has been the norm (Swilling & Annecke, 2012:3). Such restraint has not been forthcoming where issues of cruel

land acquisition (by foreign companies, domestic elite and governments), much to the detriment of the disadvantaged, are concerned.

Land acquisition is not a new thing. It, in fact, started during colonial times, for the establishment of forests and rangelands (Alden Wily, 2011a:27). Wildlife protection and conservation efforts for the benefit of the affluent soon followed (Khan, 2002:16) and land use has evolved to such uses as mining, industrial and military infrastructural projects, biofuel production and large-scale agriculture, timber extraction, rubber plantation and oil palm plantation (Murombedzi, 2014). Most of this land, about two thirds as per Alden Wily (2013), was captured from impoverished and investment-hungry Africa. These land transfers are characterised by indifference to community tenure, rent seeking, huge environmental costs and conflict as people try to hang on to their only resource (Murombedzi, 2014).

### **2.3 COMMONS**

The term commons loosely refers to vacant public lands (Schlager & Ostrom, 1992:249), but it traditionally denotes resources owned jointly by specific communities and comprises virgin lands safeguarded by communities for their massive value as forests, meadows or swamps (Cousins, 2006:488-489; Alden Wily, 2011a:1). Commons are typically vast and whole, and they are about 740 million hectares in Africa alone. This is an attractive feature, which makes the commons vulnerable for large-scale investment opportunities by investors, the State and the elite (Alden Wily, 2007:43-45; 2011c:733).

Communal domains are a superset of both the commons and individually owned residential and farming land. While common property can be tied to the whole community, residential and farming land belongs to, and is controlled by, individuals and families (Cousins, 2006:489; Alden Wily, 2007:45). The distinction between these lands and associated rights and prohibitions is deeply entrenched within customary tenure.

Commons derive their integrity from the anchoring customary rules, so the two can never be separated. The existence of land rights in the commons system is endorsed and guided by communal norms similar to how statutes validate freehold (Elliot, 2004:130; Alden Wily, 2007:46).

Since community compositions are diverse across all regions, it is not unusual to find that the norms of one community are not at all applicable or are a variation of the norms practised by another (Alden Wily, 2007:46). This serves for a complexity in tenure unappreciated by state prescribed abstract solutions to perceived (or real) resource degradation. This is illustrated by Monbiot (2003:373-74) in his account of the Masai and Turkwell River hunter and gatherer communities in Kenya who were forced to settle by the Government and United Nations, a step which inadvertently turned their commons into an open-access area, giving rise to environmental degradation and displacement of people into marginal lands. It is lamentable that only a small number of countries, in the whole Sub-Saharan Africa recognise commons as community property worthy of protection, namely Tanzania, Ghana and Mozambique (Alden Wily, 2011b:3).

## **2.4 PROPERTY RIGHTS IN THE COMMONS**

The varieties of rights within a commons as illustrated by Ostrom (2008:3) are listed below. People can own just one right or a combination or the whole bundle, depending on their status with regards to the resource. These rights set the tone for how the resource will be used by establishing who has what rights, for what purpose, during which seasons and for how long. They are:

- a. Access – where people are allowed to enter a bounded property.
- b. Withdrawal – rights allowing collection of products from a resource.
- c. Management – the right to oversee the use patterns of all members and suggest improvement.
- d. Exclusion – the right to exclude others from the resource if they do not form part of the constituency.
- e. Alienation – freedom to sell or lease any of these rights.

In her later work with Schlager, Ostrom (1992:249-262) further divided these rights into two themes. These are: the operational level, which is the umbrella for access and withdrawal rights, and the collective choice level, which comprises the administrative, exclusion and alienation rights. They also offer a useful distinction between rules and rights with the former being the framework through which the latter are devised. Rights naturally have attached responsibilities.

### 2.4.1 Property right holders

Property rights holders are classified into authorised users, claimants, proprietors and owners. Authorised users are the least powerful group and only have access and withdrawal rights, which are usually granted by the propriety or the owners. Tensions usually arise between authorised users and proprietors or owners as they try to harvest the most they can from a resource before access is curtailed. In addition to being authorised users claimants also possess management rights, but they cannot sell or lease a resource. Authorised users and claimants would be ordinary members of the commons and together they can design operational level governance rules (Schlager & Ostrom, 1992:249-262).

Proprietors are collective action rights holders who manage resources and are authorised to keep aliens out of the resource. Despite considerable power, these are still not owners and they are typically chiefs or trustees in a commons situation. Alienation rights are what separate the owners from the rest of the users. These rights (alienation) basically mean that they can sell or lease the resource if they so wish. It also means that they can be entrepreneurial with the access and authorised user rights that they can confer on deserving persons. This group would typically be the elite and the State in a commons situation.

The combination of the alienation and exclusion rights provides its holders with the incentive to sustainably manage its resources so as to maximise profits. It has the potential to put underutilised resources into productive use. Conversely the threat of overexploitation and higher environmental discounts lurk, depending on the owner's intentions for that resource (Schlager & Ostrom, 1992:256).

### 2.4.2 *De jure* and *de facto* property rights

Property rights can either be *de facto* or *de jure*. *De jure* rights are the formal and enforceable group which resembles the European derived norms. *De facto* rights are more informal and although they can be defensible in a court of law, they are inherently inferior to their *de jure* counterparts. When a government allocates a resource to a group of people, those people retain a *de jure* right to that resource, but the self-organisation that they do independently of the State to better manage their resource is *de facto* (Schlager & Ostrom, 1992:254).

Commons therefore have a combination of *de jure* and *de facto* rights and Ostrom's (1990) work, among others, has found legitimate and vibrant application of *de facto* rights to resources.

*De jure* rights are important because they are an enabling environment for productive, efficient and independent self-organisation to thrive. They also grant ownership effectively, reducing the panic that often triggers over exploitation due to desperation. Administration costs of resources are usually internalised by beneficiaries, significantly reducing inefficiencies and possible duplication. On the flip side *de jure* rights have been used to derive sweeping reforms which dismantle vibrant *de facto* systems (Schlager & Ostrom, 1992:256-258).

Rights are most useful when they guarantee outright resource ownership (Stroup & Baden, 1983:7) and, as the theme of this paper suggests, access and not ownership is usually guaranteed for millions of rural dwellers.

## **2.5 INDIGENOUS PEOPLE AND THE COMMONS**

The term indigenous tenure evokes thoughts of ancient and possibly outdated systems and people, a thinking which may justify the present predicament of people under the patronage of this system. It is, however, not wrong to associate indigenous tenure and communities because these have always been intertwined and feed off each other. Indigenous people therefore hold rights to land by virtue of historical occupancy and use. For them there is an unbreakable bond between livelihood and land (Elliot, 2004:130). Just like statutory laws and regulations, indigenous norms are flexible and resilient owing to their existence, despite the lower status afforded to them as compared to the latter. Hence there is a need to recognise indigenous communities and tenure as a present-day phenomenon that has been passed from previous generations. After all it is no longer the ancestors who guide current people, but the present generation continuously customise existing norms to suit the present situation (Cox, 1985:53; Alden Wily, 2011c:734).

Positively, some first world indigenous people have successfully contested their rights to the commons. Land rights and resources were legally reinstated to Australian indigenous communities in 1992, followed by Canada in 1997. These judgements set an optimistic precedent for the South African Richtersveld ruling that was handed down by the Constitutional Court six years later (Alden Wily, 2007:48).

## 2.6 COMMONS AND SUSTAINABLE LIVELIHOODS

The commons are normally the only real asset for the poor and this motivates sustainable management as they contribute immensely to rural livelihoods and survival (Stroup & Baden, 1983:11; Alden Wily, 2011c:739). Prior to the economic decline Zimbabwe's 35 per cent of the rural poor depended on common woodlands to survive and about 75 per cent of Zambian poor shared the same fate. Over and above the products that people harvest from the commons, there is an appreciation of the all-encompassing African culture which is accommodating to both the peasants and the wealthy. This livelihood is said to be lost at a mean rate of five million hectares per year (Alden Wily, 2007:44) and the poor are most affected. This is because they do not possess the economic muscle to make alternative arrangements for survival. According to Alden Wily (2007:47) in Africa alone 564 million rural dwellers depend on the commons and this figure was projected to rise to 1.3 billion people by 2050.

Livelihoods get threatened when people have to contend with erosion, pollution of streams and a decline in fish stocks as consequences of mining or logging. Food provision is compromised when people are suddenly prohibited from hunting after the establishment of protected areas and conservation in their locality (Khan, 2002:18). Shelter and medicines are not spared, as are religious and culturally sacred places.

The poor are the ones who experience the brunt of the degraded environment, frequently dispossessed and forced to seek refuge in marginal lands (UNDP, 1998:4; Porter *et al.*, 2000:56). At the centre of this dispossession is the ambiguity of ownership in the commons. It is therefore important for any self-respecting land reform to prioritise ownership as the first hurdle to get over to ensure that the commons are not vulnerable.

Ignorance of real estate values as can be derived from rentals of the land by mining or logging investors or prospective ecotourism and carbon credits in respect of large-scale forest privatisation for carbon sequestration through reducing emissions from deforestation and forest degradation schemes also compromises the livelihoods of locals (Murombedzi, 2014). Infrastructural developments, like road construction, which are meant to improve livelihoods, can worsen them further by introducing the threats of disease and violence for the locals. Uncompensated indigenous knowledge may also be solicited from locals (Elliot, 2004:130).

## 2.7 LAND TENURE

Tenure simply means landholding (Alden Wily, 2011b:1) or a “bundle of rights to land” (Grigsby, 2004:208). It is the relationship, regardless of cultural or statutory orientation, that governs individuals and groups with respect to land (FAO, 2002:7). Customary land tenure is the system most prevalent in rural African societies and it operates expansively in agrarian economies. It is usually unique to its host community because it draws from its norms, often leading to the misguided belief by customary residents that user rights conferred to community members can be defined as statutory customary freeholds (Cox, 1985:53; Alden Wily, 2007:44-48; 2011b:2). It is both a social system and a legal code.

Despite the advent of state making in the continent, customary tenure still dominates rural Africa (Alden Wily, 2011c:734-735). In fact, even industrial economies like Italy, Switzerland, Spain and Portugal, parts of Europe, North America and Oceania still have heavy influences of customary tenure in the rural parts of their countries (Alden Wily, 2011b: 2). It is because of this historical tie that the lack of statutory recognition of customary tenure does not deter residents’ consideration of themselves as the rightful owners of their domains (Alden Wily, 2007:48).

Tenure security is immeasurable and is largely what people perceive it to be; hence it adapts contextually. According to FAO (2002:18-20) tenure security is the assurance that a personal or a group privilege to a resource is acknowledged by others and is deserving of protection should conflicting claims arise, a *de facto* right. In the absence of this assurance people are easily evicted and instantly lose their livelihoods and this has often resulted in conflict, like the Sudan civil war which was sparked by disagreements pertaining to land ownership (Alden Wily, 2007:43-45).

Membership to social communities defends property rights and promotes social cohesion. Therefore, the total security enjoyed by a person or family is the cumulative security provided by all sources, be it the State, the community and neighbours. Governments and the formal legal systems can weaken community tenure by accepting illegal encroachment by foreign enterprise or by withholding some rights from the affected community. Conversely, the State may also protect the community from trespassers if it so wishes by providing physical security against encroachers. Tenure security may also be compromised when trying

to title or secure rights to uses unrecognised by the State. Uneven relationships as embodied by the elite and peasantry in communities may also threaten tenure security, with the wealthy cordoning off the best pieces of the land for themselves and simultaneously denying the poor access (Cox, 1985:52). Lastly, pandemics like HIV/AIDS also lend weight to tenure insecurity, particularly for widowed women (FAO, 2002:18-20).

## **2.8 TENURE (IN) SECURITY AND SUSTAINABLE LIVELIHOODS**

Land tenure (in) security influences the actions people take based on the anticipated outcome of those actions and the incentives available for managing a resource in a certain way (Schlager & Ostrom, 1992:256). As Monbiot (2003:373) says, most entrepreneurs are interested in getting a return on their investment and environmental issues are not important to them. Stroup and Baden (1983:11) reiterate this point, asserting that, “agents with no stake in the residuals of the bargaining process have no direct and personal interest in reducing the cost of that process”. This is the opposite of the environmentally sound management likely to be practiced by the locals who have strong bonds with the land and related ecosystems like coastal regions and streams (Ostrom, 1990:23; Elliot, 2004:130). As investors possess the economic resources to reinvest elsewhere, they are free to go when the inflicted degradation becomes a liability to their business, leaving behind an infertile and degraded environment for the poor to scavenge (Monbiot, 2003:373).

Vague tenure often leads to environmentally unfriendly ways to secure land as people scramble to establish a sense of ownership by whatever means, or desperately harvest the most they can while they can (FAO, 2002:23; Schlager & Ostrom, 1992:252).

There is a correlation between insecure land tenure and the poor land use which accelerates environmental degradation. Ambiguous rights remove the incentive to implement long-term resource measures. When uncertain of the ability to reap the rewards of restraint and hard work, people are less likely to use resources sustainably but may desperately try to harvest whatever resource as much as possible while they can still access it (Schlager & Ostrom, 1992:257). Likewise seasonal investors may look to maximise their returns within the allowed time frame. This outlook inevitably employs unsustainable methods and a discounting of massive environmental and social costs occurs (FAO, 2002:23; Monbiot, 2003:373; Elliot, 2004:130).

State grab of lands also are to the detriment of the environment and inadvertently induce an 'open-access' situation. Examples abound where grazing land restriction of pastoralists resulted in serious overcrowding of the next available resource as farmers had no indication when rights to that resource would also be recalled. An indirect consequence of this is that what institutional arrangements there were in the communities tend to fall away as degradation worsens (FAO, 2002:24; Monbiot, 2003:373).

## **2.9 THE POLITICS AND COMPLEXITY OF COMMON PROPERTY RIGHTS**

According to Müller (1997:114), environmentalism is inherently political because it not only leans on social action but looks to governmental involvement to achieve its goals. Common resources, and by extension common property rights, are politicised because powerful entities have a vested interest in them. These entities are: the State, which guards its interests and will encourage investment in their local communities even when it disenfranchises the majority; international financial organisations and the banking magnates, whose strict conditions attached to much needed financial aid have driven throngs of people to poverty; the conglomerates who are driven by the need to realise profits and will do anything in their power to maintain and support a dispensation that guarantees them nominally leased land and resources so they can maximise on profits (Porter, Brown & Chasek, 2000:35-78). The State, as protector and legislator, often uses the law as a tool to oppress or ignore the plight of its people, as do the elite, a cluster of political, professional and social heavyweights who wield remarkable influence on all spheres of government (Alden Wily 2011a:41, 47; Murombedzi, 2014). These roles are elaborated in the section below.

### **2.9.1 The State**

The organic role of the State is to protect its citizens, resources and frontiers. It is only the State that may negotiate with other States on behalf of its people, pledge or adopt regimes for its betterment. In their discussion of agents in the environmental arena Porter *et al.* (2000:35-78) assert that States also have, at varying degrees, the power to influence global environmental matters by either opposing or supporting certain regimes. Another avenue to make a State's position heard is through protocol memberships.

Soberly, Murombedzi (2014) asserts that the colonially induced concept of the inferiority of customary tenure is used to dispossess rural people of their rights, resources and democratic space of self-actualisation. A prime example is the Malaysian Sime Darby deal which was meant for oil palm production. Having been concluded without any community consultation, the deal was purported to negatively affect more than a million people of whom 150 000 would experience this negative impact immediately or within the first five years of the development (Murombedzi, 2014). Adverse effects included possible loss of homes, farms, cemeteries and sacred sites. Water supply resources and forests were not spared the threat. Naturally, communities raised complaints and were rewarded with a visit from the president herself (Sirleaf Johnson), who told them that the country's Constitution vested land rights on the government and that when the government signs any documents with foreign countries the communities had no power to change that, affirming Stroup and Baden's (1983:8) view that governmental control removes decision-making from the owners and bestows it in the laps of lawmakers and civil servants. Chastising the community, President Johnson is said to have warned them to stop undermining their own government and that such behaviour would result in investors leaving and Liberia regressing to days of old.

In the African battle for the commons, it is sadly the State that is most culpable of the disintegrating poverty levels and loss of livelihoods (Elliot, 2004:132). This is termed the "politics of exclusion". There remains a wide disconnect between the State's interests and those of the rural communities and so the degradation of land, a major threat to rural livelihoods, continues unabated (UNDP, 1998:6; Alden Wily, 2011c:736). Alden Wily (2007:44) and Elliot (2004:132) contend that States have the incentive to maintain the prevailing situation regarding the ambiguity of commons ownership. By taking cognisance of customary ownership and its implications on the commons, the State might lose on the additional revenue that it currently enjoys. It is therefore in the State's best interest to suppress customary tenure, often overlaying it with remote administrative rules and boundaries to extend the governmental authority (Ostrom, 1990:21; Elliot, 2004:132; Alden Wily, 2011a:20; 2011c:740-741; Peters, 2013:542, 548-549; Murombedzi, 2014).

In Zambia, Sudan and Nigeria for example, the British indirect rule excluded vast forests and pasture resources which were later classified as public lands (Peters 2013:545). Alden Wily (2007:44-45; 2011a:8-9, 31,40; 2011b:4; 2011c:733) echoes that governments take undue liberties with their citizens' resources, labelling them as idle to make way for state ownership

so that when governments broker deals with investors, the state officials are the ones who assume the leasing roles and not the representatives of the host community. To further maximise revenues by avoiding paying compensation and displacement governments typically channel investors towards unfarmed land, to nullify any resistance from resident communities. In the end it makes no difference to host communities whether these resources are sold or leased as lease terms are notoriously long, some going up to ninety nine years, excluding up to four generations from meaningful use of the resource.

Current top lessors in Africa are: the Democratic Republic of the Congo, Sudan, Ethiopia, Liberia and Mozambique, followed by Madagascar, Ghana and Zambia. Gabon, Congo Brazzaville, Cameroon and the Central African Republic are also some major leasing States. There is literature that declares that up to 70 million hectares of public land may have been leased between 2007 and 2011 (Alden Wily, 2011c:736).

### **2.9.2 The law**

A potent tool that States use to cheat their own people from their resources is the law. It is already known that land takings rely heavily on and actually worsen the weak legal status of communities to land (Alden Wily, 2011a:2). States deliberately live on the precepts of colonial masters, which treated unregistered, untitled land as vacant, paving the way for governments to lend or sell these lands to whomever they pleased at negligible cost, if any (Alden Wily, 2011c:740; Peters, 2013:546). Some domestic governments, like Gambia, Madagascar and Benin, slightly revised colonial laws, but left the vulnerability of common lands intact (by affording customary tenure an inferior status to its European derived property rights counterpart) to carry on unabatedly with plantations and mining activities, among others, at negligible cost.

Senegal and Malawi, through laws passed in 1964 and 1965, abolished customary ownership altogether and recalled original titles from chiefs, while the Sudanese 1970 law bestowed ownership of all untitled land to the government. In 1974 Cameroon, followed in 1975 by Nigeria, through law tenanted customary landholders. It is no surprise then that by 1990 more than half of Sub-Saharan African nations had more than half their lands nationalised, dispossessing their citizens. The law was used as a tool again when introducing wildlife, rangeland and forest legislation, which supported and protected the state ownership of these resources (Khan, 2002:16-21; Alden Wily, 2011c:742).

The law has stubbornly persisted with a dualism that continuously erodes customary tenure of any legitimacy. The prevailing attitude that statutory land tenure only applies to European property norms and is a misfit to custom still reigns supreme (Alden Wily, 2007:48; 2011c:733-735; Peters, 2013:549), enabling the demise of customary tenure through the weak legal status it currently upholds. Laxity of law can be blamed for the situation in Ghana where chiefs, anticipating more demand to meet urban expansion needs, have outright declared themselves as owners of the land. Custom dictates that they be trustees. Likewise in Kenya, where a land grab is said to have been spurred by the anticipation of law reforms that will disallow individual titling on community lands (Alden Wily, 2011c:733-735).

### **2.9.3 Status of land reform in Africa**

Some African countries have taken steps to change the tide. As will be illustrated below, accomplishment varies from country to country, each with its own drawbacks. Alden Wily (2011a:44-51) gives the following account on the status of land reform in Africa. Tanzania (1999), Uganda (1998), Ghana (1986, 1994), Mozambique (1997), Southern Sudan and to some extent the Republic of South Africa can be said to be the leaders in the move for statutory recognition of customary tenure. In these countries community engagement is mandatory for investors looking to establish businesses. However, the law does not give benchmarks on what would constitute acceptable community involvement. As a result no significance is placed on majority community participation nor is there a succinct requirement for consent to investment by affected communities. The absence of local governments or assisted programmes and thrusting disempowered communities to negotiate with clever business people have been major drawbacks (Alden Wily, 2011a:44-51).

The South African Constitution (1996) entrenched recognition of customary tenure. Further the passing of the Communal Land Rights Act 11 of 2004 was meant to fast-track restitution processes, but it encountered a setback when it was withdrawn due to its preference for chiefs as rightful owners of the commons which was decried as undemocratic.

Southern Sudan passed the 2009 Land Act which for the first time recognised public land as a residual category that could only be affixed to areas where customary tenure did not apply. Under this law common properties can be registered by individuals, families and even communities, and open access are only allowed where a resource has been declared as state

property (Alden Wily, 2011a:44-51). Although formal consent from affected communities is not a requirement for business establishment, compensation is non-negotiable and is fixed at the same rate as statutorily held property. Inefficient community involvement and lack of vibrant support structures are the drawbacks for the Southern Sudanese.

For all its aggressiveness Mozambican tenure reform (the 1997 Land law calls for customary tenure to be recognised even when areas have not yet been statutorily registered) law does not provide the administration and local level support that would make land restoration a reality for displaced citizens (Alden Wily, 20012:23). While Benin (2007), Cote d'Ivoire (1998), Burkina Faso (2009), Niger (1993, 2000), Angola (2004), Senegal (1964, 1996) and Lesotho (2010) do acknowledge customary tenure, they do not endow it with the same legal stature as private property. Despite Benin's law being a result of a vigorous local consultation and acknowledgement of land holding, fishing, pasture and involvement in delimiting the commons with every right assigned, it still does not constitute full title as per European norms. Certificates of ownership can be issued on request and commons are legally accepted as collateral for credit.

Countries with mixed support include Botswana (1968), Namibia (2002) and Madagascar (2005). Under these countries only houses and farms can be registered under customary tenure, leaving the commons still vulnerable. In Botswana this vulnerability has been exploited by the elite mainly as cattle ranches. In Namibia, although some schemes have devised competitive benefit sharing, the elite has grabbed about 2 500 hectares of the commons in respect of boreholes and fencing rights. Even though Madagascar devolved 1500 rural communities, the country still confiscated historically owned grasslands for the State and it is leased wantonly (Alden Wily, 2011a:44-51).

Uncertainty clouds the Swazi, Malawian and Kenyan efforts at customary tenure recognition. Swaziland started a land reform but it lost traction in 1999. Although Malawi's 2002 Land Policy was set to restore community land, its principles were to privatise and formalise land sales essentially extinguishing customary tenure (Silungwe, 2005:1). It did not see the light of day, largely due to resistance from chiefs who felt that their powers were being circumvented. In Kenya recent strides seem to have triggered a land grab as councils swiftly register untitled land in anticipation of a law outlawing this (Alden Wily, 2011a:44-51).

Northern Sudan (1984), Cameroon (1974), Mali (1993, 1996, and 1997), Chad (1967, 2000) Democratic Republic of the Congo (1967, 1973, and 1980), Gabon (1967) and Somalia (1975) have, through laws passed in the bracketed years, shown the least support for customary rights recognition (Alden Wily, 2011a:44-51).

#### **2.9.4 International law**

International law remains ineffective as countries are not bound by its precepts and there are no mechanisms in place to enforce it because of sovereignty limitations. The prevalent lack of political will, manifested by loud political silences, also undermine international law (Elliot, 2004:20-21). This is why, despite the Rio Declaration on the legitimacy of indigenous people and the call for governments to not only recognise but support their identity, culture and interests, a majority of rural residents are just as poor and vulnerable.

#### **2.9.5 The elite**

The elite are a group of individuals who endeavour to manipulate policies in which they have a vested interest (Stroup & Baden, 1983:23). Their contribution is crucial for the survival of the land expropriation trend prevalent in Africa today. It is usually easier for them to influence outcomes as they constitute traditional, political, economic and not unusually legal and military influence (Cousins, 2006:506). Such attributes make it easier to facilitate cheap leasing or sale of land and result in a combination of persistent self-interested groups that exert remarkable control over certain policies. Rights in rural Africa depend on social status and identity based on power relations; they are in fact politically entrenched (Cousins, 2006:506). A common trend in Africa is for people to retain their rural land even after relocating to the city or even overseas. Over time urban dwellers gather enough influence to annex large farms from the commons, effectively making them statutory private property (Alden Wily, 2011b:3). Once privatised, these farms are sold off to investors without any regard for communal reaction. Due to improved economic status, wealthy villagers may also maintain larger than allowed numbers of livestock which degrades the commons to the detriment of the resident rural citizens.

It is worth noting that the elite have been around since time immemorial as per Cox's (1985:52) assertion that customary tenure evolved with communities and there were the lords and peasants. Such segregation has always meant that the wealthy members can hoard more resources. After all, they possess the economic power to make this a reality; hence Alden

Wily's (2011c:737) assertion that capitalism only made a bad situation much worse. The United Nations Human Development Report Overview (UNDP, 1998:4) adds that access favours the wealthy at the expense of the poor, that is, the urban residents rather than the rural.

The elite yield greater advantage in rent-seeking opportunities afforded by foreign investment as seen by chiefs conveniently assuming ownership to harvest these gains. It is much to the poor's detriment when interests of the local elite and international investors converge, which they often do, in for example agribusiness ventures (Alden Wily, 2011c:733, 737-740). In short, the better off benefit from abundance of consumption while the poor languish from the deprivation arising from environmental damage (UNDP, 1998:4).

The return of wealthier community members who migrated to cities often alters the existing institutional arrangements of the community (Brown & Wardwell, 1980:51-53; Falk *et al.*, 2003:340; Alden Wily, 2011a:41; Connell & McManus 2011:27-28). In Pakistan, for example, large property owners have a preference for leasing their farms to wealthy foreign investors as opposed to the locals (Alden Wily, 2011a:40).

#### **2.9.6 International financial organisations**

According to Porter *et al.* (2000:53-58), multilateral financial organisations like the International Monetary Fund (IMF), the World Bank and regional banks are the modern day tools used by former colonial masters to retain influence in the commons. The vast financial resources in their possession made it easy for them to attach strict conditions to developing countries who were only eager to receive financial backing (Alden Wily, 2011c:739), a discourse which saw the least powerful countries surrender control of their financial planning for imposed mercantilist approaches (Shah, 2013). Shah (2013) adds that the hard-hitting approach of financial institutions to developing countries irreparably destroyed some ecosystems and indigenous communities.

Reinert (2009:1-34) blames this move on the "terrible simplification" of solutions derived by First World countries for the developing world. There is a tendency of First World countries to apply diligent research and resources for domestic policy formulation but to easily impose abstract models to distant places like Africa. The shortfall of this approach by the First World governments is that they are usually so far removed from reality that imposed solutions end

up worsening the problems. An example is how in the 1970's the World Bank and its structural adjustment dogma drove developing countries into deeper poverty by allowing dispossession and therefore inducing migration to marginal lands. Environmental and social costs of funded projects were highly disregarded in favour of centralised capital-intensive projects. Peters (2007:7) affirms that up to the 1980's the World Bank's recommendation to borrower States was to "replace customary systems with titling and private property rights which were posited as necessary preconditions for modernisation and development".

In a Brazilian abstract theory imposition experience on declining fishery yields the government and the Banco do Brasil assumed that newer equipment would improve yield and introduced loans for fishermen without familiarising themselves with the strategies already in place. The move resulted in the elite - who by the way possessed no fishing experience - buying latest technology fishing equipment (Schlager & Ostrom, 1992:255). The indigenous fishers were marginalised and conflict ensued, resulting in death and equipment losses as fishermen abandoned their old fishing strategies and started fighting for whatever fishing spot they could get. Overharvesting ensued and the fishery was eventually abandoned. An open-access situation was created because of sweeping reforms by the Brazilian government and bank that disregarded the historical *de facto* arrangement that was thriving before the invasion the same way that IMF and World Bank solutions refuse to consider local working arrangements.

Clay and Reardon (1998:3-7) argue that had the financial agencies applied due diligence and measured the implications of tenure insecurity on the poor, considered the commons contribution to their livelihoods and the possibilities of an economically inclusive trajectory, the reality would be a different and positive one because they would have reached holistic strategies.

As a legacy to the abstract approaches employed by the international financial institutions, countries like Botswana and Brazil incurred desertification (Porter *et al.*, 2000:53-58). As recently as 2002 the IMF compelled the Malawian government to sell its excess grain so as to repay a debt. This happened just before a food crisis struck the country, driving 7 million people into hunger (Shah, 2013).

As it became apparent that prevailing statutory adjustment policies were not stimulating economic growth as acclaimed (Silungwe, 2005:38), the World Bank's attempt at amends after wreaking havoc in developing countries saw the establishment of the Global Environment Facility with a mandate to provide supplementary finance to projects with added environmental benefits. This effort was watered down by political apathy and environmental degradation continued. The Bank further pledged to limit funding on projects that could potentially devastate critical ecosystems. Internal constraints to the Global Environment Fund were poor staffing and financial limitations. In the end renewable resources and loss of biodiversity remained unlinked (Porter *et al.*, 2000:53-58).

Taking refuge in its comfort zone, the World Bank went on to fund 170 loans valued at \$24 billion for governments without commitment for significant greenhouse gas reduction. The projects had a collective carbon production forecast of 10 billion tons in their lifetime. The excuse offered for this move was that renewable energy was a relatively new field; hence there was a shortage of specialists (Porter *et al.*, 2000:53-58). For its part the IMF assumed an indifferent stance, pleading duplication as the World Bank was already seen to be doing something to turn the tide. Anyway, perhaps conveniently, the IMF efforts at restitution were met with resistance by host governments' intent on maintaining the status quo.

Ambivalence of the World Bank's dealings or in a display of its core political preferences it went on to fund the Indonesian government to the tune of \$400 million post the 1997 – 1998 collapse, which was as a result of distorted and corrupt policies in the first place. In the early stages of negotiations it seemed the bank would enforce some strict conditions that encouraged sustainable management of resources, but the Indonesian government reneged on a number of these without consequences (Porter *et al.*, 2000:53-58).

### **2.9.7 Conglomerates**

Well known for their reliance on their strong economic and political accreditation, conglomerates are significant partners in the suppression of customary tenure. They have vested interests in environmental regimes that they may perceive as threats to their businesses and they are quick to use their connections to ensure that strict environmental regimes are not adopted (Porter *et al.*, 2000:71-76).

## **2.10 INTERNAL STRESSORS IN THE COMMONS**

Internally commons may be under threat as growing populations need space for residence and food cultivation. Immigration also puts strain on the commons as new residents are allocated common land to cultivate. Local chiefs, much like the Ghanaians, assume the role of absolute landholder to capitalise on revenue accrued by land leasing. The poor in the communities thus remain losers (Alden Wily, 2011a:43; 2011c:45).

## **2.11 THE LIFE CYCLE OF THE EUROPEAN COMMONS**

The advent of common property can be traced back to medieval English times (Cox, 1985: 49). The tragedy as espoused by Garret Hardin (1968:1243-1248) was a foreign concept for hundreds of years while this management style flourished. Its tenets were clear regulation and exclusivity guided by community-derived bylaws. Rights to the commons were either as a prior claim or a grant by the lord in return for services. Conservation and regulation were strong pillars of the commons system.

The institutional frameworks governing the commons were inclusive (Acemoglu & Robinson, 2012:317) in that both the elite (lords) and tenants (peasants) could influence strategy. In Cox's account it is clear that continued agreement of constituents was always necessary for maintenance or initiation of certain trajectories. The tenants were never at the grace of the lords, but had equal right to share in the profits generated by the commons. Claims to the commons were a compulsory condition and their management and representatives were democratically elected and involved in the cultivation of the commons (Cox, 1985:45). The assembly of cultivators and the manorial court coordinated and regulated the seasonal activities for the whole community.

To illustrate the sophistication of the commons system it is necessary to interrogate its principle. Commons were varied, for example, pasture, estover (the right to extract wood from a forest for repair of farm equipment or gates), turbary (the right to cut grass for fuel) and piscary (the right to fish). The right of pasture, for example, was further divided into common appendant and common appurtenant. The appendant was the right of villagers of the same community to pasture their animals in the lord's uncultivated land during the planting season. The number and type of animals they could pasture was limited, and as a check a villager was not allowed to pasture more animals than he could sustain in the summer, a time

when they were expected to use their own land and stored hay (Cox, 1985:53-55). This here is a check against overuse.

The common appurtenant was a grant by the lord to a fellow villager or *outsider* (emphasis my own) for undisrupted use of the commons and this right was on occasion extended to include animals like goats and pigs. Grigsby (2004:213) refers to this as reciprocity among communities. This shows that, contrary to popular belief as per Hardin, the commons were never unrestricted just like they were never for public consumption. The communities were autonomous, using the manorial court and village meetings to discuss and mediate on matters, and where issues spread to other villages all tenants justly represented or present would meet and deliberate on issues. Subsequent agreements by neighbouring villages were recorded as village bylaws.

After harvest, all commoners were allowed to pasture their livestock and collect timber and any other commodities that their resource could afford them. Interestingly, the commons were also flexible to immigration. New immigrants were afforded a yearlong probationary period after which they were expected to follow rules governing all inhabitants (Cox, 1985:50-60).

## **2.12 DEATH OF THE EUROPEAN COMMONS**

The English Common Law passed before the Roman invasion, which purposed that some natural resources should never be owned by groups of individuals (Cox, 1985:52) and the peasants were excluded by the elite under the guise of protecting resources from over-extraction. Law breaking, which saw some commoners graze immigrants' livestock and a general fatigue to follow up on misdemeanours also undermined the commons. The Parliamentary Enclosures Act of 1770 – 1880 claimed the best land, subjected it to innovative agricultural methods and left the already degraded land to the poor. Some writers contend that the commons did not die because of innate flaws in its make-up, but because it got caught up in a transitional era, battling with the combined pressures of elitist land reforms, corruption, innovative agricultural methods and especially the significant strain of the industrial revolution (Cox, 1985:59-62; Schlager & Ostrom, 1992:258).

### 2.13 EVOLUTION OF THE AFRICAN COMMONS

African commons were borne out of the tug between the European colonisers who were eager to diminish the native's right to the land and African naivety. For the Europeans, the primitive State of Africa reinforced mistaken beliefs that Africans were a part of nature and therefore incapable of self-governance. This view was catalytic in the ignorance and destruction of primitive systems which governed the interrelationships between nature and humans (Swilling & Annecke, 2012: 15). African mythical beliefs that only God owned the land, that their occupancy was tenantable and that those communities collectively managed resources opened an avenue for European exploitation (Alden Wily, 2013). This ambiguity of legal status, extent and power of the communal community effectively degraded customary tenure in the eyes of the Europeans (Cousins, 2006:502-503), who then assumed ownership of the land. Of the five bundles of rights identified by Ostrom (2008:3), locals were only given access and withdrawal rights. This move ensured that locals could sustain themselves without becoming a burden to their colonial masters (Cousins, 2006: 502-503).

Contrary to this European preference, however, and much like the European commons that were destroyed prior to the scramble for Africa, Africans had governed their resources communally and in a sophisticated manner for decades. They were characterised by, among others, inclusivity and a clear distinction between individual and common property; they were community-based with a degree of autonomy even within the community; they were acquired by birth, marriage or affiliation; and their hierarchical control was marked by decentralised decision-making (Cousins, 2006:490-494). The inherent tie of communities and communal governance is perpetual, as Cox (1985:53) asserts that common property rights developed alongside nucleated communities. Alden Wily (2011a:5) adds that community composition varies by country or circumstance and ultimately by the nature of shared resources; hence their resilience despite the onslaught of pre- and post-colonial policies.

Literature points to secure tenure before colonisation even though it was not defined by European terms. Land and resources were once so plentiful that people self-allocated their land with effective use of appropriated land as the only requirement for continued use. During those times land was considered vital for livelihood but of little value in itself (Cousins, 2006:488-510). Villages often comprising of lineages were organised in communities under the authority of chiefs or elders and the political and social nuances influenced these formations. There existed strong mythical beliefs that the land belonged to

the ancestors or, as Alden Wily (2013) asserts, God. Rights to land were garnered by marriage, birth, friendship, political and social alliances. Marriage linked families and added to the complexity of tenure (Alden Wily, 2011a:5). According to Cousins (2006:494), anthropological studies reveal that individual and communal tenure overlapped and coexisted. Despite the sense of security pertaining to individual rights tenure, whose delivery was decentralised to the familial level, this was only assured if the head of the tribe did not revoke it. Popular reasons for such evictions were allegations of witchcraft.

### **2.13.1 The role of authority in Pre-colonial Commons**

*Kgosi ke Kgosi ka morafe* (A chief is a chief by the grace of the tribe) is a Tswana proverb that encapsulates the democracy exercised in pre-colonial commons. Traditional leaders' authority was never absolute and hence they ruled in consultation with inner councils or the elders. Flirtations with despotic ideas were rewarded with warnings from the inner council and finally desertion. This role was always being reproduced to keep pace with the times (Cousins, 2006:493; Alden Wily, 2011a:5).

Although land was said to belong to the chiefs or traditional leaders, this ownership was not in the European sense and their scope was primarily limited to frontier protection, regulation of resource use, ensuring land fertility and mediation within and with neighbouring communities and land allocation was left to the villagers. In Plateau Tsonga, for example, men selected their sites and laid claim to that which they had cleared much like John Locke's creation of property (Cousins, 2006:493; Locke, 2003: 374-377).

### **2.13.2 Gender marginalisation**

According to Chu (2011:35-39), gender marginalisation has only been afforded fleeting mentions in land tenure discussions. In Africa, women's rights have always been understood in the broader context of a family; as a daughter or a wife (Cousins, 2006:506). However, prior to colonial times and land scarcity, women were free to select their own fields on the condition that they did not impinge on another's property (Cousins, 2006:507; Grigsby, 2004: 212). They could keep these fields for life and they would only be inherited by the youngest son upon the woman's passing.

Colonial developments saw males being awarded higher status in issues pertaining to inheritance at the cost of women. Even when women had claim to land due to cultural reasons, these were constrained as the colonisers viewed them as a hurdle to development (Cousins, 2006:506). Widowed or divorced women's efforts to lay claim or gain access to land are often derailed (Grigsby, 2004:213; Alden Wily, 2011c:737). According to the FAO (2002:25), urban migration gives rise to socially disempowered female heads of households. These women are typically uneducated, widowed, single parents or wives of migrant workers or the elderly, rendering them ineffective in decision-making and they do not influence communal governance. Traditional law affords them little or no security. Any attempts to have their voice heard can incite conflict. Despite these obstacles the role of women in the provision and preparation of food for the household has not wavered (Grigsby, 2004:216). It has been worsened by the ever growing population. Even where men are present, food production still lies on the women's shoulders, producing up to eighty per cent of food stuffs in Sub-Saharan Africa. And so the sufficiency of male involvement in recent land reform efforts, based on the assumption that women and children are their beneficiaries, is not only wrong but continues to compromise women's rights to land as well (FAO, 2002:26).

## **2.14 DEMISE OF THE AFRICAN COMMONS**

At the core of colonial rule indigenous people, particularly settler communities were allowed occupancy rights and not property ownership as per European norms. The belief or assumption that Africa was devoid of ownership prior to state-delivered entitlement driven by the Europeans cemented this stance, conveniently ignoring that properties were owned by tribes and clans, i.e. communities or villages (Alden Wily, 2011c:733; Swilling & Annecke, 2012:11). Hunter and gatherer communities became landless by default (Monbiot, 2003:373-374). Under this regime indigenous people were allowed to occupy and farm and all uncultivated land automatically acquired public or state ownership status (Alden Wily, 2007:44). From colonial times to the present day independent States major land appropriations are carried through by governments.

Effects of an expanding population and sophisticated agricultural advances compromised the natives' hold to the land. A growing scarcity of land, hastened by relocation of natives and large-scale protection of areas, further compromised tenure and brought about a conceptualisation of rights which saw an emergence of individualistic rights to resources.

Communities in land-sparse areas tried to get exclusive control of those areas and so the chief's role as the land holder was often cemented (Cousins, 2006:500-510). During this time natives were prohibited from selling land and communal land was off-limits as well. While others chose the individual tenure route, scores of Africans turned to communalism, especially common tribes and clans, if only as a "strength in numbers" strategy trying to hold on to the land while retaining some level of influence on the administrators, i.e. the chiefs, to ensure that personal interests were still looked after. Delimitation ensued after strengthening political affiliation to specific leaders and domains, unlike before when domain boundaries had been vague. Chiefs graduated to local administrators and their roles became increasingly autocratic (Cousins, 2006:500-510).

In South Africa different pieces of legislation meted the assault on the indigenous people's right to the land: The first was the 1913 Land Act, which lay the foundation for segregation that would follow. It detailed the conditions on which natives could acquire land (Cousins, 2006:511). Tenure security was compromised, bequeathing land limited, fixed sizes of property were introduced and how much land a native could be allocated was suddenly a prerogative of the colonial masters. Land said to be belonging to the State was used to accommodate resettled people. Thereafter, the Natives Administration Land Act of 1927, which saw the introduction of domain boundaries over which the chiefs could rule, was introduced. It was followed by the Bantu Authorities Act of 1952, which introduced authoritarian traditional regimes, eroding the checks and balances that the indigenous systems had kept on their leaders. Leaders soon became susceptible to corruption as they were no longer accountable to their subjects or inner council. Vast amounts of land were transferred to "self-governing territories", which were in fact governed by the colonial masters (Cousins, 2006:500-510).

## **2.15 THE CREATION OF OPEN-ACCESS RESOURCES**

Enclosure attempts driven by theories of the hopelessness of people to self-manage only served to create the open-access and environmental resource degradation it sought to prevent. According to Ostrom (1990:1-32) it is essential that pluralistic approaches be embraced when dealing with complex matters such as the commons. The environment can benefit tremendously if the State were to treat communities as rational human beings capable of divorcing destructive behaviour. This is an attribute that needs not only acknowledgement but

one that can be enhanced by collaboration between the State and communities (Ostrom, 1990:2). While the conventional theory favoured by the state is brilliant in predicting outcomes where users do not know each other, it falls severely short when it has to predict outcomes where users know each other and are able to collectively manage a resource sustainably to avoid overexploitation (Ostrom 1999:3). The State therefore needs to avoid the tendency to apply conventional theory to all commons scenarios, but should rather work on developing a reliable, collective action theory that would encourage emergence of resilient, cost-effective property rights regimes for different resources.

The benefits of engaging pluralistic approaches include the gathering of reliable, on-the-ground data which would result in custom solutions. Ostrom (1990) warns that complete autonomy of the commons from the state is also not an answer as communities can only benefit from the rich and robust resources that the State has. There is, in fact, an untapped opportunity for a rich scientific and indigenous knowledge exchange. Rather, local authorities should be empowered to achieve some autonomy and be able to preside over some matters to not only legitimise their role, but to avoid overburdening the State with administrative affairs (Ostrom 1990:1-32; Schlager & Ostrom, 1992:260).

When the elite and the peasantry are similarly affected by the current pattern of use and trust each other to keep promises that ensure sustainable management and also have considerable independence to self-organise without external influences, common property resources would be better managed (Ostrom, 1999:4).

## **2.16 DISCUSSION AND CONCLUSION**

Land tenure (reform) is a highly sensitive and complex issue that requires due diligence and a great deal of patience from all parties concerned. It is necessary to concede in the face of so much poverty and resource degradation that the legacy that many developing countries bear today is a direct result of centuries-old practices that entrenched constructs that can never be reversed overnight. That said, the very ingredients that delivered the present reality are the ones that can work towards a better future. There is still much need for collaboration between the State, the elite, local governments and international partners with a changed attitude, one that seeks to redress the wrongs of the past.

States as leaders and protectors of frontiers should be willing to thoroughly and honestly involve their citizens. Land tenure is certainly complex as community composition and therefore norms are not homogenous throughout Africa, and some countries are home to different tribes. Appreciation of this fact makes it necessary to treat each case (community) on its own merits and demerits. Much like the international financial organisations' abstract and theoretical thinking, States have been too far removed from the community commons they administratively owned, controlled and got massive revenue from. It is important, therefore, for the State to draw closer to these communities and observe so that all-encompassing solutions can be reached (Clay & Reardon, 1998:4). The State also, by virtue of being custodian to various wings of government, needs to establish links within itself so that solutions are holistically made. Active and honest communication between ministerial portfolios will better inform policy than when decisions are made in isolation of other equally important variables in the poverty cycle and threatened livelihoods. Furthermore the State must be willing of itself to curtail corruption as officials may be used to getting incentives to ensure that deals go through.

A theme that came through in this analysis is how the law was used to disenfranchise so many people for so long, from Europe to Asia to Africa. It is perhaps the very same law that is the biggest piece of the puzzle, the one factor that can be changed to assign as much vigour to land restitution as was given to expropriating land from the masses. While it is a relief to note successful indigenous land claims as recorded for Australia and Canada and their said positive precedents for the Ritchersveld community, much still needs to be done. The effort and commitment of the Tanzanian people to the land reform discourse is also welcome. Tanzania, through their new land provisions of 1999 fully legalised customary tenure and bestowed full authority on villages to govern their local areas. As such local communities were made custodians of their forests and the country's rural titling programme is the most advanced in the continent (Alden Wily, 2011a:8, 15, and 16). There is hope that other African countries will look up to these countries as they chart their own land reform endeavours.

Even though countries like Tanzania and Mozambique (Alden Wily, 2011a:44) are far ahead of their contemporaries, it is imperative that they do not bask in this status and rest on their laurels. A case in point is Botswana who, despite having started on land reform as early as 1968, still has vulnerable commons abused by the cattle ranching elite of the country. Title to residential and farming land is not enough for the sustenance of livelihoods. People still need

secure tenure in the commons. A salient point also is that it is not enough to legislate if the laws are not operational. So the commitment of the State calls for both the provision and support structure at local level for reforms to take place. It is imperative that countries adopt a continuous improvement approach and see this exercise not as a destination but as a journey. Women, children and indigenous people also need to be at the forefront in the agenda for land reform. Literature has shown their immense contribution in the household and the adversities they face with regard to land ownership. Cognisance needs to be paid to the changing demographic: more women are widowed as a result of HIV/AIDS; old women are raising their grandchildren; women are choosing to stay single; and countless divorces happen (FAO, 2002:26). It is time that the view of women being seen as subservient and acknowledged only as wives or daughters, is radically changed. They are after all heads of many a household and need to provide and sustain their families just as males are perceived to be.

A paradigm shift needs to occur in the way that customary tenure is viewed. As discussed in this chapter, customary tenure norms evolve with communities and rural people of today are to some extent more modernised than those of yesteryear and closer scrutiny would reflect this. Customary tenure needs recognition as an independent landholding system with partaking communities afforded the same respect on their resource as the individual or company that owns land through titling.

It is necessary that the State and the elite are willing to abandon the extractive economics and their heavy reliance on disenfranchising legions of poor people for the benefit of a few. They must be willing to start on a different trajectory, one that includes all sectors of the country in the economy. Although this may mean reduced revenue to the State and elite, it would serve countries well in the long term. And starting on this new trajectory does not have to be a radical thing, but rather gradual, with an awareness of the complexity and sensitivity that land tenure presents (Acemoglu & Robinson, 2012:318, 333).

There still remains a shortfall in the laxity of international law application at local levels. Perhaps it can be entrenched by raising the regional voice. Africa, for example, has the African Union and for the southern countries the Southern African Development Community (SADC), organisations which can be used to lobby for improved tenure reforms across the region.

## 2.17 SUMMARY

This chapter has defined the commons and the parties that have a vested interest in them with regard to Sub-Saharan Africa. The bundles of rights that exist within a commons and the implications for the different groups of holders were also explored. The commons were also illustrated as the cornerstone of livelihood sustenance for the poor.

The dual tenures, i.e. formal title and the informal customary norms, and how this duality was first created by the combined forces of conniving colonial masters and the gullibility of Africans and later encouraged by independent governments to continue benefitting as their predecessors, the colonialists, had, was reflected on.

To demonstrate the complexity and politicisation of environmental affairs with regard to common property rights and land tenure systems, the State, elites, law (international and local), international financial organisations, conglomerates and communities, who all have a vested interest in the governance of the commons, were discussed, with the conclusion that it is perhaps the combined efforts of this contingent that could turn the tide towards sustainable and sound environmental management.

It is also important to concede that it is not just external forces that threaten the integrity of the commons. Internal disputes can also wreak havoc; hence collaboration between the government and local communities would be a more viable option towards sustainable management of resources. Accordingly, the section traced the assault on the commons from Europe to Africa. The common method to emerge was the declaration of vast resources as idle, then designating them public or state-owned resources and then leasing them to foreign businesses or the elite. It also highlighted that the elite is not necessarily locally resident as some reside in overseas countries, but maintain ownership of resources in their home countries. They independently lease their resources to the highest bidders in favour of personal profits. While all these forces are at play, the commons are inadvertently turned into open-access resources, a trend sustained by the misinformed observations by external entities that are quick to impose abstract solutions.

The following chapter traces the land tenure of Swaziland since the State formation in the 1870s to present times with special reference to how the reform has always favoured the elite. The composition of the Swazi elite, the royal family, is also scrutinised, as are specific issues relating to gender marginalisation, conflicts and some examples on how livelihoods of the poor are continually marginalised in favour of the wealthy few. The laws which the Swazi government employs to embed such inequality are explored and lastly the status of land reform in the country.

## CHAPTER 3: THE POLICY AND INSTITUTIONAL FRAMEWORK FOR LAND TENURE IN SWAZILAND

### 3.1 INTRODUCTION

This chapter is an overview of Swaziland land relations from its advent as a State to present times. The special focus is on land and land relations in the country. As present-day land relations are a result of past events, notably colonisation and independence, it is imperative that this narrative looks back at the policies surrounding those events. First the commons in the Swazi context are discussed together with land tenure. The roles of the State (past and present) and the applicable institutions, the land laws of the country, the oligarchy at the north and the southern issues of poverty and compromised livelihoods, conflicts and on-going gender marginalisation are explored. Attempts and status of land reforms are also discussed.

### 3.2 LOCATION

Swaziland is a tiny kingdom landlocked by the expansive Mozambique and South Africa (Lankford, 2007:7). It is home to about 1 419 623 people, growing at a 1,17 per cent rate since July 2013. Its geographic coordinates are 26 30 S, 31 30 E. With a total land area of 17 364 square kilometres (land 17 204 square kilometres, water 160 square kilometres) it is mostly hilly and slightly slanting, offering a scenic view to the nature enthusiast. It is a monarchy with an administrative capital in Mbabane. Lobamba serves as the royal and legislative capital. The country's urban population is 21,2 per cent, with a 1,19 per cent "annual rate of change (2010–15 estimates.)", leaving 78,8 per cent in the rural areas. About 10,08 per cent of the total land area is good for crop cultivation (Central Intelligence Agency (CIA), 2014).



**Figure 3.1:** Map of Swaziland

Source: CIA (2014)

### 3.3 THE SWAZI ENVIRONMENT

Swaziland boasts a varied and vibrant ecosystem necessary for game and livestock survival (Tefera, Dlamini & Dlamini, 2009:675) with 32 per cent of the total land area covered by forests, although they are visibly thinning as an effect of growing livestock and people dependent on them for survival (African Development Bank, 2013: 10). A large proportion of Swazis rely on subsistence agriculture (Vandome, Vines & Weimer, 2013:1).

Like the rest of the world, Swaziland's deteriorating environment caused the government to take a bolder stance to protect what is left. The alarming rate of invasive weed encroachment, soil erosion, inadequate potable water supply, loss of biodiversity due to extreme hunting and overgrazing, and thinning forests point to inappropriate and poor land use (Swaziland Environment Authority: Swaziland Report to the World Summit on Sustainable Development Report (SD WSSD), 2002:14; CIA, 2014).

Since 2006 Swaziland has been an active player in the sustainability arena. To date she is a signatory to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973); the Convention on the Control of Transboundary Movement of Hazardous Waste and their Disposal (Basel Convention) (1989); Convention on Biological Diversity, 1992, and the Convention to Combat Desertification (1994) (Bray, 2006:527-548).

### **3.4 COMMON RESOURCES IN SWAZILAND**

In Swaziland commons are primarily unallocated land within the Swazi Nation Land (SNL), where all community members can extract fuel wood, poles, special grasses, herbs and some wild fruits (Stringer, Twyman & Thomas, 2007:388). Chiefs allocate the rest of the land to residents on behalf of the King for domestic purposes (Irin News, 2013). Due to the peculiarity of the SNL being owned by the King and not the people, the SNL is understood as a commons of itself. For example, individual cropping lands are open to all livestock owners to graze their cattle and enclosure ensues during the ploughing season, a period where livestock is again set on communal rangelands (Dlamini & Masuku, 2011:301; Irin News, 2012).

The commons have always been treated in a conservatory manner. Traditional conservation mechanisms include specified game hunting periods outside which people can be persecuted. There is occasional relaxation of pasturing land to allow natural restoration and seasonal consumption of certain grasses such as those meant to make sleeping mats (Whelpton, 2005:154). While these strategies have sustained the Swazi environment for decades, the effects of a growing population on the environment can no longer be ignored. The commons is presently accountable for 81 per cent of livestock (Mkhabela, 2006:59). Land has shrunk considerably since independence (van Waveren 2007:192-195), as demands for residential land mount and by extension reduce cultivable land. The situation is so dire that some communities are already saturated while others are approaching the same tragedy. It is against this background that several groups and scholars have called for a standardisation of customary law, especially with regard to land tenure and tenure security to better meet the needs of a growing population in a strained environment. Monadjem and Nkosi (2001:16) add that Swaziland is grappling with how to include the rural poor on activities that can lift them from poverty and promote sustainable development despite the rising population. The International Fund for Agricultural Development (IFAD) (2007: 4), van Waveren (2007:

195), Dlamini and Masuku (2011:302), and United Nations (2012) make a case for secure tenure charging, that it would encourage cautious resource consumption as owners would be vested to resource longevity and improvement of their own livelihoods. Additionally, ownership comes with the benefit of using land as collateral as people exit the vicious cycle of poverty.

### **3.5 SWAZI LAND TENURE**

The history of Swazi land tenure dates back to the 1870s (Mndzebele, 2001:1; Mabuza *et al.*, 2012:71) when most African countries were colonised. Land in Swaziland is broadly classified into three categories. Firstly title deed land (TDL), which constitutes about 25 per cent of the land, is bought and independently owned. Secondly, crown land, constituting about 0.4 per cent, is reserved for government national infrastructural purposes and, thirdly, SNL constitutes about 74 per cent. This portion is held in trust by the King of Swaziland (Scott, 2006:168; Lankford, 2007:11; Dlamini & Masuku, 2011:301).

Swazi Nation Land is further subdivided into three categories: about 7 per cent is chartered by big companies for agricultural business and forestry, 12 per cent was allocated to MOAC and SNTC for cattle ranching and conservation respectively and about 50 per cent of SNL is customary and predominantly accommodates rural dwellers. Citizens are either bequeathed or acquire this land by pledging allegiance to a chief and the inner council in a process called *kukhonta* (Dlamini & Masuku, 2011:301). On succession of this system the new community member is allocated land for utility purposes – to build a house, farm, bury their family and bequeath to their family – but they cannot sell or lease or mortgage this property as they do not principally own it. Van Waveren (2007:190) states that the traditional land allocation process is informed by the Swazi Settlement Act of 1950 – amended in 1979 – in conjunction with the Central Rural Development Board (CRDB) and the Ministry of Agriculture and Cooperatives (MOAC) as advisors, with the clear mandate to principally allocate land for agricultural purposes.

### **3.6 STAKEHOLDERS IN THE SWAZILAND ENVIRONMENTAL ARENA**

The following stakeholders are of major interest to the study:

1. The Swaziland National Trust Commission (SNTC), a parastatal established by the National Trust Commission Act of 1972, amended in 1973, whose mandate is to conserve national and cultural heritage. Under its auspices are the museums, monuments, parks and reserves. It is also responsible for environmental awareness and education to the public.
2. The Swaziland Environment Authority (SEA), instituted by the Swaziland Environment Act of 1992, is the overarching arm of government in overseeing sound environmental practices, especially with regard to development in the country. It monitors trends in environmental activity, advice on environmental issues and is the authority on environmental impact assessments (EIAs) in the country.
3. The MOAC, through its forestry portfolio, has a mandate to conserve forests while ensuring optimal yield from the forestry industry. Together with the CRDB this ministry also advises on land allocation in Swaziland (Monadjem & Nkosi, 2001:40-41).
4. The Yonge Nawe (You too must preserve) Environmental Action Group, the oldest and most visible environmental advocacy group in the country, was established in 1987 and campaigns for sound environmental management of resources. The vision of the organization is to realize a Swazi society that not only values the environment, but uses the available natural resources sustainably so that all citizens enjoy a good quality of life. The group also represents the poor in environmental and socio-economic justice issues (Friends of the Earth International, 2014).
5. The University of Swaziland whose vision is to encourage scientific advancement and sustainable development through excellent research (University of Swaziland, 2014).

### **3.7 GOVERNANCE IN SWAZILAND**

Swaziland has a dual legal system. Roman-Dutch Law was inherited from colonial masters and is responsible for TDL management through the Deeds Registry. Customary law administers customary land through chiefs on behalf of the King and is indigenous (United Nations Development Assistance Framework (UNDAF), 2001-2005: 7; Whelpton, 2005:

146; Mkhabela, 2006: 59; Bray, 2006: 528; Scott, 2006: 153; Lankford, 2007:11; Dlamini & Masuku, 2011:301; Irin News, 2013; African Development Bank, 2013:2; Dlamini–Ndwandwe, 2013:332). Customary law of itself is complicated and mired by ambiguous tenure rights (Dlamini & Masuku, 2011: 302). Surprisingly this known weakness in tenure does little to weaken the resolve of patriotic Swazis who strongly believe that the current system is a necessary condition for accord (Whelpton, 2005:157; Scott, 2006:157; Wooderson, 2013). Therefore, reasons for such steadfastness must not be blamed on ignorance or blind loyalty (Rose, 1993:235). The adage that the devil you know is much better than the angel you have never met aptly encapsulates the Swazi view to the matter.

The duality of law hampers progress in many ways; not least the turnaround for new laws, as extensive consultation between modern and customary laws is mandatory. In Swaziland, unlike in other (constitutional) monarchies, legislation requires royal assent, making it a ruling tool (Vandome *et al.*, 2013:3). For international environmental laws to be enforceable in the country they first have to be ratified and made into local statutes and bylaws. Despite being a signatory to international conventions, this step has not happened in Swaziland partly due to lack of infrastructure and the undeniable political indifference (Bray, 2006:527-548).

### **3.7.1 Land Governance – the King**

The land is vested in the King in trust of the nation (Scott, 2006:156; van Waveren, 2007: 189; Irin News, 2012; Dlamini–Ndwandwe, 2013:332). It buttresses his rule in the country and he imposes his authority through the chieftain system in the rural areas where 70 per cent of the population reside. In short, land sustains the King’s power (Cousins, 2006:493; Irin News 2012).

His Majesty, King Mswati III, the legally immune and supreme Swazi citizen, is the State. He is the head of the judiciary, legislative and executive arms of government, an absolute monarch (Bray, 2006:528; Irin News, 2011; Vandome *et al.*, 2013:28; Wooderson, 2013; Halvorssen & Gladstein, 2014). He appoints ten of the seventy five House of Assembly members. The House of Senate, invariably the more powerful of the two houses, gets twenty royal appointments of the thirty members. He no longer rules by decree as his father, King Sobhuza II, had done since just after independence (African Development Bank, 2013:2; Vandome *et al.*, 2013:2).

He duly appoints chiefs to manage the land on his behalf (Sithole, 2013: 100) and people can acquire land by birth or the *khonta* system. A married male swears allegiance to a chief and is granted domestic land and a patch for farming. The land recipient is then expected to show his allegiance by performing duties, *kuhlehla*. This lifelong commitment of servicing the newly acquired user rights means demonstrating utmost respect for the host chief at the local level and ultimately to the King. Typical *kuhlehla* activities include but are not limited to attending local meetings, donating towards activities organised by the chiefdom, tilling the chief's land on request and attendance to national duties like *Incwala*. Individuals who are diligent with *kuhlehla* endear themselves to the traditional court and may receive preferential treatment as a result (Scott, 2006:156; Dlamini & Masuku, 2011:301; Mabuza *et al.*, 2012:73).

### 3.7.2 Chiefs

Land is very important to Swazis for subsistence, cultural and ritual reasons, no matter that they only access it as tenants, never as owners, as it all (including minerals) belongs to the King, as enshrined in the Constitution (Whelpton, 2005:154; The Constitution of The Kingdom of Swaziland (2005); Dlamini–Ndwandwe, 2013:332). As Simelane (2012:234) asserts, land is not only a productive resource but it is also preferred credit collateral and a provisional investment tool.

Chiefs are fitting right-hand men for the King as they have controlled access to him through the Swaziland National Council (SNC) (Vandome *et al.*, 2013:4). They allocate residential and farming land to subjects on behalf of the King in exchange for sworn allegiance (*kukhonta*) to themselves and to the King. By virtue of being of noble descent royals usually receive vast allocations through the *khonta* system (Whelpton, 2005:150).

Of his own prerogative a chief can expel persons perceived to be troublesome within the community. Rampant infidelity, sorcery allegations, murder or theft are reasons that could qualify one for banishment. A man may also be expelled as a result of his spouse or offspring's wrongdoing (Mkhabela, 2006:62; Scott, 2006:156; Dlamini & Masuku, 2011:301; Irin News, 2011; 2012; Mabuza *et al.*, 2012:72). Chiefs also act as arbitrators in dispute settlement (Irin News, 2012). The chief may also adjust the original allotment made to a family to make way for public need. It is through these activities that chiefs command significant influence within their communities and among their peers. Chiefs in charge of

places closer to urban areas or endowed with fertile soil have more influence as they attract wealthier constituents who lavish them with gifts. Conversely chiefs in deeply rural, infertile areas are held in lower stature (Mkhabela, 2006:62). In all settings, the general public's influence is minimal as the views of chiefs and inner council take precedence (van Waveren, 2007:192-195).

### **3.7.3 The People**

Swaziland is a mono-ethnic country with two official languages, siSwati and English (Lankford, 2007:7). This feature provides for commendable cohesion in the country. However, when it comes to land affairs the general public often gets the short end of the stick through lack of representation in issues that directly affect them. For example, communities at the periphery of protected areas are inadequately consulted (Monadjem & Nkosi, 2001:57, 59, 60). The same marginalisation occurs when chiefs allocate land of their own accord and communities remain mute on the rate of new residents. In and of itself this is a double-edged sword because on one part there are financial incentives that the chiefs get to keep for allocating land and on the other part all people do need a space to live in (van Waveren, 2007:192-195). Communities are also marginalised, firstly by being tenanted and secondly by not partaking in inherent worth of their communities.

## **3.8 THE SWAZI GEOGRAPHY**

Four administrative regions make up the country, namely Hhohho, Shiselweni, Manzini and Lubombo. A further classification by the Ministry of Agriculture and Cooperatives (MOAC) (2014) gives an insight into the country's four agro-ecological zones.

The Lowveld covers 6 416.2 square kilometres and is a semiarid climate with a predisposition for droughts (IFAD, 2007:3; Tefera, *et al.*, 2009:676; Terry, 2012:13; African Development Bank, 2013:9). About 24 per cent of the Swazi population reside in this region. UNDAF (2001-2005: 6) reports that this area was hit with a prolonged famine from 1994 to 1996 and that current overgrazing worsens the problem. Crops that grow well in this region are cotton, citrus fruits and irrigated sugar cane (Lankford, 2007:4). Maize, which is a staple food for the country, is not suitable for this region as it is dry, but people continue to plant it as a mechanism to hold on to the land or risk losing it through expropriation (Dlamini &

Masuku, 2011:302; Irin News, 2013). As the population increases, the demand for land grows (Irin News, 2012).

Conducive to most crops is the Highveld covering the western parts of the country with a total area of 5 029.5 square kilometres. However, high rainfalls often lead to nutrient leaching. Soil infertility and soil acidity are prevalent challenges. This part of the country accommodates about 31 per cent of the Swazi population (Mkhabela, 2006:58). The Middleveld, accommodating approximately 41 per cent of the total population, is a subtropical region characterised by a mixed veld on which inedible and edible grass species grow. Its total area is 1 606.1 square kilometres. According to Dlamini and Masuku (2011:302), the Middleveld produces the highest maize yields although harvests have been declining steadily since 2001 due to unstable weather conditions and change in land use.

The Lubombo Plateau is in the northern parts of the country and accommodates only about 4 per cent of the Swazi population. It is particularly conducive to maize, and root vegetables like sweet potatoes and cassava. Its expanse is 1 312.2 square kilometres (MOAC, 2014).

### **3.9 THE HISTORY OF THE SWAZI STATE FORMATION**

As previously alluded to, the present land trajectory is as a result of a combination of history, custom and tradition (Swaziland Environment Authority: Swaziland National Report to the World Summit on Sustainable Development (SD WSSD), 2002:11). Mabuza *et al.* (2012: 72) assert that the present tenure has been shaped by events dating back as far as 1875. This section traces the Swazi State formation with special reference to King Mswati II, the father of the nation; Mbandzeni, the king who unintentionally leased all Swazi land; Queen Regent Labotsibeni, the formidable regent who fought for the return of Swazi land; King Sobhuza II, the charismatic leader who fought for native land on the one hand and put the solid foundations of oligarchy on the other, and lastly the current king, His Majesty, King Mswati III, who enjoys the fruits of his predecessors' labour.

In about 1750, the Ngwane temporarily settled in Maputo under the auspices of the Dlamini clan. Ngwane is the alternate name for the Swazi. It is homage to the nation's first ruler who led the nation from 1745 to 1780 (Gillis, 1999:11-12; Archontology Organisation, 2011; SNTC, 2014). Conflict between the Ngwane and the Maputo natives provoked a trek that had the nation settling in the northern parts of the Zulu kingdom for just over half a century

(1750-1810). The formidable Zulu strength was unmatched by the Ngwane, who again migrated and finally settled in modern-day Swaziland between 1810 and 1820. This time the Ngwane had the upper hand and effectively consolidated established resident chiefdoms into the Swazi nation (US Department of State, 2014).

### **3.9.1 Mswati II's Reign**

Mswati II, the nation's namesake, expanded the Swazi nation territory by leaps and bounds, stretching through the north-west and finally stabilising the south with the Zulus. He enlisted the aid of the British against sporadic Zulu raids, which was earlier explained to be a powerful nation. It was during these times that some white settlers made Swaziland home. After Mswati's demise the Swazis went on to negotiate and reach agreements with the British on issues such as self-governance, European rights to local resources, safety and governmental control. As a result of these agreements South Africa temporarily assumed control of Swazi interests for about 8 years (1894–1902) before handing over to the British (US Department of State, 2014).

### **3.9.2 Mbandzeni's Reign**

According to Rose (2003:126) and Simelane (2012:235) Mbandzeni leased almost all the country's natural resources to Europeans in a bid to safeguard independence and at the same time appease the Europeans in return for support in keeping the ever strong Zulu army at bay. Unbeknownst to him the concessions were later converted to freehold title through the Land Partition Act of 1907 (Youé, 1986: 46). The Europeans would later label Mbandzeni a weak leader who sold out his people for alcohol. Of course this description is void of the known differences between European and customary tenure and the responsibility of the Europeans in tricking the then paramount chief into so much loss. They (the Europeans) exploited the strong belief of natives that land is not ownable, save by the community (Alden Wily, 2013) and the introduction of the Land Partition Act of 1907 forced the King to confront the consequences of his retrospectively hasty and ignorant decisions. A 1907 meeting legalised (by Europeans norms) the land grab on condition that sacred areas like burial caves and graves, and the royal kraals would not be affected (Whelpton, 2005:153). By the end of the partitioning between European freehold and native reserves, overseen by appointed Special Commissioner George Grey (Simelane, 2012:235-236; Mkhabela, 2006:62; Dlamini–Ndwandwe, 2013:332), Swazis were given just over a third of the total land with a grace period of five years to vacate the European land and move into the designated reserves, then

called Swazi Areas (Youé, 1986:57). The term Swazi Areas eventually fell away in favour of Swazi Nation Land (Whelpton, 2005:147). According to Simelane (2012:236) this exercise immediately rendered 20 000 Swazis landless while the rest were jam-packed in the newly established areas. He notes that although the land struggle would remain a contentious issue even after the independence of 1968, the control of the SNL gave prominence to the monarchy and chiefs.

### **3.9.3 The Queen Regent Labotsibeni**

Queen Regent Labotsibeni came to the fore of Swazi State making when her son, King Bhunu, died suddenly while the heir apparent, King Sobhuza II, was still a little boy (Youé, 1986:46-47). Before his grandson's ascension to the throne the Queen Regent had already gotten the ball rolling to recover lost land. As early as 1914 the Queen Regent had devised a plan urging Swazi men to seek the employ of South African mines so they could contribute an annual £5 to set up the land recovery fund. To prove her commitment she made a personal contribution to increase the value of the fund. The 1913 Union Native Land Act, banning Swazis to buy land outside the demarcated reserves (without the resident commissioner's approval), had only served to strengthen her resolve (Youé, 1986:55-71).

In 1915 a proclamation was passed that native land purchases were for national purposes. The provisions of this proclamation did not include a need to give title deeds and Swazis were given a worthless document as proof of purchase. This led to protests from the natives, demanding a better form of ownership and the phrase "vested in the (then) Paramount Chief in trust of the Nation" was coined (Youé, 1986: 67-68; Dlamini–Ndwandwe, 2013: 332).

### **3.9.4 King Sobhuza II's Reign**

When Sobhuza officially assumed the throne in 1921, the resident high commissioner had taken it for granted that the young king would abide by the provisions of the Land (Concession) Partition Act of 1907. This proved to be a wrong assumption because the king pursued the subject of returning lost land with ardour. Barely four years into his reign he challenged and lost a bid to overturn the Unallotted Land Concession of 1907, owned by one Allister Miller, at the Special Court of Swaziland. Undeterred he appealed this judgement at the Privy Council where his bid endured another defeat on the grounds that the Foreign Jurisdiction Act of 1890, through which concessionaries were made, was unchallengeable.

In 1940, on request of King Sobhuza, the British gave Swaziland £190 000, which he used to establish the Inheritance Fund (*Lifa*), the purpose of which was to recover land from the concessionaries (Dlamini & Masuku, 2011:302). The fund resulted in 101 171.5 hectares of land being regained by the Swazis so that by 1960 they owned about 52 per cent of the land. Crown land was about 2 per cent and the rest, 46 per cent, was still under European ownership (Youé, 1986:69).

The journey to Swazi independence from the British began in 1944. In preparation for democratic elections King Sobhuza spearheaded the Imbokodvo National Movement (INM), a traditionalist political group. It contested and won all parliamentary seats in the 1964 elections which were scheduled by the colonial government (Vandome *et al.*, 2013:1). Swaziland was granted independence on 6 September 1968 (Coppock, Forte, Ncube, Ooka, Richards & Vyas, n.d.:2).

Between 16 and 17 May 1972 Swaziland had her maiden post-independence elections. The INM once again achieved a landslide victory, securing 21 of the 24 National Assembly seats. The rest (3) went to the Ngwane National Liberatory Congress (NNLC) and this victory, although negligible, was enough to incite paranoia in the King. The intellect of the NNLC, who desired that the monarchy be run in a constitutional manner, threatened him (Freedom House Report, 2013:12). Questions about the validity of the citizenship of one of the NNLC leaders (Zwane) saw the King declare a state of emergency in the country (Lodge, Kadima & Pottie, 2002:38). Zwane was eventually exiled and only welcomed back on the condition that he would refrain from politics. This move neutralised the NNLC threat and Sobhuza concentrated on endearing himself to his subjects, leaning on his natural charisma and the personality cult that embodied him.

On 12 April 1973 the democratic parliament was dissolved (Stringer *et al.*, 2007:388; Wooderson, 2013). As conditions of this dissolution three decrees were passed. The first was a 60-day detention decree to imprison people seen to propagate dissent in the country and the second was the *kukhonta* decree, which became a norm for citizenship. This move effectively separated the Swazis of Swaziland from those of neighbouring South Africa and simultaneously increased tenure insecurity for marginal people. The third decree saw the King assume all legislative, judiciary and executive power, essentially running the country in consultation with the cabinet (EISA, 2008).

In September of the same year (1973) Sobhuza commissioned a Constitutional Board which later upheld the 1978 Establishment of the Parliament of Swaziland Kings-Order-In-Council (Vandome *et al.*, 2013:3). This document was actually the 1973 suspended constitution save for six important changes listed below.

1. Political parties remained banned.
2. The King had new powers to appoint members of the House of Assembly. The current King appoints 10 of the 76 members of the House of Assembly. Sixty five are elected through the national elections. For the more powerful House of Senate he appoints 20 and 10 are chosen by the House of Assembly in secret ballot (Vandome *et al.*, 2013:3; African Development Bank, 2013:2).
3. Introduction of the *tinkhundla* (constituency) level voters who would elect (the 65) members to the larger House of Assembly. Members of this House elect members to the smaller and more powerful House of Senate amongst themselves. An *inkhundla* is a traditional meeting place typically accommodating about 10 chiefdoms. In this forum local matters are deliberated on (Swaziland Environment Authority: SD WSSD Report, 2002:12).
4. The electoral committee overseeing all these processes were to be handpicked by the King.
5. Candidates would be evaluated by the King.
6. Campaigning was banned.

As a result of all of these measures the King's supremacy over Swaziland was consolidated (EISA, 2008). Six years to this date he convened a new parliament largely appointed by himself and through an indirect election (US Department of State, 2014). This would set precedent on the Swazi political scene and perhaps set the foundation for the despotism evident in his son's rule. Efforts to improve rural livelihoods through commercialised farming by the Rural Development Areas Programme established in 1970 were futile, despite receiving funding from the British and the World Bank among others (EISA, 2008).

On his death in August 1982, after a 61 year reign, Queen Regent Dzeliwe ruled the country in lieu of her grandson, Makhosetive, who ascended to the throne on April 25 1986 (US Department of State, 2014). On ascent to the throne he quickly abolished the Liqoqo, a 16 member council which was responsible for crowning him as king (EISA, 2008).

### 3.10 THE LAND LAWS OF SWAZILAND

The land laws of Swaziland are derived principally from the Constitution of the Kingdom of Swaziland, 2005; statutory law as set by the King's decrees and Acts of Parliament; case law; customary law and Roman Dutch law (Scott, 2006:152). Alden Wily and Mbaya (2001:29) give the following list of land-related laws of Swaziland:

1. Forests Preservation Act, No.14 of 1910, which stipulates the conditions for the preservation of trees and forest in designated Crown Land and SNL as per the Concessions Partition Act. It prohibits harvesting of indigenous or state timber without permission from the relevant minister. A 27.432 metres distance separating land and forests is also imposed. Collecting wood for fuel is allowed.
2. Crown Lands Disposal Act, No.13 of 1911. It provides for permits, chartering and any other clearance of Crown Land.
3. Native Administration Act, No.79 of 1950. This Act is so scant in its provisions that personal interpretation often takes precedence (Rose, 2003:127).
4. Swazi Courts Act, No.80 of 1950. This act was set up for the administration of Swazi courts; yet it does not preside over customary land areas as may be expected (Rose, 2003:130).
5. Private Forests Act, No.3 of 1951. It stipulates the permissions that people should seek first, before clearing or cultivating a private forest. It also caters for minors by pronouncing that guardians and parents of children found to have committed an offence will be held equally liable.
6. Marriage Act, No.47 of 1964. As one of the contentious pieces of legislation in the gender bias argument, Part V, Section 24, of this act articulates that marriage power in Swaziland belongs to the male spouse and confers Swazi law and custom as the governor of proprietary rights in the union for marriages solemnised in Swaziland (Scott, 2006: 159).
7. Natural Resources Act, No.71 of 1951. It established the Natural Resources Board and vests all mineral rights in the King. It also provides for the conservation and improvement of natural resources outside of designated Swazi areas.
8. Land Concession Order, No.15 of 1973. This is the Kings-Order-In-Council which provides for all concession land to be vested in the King and prohibits any conversion of concession land into freehold title (Vandome *et al.*, 2013:3).
9. Deeds Registry Act, No.37 of 1968. In combination with the Marriage Act, these legislations marginalise women. Section 16 articulates that women married in

community of property cannot have joint property registered in their names save for personal inheritance or donation. With regard to those married out of community of property or out of the country the law still requires that the husband assists the wife in any deed-related activities. The prerogative of deciding whether such assistance is necessary rests with the Registrar of Deeds.

10. Land Speculation Control Act, No.8 of 1972. It regulates land transactions among non-Swazis.
11. Farm Dwellers Control Act, No.12 of 1982. This act specifies the rights of farm tenants and the conditions of their tenancy. It also outlines restrictions upon their eviction and provision for legal redress between themselves and their landlords, the farm owners (Mkhabela, 2006: 63).
12. Draft National Land Policy 1999. This policy was meant to chart the way forward with regard to the interface of the dual land systems in the country, enhanced land access and land tenure especially where gender equality is concerned (Mkhabela, 2006: 63).. This did not happen as the policy never got the customary assent it required and it therefore remains in an indeterminate state.
13. The Constitution of the Kingdom of Swaziland Act, No.001 of 2005.

### **3.11 THE SWAZI OLIGARCHY**

The first parliamentary portfolio immediately after independence was a poster for the elite. With a prince as the prime minister, a white finance minister (to allay investor fears and represent settler interests), aristocrats and professionals, the Swazi government projected a conspicuous absence of middle- and working-class representation. Moreover, industry interests were protected by the ironclad control on unionism in the country (EISA, 2008).

Elitism has always been embedded in the royal quest for the state emancipation from former colonisers. Notably, the independence campaign was always on the basis of autonomy within the constructs of imperialism, not divorced from it (Youé, 1986:72; Stinger *et al.*, 2007:388). Land was long identified as the ripe political tool for peasant coercion and control (Simelane, 2012:249); hence “the ritual power of the sovereign and structure of clan hierarchy remain intact” Youé (1986:74). Although land recovery was commendable, it was conveniently funded by a population who would never benefit from the fruits of its labour. An illustration of early entitlement is seen in the 1916 decision to send a young Sobhuza and offspring of Induna’s to school funded by the Swaziland National Fund. This fund was meant for all

Swazis. A notable thing is how the Queen Regent's son – Malunge – vetoed the suggestion that his mother contribute as the ruler, and suggested that Swazi men be benefactors of that fund instead (Youé, 1986:69-70).

In 1968 King Sobhuza II established the autonomous Tibiyo Taka Ngwane by Royal Charter for the sole purpose of development stimulation in the young democracy. Forces to be reckoned with, Tibiyo and its sister company Tisuka Taka Ngwane not only conduct national business, but have invested heavily in private businesses as well (Lankford, 2007:7; Mabuza, *et. al.*, 2012:72). According to the Tibiyo website it holds shares in the agricultural sector (a collective 93.1 per cent between the two sugar companies in the country, the Royal Swaziland Sugar Corporation (53.1%) and Ubombo Sugar Limited (40%)). People were dispossessed of land without reparation to make way for these flourishing sugar estates (Freedom House, 2013:16). Tibiyo Taka Ngwane is also a player in the property market and wholly owns the Ezulwini Valley Hotel and a number of other upmarket buildings with varied share options. Media, through whole ownership of the alternative newspaper, *The Swazi Observer*, is also in their portfolio together with the whole ownership of the Jubilee Printing Company (Tibiyo Taka Ngwane, 2014).

Tibiyo's success would be a good story to tell if it continued to serve the Swazi nation at large, but alas, its beneficiaries are only the aristocrats (Irin News, 2008). By virtue of being adequately resourced, it annihilates competition from underresourced would-be entrepreneurs (Freedom House, 2013: 10). The Swazi elite, about 10 per cent of the population, is accountable for more than half of the country's consumption and the inequality gap is getting wider (Simelane, 2012:240; Freedom House 2013: 10; IFAD, 2007:1-4). Just 15 years into independence Tibiyo Taka Ngwane already owned 23 per cent of the 60 per cent SNL (EISA, 2008).

### **3.12 PERVERTED SPENDING**

In 2003 the King Mswati III constructed five new palaces for his wives at the tune of \$4 million. Initial reports claim that he had requested \$15 million of public funds to construct a palace for each of his then thirteen wives, but the coffers could only afford the eventual \$4 million (Clarke, 2011). According to Irin News (2004a) this expenditure was amid an earmarked \$20 million for construction of luxury homes of the King's aunts and his

stepmothers. This was in the face of the country experiencing a terrible drought season that led to the National Disaster Relief Task Force chairperson, Dr Ben Nsibandze, recommending that the situation be declared a national crisis by the government. His call was eventually heeded when the then Prime Minister, the Honourable Themba Dlamini, declared a national emergency in February 2004. He cited the scourge that the HIV/AIDS pandemic, chronic poverty and nature caused as reasons for this sad state of affairs. The banned political parties were not as diplomatic in their response and pointed at the double-edged sword of a feudal land distribution which entrenched impoverishment to the masses while giving more power to the monarchy, a deficient HIV/AIDS policy and general government negligence as the real reasons the country found itself at such a trajectory (Irin News, 2004b).

According to Agence France-Presse News (2014) the 2014 budget for the Swazi King stands at \$61 million and it is responsible for his salary, the Queen Mother's maintenance and remuneration of royal aids. This figure is said to also cater for \$12 million in respect of outstanding construction work on palaces. The country's 2014/15 budget was projected at 15.3 billion Emalangeni (equivalent to the South African Rand) and was funded as follows; 49 per cent would be from the Southern African Customs Union (SACU); about 36.6 percent came from unspecified non-SACU receipts; 0.7 per cent was borrowed and the shortfall was financed by development partners who had already pledged about 778.2 million Emalangeni at the time of the 2014/15 budget speech. The development partners include the European Union (EU), the Taiwanese government and the Global Fund among others (Dlamini, 2014:8-9). The Swazi parliament does not review the King's finances as such a move would be perceived as undermining the King (AFP News, 2014).

Although the Swazi elite are predominantly of royal blood, there is another class, the intellectual Swazis, who bear no ties to the royal lineage. This group either migrates to the industrial town of Manzini or the capital, Mbabane (Simelane, 2012: 238), and in some cases to neighbouring South Africa to ply their trade. While they remain a beacon of hope for their rural bound relatives, it is not unusual for them to secure pieces of land in their place of birth for later development for it is endearing to a Swazi to have a stronghold back home. While they are growing their money, these secured pieces of land remain fallow while the peasants continue to suffer. Upon return, usually with a vastly improved socio-economic status, these people can impose tremendous influence on the chief and inner council and duly support decisions from which they stand to benefit immensely (Falk *et al.*, 2003:340).

### 3.12.1 Engcayini Grazing Land Rehabilitation Case Study

A government partnership with the Japanese International Cooperation Agency (JICA) to rehabilitate a rundown communal grazing land at the Engcayini chiefdom in the Manzini region (Stringer *et al.*, 2007:388-392) also gleaned at the communal elite who uses systems to benefit from a virtuous cycle while locking the peasants in vicious cycles (Terry, 2012:136). As 81 per cent of cattle is resident in SNL with no particular feeding routines, it is inevitable that the grazing land comes under strain (Tefera *et al.*, 2009:675; Mabuza *et al.*, 2012:73).

The wealthy, who kept large numbers of livestock, a traditional store of wealth and relatively larger disposable incomes, welcomed the move for rehabilitation (Tefera *et al.*, 2009:75; Terry, 2012:137). Researchers noted that this group also received detailed consultation even prior to the community meetings and they latched onto this opportunity to steer the project in their own interest. They would, after all, have fat and healthy cows at the end of the project. An equal levy was imposed on all households, regardless of whether they kept livestock or not. The reasoning behind this move was that they might own some in the future. Also, all households were required to send representatives to work on the project, failure to which would result in fines proffered against absconding family. Again the rich were in a better condition to meet these demands (Stringer *et al.*, 2007:388-392).

At the opposite end of the spectrum were the peasants who, despite owning no livestock, were committed to work, as they could not afford the fines. Their time and labour went into the project and at the end they were worse off because the rehabilitated commons on which they exceedingly depended, was cordoned off and they could no longer extract their needs like fire wood, herbs and fruit. This case study displays how pre-existing strata within the community were unintentionally reinforced as a result of the project, with the poor emerging worse off and the wealthy with even better status. After all, fat cattle may mean more milk to sell to the peasants and better prices for butcheries (Stringer *et al.*, 2007: 388-392).

### 3.13 CONFLICT

A trade unionist in Swaziland once remarked: “There is peace in Swaziland, but it is not real peace if every time there is dissent, you have to suppress it. It’s like sitting on top of a boiling pot” (Halvorssen & Gladstein, 2014). The following issues co-exist in Swaziland and they

may explode into the largest conflicts in the history of the country yet: discriminatory access to land; gender inequality; overpopulation on SNL; environmental degradation of resources; tenure insecurity; illegal dwelling on privately owned farms by the landless; scarcity of land and slow socio-cultural reforms (Mkhabela, 2006:58-74). Where conflict exists, it is usually an exposé of the defencelessness of Swazi rural dwellers against their local government in land control issues, and tenure security is often the contentious issues that eventually result in conflict (Simelane, 2012:249-250).

SNL is under pressure to accommodate a growing number of people as Swazi society is predominantly rural. As Alden Wily (2011a:7) asserts, actual rural numbers are forecast to grow in Sub-Saharan Africa. Land degradation is worsening as farmers continuously graze their livestock in compromised land. As established earlier, all rural SNL belongs to the King, and through elite contacts those linked to him get all the land they require. This exacerbates tenure insecurity and breeds conflict as peasants are dispossessed of the single most important asset of their livelihood in favour of a single entitled rich person. Below are the two biggest conflicts to engulf Swaziland yet. One happened in 2000 and the other as recent as 2011.

### **3.13.1 KaMkhweli – Macetjeni Case Study**

The hierarchy from household to chief to king would understandably feed the assumption that chiefs are totally subservient to the King. However, Chief Mtfuso Dlamini of KaMkhweli and Chief Mliba Fakudze of Macetjeni in the Lubombo region displayed that this is not always the case. In the year 2000, the King passed out an order, stripping these chiefs of their powers. He installed his brother, Prince Maguga, as the rightful chief, alleging that this had been the late King Sobhuza's wish (Dlamini, 2010; Simelane, 2012:239). The contentious area was incidentally a prime cotton farming spot in the kingdom. The communities partook in this activity and were able to use proceeds from their toll to sustain their livelihoods. When the conflict gained momentum, factions were produced, with one party willing to abide by the King's order to maintain 'peace'. The other faction, who supported the chiefs' standpoint, were of the view that such last wishes of the late King should have been communicated while King Sobhuza was still alive. Moreover, these chiefs were legitimate leaders as they had been installed in accordance with Swazi law and custom. To this latter group the King was just being a bully and they felt it was his way of gathering land under the royals' patronage. At the climax of this conflict the King, through the army and police services, evicted about

between 200 and 400 people by night and dumped them sporadically in other communities in the country. The defiant chiefs escaped his wrath and applied for asylum in neighbouring South Africa (Independent Online, 2000; Simelane, 2012:232-254).

### **3.13.2 Ngwane Park/ Kashali Conflict**

Eleven years later, in 2011, another land conflict would play out in the country, this time at the peri-urban Ngwane Park/Kashali area at the outskirts of Manzini, where it was said that Chief Prince Matatazela had wrongfully allocated to citizens the King's land on Farm 126 (Simelane, 2011). People had built their homes and they watched as government bulldozers tore them down at the command of the neighbouring Masundvwini Royal Residence where the King had spent part of his childhood. Respondents contested that they had rightfully acquired land through the *khonta* system and had been duly allocated land on which to build their homes. They further sought the relief of the law and approached the High Court of Swaziland with their grievances, but the traditional court was not frightened by this move. Instead the Royal Residence Committee called a meeting with visible police presence to intimidate their opponents where a succinct order indefinitely banning any further meetings in the area was passed. Furthermore, people were instructed not to voice any opinions or concerns as the purpose of the meeting had been to pass on the order and not dialogue. The only provisions for a meeting were, ironically, when there would be development issues deliberated and even then that process would not be autonomous from the Masundvwini Royal Residence Committee as people were expected to get approval from the committee first before proceeding. People could only respond with murmurs, unable to voice out their grievances for fear of royal wrath (Simelane, 2011).

### **3.14 POVERTY AND INEQUALITY**

The 2011 estimates of the CIA (2014) place about 78.8 per cent of the Swazi population in rural areas. More recent literature places the number at 70 per cent of the total population (African Development Bank, 2013:1). IFAD (2007:1-4) adds that their urban dwellers consume twice as much as the rural residents. After all, the urban per capita income is said to be quadruple that of the rural population. About 40 per cent are unemployed. This group typically comprises of women, the illiterate and the youth (Vandome *et al.*, 2013:31). Of the 76 per cent rural residents, 69 per cent lives below the income poverty line while 37 per cent are in extreme poverty (Terry, 2012:137). The rural Swazis are also undeniably the ones who

experience the excruciating wrath of drought, which is a regular occurrence in rural Swaziland.

For the rural Swazi subsistence agriculture and by extension land availability is the primary, if not only source of income (Lankford, 2007:11; Dlamini & Masuku, 2011:302). Swazis grow maize, the staple food of the country (Mabuza *et al.*, 2012:73) and any fluctuation in its yield constitutes a crisis (Dlamini & Masuku, 2011:302). Such a crisis has been evidenced by a drop in maize yields since 2000. 2012 saw a further 10 per cent decline in maize yield that resulted in a 39 285 metric tonnes deficit (African Economic Outlook, 2013). Currently about 10 per cent of the Swazi population is reliant on food aid. This figure is supplementary to the World Food Programme (WFP) support to an estimated 100 000 school-going children (Irin News, 2014a; 2014b). The WFP alleges that the Swaziland chronic hunger problem can very well be conquered if small farmer empowerment and land use reform policy were prioritised. UNDAF (2001-2005, 6) and Wooderson (2013) allege that Swaziland possesses vast resources to squash the hunger problem indefinitely. In a March 2014 report, heralding another drought and reliance on food aid by the Shiselweni and Lubombo regions (Irin News, 2014b), some non-governmental organisations (NGOs) went on record saying that the availability of food aid bolsters the governmental nonchalance to the plight of the people (Irin News, 2014a). This sentiment is shared by some governmental officials who saw the US \$1 billion Sikhuphe International Airport receiving considerable attention as compared to hunger mitigation plans. In a perverse move that smirks at inequality the airport is situated in the notorious Lowveld, the face of Swazi hunger (UNDAF, 2001-2005:6; Terry, 2012:135; Wooderson, 2013).

The general public also aired their feelings in an Afrobarometer survey of which the results were released in December 2013 (Irin News, 2014a). The report alludes to dissatisfaction by citizens over perceived governmental disinterest in dealing with pertinent issues such as prevalent food scarcity, high unemployment and poor service delivery. The respondents also felt that government was complacent in as far as narrowing the ever growing wealthy/peasant disparities. The survey findings were a vindication for local NGO's who bemoaned the dismissive and laissez faire attitude of some governmental officials who even went as far as blaming NGO's for exaggerating the situation on the ground (Irin News, 2013; 2014a).

### 3.15 GENDER AND LAND

Patriarchal preference for land allocation, a naive stance when considering the fact that more and more households are headed by women, is still prevalent in Swaziland (FAO, 2002:23; Rose, 2003:123; IFAD, 2007:1; Langwenya, 2012:6;) and both the application of customary and statutory law is to blame for this predicament. Customarily girl children are forbidden from inheriting land from their own parents in favour of the males within the family. This practice becomes a double blow for the widow's girl child (United Nations, 2001:3). Statutorily women are prohibited from registering joint property through the Deeds Registry Act as the Marriage Act sets the stage by vesting all marital powers in the man (United Nations, Swaziland, 2012; Simelane, 2014:86). Despite the evolution of various African land tenures, women still receive user rights to land and not ownership (Rose, 2003:123; Dlamini–Ndwandwe, 2013:333).

**Table 3.1: Women land ownership status in Swaziland**

Category	Ownership	Women's Status
Swazi Nation Land	Land held in trust of the Swazi Nation by the King. Chiefs allocate this land.	Women need a male surrogate for access.
Freehold Land	Privately owned land	Single women can obtain title of their own volition but forfeit such rights when they marry in community of property.
Crown Land	Government land	Women can get allotted plots, but married women depend on their spouses for this allocation.

**Source:** Simelane (2014)

In Swaziland the ancient restrictions and attitudes to women and land rights are still prevalent despite articulations to the contrary in the Constitution (Dlamini–Ndwandwe, 2013:333). For example, tradition still dictates that only married men are eligible to acquire customary land using the *khonta* system (Whelpton, 2005:150; Mkhabela, 2006:61; Scott, 2006:156; van

Waveren, 2007:189; Dlamini–Ndwandwe, 2013:332; Vandome *et al.*, 2013:31). For bachelors a father can allocate land within the family plot or be his son’s emissary to the chief if he desires a plot outside the confines of home. None such is in place for the single daughter and daughters are often sidelined when it comes to inheriting land from a late parent (Simelane, 2014:91).

While Swazis are grappling with the concept of a woman as an independent being (Vandome *et al.*, 2013:31), women remain the “productive centres of household economy” (Grigsby, 2004:216) and they continuously have to rely on their wits to access land to ensure provision for their families. It is appalling that throughout the tenure evolution thus far, land laws still consider the average women as being the married one. This view does not take into account the fact that other women are divorced or widowed while some make a personal choice to remain unmarried. Even the married ones occasionally become household heads when their partners are absent, often for long periods (Rose, 2003:124; FAO, 2002:25; Grigsby, 2004:213). At the end of the day this dispensation is dehumanising for women and restricts them from gainful participation that could advance personal and communal development (Dlamini – Ndwandwe, 2013:329).

Grigsby (2004:207-222) and Rose (2003:123-149) discuss strategies that women have employed in Swaziland, Senegal and Malawi to get their hands on much needed land, albeit temporarily in the case of the Senegalese. The theme in these narratives is that women are in one way or the other at the mercy of the men in their lives (husband, brother, uncle, father and even offspring) to either get an audience with the Swazi traditionalist or negotiate for a piece of land in the case of the Senegalese and Malawian. Women have learnt to manipulatively confront the land tenure trajectories as their needs for land remain.

The widowed woman must contend not only with the in-laws but the community as well. On death of her husband a Swazi woman is customarily expected to partake in mourning rites that include wearing distinct mourning gowns throughout a specified time (United Nations, 2001: 8), usually about a year. During this period she can be severely discriminated against and often is the recipient of violence from the in-laws. Widows are usually dispossessed by their in-laws unless they partake fully in the mourning rites for their dead husbands (United Nations, 2001:14; Dlamini–Ndwandwe, 2013:338-339). Even where qualified, mourning women are prohibited from holding public office. Despite the Constitution saying that

women have the right to refuse to partake in such rituals, they are forced to or risk being disowned by the community if those mourning rites were not upheld. This includes refusal by the in-laws' chief to have the widow eventually buried in his area. It is not uncommon for the maternal chief to refuse this as well on the basis that a married woman is catered for by her marital community. This puts women in precarious positions and makes them vulnerable to unsolicited friendships to maintain their land ownership status and, in the case of widows, their freedom of expression is severely curtailed as they have to continually placate in-laws on whose goodwill they can continue to have user rights on land (Dlamini–Ndwandwe, 2013:329-340; Simelane, 2014:91).

Section 20 of the Constitution of the Kingdom of Swaziland prohibits discrimination against any person based on colour, religion, tribe and especially gender. Section 28 succinctly addresses women, saying that they are entitled to the same treatment and opportunities as their male counterparts. This section also calls on the government to provide facilities necessary for potential realisation and advancement of women. Section 211 addresses land directly and its provisions are that land allocation for domestic purposes shall be gender neutral (Government of Swaziland, 2005:23, 31-32, 131; Dlamini–Ndwandwe, 2013:329-345). Despite these articulations by the Constitution women continue to rely on male relatives for land (Langwenya, 2012:1–10). The current stand of the law with regard to gender actively constrains female participation in land affairs and it inadvertently overlooks a high human resource base and encourages unsustainable land use in the rural areas where most marginalised people reside (UNDAF, 2001-2005:8-9).

Human rights activist Mary Joyce Doo Aphane made history when she used the Swazi Constitution to challenge provisions of The Marriage Act, No.47 of 1964, and the Deeds Registry Act, No.37 of 1968, which disallow a woman married in community of property to register property in her name. When she won that case, she momentarily became a beacon of hope for all women before the realisation that the judgement only pertained to women married in community of property and was mute on those married through the Swazi law and custom (Langwenya, 2012:1-10).

The Constitution of the Kingdom of Swaziland (2005) also contradicts itself when it enshrines gender neutral in Section 211 and a generic form of Swazi Law and Custom in Section 252. To reiterate, Section 227 (1) of the Constitution calls for the preservation of

customary law (Dlamini–Ndwandwe, 2013:330). This can be rightly viewed as taking considerable steps back in the emancipation of women because the very customary law that embeds gender-based land access inequality was preserved, leaving its application to personal interpretation by traditional authorities. It is not surprising then that wives are expected to accompany their spouses to land negotiations at the chief’s kraal, but their opinions are never solicited. It, therefore, remains that women can only gain land through their male relatives or offspring (Langwenya, 2012:1-10).

### **3.16 LIVELIHOODS**

The natural ecosystem is vital for rural livelihood sustenance with many, if not all, rural dwellers investing their resources in food provision activities (Stringer *et al.*, 2007:388). As a result of the conflict of the then ongoing debacle in the KaMkhweli and Macetjeni chiefdoms, residents left their fields fallow in fear, on one hand, that the incoming Chief may dislocate them and, on the other hand, because their tenure had suddenly become insecure and they did not have the confidence to plant produce that they might have to leave behind (Simelane, 2012:239).

In rural Swaziland it is quite common for the peasantry in the community to sell their services to the wealthier community members, ploughing or hoeing their fields in return for paltry pay. While the dispute was raging on, the peasants suffered a huge blow before the actual eviction. Likewise, the people were displaced to marginal lands to make way for sugar plantations when the Royal Swaziland Sugar Corporation and Ubombo Sugar Mills were established as per Freedom House (2013:16). So although customary tenure can be viewed as a more inclusive system, it is sadly not always the case in Swaziland. Instead there is a sinister being that controls the land through greed and disregard for the plight of the poor (Adams *et al.*, 1999).

In the KaMkhweli/Macetjeni debacle, innocent children were the casualties, dubbed “victims of state thuggery” by some analysts (Simelane, 2012:244). Some families were separated and some school children who were due to write their final external examinations lost this opportunity. For some that was their last contact with school. The Swazi government was unconcerned and made no attempt whatsoever to either trace these children and, where some

were traced by NGOs like Save the Children Fund (SCF) and the Baphalali Swaziland Red Cross, the government did not even attempt to pay their school fees. Instead, there were reports to the effect that the police and soldiers had vowed to ensure that they never got the opportunity to write their exams in their former schools (Simelane, 2012:243). The situation was no better for those children lucky enough to have been dumped with their parents. They stayed in camps, supported by NGOs, and their lives were characterised by lack of food, of clothing, of proper accommodation and their situation became even worse when the NGOs could no longer support them due to fiscal challenges.

In hindsight even the decision to not plough that year proved to have been a wise one because after the forceful evictions were completed, the King ordered residents not to farm affected fields (Simelane, 2012:245). He was at liberty to make that call as, after all, land is held in trust by him (Stinger *et al.*, 2007:388). This decision further compromised residents' livelihoods because some had taken on some children from the evicted families and therefore their families had become larger by default.

When civil society protested these atrocities, teargas and rubber bullets were pelted at them by the armed forces. Moreover, as is usual in the kingdom, meetings called by the Swaziland National Association of Teachers (SNAT) and the Swaziland Federation of Trade Unions (SFTU) were subsequently banned (Simelane, 2012:246).

### **3.17 ATTEMPTS AT LAND REFORM**

Land reforms have been requested in the country since the early 1990s (Vandome *et al.*, 2013:28). A land reform policy followed in 1993, but the exercise was put on hold (Mabuza *et al.*, 2012:71-80). Ordinary Swazis long for an end to tenancy so that they can participate in the economy (Irin News, 2011). This is a controversial topic in Swaziland as it can be viewed as dissent by the Suppression of Terrorism Act, No.3 of 2008 through which individuals perceived to be criticising the King can be prosecuted (Vandome *et al.*, 2013:29). Nationalisation of land would be a precarious choice as it would return all land to the State, invariably the King, and privatisation is just as bad, as the majority of people cannot possibly afford to buy land.

There is consensus that reforms have been stalled due to fierce opposition by aristocracy whose legitimacy hinges on the soil (Irin News, 2011; Vandome *et al.*, 2013:3; Irin News 2012).

### **3.18 DISCUSSION AND CONCLUSION**

Swaziland has not been spared from the environmental degradation happening in the world and since independence she has experienced significant population growth that puts land resources under considerable strain (van Waveren, 2007:192-195). Much like continental counterparts, the Swazi State continues to disenfranchise its poor members through a host of laws and regulations that enrich the wealthy. Swaziland boasts a dual legal system, the modern Roman-Dutch Law left by her former colonial masters and the traditional customary law that is executed by chiefs in rural areas on behalf of the King (Mkhabela, 2006:59; Lankford, 2007:11). The duality of tenure is often blamed for the long turnaround in law formation. This is because the traditional structure needs to endorse formal law before it can be implemented, an often time-consuming aspect. The country's Constitution declares the King unaccountable to any law and the head of all arms of government (Bray, 2006:528; Vandome *et al.*, 2013; Wooderson, 2013). Ironically, Swazis are said to prefer the status quo, believing that an alternative would compromise the legendary peace and stability of the country (Whelpton, 2005:157).

All customary land in the country is effectively owned by one person, His Majesty, the King (Scott, 2006:168; Dlamini & Masuku, 2011:301). This peculiarity results in all customary land being seen as commons as people never truthfully own even the land they reside on. Individual land, such as fields, is treated as commons during winter when all livestock can feed on any field until the ploughing season, when livestock feeds in designated grazing lands.

An inquiry into the past leaders gives a picture of a resilient elite who first established the Swazi State (Mswati II), almost lost it all (Mbandzeni) and a formidable team that recovered most land (the Queen Regent Labotsibeni and King Sobhuza II) (Youé, 1986:49-70). It is during King Sobhuza II's reign that the Swazi elite were properly established. Evident in the composition of the first parliament, which excluded representation of the peasantry, to the dissolution of parliament a mere five years post-independence, is the rule by decree in 1973

and establishment of the contentious Tinkhundla system and the establishment of Tibiyo Taka Ngwane by royal charter (EISA, 2008). Through Tibiyo Taka Ngwane indigenous people were displaced to make way for two sugar mills (Freedom House, 2013:16). Current reports allege that 10 per cent of Swazis account for half the country's consumption while scores of citizens are ravaged by chronic hunger.

The present king enjoys the plunder that the mechanisations of his forefathers afford him. Under his rule, Swaziland has experienced some shocking land conflicts as elaborated in the KaMkhweli/Macetjeni and Ngwane Park/KaShali case studies (Simelane, 2011; Simelane 2012:232-254). The country's driest regions – Lubombo and Shiselweni—continue to experience regular droughts while the elite lives large. NGOs and some government officials have made utterances to the effect that it is not resource incapability that fails Swazis, but the irresponsible government priorities (Irin News, 2013).

The Engcayini grazing land rehabilitation case study (paragraph 3.12.1), displays how means to uplift citizens from poverty inadvertently reinforce the vicious cycle for the poor while entrenching the virtuous one for the wealthy (Stringer *et al.*, 2007:387-393). The three case studies showcased the embeddedness of poverty, inequality and marginalisation under the current tenure. Gender inequality, which the country's dual laws combine to perpetuate or ambiguously address, was also discussed.

### **3.19 SUMMARY**

This chapter identified the true Swazi elite and royalty and how past actions ensure them perpetual opulence, unless they are willing to engage and share the country's wealth with the peasants. It also delved into why the King may be reluctant to support land reforms as an independent nation threatens his hold. After all, it is through the soil that he feels in charge, as seen by the KaMkhweli/Macetjeni evictions.

Sustainable management of resources does not seem to take priority in the country's strategy as the poor and most reliant on the environment are ignored and the wealthy continue with barbaric displays of opulence. Archaic stereotypes that perpetuate reckless use of the environment like gender marginalisation are still embedded in the fibre of Swazi society. The laws, the reform and implementation of which would herald a new chapter in resource

sustainability, remain largely unchanged and emergent ones are for further suppression of the citizens. For women neither the Roman-Dutch law nor customary laws offer relief and hence they must continuously rely on their wits, and their male proxies, to get some much needed land. For the widow the burden is twofold as she has to rely on the welfare of her in-laws for continued access to land.

The next chapter is a compilation of the insights from identified interest organisations (SEA, SNTC, MOAC, CRDB, Yonge Nawe and the University of Swaziland) on the status of land tenure reform, how it affects the sustainability of common resources in the next chapter and how it can be customised to meet contemporary needs.

## CHAPTER 4: FINDINGS

### 4.1 INTRODUCTION

This chapter primarily describes the fieldwork (that was carried out for this research) and then offers an insight of the Swaziland environmental management discourse. Pertinent issues like the lack of political will, tenure, biodiversity, the emergence of an informal land market in the vacuum created by the inability of customary law to adapt to modern times and the consequences thereto are discussed. It is argued that the combination of these factors severely compromise the livelihoods of the rural poor who depend on the ecosystem for its services and products. For emerging sustainable endeavours like the Chiefdom Development Planning (CDP), the proposed Land Bill and the recent delegation of traditional leaders to pioneer countries (with regard to recognition of customary tenure) political buttressing is important.

### 4.2 FIELDWORK AND DATA COLLECTION

Primary and secondary data were collected for the study. The primary data was secured by means of structured interviews with respondents including the information officer from the Swaziland Environment Authority (SEA), the environmental educator from the Swaziland National Trust Commission (SNTC), an academic from the University of Swaziland (UNISWA) and a soil surveyor from the Ministry of Agriculture and Cooperatives (MOAC), who were selected using the purposive sampling method. Copies of questionnaires can be found in Annexure A-E. Secondary data collected includes books, reports, research documents and media reports on the subject.

Limitations on the field data collection were the lack of maps tracing the evolution in the making of the Swazi State (from when the Swazis first settled to when they lost massive ground due to concessions to when they brought back the land to the current state) and the fact that at the time of the research Yonge Nawe Environmental Action Group, the only civic advocacy group on environmental affairs in Swaziland, was defunct. Lastly, due to commitments, the agricultural soil surveyor responded for his section and also on behalf of the Central Rural Development Board (CRDB).

## **4.3 RESULTS**

According to Swaziland's State of the Environment Report (SSER) (2013:35), Swaziland is currently on an unsustainable trajectory with detrimental results for the future. This anomaly is not due to absence of policy as it is with the poor or lack of implementation of vigorous environmental policies. The section below focuses on the various issues that combine to deliver unsustainable management of natural resources.

### **4.3.1 Political apathy**

The Constitution of the Kingdom of Swaziland (2005) does not enshrine a specific environmental right although it does imply cognisance of other's (people or the environment) rights in the enjoyment of one's own rights. This provision alludes that rights are conditional on consequent duties towards the environment (Faure & du Plessis, 2011:464). The Constitution of the Kingdom of Swaziland (2005), through its directive principles, places the onus firmly on the State and citizen to protect the environment for its own sake. However, despite such affirmative articulations in the Constitution, the Multilateral Environmental Agreements (MEA) Coordination Strategy for Swaziland (2014: v) noted an inadequate legislation of some MEAs that the country had rectified. Political indifference to some critical issues such as poverty and disease, blurred understanding of the consequences of inaction and scepticism over environmental issues was also noted.

Swaziland currently battles such environmental problems as drought and water scarcity (MEA Coordination Strategy for Swaziland, 2014:3), pressure on biological resources exerted by uncontrolled harvesting of biological resources (environmental educator, 2014: pers. comm.), habitat destruction, and uncontrolled land use and unplanned human settlements due to the lack of a land policy. Land degradation is also a problem and is caused by overgrazing, incapacity to deal with prevalent storms, invasive alien species and uncontrolled disposal of toxic waste. High dependence on the environment by the rural poor, lack of political will and socioeconomic problems as a result of the HIV/AIDS pandemic also feature (MEA Coordination Strategy for Swaziland, 2014:3). It was noted that externally funded project dealing with MEAs were the most successful as compared to domestic efforts (MEA Coordination Strategy for Swaziland, 2014:12).

Constraints/gaps identified for wanting execution of the MEAs include lack of key policies like the land policy and bottlenecks in legislation approval (MEA Coordination Strategy for

Swaziland, 2014:19). The SEA information officer (2014: pers. comm.) also noted that the need for traditional endorsement of policies, owing to the country's dual justice system, significantly delayed domestication of international conventions that Swaziland is signatory to.

#### **4.3.2 Customary tenure**

According to the Swaziland National Trust Commission (SNTC) environmental educator (2014: pers. comm.) the current land tenure adversely affects the sustainability of common resources and wildlife in that it blurs the specific roles and responsibilities of people who derive livelihoods from a common resource, in this case a protected area. It becomes a predominant problem when the ambiguous influence of traditional leaders is used to obstruct access and benefit-sharing efforts. Occasional chieftaincy and community delimitation disputes also present with considerable uncertainties. Against the backdrop of such uncertainty the rampant consumption of natural resources occurs, for example, harvesting of indigenous forests (environmental educator, 2014: pers. comm.).

The Swaziland Environment Authority (SEA) on its SSER (2013:35) reiterates that the overexploitation and unsustainable management of resources is not a new phenomenon, but rather an old one that is intensified by the combination of the following factors:

1. The conspicuous absence of a national land policy which would provide for a holistic management of common resources;
2. Failure to enforce existing legislation;
3. Unsuitable land use patterns;
4. Poor environmental awareness in the nation which leads to poor planning;
5. The current land tenure system;
6. Lack of accountability especially on Swazi Nation Land (SNL);
7. Conflicts over land and natural resources; and
8. Incapacity to integrate land use planning and landscape management.

The SEA information officer (2014: pers. comm.) added that the current insecure land tenure is still seen as a driver behind loss of biodiversity, depletion of critical ecosystems and destruction of wetlands as it perpetuates free-for-all scenarios, where no one is held responsible for their unsustainable actions. Another issue was that the currently unregulated allocation of land to residents by traditional authorities often counters SEA efforts in that

sensitive areas could be apportioned by uninformed leaders when they should in fact be protected. Land being unregulated on SNL also means that there is no uniformity in the scale of land being allocated to land seekers. As a result the country currently battles with infestation of alien invasive species (SSER, 2013:33).

### 4.3.3 Elite

Youé, (1986:74) and Simelane (2012:249) have already argued that the power of the Swazi elite has always been buttressed by their firm hold on the land. In spite of the shameful Macetjeni/KaMkhweli debacle, which culminated in the displacement of two chiefs and numerous families at the dawn of the century, the thirst of Swazi royals for land ownership remains unquenchable. As recently as 15 October 2010 residents of Bulunga area in the Manzini region were served with threatening letters alerting them that the area was suddenly under Prince Mangaliso's jurisdiction and they were instructed to swiftly change their graded tax details to indicate that he was their rightful chief and not Chief Mafamba, the resident chief at the time (Dlamini, 2010). Conveniently the directive was issued when the King was in seclusion in preparation of the sacred *Incwala* ceremony and the community could not have an audience with him to air their grievances (Dlamini, 2010). Seclusion is a period of traditional cleansing observed by the King ahead of the *Incwala*, which is regarded as the Swazi national prayer. During this period the King virtually disappears from the public sphere and does not partake in any official duties (Lee, 2011).

Prince Mangaliso's claim was hot in heels of another claim made earlier in the year (July 2010) by the former minister of home affairs, Prince Sobandla. He was controversially appointed as chief of Sankolweni area in the Manzini region. Prior to that, another prince, Matatazela, had attempted to lay claim on the Mbekelweni area although his efforts proved futile (Matse, 2010).

Again in 2010, the then Prime Minister, Sibusiso Barnabas Dlamini, nine members of his cabinet and four members of the royal family questionably purchased former crown land at deflated prices of up to 50 per cent discount. Due to the controversy that the issue generated the King was asked to intervene and the last time the issue was spoken of the then minister of housing, Mrs Lindiwe Dlamini, was quoted as saying that the King had issued a directive that the matter should not be discussed. The land was never returned (Magagula, 2011). In the

same year top government officials passed a law entitling them to large allowances and big retirement packages just before the financial crisis happened (Polgreen, 2012).

The most recent case happened in the Nkilonko chiefdom close to the Lavumisa border post. Close to 200 families faced eviction after their custodian, chief Mvimbi, declared that he had earmarked the area they were residing on for business. Residents of the area were said to comprise old widows who had been in the area since they were resettled for the Ubombo Sugar Mill about 30 years ago. At the time of the report there was no allocated alternative settlement area and their livelihoods were once again compromised (Magagula, 2014).

#### **4.3.4 Population growth**

It is often easier for fewer people to be more sustainable than a larger contingent. According to Hardin (1968:1245), the earth finds it easier to renew itself when it carries less than optimum people. With growing populations continuously exerting pressure on resources the earth is unable to recharge. According to the July 2014 estimates CIA World Fact Book projects the current Swazi population to be about 1 419 623 people, who all rely on the environment for needs such as shelter, food and water. The SSER (2013:26, 35, 44, 47,202) notes population growth as the main driver of unsustainable land use change. Deforestation, for example, happens largely as a result of population growth as people clear land for shelter and subsistence farming. The Swaziland National Trust Commission (SNTC) has encountered problems with regard to the growing population. Notably that is when people encroach on protected areas in search of living space. As a result the organisation spends considerable effort consistently engaging with the neighbouring communities to clearly define boundaries and also encourage the conservation of natural resources. These engagements typically involve traditional authorities and the community (SNTC environmental educator, 2014: pers. comm.).

#### **4.3.5 Biodiversity**

According to the African Health Observatory (2010-2014) Swaziland's ecosystem health is threatened by lack of protection and land conversions. The SNTC asserts that about 30 mammal species in the country face extinction and are currently confined to protected areas. Of the 56 tree species listed in the Swaziland Plant Red Data Book 19 are not found in any protected area. Remmelzwaal (2006:2) adds that overexploitation of resources and loss of habitat accelerates biodiversity decline. According to the soil surveyor from MOAC (2014:

pers. comm.) deforestation is increasingly becoming a major problem and one can see forest wood being sold alongside the pavements of many a Swazi road.

The effects of climate change were also visible on land and projections from the current trend point towards the ecosystem adaptation at an accelerated pace from 2010-2020 (SSER, 2013: xvi). Adaptation of land for agricultural purposes and then grazing land after which it would be rehabilitated back into the ecosystem is expected to decrease. The conversion of land from grazing to protected areas is expected to either increase or remain the same. The salient point is that the ecosystem will continue to be degraded although it is set to be compensated by converting ranching land into conservation land and some measured conversion back from agricultural crop land (SSER, 2013:28).

#### **4.3.6 Informal land market**

The rural elite who work in the cities wants land from the Swazi Nation Land and often do not have the time to follow the laborious *khonta* process. There have been reports of chiefs selling SNL not only to Swazis but foreigners as well (Comesaria, 2013; Gwebu, 2013). It then becomes easier to do what is the norm nowadays: identify someone who needs to dispose of land, approach that person and negotiate a price for the land. The land disposer then assumes the role of an emissary and approaches the traditional leaders, notifying them that he has some land to offload, usually fallow fields at his disposal, and that there is already an interested party. Now, in the traditional process any community member who feels overwhelmed by the amount of land they possess could always forfeit it back to the care of the chieftaincy so that the chief could allocate it to new arrivals or alternatively give it to families who may have had smaller allocations and due to growth of family size then require more (Simelane, 2010). The land seeker is then allowed an audience with the inner council (*libandla*) where he is expected to host them as he is formally given the land. To complete the process he has to give a cow to the royal kraal, as is the case with the traditional *khonta*. In addition to those costs he still has to pay whatever amount agreed between him and the person who has land to dispose of, typically from E5 000 to E80 000 or more (Simelane, 2010).

An undesirable consequence of this emerging trend has seen the rise of unscrupulous sellers who target desperate land seekers, showing them plots and processing their sales without approaching the traditional leaders. The land seller duplicates this transaction with many others for the same piece of land and then disappears. In some cases you find that the land

does not even belong to him at all and it is only when a land seeker is going through the traditional processes that conflict ensues. Most are left in the cold as they cannot openly approach chiefs for redress as this is not an official activity (UNISWA Academic, 2014: pers. comm.).

Other people also see this as a profitable business, so they buy plots on SNL, subdivide them and resell them. This is unwise and unsustainable use of common resources because it is unregulated and also because it is an attack on the little arable land that the country has as people turn to their fields to sell (Simelane, 2010).

A significant point to be made here is that although chiefs are the traditional leaders and are conventionally responsible for allocating land, they cannot be solely blamed for altering the community landscape. It is clear that residents are in fact very active in bringing new blood into the community and should therefore take some of the blame when such new people are not of sound character. Although this is at the expense of those community members who do not partake in this activity, and who therefore have no benefits accruing to them, the rural dwellers are not innocent in all of this and the consequences thereto (Simelane, 2010; Comesaria, 2013).

#### **4.3.7 Livelihoods**

The livelihoods of the poor remain severely threatened by the growing commercialisation of the SNL trend. Firstly, because they are already poor, they can be tempted to partition and sell their land for instant gratification. Secondly, once the land is sold, the likelihood of buying it back is close to nil as they would not have money for the increasingly expensive traditional *khonta* process. An University of Swaziland (UNISWA) academic (2014: pers. comm.) estimated the *khonta* fee to be around E11 000 (the Swazi Emalangeni (E) is equivalent to the South African Rand (ZAR)), including the customary cow to be given to *libandla* (inner council). The figure is not inclusive of the actual cost of the land that one has to pay separately. As about 69 per cent of rural Swazis live below the income poverty line and about 37 per cent of those in extreme poverty, it is clear that loss of arable land, their only livelihood resource, is detrimental regardless of whether they forfeited it willingly or under duress (Terry, 2012:137).

The other casualties of the new land for sale regime are orphaned and vulnerable children (OVC), a group that has grown phenomenally owing to the scourge of HIV/AIDS. The World Fact Book (CIA, 2014) estimates that the HI virus was prevalent in about 26,5 per cent of the Swazi population in 2012. Minor children, too young to stake their claim on their parents' land, often rely on the goodwill of their older relatives who may also decide to sell land to land seekers without any consultation with the surviving offspring of their relatives (Simelane, 2010). This loss is pronounced for widows with only female children as customary law remains patriarchal.

The issue of uncontrolled livestock (particularly on SNL) which then compete with humans for products or overgraze on pasturelands is still rife. This is reinforced by the fact that Swazi society views possession of livestock as the ultimate measure of wealth. The soil surveyor (2014: pers. comm.), also conceded that the situation reached a hopeless point due to a lag in monitoring, a service which is supposed to be offered by the Ministry of Agriculture and Cooperatives' Rural Development Areas (RDAs) extension services. He affirmed that it was not the role of chiefs to control livestock numbers, but that of the agricultural officials deployed in the RDAs in consultation with traditional leadership. In 2006 Rimmelzwaal (2006: 29) noted a host of undesirable environmental trends that were a result of unsustainable resource management in the country. These are: the decrease in natural resources; alteration of the ecosystem; a decline in natural products; decline in affordable energy sources; decrease in arable land; land fragmentation; water shortages; compromised capacity to cope with natural disasters and a rise in food insecurity. The combination of these factors severely impact livelihoods, especially those of rural dwellers on SNL.

#### **4.3.8 Integrity of the Traditional Swazi Community**

This advent of the informal land market is severely deteriorating the integrity of the traditional Swazi community. Yesteryear's *khonta* process would not be complete until the receiving chief sent a delegate to the land seekers' chief to inquire on the character of the land seeker and ascertain whether he was leaving that community under healthy circumstances (UNISWA academic, 2014: pers. comm.). In this way the new community would to all intents and purposes be welcoming a worthy member, fit for integration into that community. With the new trend of selling land this integrity check no longer occurs and this may result in undesirable people being afforded land they otherwise should not have been (Gwebu, 2013).

#### **4.3.9 Gender**

It seems the issue of gender equality still takes the back burner in environmental affairs in Swaziland. It is enough to just mention it without going into detail to provide for the conditions that such rights can be fulfilled. In the proposed Land Bill to be discussed below the only mention is that all citizens are eligible to receive land allocation. This is a mute statement when considering the hold Swazi law and custom has on SNL. The Land Bill also recognises both spouses in cases where they own property and provides that they should both be signatories to any decision taken regarding said property. While this move would be most welcome, it still does not address the woman married in Swazi custom and resident in the rural areas where there is no title, and in-laws can stake a claim on the family property in the event that her husband dies (The Draft Land Bill, 2013). The proposed Land Bill calls for equal recognition of spouses who own property and are married in community of property. It also makes provision that polygamous relationships retain the same stature as monogamous ones.

#### **4.3.10 Communal capacity**

When quizzed about the ability of communities effectively advocating for their cause, especially in the conservation of the environment, the Swaziland Environment Authority (SEA) information officer (2014: pers. comm.) conceded that the Environmental Impact Assessment (EIA) was not enough. He added that the vacuum left by the closing down of the only active environmental advocacy group, Yonge Nawe, was most regrettable and exposed incapacitated communities. He added also that actively advocating for communities fell outside the scope of the SEA as it could not be seen as playing and refereeing environmental issues at the same time. He, however, added that the level of active participation in such processes depended on how informed the community members were. He provided examples whereby the Ezulwini residents (an urban settlement between Swaziland's biggest towns) successfully lobbied and rejected plans by the Swaziland Water Corporation (SWC) to construct a sewerage plant in their community. The said plant was eventually constructed in Nhlambeni, a peri-urban area in the outskirts of Manzini, without as much resistance. Both the UNISWA academic and the SEA information officer (2014: pers. comm.) were of the view that the calibre of the community was the determining factor in terms of active participation and capacity to question decisions taken during EIA processes.

The SEA information officer (2014: pers. comm.) reaffirmed that the EIA is founded on the maximum public participation premise and the belief in giving interested and affected parties enough opportunities to influence any decision taken. So as an authority the organisation's interest is in whether all affected parties were represented in the public participation process and they unfortunately cannot measure how capacitated the community may be. He noted that the technicality, the typically large size and language used in reporting (English), could be a hindrance to effective public participation. As a result the authority now requires that public notifications not only appear in the country's newspapers, but are also advertised on radio to maximise outreach and that non-technical summaries be available in vernacular language.

#### **4.3.10.1 Umbane development saga**

In 2009 a company formed by employees of Swaziland Electricity Company (SEC), aptly called *Umbane* (lighting), announced plans to convert Portion 13 of Farm No 670 in Malkerns into a fully-fledged residential area complete with a business area to support the residents (Shongwe, 2009). Malkerns is an area situated about 25 km southeast of Mbabane, the Swazi capital. It boasts of an irrigation canal that was constructed to irrigate widespread farmlands for commercial agriculture after independence in 1968 (IRIN News, 2009). The proposed township was set to accommodate only the members of the company. This decision attracted a lot of criticism and objections from the general public. According to the IRIN News (2009), main objections to the development were on the grounds that Portion 13 was prime agricultural land and commencing with the project would not only remove fertile soil from the already drought-prone country, but that it would have a disastrous domino effect on the extensive agricultural infrastructure in the area. Traditional healers were up in arms as most of their medicinal supplies were endemic in the area (Nhleko, 2009). They enlisted the help of Big Game Parks who cited such laws as the Flora Protection Act, No.10 of 2000 and the Environmental Management Act, No.5 of 2002 in their opposing claim. Yonge Nawe, then operational, also expressed their disagreement to such plans, citing detrimental consequences to the country's efforts to realise food security and sustainable development (Faure & du Plessis, 2011:475).

During this time Umbane were of the view that since they purchased the land in question, they could do with it as they wished as they possessed the full bundle of rights as explained by Ostrom (2008:3). Contrary to this belief, the opposition was just as formidable and the

minister of tourism and environmental affairs was required to set up a tribunal to look into the matter. In the tribunal a judge or magistrate presides over the case and makes recommendations to the minister. The minister considers the tribunal's recommendation and makes a final decision on the matter. In this case the decision was to withhold the permission due to the public outcry and Umbane could not commence with their plans. In 2010 they announced plans to abandon sugar cane farming on their land and consider alternative crops as they were not realising profits. Of the 495 hectares of land in their ownership they proposed to dedicate 451 hectares for the new endeavour and the remaining 44 hectares to their housing project (Vilakati, 2010). No development has happened so far.

This case illustrates a community which mobilised and successfully objected a major land use change in their area. One can infer that the community had the capacity to take on the developers because they were informed and knew to enlist a reputable organisation such as the Big Game Parks and Yonge Nawe whose advocacy helped their cause. This reiterates the point by the information officer (2014: pers. comm.) and the academic (2014: pers. comm.) that it is often the calibre of residents in an area which determines their ability to actively participate and influence decisions on the sustainability of their common resources.

#### **4.3.11 Land reform**

The interviewees confirmed the views expressed in the previous chapter by Irin News (2011; 2012) and Vandome *et al.* (2013:3) that the royal family is reluctant to sanction land reforms as fruition of such an exercise may threaten their legitimacy. According to a soil surveyor (2014: pers. comm.) the Land Policy that was instituted in 1998 was revived in 2008 with modifications to potentially sensitive parts and was sent to the royal house for endorsement. It has never seen the light of day since then. The SEA has since decided to initiate public dialogue by presenting a Draft Land Bill the provisions of which will be discussed later. This is obviously a regrettable situation as land reform proponents have never challenged the monarchy. In fact, they revere it as a powerful symbol of their culture and tradition although they view the King's unchecked power as an outdated concept in modern times (Polgreen, 2012).

#### **4.3.12 Conflict**

Conflict over land resources will start at the family level (Simelane, 2010). The UNISWA academic (2014: pers. comm.) agreed with this assertion. He predicts that this will be caused by the widening gap in the application of Swazi law and custom and contemporary living. He thought it highly likely that when minor children come of age they could challenge previous sale of land by their parents or relatives on the constitutional premise that Swazi Nation Land is not for sale. Without receipts to prove purchase, a land owner may be threatened. Even the poor may fight amongst themselves owing to differing views on whether to hold on to or dispose of land for temporal relief.

On resources, the Chiefdom Development Planning (CDP) project noted that recent developments in the Lower Usuthu Smallholder Irrigation Project (LUSIP) area may attract people from neighbouring communities to settle in the hope of reaping the rewards. If that process is not properly managed, it may also result in conflict; particularly as existing scheme members already forfeited some of their land in support of the project (IFAD, 2012). The SSER (2013:36) also mentions conflict and competition of natural resources as a deterrent to sustainable management of land.

On the international front, Mundi (2013) reports that the King unsuccessfully attempted to recover land from the Mpumalanga and KwaZulu-Natal provinces of South Africa in 2006. Such efforts may be revived to accommodate the expanding population.

### **4.4 COULD THERE BE WINDS OF CHANGE?**

Not all is doom for the sustainability of common resources in Swaziland. The issues below describe what could possibly be a strategy to embrace proper environmental management and sustainability by the traditional authorities. The Chiefdom Development Plan and the recurring visits to Tanzania by the chiefs are discussed next.

#### **4.4.1 Chiefdom Development Plans**

According to IFAD (2012), the Lower Usuthu Smallholder Irrigation Project (LUSIP) started a new project called the Chiefdom Development Planning (CDP) in 2004. Through this ingenious tool increasingly scarce resources like land and water were availed to resident smallholder farmers. To secure land, participating homesteads were requested to forfeit some

of their land for the purpose of the project, thereby fostering communal inclusiveness. IFAD offers training and capacity building to the participating communities. Production resource maps are produced and members partake in a participatory community resource assessment and the beneficiaries also design their own development plans. As a result of this project subsistence farmers have been commercialised, significantly improving their livelihoods. The project is unique in that it works with the existing traditional governance structures, as its apt name suggests. It also integrates such issues as public health, potable water supply and sanitation and gender equality. Among its successes the project has seen 1 184 homesteads access irrigated land through the 40 irrigated farms in its care. Financial institutions have also been reeled in to support the project and there are talks of legislation to legalise the operation of the CDPs (IFAD, 2012).

Other initiatives run by the MOAC include ‘climate-smart agriculture’, a concept described by FAO (2011:1) as dependent on increased agricultural productivity, improved socioeconomic status, better livelihoods and ecosystem resilience and a reduced agricultural carbon footprint. The ingenuity encourages the use of nearby resources with minimal disturbance to the environment like, for example, people starting food gardens next to the rivers. Communities like Mpuluzi in the Hhohho region have already benefitted in such techniques as gravity-driven irrigation systems and minimal use of pumps in cases where the terrain is disagreeable. Examples of climate-smart agriculture techniques currently being promoted in Swaziland include “conservation agriculture, irrigation, rainwater harvesting, agro-forestry and new crop variants” (Manyatsi & Mhazo, 2014:13).

#### **4.4.2 Delegation of Chiefs in Tanzania**

The Chiefdom Development Planning (CDP) exercise has been so successful that the government considers rolling it out to other impoverished communities to improve their plight. To properly implement this next step the government saw it fit to send a delegation of chiefs and princes to Tanzania – a country Alden Wily (2011a:44; 2011b:3) hailed as a pioneer on the recognition of the commons as community property – on a fact-finding mission. The decision to expose chiefs and princes to the Tanzanian way of sustainable resource management shows that chiefs are pivotal in the Swaziland environmental management strategy. After all, they are the traditional leaders and port of entry in SNL. According to the Swazi Observer (08 July 2014), the trip was sponsored by IFAD and the Ministry of Agriculture and Cooperatives (MOAC) through the Lower Usuthu Sustainable

Land Management Project. The purpose of the trip was to expose traditional authorities to sustainable land management and agricultural productions approaches that simultaneously address the poverty problem engulfing the country. The main issues discussed were participatory forest management, agro-forestry and the sustainable administration of land management. These were apt topics considering that deforestation, land degradation and climate change are issues Swaziland grapples with. On sustainable land management the issues of how communities develop village maps and how land allocated is mapped and registered allowing for households to secure start-up loans from financial institutions were addressed.

#### **4.4.3 Proposed Land Bill**

The Draft Land Bill (2013), Section 4 (2), is guided by such principles as fair access to land, security of tenure, sustainable and productive management of land resources and transparency in land administration. It also seeks to eliminate gender discrimination and marginalisation of vulnerable groups by either the law or customs related to land. The proposed Land Bill also calls for participative, accountable and democratic decision-making by the public and government (The Draft Land Bill, 2013).

In line with existing Swazi legislation, the bill vests all SNL in His Majesty, the King. The bill recommends that the *khonta* process be formalised. Under the proposed regime a land seeker would submit an application which contains his/her full details and area of current residence. If the applicant has never *khontaed* before, then they would submit an affidavit attesting to the fact. Those applicants who had been previously allocated land would be required to submit evidence that they surrendered the old place to the resident chiefdom (as per Swazi custom) prior to being allocated new land. The *khonta* process would be rendered complete when the land seeker is issued with a certificate which has their particulars, the size of their allocation and the land surrender procedure in case they want to leave that area in the near future (The Draft Land Bill, 2013). If and when the bill becomes law it shall be an offence for a person to have more than one plot on SNL throughout the country. As a deterrent the bill provides for a E20 000 fine or a two-year jail term for people assisting others to illegally remain on SNL and a E50 000 fine or five-year jail term for selling SNL. The bill also acknowledges the issue of SNL commercialisation and attempts to curb and somewhat regulate the procedure. It reaffirms that SNL is not for sale in Section 106, but relents by allowing for the compensation of people who may have started developments in

their plots prior to the decision to leave them behind. In what may be viewed as an attempt to democratise the residence of community members, the bill also provides that community members facing expulsion from an area be allowed a maximum period of three months to remedy the situation. Furthermore they are allowed to appeal such a decision. Under the Bill the role of chiefs would include prescribing the conditions of land allocations and spearheading land use development and infrastructural development of their respective areas.

#### 4.4.4 The National Environment Fund

There has been the establishment of a National Environment Fund where all monies (penalties and fines) are available to the public to apply for grants to finance environmental projects on the ground by the Swaziland Environmental Authority. The fund benefactors are environmentally noncompliant establishments whose fines finance the fund (SEA information officer, 2014: pers. comm.). There are community projects that support environmental protection and resilience of livelihoods like, for example, the protection of wetlands and regeneration of special grasses (e.g. grass for making hats and mats). Such projects have been funded in Lawuba, Sigwe and Kutsimuleni chiefdoms in the Shiselweni and Manzini regions. Despite this initiative the respondent felt that it was not nearly enough and that there was a need for a more coordinated and holistic approach to environmental sustainability issues across government policies, e.g. a poverty reduction strategy in all government policies (SEA information officer, 2014: pers. comm.).



**Figure 4.1 & 4.2:** A rehabilitated Lawuba wetland (Left) and various products made from the grass (Right).

Source: Hlophe (2012)

#### 4.5 THE FUTURE

According to the environmental educator at the Swaziland National Trust Commission (SNTC), the organisation currently runs environmental education and community outreach programmes to facilitate awareness and active oriented learning to capacitate stakeholders for sustainable livelihoods. SNTC allows neighbouring communities access to harvest some resources found within protected areas. Engaged communities provide ecotourism-related activities like cultural performances for visiting guests (environmental educator, 2014: pers. comm.).

On the issue of tenure all respondents, i.e. the information officer, environmental educator, soil surveyor and the UNISWA academic (2014: pers. comm.), concurred that, despite its present shortcomings, drastically altering the tenure of Swaziland would be more detrimental than beneficial, especially with regards to the plight of the poor and the marginalised in society. The SNTC environmental educator (2014: pers. comm.) volunteered that such a move would result in delimitation disputes which are already a cause for concern. The SEA information officer added that Swazis view Western tenure as a threat that disenfranchises the poor. So, in this way secure tenure becomes fundamentally problematic in the Swazi context. He added that secure tenure on its own is no panacea for the sustainable use of common resources and that it can, in fact, worsen the situation because of the commercialisation and environmental irresponsibility that is sometimes a consequence of secure tenure. Conversely one person may have portions in a number of chiefdoms and exert the same pressure repeatedly.

#### 4.6 DISCUSSION AND CONCLUSION

Much like the rest of the world when it comes to environmental affairs and sustainability issues, Swaziland comes short when it comes to exerting the necessary political pressure to realise a sustainable future for the country (SSER, 2013:296). Customary tenure as it is, remains a sore point although it understandably still accommodates the poor in society. Given the emergence of SNL commercialisation, this privilege may soon be lost among the poor, either of their own volition by disposing of their land or involuntarily by being unable to afford the ever rising *khonta*-related costs.

Biodiversity continues to be under threat and with the poor primarily depending on ecosystem services and products; their livelihoods are severely compromised by the current trajectory (Remmelzwaal, 2006:29). Gender issues also seem to lurk in the shadows of the environmental arena. In a welcome move the proposed Land Bill recognises both spouses where they own joint property and further goes on to recognise polygamous relationships which are a norm in Swazi society. Unfortunately, it does not outline the customary provisions under which these rights may be realised. Another worrisome trend is the constant reminder to ordinary citizens as to whose family owns the land, as seen in intermittent land claims by members of the royal family.

Positively, it was noted that some communities in Swaziland have the capacity to effectively participate in environmental impact assessment as seen by the Malkerns community, although it was not on SNL which is the focus of this study. The success of the CDPs and subsequent traditional leader missions to Tanzania also offer a ray of hope.

#### **4.7 SUMMARY**

The salient point in this chapter has been that Swazi institutions are aware of the shortcomings of their tenure, but they remain steadfast in the belief that meaningful solutions have to be charted in the context of the existing customary tenure system and not an overhaul. The premise for that is that any foreign system like the titling of land would disadvantage the poor who are already suffering. Constant reminders of the insecurity presents with the sporadic land claims – often laced with eviction threats – courtesy of the royal family members.

There also seems to be a gap between customary law and the society that it is supposed to derive its norms from. That gap could be closed by modifying the customary law to reflect the current situation, especially with regard to women and the marginalised. While it made sense yesteryear to think of women under the confines of spouse, evidence abounds that women are no longer governed by those labels, choosing instead to remain single or to be divorced or, sadly, widows. Customary law can only remain vibrant and relevant if it adapts with the times.

While it is reassuring to see traditional leaders embark on fact-finding missions, it reveals that the traditional authorities intend to retain their firm hold on the land, which is not necessarily a bad thing provided that they include the peasants in the sustainable management of common resources on which a larger population solely depends.

## CHAPTER 5: EVALUATION

### 5.1 INTRODUCTION

This chapter is an evaluation of the findings of this research study. In the sections below it will be argued that political commitment is necessary to steer environmental management towards a more sustainable trajectory. This assertion is made on the basis that when there is visible commitment to policy, challenges would be tackled better. The challenges that Swaziland currently faces with regard to ensuring sustainability of common resources are: the administration of customary tenure; inadequate conservation of natural resources; emergence of an informal land market; compromised livelihoods; the adulteration of the traditional Swazi community; ongoing gender marginalisation; communities not effectively participating in issues affecting their livelihoods and a delayed land reform. The level of political commitment dedicated towards the tackling of these issues will determine the intensity at which these issues are undertaken.

### 5.2 POLITICAL COMMITMENT

Various authors have made reference to the lack of political will being an impediment to environmental management globally (Alden Wily & Mbaya, 2001:89, 99; Monadjem & Nkosi, 2001:75; Elliot, 2004: 8, 23; Bray, 2006:530, 533). The contention by Müller (1997: 14) that environmentalism is inherently political is true for Swaziland. In this country the oligarchy has a vested interest in land ownership and therefore the current state of affairs regarding environmental management is (indirectly) linked to a lack of commitment politically.

Firstly, environmental protection is not explicitly preserved in the Swazi Bill of Rights (Bray, 2006:546; Faure & du Plessis, 2011:464), but is implied by other rights such as the right to equality before the law. This stance proves the intention to realise sustainable environmental management in the country. It is, however, not enough to intend for something to happen, especially at the rate that environmental degradation is said to be happening (e.g. by the State of the Environment Report, 2013). It is an unfortunate position to be adopted by the State as its organic role primarily is that of protector and legislator on environmental issues, among others (Porter *et al.*, 2000:37-78). It is imperative that environmental issues take centre stage

in the Swazi landscape, and for that to happen there needs to be a strong political will in favour of that development.

Secondly, Swaziland has been noted to have two separate legal systems in place, the customary and the statutory law, stubbornly persisting with a dualism that has stalled progress since colonial times. Although Alden Wily (2011c:733-735) and Murombedzi (2014) are of the opinion that this dualism weakens customary law, the opposite is true in Swaziland. It can, in fact, be inferred that in Swaziland customary law supersedes statutory law, because all statutory law can only be passed after endorsement by the traditional leaders. Of itself this feature does not seem to be much of a hindrance until the extended delays it causes on passing laws by cabinet. Incidentally the laws that take long are the ones that are seen to potentially compromise the oligarchy's hold on the land. For example, the Land Policy which was drafted in 1998 went through the statutory process, was then submitted to the traditional authority for endorsement and has not seen the light of day since. The delay is especially surprising when considering that oppressive laws like the Suppression of Terrorism Act, No.3 of 2008 are operational and have been since 2008. This is, in fact, a show of a state intent on guarding its own interests by whatever means necessary (Porter *et al.*, 2000:37-78) while the environment in which it is sovereign deteriorates further under its watch. The absence of crucial laws like the Land Policy emasculates efforts by the instruments of government (e.g. Swaziland Environment Authority, Swazi National Trust Commission, Ministry of Agriculture and Cooperatives) to effectively control land resource use and this has been identified in the reports, e.g. the State of the Environment Report (2013) by the Swaziland Environmental Authority. As a result the infamous free-for-all scenario that Hardin (1968:1243-1248) posited is perpetuated with no people held responsible for any gross exploitation of resources and none of the people of the ground having the incentive to protect a resource that they might even be removed from through customary law provisions. At the end of the day all efforts, no matter how sophisticated, get watered down and so the unabated natural resource exploitation goes on.

The government is the chief protector of the environment and incidentally has in its custody the vital institutions to realise the reality of sound environmental management of common resources. These instruments are: Parliament for passing local environmental law or ratifying international conventions and domesticating them; government ministries that are there to implement the laws passed by government and, lastly, the judiciary whose duty is to uphold

the environmental laws and chastise detractors as appropriate (Bray, 2006:523). This is where opportunity lies for the Swazi government to display their strong will to see environmental management and sustainability issues prioritised. Worth noting also is the fact that technical skills and expertise of government officials and administrators are invaluable for proper implementation and enforcement of environmental law. To adequately train and develop staff in the government institutions and give them the resources necessary to fulfil their mandate also depends on how vested the country is in accomplishing that reality. The salient point made here is that without the necessary political commitment a lot of plans are as good as dead because their success would be jeopardised from the onset, be it by inadequate resource provision or inconsequential apathy from the appropriate institutions.

Political commitment remains the most potent ingredient that can steer the nation towards protection of environmental resources and ensure social justice. Visible political commitment would mean that efforts by the government and its instruments and civil society are not in vain. It is not expected that at the advent of political commitment sustainable management challenges would disappear into thin air, but it is understood that an administration which not only talk but walks the walk will in time garner support from its citizens. It can be expected that a more productive interaction between the two classes of law applicable in Swaziland (customary and statutory) can be realised and the grey areas in the cleavages be ironed out.

For a country like Swaziland political will can be best expressed by the King in his capacity as the supreme person in the country. He can display this by appointing environment-conscious people into the houses of parliament (Senate and Cabinet) and the numerous boards in which he commands a level of influence. He could also share this mandate with his appointees so that they are not afraid to make radical decisions where necessary. And just like he has on occasion called for people to stop discussing certain issues, e.g. dubious land purchase by ministers, he would well be within his rights to not only call for but initiate vigorous discussion of environmental affairs. Such dialogues double as opportunities to include all sectors of society under one roof so that various knowledge types can be shared. This would encourage productive interactions within the population and the policies to result from there would likely be more appropriate than the current ones. If the King can make these bold strides, it would be easier to get the government and its instruments to deliver on the mandate. Lastly, civil society would be empowered to conserve the environment around them. Under the current dispensation these propositions are unlikely to happen unless the

King makes the conscious decision to take on a different trajectory than is the norm and actually follows through with it.

### **5.3 CUSTOMARY TENURE**

In Swaziland both statutory and customary law dictate that Swazi Nation Land (SNL) belongs to His Majesty, the King. This is in line with the ancient colonial preference for awarding the state ownership of land as the people were deemed unfit for such an honour (Alden Wily, 2011c:733; Swilling & Annecke, 2012:15). As a provision of customary tenure the chiefs administer the SNL on his behalf.

The celebrated strength of customary tenure is probably also its greatest weakness, the fact that it is not documented anywhere. The strength is that it has proved its resilience and tenacity by being passed on from generation to generation through custom and practice. This attribute, however, also means that interpretation is left to be the interpreters' prerogative, usually the chief and the traditional council. It is also this interpretation that is usually to blame for the continued marginalisation of women who find it difficult to acquire land without a male proxy.

Customary law has also been conveniently quoted by the Swazi elite when forcefully taking land from rural Swazis. With the installation of Prince Maguga as double chief of Macetjeni and KaMkhweli chiefdoms, nuances of customary law were quoted by referring to the (also undocumented) wishes of the late King Sobhuza II. This was a failure on the part of customary law to display to all and sundry what it provides when it comes to fulfilling the dead kings' wishes. Its contemporary, the statutory law, would for instance have had a will which would have been verified as authentic and then executed. Customary law could also not be interrogated to find out what should then have happened to the incumbent chiefs who ended up as asylum seekers in the Republic of South Africa. Prince Matatazela's claim to the Mbekelweni chieftaincy could have been attributed to customary law just as the Prince Sobandla claims to the Sankolweni chieftaincy. Disappointingly, as recently as 2014 residents in the Nkilonko chiefdom were facing possible eviction by the chief as he had earmarked the place for development (Magagula, 2014). Prince Mangaliso could also as easily install himself chief over the Bulunga constituency overnight because of customary

law regardless of the fact that the area already had an incumbent chief. To drive the point home he told the community that those who did not want to recognise him as chief were free to vacate the area. All these instances show the misuse of customary tenure to mercilessly rule the people. It also serves to instil fear among all Swazis as non-royal Swazi chiefs seem to be unsafe from later claims that they must absolve themselves of all power and become subjects to a prince or vacate the area. This pays homage to the assertion that rights in rural Africa are very dependent on one's social life and identity based on power relations (Cousins, 2006:506). Although chiefs are just as powerful, it is apparent that the Swazi pinnacle is reserved for royalty as they can easily depose a chief to install one of their own with no consequence to them.

To add to the intrigue, the same Prince Matatazela was later, in 2011, implicated in wrongfully allocating people land in a farm belonging to the King. The matter was concluded by having bulldozers tear down houses as people once again became landless. The important thing to note here is that the people who later had their homes demolished had acquired land through Swazi law and custom. To all intents and purposes they therefore had tenancy to that land in perpetuity and they duly started constructing their homes. Surprisingly the very customary law was quoted when bulldozers were authorised to demolish their homes. From this instance it can be concluded that customary law does not really exist, but can be quoted to satisfy the whims of the elite in Swaziland.

As usual when customary law is quoted by the elite, it is to use the King's name to get their way.. Even when they do not explicitly use the King's name, it is always implied. It holds then to look to him as the one to steer political will towards the revival of sound environmental management of resources. It is also the King who can get the organs of State to start working on documenting customary law for ease of future application.

As the large majority of Swazis reside in rural land, they can be said to be familiar with customary law by default. This christens customary law as the ultimate vehicle with which to sway the attitudes and activities of the people regarding environmental conservation. Customary law is also a powerful agent as seen by the insistence that it be applied unadulterated by the Constitution and the Draft Land Bill. It would be beneficial to document it so that all citizens can have it as referral. Documented customary law can also be used to contain the powers of the chiefs, creating a check and balance on their powers. Documenting

it would also help the nation to identify weaknesses and amend them as appropriate. Aggrieved members of society (usually women, widows) would then also have a basis on which they could challenge decisions taken against them. It is also the modern era and customary law has to evolve as well and be documented. After all, it owes its tenacity and resilience to its ability to move with the times. Customary law needs to also highlight and address the issue of women empowerment instead of being used as a tool of oppression.

#### **5.4 INFORMAL LAND MARKET**

The Schlager and Ostrom (1992:252) and FAO (2002:23) prediction that ambiguous tenure invariably leads to unscrupulous ways to secure land as people scramble to establish a sense of ownership by whatever means, has in Swaziland manifested itself in the emergence of an informal land market. This trend can squarely be attributed to the disjuncture between statutory and customary law. This assertion is made because although statutory law states that SNL is not for sale, chiefs have been said to knowingly participate in the exercise although they would never publicly consent to this. The far-reaching effects of this new development shall be experienced by the poor when they are stripped of their last dignity by losing their land. Even the new communities that are being created may prove to be a sore spot in the near future. Therefore there is urgent need to regulate if not prohibit this exercise in order to avoid colossal ramification in the near future. Swazi nation land is the only safe haven for all Swazis, rich and poor alike. The casualties of the emerging trend will be the poor as they are the ones with the incentive to sell land for temporal relief and, secondly, because after the sale of land they may become destitute as they might not afford the ever rising *khonta* costs. Ownership favours the wealthy (UNDP, 1998:4) and the working class (Alden Wily, 2011a:40) of Swaziland have certainly enjoyed the land ownership that their money can afford them. Although expensive for the rural unemployed, Swazi SNL can be said to be considerably cheaper than what one could pay in regulated title deed land. In this process though there is the danger that indigenous people could also be permanently displaced as a result of the booming land sales and one way or the other this will eventually become a housing problem for the government when multitudes of people end up without shelter. It also serves to mask the real problem from government because at the time people are filling up the land haphazardly and when it is finally saturated, government may not have leeway on which to navigate the challenge. After all, land is finite and cannot be created to accommodate more people.

As commons derive their integrity from the anchoring customary rules (Elliot, 2004:130; Alden Wily, 2007:46), the arrival of people without following the widely accepted and customary channels also immediately alters the prevailing institutional frameworks at community level (Brown & Wardwell, 1980:51, 53; Falk *et al.*, 2003:340; Alden Wily, 2011a:41, Connell & MacManus, 2011:27-28). By having been inducted differently in the community new members may not feel the need to follow the same rules as everyone else. Additionally as most of these people generally work in the urban areas, it can be expected that they would miss a lot of the traditionally sanctioned activities. Such activities are viewed as important for cohesion among community members.

The other factor is that it is arable land that is under attack. Without arable land most citizens would have to rely on welfare. The question then is whether Swaziland has the resources to become a fully fledged welfare state. The answer is a resounding no. It is in the government's interests to nip this activity in the bud or risk the likelihood of having many people it cannot afford to support. Land has been known to result in conflict in Swaziland; so in the interest of conflict containment it is also in the interests of the government to prohibit the sale of land in SNL or at the very least provide strict and transparent regulations to be met before one can alienate land.

## **5.5 BIODIVERSITY LOSS**

As long as the insecurity of tenure is still the norm the following can be expected to go on: accelerated biodiversity loss on SNL, wetland destruction; degradation of sensitive areas with no consequence whatsoever to the perpetrators; chiefs will also continue relying on their prerogative in apportioning land instead of following certain guidelines that ensure sustainability. Unsuitable land use planning resulting in habitat destruction and accelerated biodiversity losses, occasional conflicts over land and boundaries and inability to combine land use planning and landscape management will therefore continue to be sore points in the near future.

## 5.6 INEQUALITY

Inequality continues to be a problem in Swaziland. Disappointingly it seems that the elite are completely out of touch with the plight of the rural poor. An example can be found in the legislature passing laws entitling them to large retirements and later the greed was manifest when members of the cabinet unfairly profited by buying former crown land at severely deflated prices. Although these can be viewed as completely unrelated incidents to environmental management, it can also be argued that that money could have been used to fund environmental initiatives like the ever threatening food scarcity that regularly ravages the country. In fact, these actions are what Porter *et al.* (2000:37-78) refer to as the State and elite guarding their own interests. It is also an expression of the politics of exclusion (Elliot, 2004:132). As discussed, it is when the poor are desperate that they degrade the environment the most. There remains a need for the elite to want to include the poor in developing the country sustainably and that would mean sharing the resources instead of defending them for the select few. This defeats one of the tenets of sustainable development which is fairness. Moreover, the elite also got the backing of the King when he issued a directive that such issues should not be discussed further, effectively silencing any people thought to be detractors.

There is a need for Swazi policy to be inclusive and to bring together the bureaucrats, elite and civil society at a round table so that they can together chart the way forward in what Acemoglu and Robinson (2012:317) refer to as inclusive institutional frameworks. The ideal result of such frameworks is the marked influence of both the rich and poor on policies affecting their lives. For this to happen, there needs to be commitment and willingness, especially from the part of the elite and the bureaucrats who own or access the resources that can be used to reverse the current reality. The current state of environmental management and sustainable management of current resources remains largely unequal and is not a morally defensible sustainability as it is not inclusive of the poor in society (Turner *et al.*, 1994:32). Culture is where Swazis across all walks of life converge to celebrate their heritage. The Swazi society is incredibly steeped in it and it may be exploited for the purpose of providing a renaissance of the Swazi society, a rebirth that recognises the role of nature in sustaining human life and the mutual benefit that can be extended back to nature through responsible environmental management.

## 5.7 GENDER MARGINALISATION

Cousins (2006:506) claims that gender marginalisation is one of the constructs of colonial times that have been embraced by many post-independence African governments. And Chu (2011:35–39) decries the fact that gender marginalisation is usually just glossed over in land tenure affairs. Swaziland has in some respects attempted to prioritise gender issues although the commitment to really shift the paradigm is still not there.

In what could be viewed as a future victory for women the proposed Land Bill tackles the issue of property registration by ordering that both spouses appear on the title deed of a jointly owned property. It also requires both partners to sign any documents relating to the property versus only the male signing as per previous provision of the Marriage Act, No.47 of 1964, and the Deeds Registry Act, No.37 of 1968. While this appears to be a step in the right direction, the first disappointment is that the bill in question is still in draft form and as such may be tied up in the dual law conundrum for more than a decade as well (if the still to be endorsed Land Policy is anything to go by).

Secondly, while it boldly attempts to play advocate for all women – e.g. by providing that polygamous relationships be treated as civil ones – it still falls short because it does not detail how the customary law should be applied in such cases. Thirdly, although the bill quotes the Constitution when asserting that all citizens are eligible to be allocated land; such articulations are voided by the expectation to administer customary law without modification when it is known not to recognise women as independent individuals. In gender issues customary law's biggest weakness is that it does not recognise women outside their roles as wife, daughter, sister or mother and as such still requires the male proxy for any land allocation to happen. The second problem with customary law will be reiterated: It is not documented, ultimately leaving it to the chief/traditional council's prerogative to allocate (or not) land to female land seekers with no guiding standards in place.

The plight of women can be improved by the collective actions of a strong political will, revision of the customary law provisions that marginalise women and also the realisation and appreciation of the roles played by women in upholding society. Instead of laws saying “No discrimination according to gender...” they perhaps need to be clearer and say “Women are entitled to...” and further make the conditions conducive for them to access and exploit those resources.

## 5.8 SUSTAINABLE LIVELIHOODS

The livelihoods of many rural Swazis remain highly unsustainable. On one hand they contend a resource scarcity. On the other hand the sporadic land claims and threats meted by princes and other members of the elite, seeking either to be chiefs (princes) or to move them to make way for business (Nkilongo chief), often means that they cannot unreservedly call a place home. They not only lack the assurance that as personal entities or groups their rights to land are acknowledged by all prevailing institutional frameworks, but that those rights are deserving of protection also (FAO, 2002:18-20). The study has shown through isolated incidents how the oligarchy often threatens the people's right to land, as with Prince Mangaliso's directive to the Bulunga constituency. From that situation a conclusion can be drawn that residential rights are only assured when communities accept royal orders with no question whatsoever. It must be noted that rural people are typically less rich, so moving house from the only area you call home would be understandably costly and the commons are usually the only real asset they own (Alden Wily, 2007:43-45). Besides the assured financial setback, rural people generally have a strong bond with their land (Elliot, 2004:130) which is then forcefully severed. On the other hand the Nkilongo constituency is awaiting their fate which, if history is anything to go by, may just resemble Murombedzi's (2014) Malaysian Sime Darby deal which went through despite protests to the contrary and dislocated scores of people. Swilling and Annecke (2012:3) assert that the contemporary sustainability test is whether ruthless exploitation of resources can be slowed down to ensure a fair future for all. Such a challenge is lost in the mind of the Nkilongo chief who threatened to spearhead development that would compromise his subjects. In terms of common resources sustainability, people who live under such conditions would not have any incentive to preserve anything because they never know when their last day may be in that area and hence will tend to maximise their benefit while they still can and therefore rampage on the environment. Schlager and Ostrom (1992:257) actually declared that there is a correlation between people living under an insecure tenure and poor land use that hastens environmental degradation. Reports like the State of the Environment Report (2013:35) also corroborate this viewpoint.

The government needs to devise new strategies for policy formation to ensure that maximum public participation is garnered to maximise on support of that policy. Although rationing of resources could offer relief to the country's environmental resource base, it comes with a host of institutional arrangements that need to be in place before such can take place. And the

government needs to be willing to put those institutional arrangements in place, not only for implementation but for on-going monitoring and evaluation to ensure sustainability.

Although a ‘peaceful’ nation, Swaziland had better gear for full-blown conflict in the near future if things do not change. Already there have been forceful evictions, occasional threats of eviction on unwilling subjects and the usual chieftom disputes which comprise of boundary issues and sometimes inheritance. As land becomes scarcer it can be expected that all royal family members and the elite will have the incentive to be chief or have their desired candidate as chief to ensure that they can benefit perpetually from the generosity of community members through *kuhlehla*.

## **5.9 SHRINKING ARABLE LAND**

According to the World Factbook (CIA, 2014) only 10,8 per cent of total land area in Swaziland is arable. The advent of the informal land market places this valuable resource in jeopardy as citizens are selling fields to land seekers. In a few years the country may face the hardship of not having any land to farm on, especially for the less fortunate who rely on the fields for subsistence farming and whose socioeconomic status does not allow them to buy food from the shops. A reduction in arable land is the worst thing that a poor person may have to contend with as subsistence farming may just be the only activity keeping them going. If uncurbed numbers of people eventually sell their homes when the arable land is finished, they will end up being displaced and may end up creating an informal settlement problem for the government.

## **5.10 CONFLICT**

If customary land continues to be unregulated then it can be concluded that Swaziland is well on its way to conflict. And it would not be the first country to be embroiled in resource disputes. It has been said that the Sudanese civil war was ignited by difference of opinion regarding land ownership (Alden Wily, 2007:43-45). The fact that arable land is so little and is the very land that is sold places the country in a precarious position. Chieftaincy disputes are already the norm in Swaziland and it certainly will not take long before the disputes escalate into something bigger, especially as the land resource becomes scarcer. On one front it may be families embroiled in disputes with the bone of contention likely to be land sold

without proper family consultation or consent or land belonging to a widow with offspring. On another front disputes are likely to escalate between chiefdoms over boundaries. At the largest scale it may be country against country. As noted, the King of Swaziland has in the past instituted claims to reclaim land from the Mpumalanga province of South Africa. When the land becomes scarcer as more people occupy it, his request may gain urgent momentum and South Africa may not be willing to cede the land to him. This may very well culminate into the first international and the biggest conflict Swaziland has ever seen.

Conflict between neighbouring communities and statutory bodies like the Swaziland National Trust Commission (SNTC) over boundaries is likely to intensify as people have nowhere else to go but to encroach on protected areas. Deviating from the traditional *khonta* system may also in the long run alter the cohesion that Swaziland is famous for. And the more people in the commons have no trust among each other and lose the kinship that is usually cultivated by the sharing of common resources the easier it will be to sow seeds of dissent amongst communities.

## **5.11 PUBLIC PARTICIPATION AND DEMOCRATISATION**

Principle 10 of the 1992 Rio Declaration reads:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

From the little that can be gleaned of Swaziland it is obvious that civil society is not encouraged to actively participate in decision-making, but are also often threatened with eviction, highlighting their insecurity of tenure. The downside of this stance is that bureaucrats tend to make and rely on assumption-based policies or conventional theory. They are usually so far removed from the actual reality that they rely on abstract models to derive that policy and such solution ends up worsening the problem. There is need to avoid

this terrible simplification of environmental problems (Reinert, 2009:1-34) and the propensity by government to remotely administrate the commons (Ostrom, 1990:2; Elliot, 2004:132; Alden Wily, 2011a:20). The more democratized public participation approach to ensure that close to accurate information is used as a starting point to bolster the chances of making relevant policy for the problems the country faces is a better approach. Otherwise there is always the risk of duplicating Ostrom's Brazilian fishery experience and with such an approach a government can always be assured that their policy will wreak havoc and leave the people who depend on the resource worse off (Schlager & Ostrom, 1992:255). As with the Brazilian experience, this action unfortunately weakens any citizenship and likelihood that the people can engage with the government to reach sustainable solutions. It means, therefore, that any environmental management decisions taken remain autocratic and are imposed on the populace. Imposed decisions are less likely to hold for long as the recipients may feel that their own interests are regarded as unimportant and pretentious. And when people feel this way they are less likely to practice caution when harvesting from the environment. In fact, they may be tempted to express their anger by destroying the environment as it is the only thing that they can take out their frustrations on.

The weaknesses of shutting out civil society include the lost opportunities of exchanging experiential and expert knowledge which can help them in policy formation and in getting rural residents to adapt their habits accordingly. They would be more receptive to mutual dialogue as opposed to merely executing orders from people perceived to be out of touch with their plight. Lastly, the more the livelihoods of the poor are compromised, the more they will become a burden for the government to provide them with basic services which they ordinarily would harvest from the environment.

The presence of such laws as the Suppression of Terrorism Act, No.3 of 2008, in the public domain is welcome as terrorism is a valid threat that all countries need to envisage and protect its citizens against. However in the case of Swaziland this may mean that public opinion on environmental affairs is not only unsolicited but prohibited as well. It is also likely to erode any remnants mutual trust between the State and civil society as it can be easily misused to punish perceived detractors. It is only when all society members see themselves as being similarly affected by the current pattern of use and trust each other to do their respective part in ensuring that sustainable development is a reality and are also allowed a certain latitude to self-organise without external influences that commons will be better

managed (Ostrom, 1990: 4). This Act is said to be so ambiguous that utterance can be said to constitute dissent and people can be prosecuted as a result. Although not an environmental law, the act discourages discussion on land reform or tenure issues as these go to the core of Swazi governance because the firm hold on the land buttresses royal rule. It can be expected then that people will shy away from public discussion in fear of being seen as challenging the King's rule in the country.

Even if the Suppression of Terrorism Act, No.3 of 2008 Act was repealed there is also much required from the side of government to assure people that their views are not only valid but are considered as well, especially with the level of mistrust that exists between the two parties. There is need also to realise that it is only through robust public participation that meaningful strategies can be undertaken in facing the poor environmental management debacle. It is also through public participation that all stakeholders can confront their own weaknesses as individual entities and as a group and anticipate them on time. Importantly, the benefit of attacking the complex problems that society currently has from varied points of view can only prove beneficial in the long run. Actively involving the public also means that they will not be disillusioned by any articulations made by the bureaucrats and will instead be receptive and also have a will of their own to see strategies succeed. By advocating for active and robust public participation and democratisation it is not the study's assertion that challenges will then vanish.

Soulé and Lease (1995:162) assert that bureaucrats and elite are city people and therefore are prone to arrive at city-friendly solutions. That is why Acemoglu and Robinson (2012:317) call for inclusive institutional frameworks that would result in both the elite and the peasantry influencing strategy. Even in medieval times the commons started unravelling when the elite started to systematically exclude the peasants from the running of the commons (Cox, 1985:52). It is imperative therefore that the rural and the city people merge for the purpose of synthesising strategies. Appropriate strategies can only be arrived at when the rural people, armed with experience, are allowed to influence the process. It is a fact that government cannot do that alone; even if they had all the resources they would still lose out on the invaluable advice that experiential knowledge can add to policy. And the way to tap into that knowledge bank is inviting the indigenous people who live in the situation. Science can only hypothesise it is necessary that those people are brought to the table.

## **5.12 POPULATION GROWTH**

The growth in Swazi population is not projected to slow down. The World Factbook (CIA, 2014) predicts a 1.14 per cent growth rate (as per July 2014 estimates), meaning that the problems that have manifested as a result of a growth in population are not going away. These are deforestation, encroaching on protected areas and exaggerated use of resources. The government and its instruments therefore have a responsibility to plan for the future under an increasingly complex state of affairs that this development is likely to bring about. This would probably start with addressing the current pertinent issues like the insecurity of land tenure to ensure that the projected population increase does not overwhelm governance of the country, potentially resulting in resource conflicts as previously stated. The increase in population growth has also increased the value of land. Cousins (2006:488-510) says that when people were fewer, land itself was of negligible value since it was in ample supply. Population growth has also meant that there is far more withdrawal of ecosystem services and products than the earth can afford to replenish to continuously meet the ever growing demand exerted on it. As there are more people, the demand for land has grown and unfortunately it cannot be stretched to accommodate the needs of an ever growing population.

## **5.13 CHIEFDOM DEVELOPMENT PLANNING (CDP)**

The emergence of the Chiefdom Development Planning (CDP) in the Lower Usuthu area is commendable as is the success drawn from it. It was particularly inspiring that these plans were tailor-made for the Swazi situation in the sense that traditional presence has been sought from the beginning. As mentioned in earlier chapters, Swazis are steeped in their traditions and a plan that does not alienate those traditional frameworks stand a better chance at sustainability.

The initiative showed rural Swazis the possibilities that exist in their midst. In fact, the success of the CDP reiterates Ostrom's conclusion that it is the combination of effort rather than advocating a single dispensation that would result in a sustainable management of the commons. By having the community pool their resources by contributing some of their fields to the project to create the farms instilled commitment on the part of the community. It is also worthwhile to note that the fields donated to the farms were not sold, meaning that the

involved families' subsequent generations would also benefit from the initiative. This should satisfy a tenet of sustainable development.

The CDP is a display of local authority and community empowerment to achieve some independence ability to manage their day-to-day local matters without overburdening the State (Ostrom, 1990:1-32, Schlager & Ostrom, 1992:260). It has also shown that even with a degree of independence local authority still needs the support from government as seen by the visible presence of the Ministry of Agriculture and Cooperatives in guiding the community with regard to what products to be farmed and what methods to be used, i.e. climate-smart agriculture. It also reveals that the State is willing to develop reliable and robust collective action theory that promotes resilience and cost-effective property rights administration for communal resources as advised by Ostrom (1999:3).

The rural farmer support offered by the International Fund for Agricultural Department (IFAD) in conjunction with the Ministry of Agriculture and Cooperatives (MOAC) is also a commendable collaboration. The training does not only empower the community, but it increases the likelihood that the project will be a sustainable one long after the initiators have left. The fact that community members also partake in participatory community resource assessments and are empowered to design their own development plans is also a step in the right direction. That is to empower people and let them self-manage. As a show of sustainability the project has evolved to include public health, potable water supply and sanitation for the community, all factors that positively affect livelihoods. Importantly, it simultaneously addresses gender disparities as women are also active and have benefited in having their socioeconomic status (and by default those of their families) uplifted.

The sobering thought that comes to mind though is that under the current tenure residents may also be forced to leave at the whim of the chief due to the unregulated and undocumented customary law. Notwithstanding this potential weakness the entire project looks like a great prototype for the country to build on and spread to the other communities. Of course, there are other institutional considerations like the pending registration of the CDP operation in Swaziland as proposed and most importantly ensuring that communities do not become indebted to financial institutions and end up losing their land and their livelihoods to them.

#### **5.14 TANZANIAN FACT-FINDING MISSIONS**

In yet another move that could signal a strong commitment from Government to move towards sustainable environmental management of common resources, chiefs and princes were sent on a fact-finding mission to Tanzania, a country regarded as one of the pioneers of customary tenure recognition in Africa. This move is strategic on the part of Government and it also affirms that the Government expects the chiefs to still play the pivotal role as the King's administrators on SNL in any future dispensations. This betrays the King's intent to keep his grip on the land. This is not a bad thing because Swazis (as per interviews) see more benefit in improving on the current system instead of a complete overhaul that would result in a complete upset of the status quo. The fact that the Tanzanian counterparts shared with the Swazi contingent was that the work was still cut out for them in terms of getting the institutional instruments behind the resolution to chart an environmentally sound and sustainable future for the country. The extent and willingness of the Swazi oligarchy is unclear at this stage, but there is hope that the investment on these missions starts to bear fruit sooner rather than later.

#### **5.15 DRAFT LAND BILL**

Although the articulations made in the Draft Land Bill are refreshing for the most part, they are still empty if the Bill will stay in its embryonic state like other laws before it, i.e. the 1998 Land Policy. It, however, stands as an aggressive way forward, attempting to contain land sales without commercialising SNL. The position of women married in polygamous relationships is superficially dealt with as it is governed by customary law which, as discussed earlier, is not straightforward in its administration. The salient point with regard to environmental law would be that without unnecessarily rushing the process it needs to be dealt with the urgency that it deserves. Much of the ecosystem is degraded and habitats destroyed every day that the laws are not passed. Moreover, rural people continue to survive under unspeakable conditions. In short, the delay in passing environmental laws is in fact a delay to humanity and the poor are paying that price with their lives. There is a need for better interaction between the customary and statutory laws of the country that will result in timely passing of laws.

## 5.16 DISCUSSION AND CONCLUSION

This chapter has identified political commitment as the single most important factor in steering the nation towards environmentally sound management of resources. In particular it is its lack in reconciling the precepts of statutory and customary law, especially in passing new laws in the country, in explicitly enshrining environmental protection in the Swazi Bill of Rights and in ensuring a holistic approach towards environmental management by the various instruments of government. Lack of political will is also blamed for the emergence of an informal land market in the cleavage. It is because of this lack of reconciliation that perpetrators cannot be brought to book because they are committing travesties in the realm of customary law which is administered and punished in traditional courts. Unfortunately, as chiefs are also privy to this activity no one would have the incentive to bring people to book. Statutory law, on the other hand, is applied in title deed land and therefore has no jurisdiction in SNL and therefore the issue infiltrates the Swazi commons unabated.

Older results of the insecurity of tenure are the loss of biodiversity and habitat destruction which also continues at an accelerated rate. Gender marginalisation is still rife although the Constitution of the Kingdom of Swaziland (2005), and the Draft Land Bill (2013) attempt to tackle it. The attempts are seen as half-baked because they only allude to gender equality without delving into how the nation can possibly address the disparities.

Livelihoods remain unsustainable and so the assault of the commons remains. They will become severely compromised in the near future when people suddenly do not have arable land on which to farm. This eventuality will be brought about by the continued ignorance of the thriving land sale on SNL and the fact that the land on sale is the cultivable part. Constant articulations by the elite are also compromising rural livelihoods, for people should remain oppressed by reminders that they could be vacated at any time or the ad hoc installation of chiefs.

If the country continues on the same trajectory then conflict is definitely inevitable, from the family unit, to chiefdoms and the country. Population growth is also projected to remain on an incline, meaning that in the near future there will be even more people contending for the shrinking resources. The picture of the Swazi sustainability trajectory is not all bleak though

as welcome developments like the successful Chiefdom Development Planning (CDP) and the recent oligarchy trip to customary tenure pioneers like Tanzania serve to revive hope that the country can get onto a sustainable trajectory sooner rather than later.

### **5.17 SUMMARY**

This chapter foremost confirms the premise that the current land tenure does not support the sustainability of common resources as embodied by the glaring lack of political commitment to implement environmental strategies. The lack of political commitment is seen the clearest in the delays in passing environmentally crucial laws like the Land Policy, which would offer a framework for land management affairs. As a result unsuitable land use is not curtailed and people on SNL remain unaccountable for their actions. It has been argued that political commitment together with documentation of customary law and active participation of all citizens are necessary ingredients in charting a new future.

## CHAPTER 6: CONCLUSIONS AND RECOMMENDATIONS

### 6.1 CONCLUSIONS

This chapter provides a summary and overview of the study. It also includes the recommendations that were drawn from the study. Theoretically the study starts off from Hardin's (1968:1243-1248) assertion that humans are inherently atomistic and that in commune situations they would always seek to maximise their individual gain at the cost of the community they are part of. This view has informed many a policy as governments sought to sustainably manage resources remotely. The problem with this approach is that it inadvertently created the very open-access situation it sought to prevent. While Hardin (1968:1243-1248) encouraged privatisation of rights, many governments resorted to using conventional theory to formulate policies for resources and people they had not taken time to know. Needless to say, such policies often backfired and resulted in resource depletion and disintegrated local institutional arrangements instead of the opposite. Intensive research on the subject of commons by such people as Ostrom (1990:1-55) later birthed alternative conclusions to Hardin's. It provided that as a starting point it should be realised that communities are diverse, as are their norms and communal arrangements. Appreciating this fact allows for the realisation that there can never be a blanket policy to deal with issues of sustainable resource management across communities, but that each had to be tailored according to the merits and demerits of that specific community. This is unfortunately where most governments have failed. Ostrom added, from extensive study, that the more cohesive a community, the more likely that each member would treat the common resource with caution. Ostrom also deduced that a strong sense of community is not the panacea for collective best interest (Ostrom, 1990:8-9). She therefore concluded that for true sustainable management the combined efforts of the community, the local authority and the government will always be a necessity. The local community and authority could work together and unburden the government while the government would always be needed to restore order from time to time and, importantly because of its institutions, the government could also offer ongoing support and capacitate the communities for self-management.

Property rights and their administration have increasingly come under the radar due to such factors as population growth, migration and the growing perverse consumption in the world.

Population growth exerts a lot of pressure on the environment and as such resource depletion is on the rise. Perverse consumption, on the other hand, has meant that although many resources are depleted to provide luxury goods it is only a select few, the wealthy, who benefit from it (UNDP, 1998:4). Meanwhile multitudes of poor people have to contend with a compromised environment when they are not responsible for the large-scale resource destruction that compromised the environment in the first place. Because of their poverty status and desperation these people severely depend on the environment for ecosystem products (fuel wood, grass and wild fruit) and services (water reticulation offered by a wetland, for example).

A healthy environment is a triumph for both dependent communities and governments in that it alleviates the governmental welfare burden when the poor in society are provided for by their immediate environment (Monadjem & Nkosi, 2001:3). It is therefore discouraging to note that the commons have been under attack from the combined efforts of the two groups that should have the greatest incentive to protect them. Dependent communities often wreck the commons because they do not have alternatives. In the free-for-all scenario that is usually perpetuated by lack of relevant policies people are stripped of the incentive to care about tomorrow and therefore respond to their immediate need for that resource and if they can capitalise on it they do so. Governments, on the other end of the spectrum, do not engage how and as much as they should with dependent communities to enable appropriate policy formulation Reinert (2009:1-34). They also display a preference for blanket policies when in fact communities are different and therefore require not only case-specific policies but varying degrees of implementation as well.

The study sought to consider how customary tenure affects sustainable environmental management of common resources in Swaziland. Tenure is the relationship governing individual and group relations with regard to land and it can either be secure or insecure. When it is secure its recipients can expect that their rights to a particular resource cannot only be acknowledged but that they would be protected as well. Conversely the tenure insecure people have no certainty or confidence in the acknowledgement of their rights to a resource. It is not unusual for the latter group to use resources excessively as they try to maximise personal benefit before others. It is for this reason that insecure tenure has been widely associated with unsustainable environmental activities.

The study adopted a qualitative approach and a purposive sampling method. Experts were identified from the organisations that deal with environment and land issues in Swaziland. These are the Swaziland Environment Authority (SEA), the Central Rural Development Board (CRDB) in conjunction with the Ministry of Agriculture and Cooperatives (MOAC) and the Swaziland National Trust Commission (SNTC). The University of Swaziland (UNISWA) was engaged to offer an objective view as all the other organisations are either governmentally owned or government affiliated. The Yonge Nawe Environmental Action Group was chosen by virtue of being the oldest and only environmental advocacy group looking after community interests in the country. It was, however, found to be defunct at the time of the interviews. There is currently no entity that has taken the baton from them. In-depth interviews using prepared questionnaires (Annexure A – E attached) were carried out.

The underlying concepts of sustainable livelihood, migration, population growth, customary land tenure and common resources governance were explored extensively through literature, first in the global, then African, and finally Swazi contexts. Customary law derives its resilience from its host community as norms adapt over time. This quality then means that customary law application and nuances vary from one community to the next. This is the limitation of the study: it cannot be applied elsewhere as it focuses on a specific country – Swaziland.

The low status afforded customary tenure by many governments is a critical poverty propellant. In a commons the inhabitants have bundles of rights which determine their status. The bundle consists of access, withdrawal, management, exclusion and alienation rights which can be further classified into the operational level rights (access and withdrawal) and collective level rights (management, exclusion and alienation rights) (FAO, 2002:8). Resource users are classified into authorised users (who enjoy the access and withdrawal rights), claimants, proprietors and owners (Schlager & Ostrom, 1992:249-262). As the less empowered group authorised users have been known to overharvest resources in an attempt to maximise their gains against uncertain access withdrawal conditions.

In terms of legality property rights are either *de facto* or *de jure* and a communal setting combines these rights. When a government awards people exclusive rights to a resource it bestows *de jure* rights on them. The arrangements and rights devised by the community of its own accord on how to manage the resource are *de facto* rights and are informal (Schlager &

Ostrom, 1992:254). Commons are not unique to the African continent. Australia and Canada has them and awarded them their property rights and resources in 1992 and 1997 respectively (Alden Wily, 2007:48). They are typically inhabited by indigenous people whose claim to them is historical tenure and use. Commons sustain the rural livelihoods and this has in recent years come under threat from environmental disasters like erosion, pollution and overharvesting. Commons also offer sanctuaries and sacred places to its inhabitants and are usually the only real asset some people will ever have in their lifetime.

Commons often endure internal and external attacks. Internally trends like population growth can exert enormous pressure on the resource as does immigration (Hardin, 1968:1243-1248; Clay & Reardon, 1998:1; UNPED, 2001:16-18; Cousins, 2006:448-510; SSER, 2013:26, 44; Wenner, 2013.). All people require shelter and land to build it on just as they require nourishment and some more land to farm on. The ecosystem products and services suddenly have to cater for a larger contingent and sometimes it falls short of the requirements expected from it. There are also other factors like personal greed exhibited by commons administrators which result in unsustainable land location. When an administrator stands to gain personally, he/she can allow an undesirable activity on the commons or give the best portions of land to people who are of a greater socioeconomic standing and leave out the undesirable bits to the peasantry.

From the outside the commons are attacked by the lethal combination of the State, the law (local and international), the elite and conglomerates (Porter *et.al*, 2000:35-78; Elliot, 2004:132; Murombedzi, 2014). These are powerful groups whose main driver is self-interest. They incidentally control or, in the case of elite and conglomerates, influence policy and they use this advantage to sway it to fit their preferences at the cost of the rural poor. Commons have been attacked the world over, from Europe to Asia to Africa. The main tenet has always been systematically excluding the poor by declaring individual title on large pieces of lands for the select few (wealthy) while large numbers of the poor have to make do with marginal lands and scarce resources. The same method used in medieval England was used as a prototype for the African scramble by colonialists. The African belief in communal ownership and the land essentially belonging to some mystical beings made it easier for the colonialists to impose their 'superior' and formal land ownership system that systematically disposed lots of Africans of their natural resources (Alden Wily, 2013). A host of laws were passed to ensure that the takeover was legal and could not be challenged. At the same time

customary tenure assumed the informal *de facto* status that could not be readily enforced in a court of law. In the assault large tracks of resources were often assigned state ownership and then exploited as the state saw fit.

The dismantling of the commons saw chiefs who had been mere administrators prior to the attack gain influence by being made paramount chiefs by the colonialists. Their roles became increasingly autocratic and less people-centred (Cousins, 2006:500-510). Local people also banded together, believing that there was strength in numbers and also trying to ensure that they could at least influence the chiefs who now were the go-betweens for the colonialists and locals. Other consequences were gender disparities which were embedded to ensure that women remained subservient to men despite their significant role in food production. Culture was ignored to ensure that men were the recognised heirs to land and that construct still remains.

African States would later gain independence from their colonialists and the new governments demonstrated a tendency to fill their former masters' shoes rather than liberalise their countries. Where benefit had previously accrued to the colonial masters the states and elite were the new beneficiaries. They not only maintained colonial laws, but in some cases new laws were passed to cement the status quo. Post-independence bureaucrats and elite usually have business interests that converge with those of international conglomerates and they use their influence to ensure that these proceed despite any difficulties that accrue to local society and the long-term environmental destruction. Not all is lost, however, as some African countries have attempted to institute land reforms. The common trend is that customary tenure remains inferior to titling although it is variably recognised and some resources and rights have been returned to communities. Tanzania, Botswana and Mozambique are among the African countries that have made significant progress in customary tenure restoration (Alden Wily, 2011a:44-51).

International financial organisations like the World Bank and the International Monetary Fund have also been culpable in commons degradation (Porter *et al.*, 2000:53-58). In a way these organisations could even be viewed as an evolved colonialism. Their preference for policies that benefited a few while local communities languished always left a lot to be desired. Moreover, the entities that usually benefitted the most from these were the very conglomerates whose roots are in former colonial countries. Although there have been

attempts to adopt more environment-friendly laws by supporting environmentally sound policies, the organisations have time and again tended to fund perverse projects.

The focus of the study was on a small landlocked country of Swaziland. Home to almost one and a half million people, it is surrounded by the larger South African and Mozambican States (CIA, 2014). It is presently ruled by His Majesty, King Mswati III who ascended the throne in 1986, four years after the demise of his father, the late King Sobhuza II. The citizens of this beautiful, scenic country are extremely dedicated to their traditions and culture. They are committed to their customary system even though it is riddled with inconsistencies, believing that it is the necessary condition for the pseudo-peace in which they take much pride (Scott, 2006:157; Wooderson, 2013). Like all present day countries, Swaziland contends with environmental problems despite having a vibrant ecosystem. Population growth has resulted in overexploitation of environmental resources as land shrinkage and the visible thinning of forests (people fell trees for various domestic purposes) indicate. A host of other environmental resource problems, including alien weed infestation, scarce drinking water supply, soil erosion as a result of overgrazing and loss of biodiversity, have been noted (Swaziland Environment Authority: SD WSSD, 2002:14).

The country is administratively divided into four regions, namely Shiselweni, Lubombo, Manzini and Hhohho region. The capital city is in Mbabane while the legislative capital is in Lobamba, an area nestled between Manzini and Mbabane. Climatically the country comprises of the Lowveld, which has a semiarid climate and is drought prone, the Highveld, which has high rainfalls that often induce nutrient leaching, the Middleveld, which is mixed veld and home to various edible and inedible grass species, and the Lubombo plateau, which is conducive to maize and other root vegetables (MOAC, 2014).

A large portion of the Swazi population relies on subsistence agriculture despite having a small portion of arable land (about 10 per cent). Swazi tenure is divided into three: title deed land (TDL), Swazi nation land (SNL) and crown land (Scott, 2006:168). In TDL people can buy land and receive a title to it through the Deeds Registry Act and they are fairly independent in terms of how they manage or even alienate their property. Crown land belongs to the government of Swaziland and is reserved for governmental infrastructural purposes. SNL is the largest portion of the country and is predominantly rural. It is the commons of Swaziland. Although rural Swazis live in SNL, communally administered by

chiefs, they do not own it. They are tenants land lorded by the chiefs, with the King as the owner of all SNL as provided for by all land laws of the country. Rural Swazis are tenure insecure.

People acquire land on SNL through the customary system called *kukhonta* and enter the lifelong *kuhlehla* custom, which is a system of paying homage to the local traditional councils (Dlamini & Masuku, 2011:301). Most Swazis like *kuhlehla* as it enhances cohesion and strengthens communal relationships. Chiefs, the SNL landlords, are a powerful entity with controlled access to the King and they have the prerogative to purge undesirable persons from their custodian communities. They also retain the indigenous role of dispute mediation. The level of influence an individual chief commands collates with the status of the community where he is custodian. Those in charge of communities comprising significantly wealthy members and fertile land typically have more clout than their counterparts in charge of poor land and less rich members. Status also varies on whether one is a royal or not with the royals taking precedence over the common chiefs. As has been seen, sometimes royals decide to claim land and depose of incumbent chiefs who are then demoted to being in the new chief's advisory bodies.

There has been a significant consumption of SNL since independence in line with an expanding population (van Waveren 2007:192-195). A larger population of Swazis are rural based (about 79 per cent). Poverty is also rife in rural Swaziland where about 69 per cent of residents live below the poverty line with about 37 per cent existing in chronic and extreme poverty. To make the situation even worse the country also experienced dwindling of its staple food production – maize – since the year 2000. Government instruments have been trying to integrate the rural poor in activities that would simultaneously emancipate them from poverty while promoting sound and sustainable management of environmental resources. The country also battles with high unemployment as about 40 per cent of Swazis are unemployed.

Conservation has always been practiced in traditional Swaziland (Whelpton, 2005:154). For example, pastoral land used to be rested periodically to allow it to rejuvenate and contain soil erosion, hunting in game reserves was only carried out on specific times when the King issued an open season and it would be strictly prohibited when the given time lapsed and special grasses were only harvested when the King gave the go-ahead. Population growth has

continually undermined these strategies. Livestock is the ultimate symbol of Swazi wealth and the more people there are the more livestock there is to feed on a fixed pasture. This has resulted in soil erosion as most pastures lie bare. This is worsened by the fact that people tend to adopt the free-for-all scenarios where no one takes direct responsibility for their growing livestock and would rather feed it in the rundown pasture like everyone else, as per Hardin's (1968:1243-1248) analogue.

Over exploitation of resources in Swaziland is catalysed by the combined factors of a lack of a land policy to provide overarching land management regulations; failure to enforce existing legislation; unsuitable land use patterns; poor environmental awareness countrywide which results in poor planning; lack of accountability on SNL; conflicts over land resources; incapacity to integrate land use planning and landscape management (SSER, 2013: 35).

Customary tenure blurs resource responsibilities and the undefined scope of traditional leaders often results in problems. It also hastens biodiversity loss, critical ecosystem depletion and wetland destruction. Although the 30 mammals that currently face extinction are in protected areas, 19 of the 56 tree species listed in the Swaziland Plant Red Data Book are not found in all the country's protected areas (SNTC environmental educator, 2014: pers. comm.). Not all chiefs have the environmental knowledge and sensitivity that would empower them to allocate land sustainably.

In the gap that exists in the application of customary and statutory law there has emerged a new culture of selling land in SNL, something considered taboo in Swaziland. Residents often sell portions of their fields, something which reduces arable land in the country. This activity will in the long run negatively affect orphaned children who rely on the welfare of their uncles to look after their interests. It also entices the poor to dispose of some land which they would find difficult to recover when the need arises. This could eventually result in a welfare burden for the government. The customary *khonta* system has also become increasingly expensive. Introducing community residents outside the realm of the *khonta* custom also alters the community composition and cohesion.

It is against this backdrop that there have been widespread calls for securitisation of customary tenure for Swazis with the main tenet being that granting ownership would also transfer the incentive to adopt environmentally sound and sustainable management of

environmental resources, i.e. land to the local communities. As poverty alleviation strategy land could be used by communities as collateral for start-up finance, although this undertaking could also backfire when people get dispossessed of their only real asset due to defaulting in payments to financial institutions.

Swaziland has a dual law system. TDL is managed through the Deeds Registry under the auspices of Roman-Dutch law and SNL is managed through customary law. The global consensus is that customary law is inferior to statutory law but the opposite is true in Swaziland. Although statutory law seems to supersede its counterpart in application, customary law remains superior because its assent is always necessary when a statutory law has to be passed. Decisions made under the precepts of statutory law are also oftentimes overturned by customary law in the country, entrenching the monarchy in the day-to-day running of the country. The preference for a customary stronghold in the country was evident as far back as when the Swazi oligarchy fought for independence. They wanted it not to liberalise all Swazis, but that it should be granted on the basis of the imperialism blueprint.

Post-independence this was evident when the then ruler, the late King Sobhuza II, dissolved the parliament that was as a result of the second election and the first since independence (Stringer *et al.*, 2007:388; Wooderson, 2013). He panicked when the opposition party, which consisted of intellectuals who were critical of the significant role the monarchy had in day-to-day running of the country, won 3 of the 24 seats to parliament. In the first election the opposition had not secured any seat. Three proved a threat enough for the King to speedily dissolve parliament and institute the 1973 decree which banned all political parties for leadership to be left to the King and his advisors. Once the resultant disturbance had died down the King relied on his charm and the personality cult he had cultivated to rule the country.

To buttress royal stronghold all laws vesting land and minerals in the King were not changed and post-independence laws reiterate this. Moreover, the King is the head of all the arms of government (judiciary, legislative and executive). He is the supreme Swazi citizen and legally immune.

Swazis owe their name to their ancestor, King Mswati I, who established them as a nation when he settled in present day Swaziland after trekking extensively from parts of Maputo and

Zululand. His need for military backing against the strong Zulu army led him to ask the aid of the white settlers. In exchange for their help the white settlers were awarded rights to certain resources. The relationship between the Swazi leadership and white settlers continued well after King Mswati I's demise and resulted in a significant loss of Swazi territory during King Mbandzeni's reign. In trying to secure Swazi independence King Mbandzeni unwittingly signed off environmental resources to the whites under the impression that it was a lease. To the whites, however, it was equivalent to title transfer. The results of the toxic exchange resulted in the Land Partition Act of 1907 where Mbandzeni was forced to confront the consequences of his actions. Upon his death Mbandzeni was succeeded by King Bhunu, who ruled for a short time before his demise, leaving the then infant Sobhuza as heir apparent. Because Sobhuza was still young, his grandmother, Labotsibeni Mdluli, became the Queen Regent and embarked on the journey to recover the lost land. Strategies included sending Swazi men to South African mines to seek employment so that they could contribute to a fund dedicated to buying land. The recovered land was called Swazi Nation Land and was vested in the King for all Swazis. Inheriting his grandmother's passion, King Sobhuza also pursued the land recovery programme with fervour.

The Swazi elite have been conspicuous since before independence although the vulgar opulence displayed by their descendants is unparalleled. The first post-independence parliamentary portfolio made no attempts to include middle-class or working-class representatives and instead had a prince for a Prime Minister and a European for a Finance Minister to represent settler interests in the new government (Youé, 1986:72). Not long afterwards King Sobhuza established Tibiyo Taka Ngwane, Swaziland's corporate giant. This organisation was established in trust of the Swazi nation although it only really caters for the royal house. The elite have been entrenched in Swazi society with the royalty accounting for the prime spot. Perverted spending by the elite is rife, a regrettable thing in view of the large inequality disparities in the country. Millions are spent refurbishing royal palaces, purchasing motor vehicles and indulging in shopping sprees while a significant number of Swazis are ravaged by persistent hunger and poverty (Irin News, 2004a & b; Clarke, 2011).

The elite easily influence policy to safeguard their interests. Even in rural settings, like in the Engcayini pastoral rehabilitation programme, (paragraph 3.12.1), the local elite were not only able to alter the policy before the rest of the community, but they also ensured that the peasantry would put in the work by insisting on fines for absentia even though some of them

did not have cows at the time (Stringer *et al.*, 2007:388–392). The reasoning for insisting that even households who did not have cows partake in the activity was that they could have them in future. This was of course beneficial to the elite because they spread the effort while individualising on the benefit. The poor were forced to abandon their own projects to concentrate on the pastoral for communal good. However, on completion the revamped pasture was demarcated and the poor could no longer access it for products like fuel wood, wild fruits and grass. On one hand their poverty was entrenched while the rich raked extra benefits in terms of well-nourished cows which could produce more milk for sale and also attract handsome prices from butchery owners in the event that they were sold.

As in other parts of the world, a majority of Swazi homes are headed by women and regardless of this fact Swazi laws still display a strong patriarchal preference for land allocation. Women are still viewed in light of their extended roles as wives, something clearly out of tune with present trends. More and more women are staying single, some widowed and some divorced with yet another group of married women who run the home because their husbands are working away from home (FAO, 2002:26; Simelane, 2014:91). Owing to the scourge of HIV/AIDS there are also old women who raise their grandchildren because their own children are deceased. One would think that cognisance of these challenges would justify a shift in policy to allocate land easily to women, yet they still struggle to do so. Divorced or single mothers have to present a male proxy to the traditional councils to be considered for land allocation (Rose, 2003:123-149; Grigsby, 2004:207-222). Even though widows may have had access to land while their husbands were alive, that access hinges on them maintaining good relations with their in-laws; otherwise they lose their claim to that land. Single women often rely on their fathers or uncles to negotiate for land allocation on their behalf. Because women increasingly have to rely on their wit to devise strategies to get land, they can often be compromised by the very male proxies they depend on.

The Constitution of the Kingdom of Swaziland (2005) offers an interesting view on land relations. In one part it upholds gender-neutral land allocation, meaning that women are equally entitled to land as their male counterparts. In another part the Constitution of the Kingdom of Swaziland (2005) enshrines organic customary law when it is known that it is a patriarchal system and therefore maintains the subservience of women. Other land laws that marginalise women include the Marriage Act, No.47 of 1964, which vests marital power on the male spouse and grants Swazi law and custom control of marriages officiated in

Swaziland. The Deeds Registry Act, No.37 of 1968, on the other hand strips women married in community of property of the right to have their names appear on a title deed to jointly-owned property. Those married out of community of property are still required to seek their husbands' assistance on any deed-related services and the prerogative of deciding necessity of assistance rests not with the spouse but the Registrar of Deeds. Doo Aphane, the human rights lawyer who successfully challenged these pieces of law, offered a beacon of hope for many Swazi women married in community of property.

Notwithstanding the Doo Aphane victory (Langwenya, 2012:1-10), gender disparities in Swaziland are still inadequately addressed, especially for women married through Swazi law and custom. The proposed Land Bill, if it miraculously overcomes the customary assent hurdle and gets enacted, could offer some headway in addressing the glaring issues. This bill proposes that married women be afforded the same status as their male counterparts in terms of deeds registration. It also shows sensitivity to the country's customary polygamous marriages by proposing that women in those arrangements have their marriages afforded the same status as of those married in civil rights.

Swaziland has also had her fair share of land-related conflicts, something that can be expected when considering the fact that the land resource is becoming increasingly valuable. The most colossal one yet has to be the 2000 KaMkhweli and Macetjeni debacle where the royal house forcefully installed the late Prince Maguga as a double chief in these areas despite remarkable resistance from the then incumbent chiefs (Independent Online, 2000; Dlamini, 2010). There were claims from the royal house that the late King Sobhuza had intended for his son, Prince Maguga, to administer those chiefdoms and as such the incumbents were to accept demotion to allow the Prince to rule (Independent Online, 2000). Those claims were a shock revelation to two chiefs who had been installed rightfully by Swazi law and custom. They challenged this order and refused to abdicate their positions. The royal house, through state instruments (police and defence forces), launched an attack on the area targeting the chiefs and their supporters. Many people were carried away on trucks and dumped in various parts of the country. The stubborn chiefs escaped and sought asylum status from neighbouring South Africa (Independent Online, 2000). In the aftermath remaining residents could not farm as the royal house issued an order prohibiting such until after the new chief had been installed. School-going children missed their opportunity to write end-of-year exams that year and many were separated from their families. Some

remaining families had an additional burden as they took some children whose parents had been evacuated, therefore meaning an increase in family size. The order not to farm when most Swazis rely on subsistence farming resulted in food shortages.

In another incident people of the KaShali/Ngwane Park area had their homes demolished after it came to light that they had been erroneously allocated land on a farm belonging to the King even though they had acquired the land through the very Swazi law and custom (Simelane, 2010). These examples show that even though unaffected Swazis may assume that their tenure is secure, it really is not. And for the one who is aware of this truth it holds that they would seek to maximise their gain while they can. Regular conflict compromises rural livelihoods severely. As rural Swaziland is dependent on subsistence farming, this activity is also a means of employment for the peasants. Surprise evacuation and homes being demolished also places financial burdens on the rural people of whom most are already poor and cannot afford to be constantly moving.

As if to prove that the elite remain unaffected by the compromised livelihoods of rural Swazis princes still occasionally lay claims on land with chiefs in place. For example, Prince Mangaliso totally disregarded Chief Mafamba when he issued a directive saying that the people should acknowledge him as chief from then on (Dlamini, 2010). He conveniently did this when the King was in seclusion so that he could not be approached by the aggrieved community members for redress (Lee, 2011). The former minister of home affairs followed suit when he laid claim in the Sankolweni chiefdom. Prince Matatazela unsuccessfully tried to take over the Mbekelweni chiefdom and was responsible for the KaShali/Ngwane Park confusion that resulted in demolished homes (Matse, 2010). After this shameful act people were banned from holding meetings and were told to heed the orders to just leave the area.

As recently as 2014 a commoner chief threatened to evict people in the Nkilonko chiefdom because he had earmarked the area for development. The people in that area had been resettled there an odd thirty years ago when the Ubombo Sugar Mill was established. This is still unsustainable development if it does not consider and involve the affected parties. It also highlights how unsafe tenure in Swaziland really is when one man can just issue an order with no regard for other people's opinions (Magagula, 2014).

Conflict also abounds when people encroach protected areas and the Swaziland National Trust Commission (SNTC) has to spend considerable effort warding them off. It is noteworthy that the country has a plethora of land-related laws from both the pre- and post-independence eras and that neither group of laws securitises tenure for the common Swazi citizens. The Constitution also does not enshrine a specific environmental right, but implies it by placing the onus on the State and citizens of Swaziland to conserve the environment (Faure & du Plessis, 2011:464). None of the laws have ever been enforced to allow for proactive development and proper environmental planning in the country. As a result progressive Swazis have attempted to call for land reform since the early 1990s, but have always been met with fierce opposition from the royals as they fear that a secure tenure for the commons would threaten the legitimacy of royal rule in the country. The government has been accused of being indifferent in dealing with pertinent issues such as food scarcity and high unemployment in the country (Terry, 2012:135; Irin News, 2014a&b). Indifference was apparent also in the aftermath of the KaMkhweli/Macetjeni debacle when children were left to fend for themselves in the sudden royal-induced absence of their parents. Nongovernmental organisations have also decried the *laissez faire* attitude displayed by bureaucrats regarding the poverty levels and glaring inequalities in the country. Meanwhile rural people attempt to hold on to their only real asset, land, by farming even if it is infertile as they fear that leaving it fallow may trigger repossession by traditional authorities to give to new members of the community (Dlamini & Masuku, 2011:302).

On a brighter side the country has seen the successful implementation of community development planning (CDP), which is a joint initiative between International Fund for Agricultural Development (IFAD), Ministry of Agriculture and Cooperatives (MOAC), local authorities and the community. This programme is the first that vindicates Ostrom's position on the conditions for success in communal governance (Ostrom, 2010:6). As opposed to imposing the community participates and is involved in the project. It has been so successful that it might be done in other areas. Chiefs and princes were also taken to Tanzania to observe how their transition to secure tenure has been, the challenges to anticipate and how best they can apply the process in Swaziland. The National Environment Fund, which is benefited by among others fines from noncompliant businesses, has also been able to rejuvenate numerous places in the country including the Lawuba wetland, which is commendable (SEA information officer, 2014:pers. comm.). If the proposed Land Bill is passed, it would be a triumph for sustainability and environmental management in Swaziland.

For one, it would offer the overarching principles that the country is seriously lacking. It is not without its weaknesses, but charting the way forward was never going to be easy and straightforward and getting on the road to success is much better than holding out for the perfect time.

## **6.2 SUMMARY**

The customary land tenure in Swaziland does not promote sustainable environmental management of common resources. The absence of a land policy which would provide overarching support and guidance for institutions to undertake sustainable use of resources is a glaring shortcoming. As a result there is a gap in environmental planning and proactive development in the country. The death of civic institutions like the Yonge Nawe Environmental Action Group also dealt the environment a blow. Without knowledgeable and informed people to sensitize rural people on the implications of their actions the opportunity to conserve the environment is lost. In this vacuum Swazi National Land (SNL) then remains the free-for-all with the grim consequences that Hardin foretold. Swaziland seems to be at the dawn of constructing significant sustainable development. The emergence of the Chiefdom Development Plans is a ray of hope as they embody the proper environmental planning and proactive development that the country should adopt. The chief visits to Tanzania are encouraging as they seek to empower the very people responsible for land allocation in the country as is the rehabilitation that is funded by the National Environment Fund. However, even with the success of the first of such programmes the country should not rest on its laurels since environmental problems are increasingly complex.

Political apathy will never be a useful ingredient in the sustainable use of common resources particularly as people are inherently self serving. It is therefore necessary that political weight is pulled behind the plight of the vulnerable in society i.e. the poor, women and children. Population growth also means resources shrink and therefore there is a demand for creativity in the management of common resources to ensure sustainable livelihoods for all. The poor in society are the ones that need protection from the growing informal land markets on SNL.

### **6.3 RECOMMENDATIONS**

- Document customary law to ensure standard application across the country and also to provide reliable and objective reference for application purposes.
- Government should identify all arable land and institute communal farming so as to prevent the land resource from going extinct.
- Ration common resources and empower communities to replenish products as they harvest from common resources, e.g. tree planting after felling older trees.
- Swaziland should rely on its strength as a mono-ethnic society to institute inclusiveness in its policies.

### **6.4 RESEARCH OPPORTUNITIES**

The following are future research other scholars can embark on deriving from this study:

1. This study sampled purposively with the intention to speak to organisations which are involved in land tenure studies. Another approach could be to target communities to hear what the people on the ground are saying and hoping for.
2. The recommendation that customary law should be documented warrants its own study to determine how this exercise could be carried out and the potential benefits to such an endeavour.
3. Another study could assess the level of environmental awareness within the rural Swazi population versus the efforts that are made by the affected organisations to spread it.

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## **Annexure A – Central Rural Development Board Questionnaire**

1. Please discuss the role of chiefs in customary land affairs.
2. There have been reports of land sales in customary land, an exercise considered illegal in Swaziland. The reports allege that some chiefs take part in this activity. Is the CRDB aware of this? If not, why? Comments on the issue.
3. How do chiefs encourage sustainable management of environmental resources in their various chiefdoms?
4. Excessive livestock have also been said to contribute to overgrazing and soil erosion. How do chiefs control the number per household, especially within the wealthier members of the community?
5. How are intercommunity relations managed with regard to resources which other communities may lack?
6. Do existing community members influence the rate at which people migrate into their communities? If yes, how extensive is this influence?
7. Do community members yield any influence regarding communal environmental resources? Please elaborate on response.
8. There have been articulations made that communities were becoming saturated as the rate of incoming people is incessant. Has this been identified by the Board as a challenge. If yes, what mitigation is in place for yet to be saturated areas?
9. When and under what conditions do chiefs reduce original family allotments? Are affected families engaged in the allotment reduction process? What are the consequences when the affected families disagree with the traditional council's decisions?
10. Comments on the halted land reform policy of 1999.

Thank You!!!

**Annexure B – Ministry of Agriculture and Cooperatives (Land Use) Questionnaire**

1. What gave rise to the abandoned 1999 Land Policy review? Why was it stopped? Are there plans to revisit the process? If yes, please elaborate.
2. How is population growth, a factor that has already been blamed for saturation in some communities, anticipated and mitigated for in the land management portfolio?
3. What percentage of cultivable land is actually farmed? Why?
4. Would you say that there are any benefits to secure land tenure? Explain.
5. What proportion of SNL is currently leased to big companies and at what cost? How do indigenous people benefit as a result of these transactions if there are?
6. How much land is idle in the country?
7. Please elaborate on how the leasehold system on Swazi Nation Land works.
8. What measures and what progress have been made to provide long-lasting relief to people in drought-prone areas?
9. Rural people are said to contribute to deforestation as they harvest trees for shelter and fuel wood. Is this a problem in Swaziland? If yes, to what extent?
10. How extensive are mineral deposits in the country? What has hindered the mining of such minerals as gold and diamonds that the country possesses according to the media? When mining eventually occurs, do neighbouring communities stand to benefit? How?
11. How vast are the Swazi commons?

Thank You!!!

### **Annexure C – Swaziland Environment Authority Questionnaire**

1. The 2001 Swaziland National Biodiversity Strategy and Action Plan identified secure tenure as a means of a sound conservation. Please elaborate on what informed this standpoint.
2. Please elaborate on how tenure can improve and sustain Swazi rural livelihoods.
3. How has the land tenure landscape, with regard to biodiversity protection, been since 2001?
4. Rural residents are said to be excessively dependant on natural resources and ecosystem services for survival and therefore exert considerable pressure on the environment. How does the SEA influence this if at all?
5. An important tool used by the SEA in establishment of businesses is the Environmental Impact Assessment (EIA). This also represents a tool for vocalisation of community concerns. What level of community involvement is considered adequate by the SEA for rural projects, if any?
6. Rural people are typically less literate in comparison to urban dwellers. How does the EIA factor this to ensure that people are fully aware of what projects they are welcoming to their communities?
7. Are rural residents empowered through the EIA, among others to veto projects that they may feel do not appeal to their communities, for example, a threat to biodiversity? If yes, how? Please give examples of projects that were denied certification because the community said so.
8. Since 2006 Swaziland has been an active player in the sustainability arena. To date she is a signatory to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973), the Convention on the Control of Transboundary Movement of Hazardous Waste and their Disposal (Basel Convention) (1989), the Convention on Biological Diversity (1992) and the Convention to Combat Desertification (1994).  
Has this legislation been endorsed in Swaziland? If yes, when?
9. Comments on the land tenure policy reform halted in 1999. If passed, would it have improved the agenda of the SEA with regard to common resources? Please elaborate on your response.
10. Which stakeholders does the SEA liaise with regarding biodiversity conservation?

Thank You!!!

## **Annexure D – Swaziland National Trust Commission Questionnaire**

1. Does the SNTC have a role in common resource governance?
2. How does the entity encourage sustainable management of common resources?
3. How vibrant is the Swazi ecosystem?
4. Are there any red data species in Swaziland? If yes, what is the rate of extinction since 2006?
5. Does tenure insecurity affect common resources or wildlife conservation? If yes, how?
6. The Game Act and other legislation govern the use and conservation of resources. Would you say that those practices, pastoral resting, controlled hunting (*butimba*) are still effective? Please elaborate.
7. Swaziland contends with a growing rural population, where the protected areas are incidentally situated. How has this growth affected protected resources so far? Is it a sustainable trajectory? If not, what measures does the SNTC propose to sustain common resources?
8. Is there any ongoing engagement with surrounding communities (When did it start, spurred by what and what tangible benefits since)?
9. How do protected areas benefit from an involved community, if they indeed do?
10. In your opinion would a change in land tenure regime affect the sustainability of common resources? Please elaborate.
11. A land tenure reform policy was instituted and halted in 1999. Any comment on this.
12. Who are the SNTC stakeholders in the management of the protected areas (complexity)?
13. Since 2006 Swaziland has been an active player in the sustainability arena. To date she is a signatory to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973), the Convention on the Control of Transboundary Movement of Hazardous Waste and their Disposal (Basel Convention) (1989), the Convention on Biological Diversity (1992) and the Convention to Combat Desertification (1994).  
Has this legislation been endorsed in Swaziland? If yes, when?

Thank You!!!

## **Annexure E – University of Swaziland Questionnaire**

1. Please explain the Swaziland land tenure reform.
2. Community involvement in EIAs, how significant is community concerns?
3. The role of chiefs in land management?
4. Does the current land tenure provide for sound environmental management of common resources? Please elaborate.
5. Please comment on the inferiority of customary land tenure versus statutory tenure in Swaziland and how it affects the sustainability of common resources in the country.
6. Composition of the Swazi elite. How do they guard their interests?
7. Among the powerful players in land matters are the elite who in the case of Swaziland have been identified to largely comprise the royal family. In other countries like Pakistan, for example, the elite also leave their home country and reside overseas while retaining their land. Could this also be true for Swaziland? If yes, to what extent are these elites allowed to retain their land?
8. Would you say that chiefs/traditional structures gain personally from land leases or land allocation through the traditional *khonta* system? Substantiate the claims.
9. Influence of international financial organisations in the country, especially with regard to land tenure.
10. Insecure land tenure has also been punted as the cause of conflicts. For her share, Swaziland has experienced such conflicts as at KaMkhweli/Macetjeni and Ngwane Park KaShali, which saw scores of people being evicted. What would you say considering that more and more people are increasingly desperate for land?
11. Trends of land sales in customary land have also emerged. How does this affect the cultural connotations of customary land and are these sales legal where there are receipts as proof of payment?
12. Since the passing of the Constitution and such cases as the Aphone vs. Government, would you say that her victory improved the plight of women with regard to land ownership?

Thank You!!!